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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

FUNKO, INC., et al.,

Defendants.

Case No. 2:20-cv-02319-VAP (MAAx)

CLASS ACTION

DECLARATION OF STEPHANIE M. BEIGE IN SUPPORT OF FINAL APPROVAL OF THE SETTLEMENT AND PAYMENT OF ATTRONEYS' FEES AND EXPENSES

Hearing
Date: November 7, 2022
Time: 2:00 PM
Courtroom: 8A
Judge: Hon. Virginia A. Phillips

I, Stephanie M. Beige, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm of Bernstein Liebhard LLP ("Bernstein Liebhard"), court-appointed Co-Lead Counsel on behalf of Lead Plaintiffs Abdul Baker, Zhibin Zhang, and Huaiyu Zheng ("Lead Plaintiffs") and the proposed Settlement Class in the above-captioned action (the "Action").[1] I have personal knowledge of the matters set forth herein and, if called upon, could and would competently testify thereto.

2. I respectfully submit this Declaration in support of: Lead Plaintiffs' Motion for Final Approval of Settlement, Certification of Settlement Class, and Entry of Judgment; and (b) Lead Counsel's Motion for Payment of Attorneys' Fees and Expenses. Both motions have the support of the Lead Plaintiffs. *See* Declarations of Lead Plaintiffs Abdul Baker, Zhibin Zhang, and Huaiyu Zheng, attached hereto as Exhibits 1-3.[2]

I. PRELIMINARY STATEMENT

3. Lead Plaintiffs succeeded in obtaining a recovery for the Settlement Class in the amount of $7,000,000, in cash, which has been deposited in an interest-bearing escrow account for the benefit of the Settlement Class. As set forth in the Stipulation, in exchange for this payment, the proposed Settlement resolves all claims asserted by Lead Plaintiffs and the Settlement Class in the Action and all related claims that could have been brought against the Defendants ("Released Claims").

4. The case has been vigorously litigated from its commencement in March 2020 through the execution of the Stipulation. The Settlement was achieved only after Lead Counsel, *inter alia*: (i) conducted a thorough and wide-ranging investigation concerning the

[1] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated June 3, 2022 (the "Stipulation"), previously filed with the Court. *See* ECF No. 186-1.

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

allegedly fraudulent misrepresentations and omissions made by Defendants; (ii) prepared and filed a detailed First Consolidated Amended Class Action Complaint ("FAC"); (iii) researched and drafted an opposition to Defendants' motions to dismiss the FAC; (iv) prepared and filed a detailed Second Consolidated Amended Class Action Complaint ("SAC"); (v) researched, drafted, and successfully opposed Defendants' motions to dismiss the SAC, in part; (vi) worked closely with its damages experts to analyze loss causation and damages issues; (vii) served and responded to various demands for the production of documents and interrogatories; (viii) engaged in meet and confer sessions with Defendants with respect to discovery demands and responses; (ix) drafted a detailed mediation statement and mediated the Action; (x) negotiated the terms of the Settlement; and (xi) reviewed hundreds of pages of confirmatory discovery produced by Funko in furtherance of the settlement negotiations. At the time the Settlement was reached, Lead Counsel had a thorough understanding of the strengths and weaknesses of the parties' positions.

5. In deciding to settle, Lead Plaintiffs and Lead Counsel took into consideration the significant risks associated with establishing liability, as well as the duration and complexity of the legal proceedings that remained ahead. As demonstrated by the parties' court filings, the Settlement was achieved in the face of vigorous opposition by Defendants who would have, had the Settlement not been reached, continued to raise serious arguments concerning, among other things, whether the alleged misstatements were material or false, whether there was any evidence of Defendants' scienter, and whether Lead Plaintiffs could prove that the alleged fraud caused economic loss.

II. PROCEDURAL HISTORY

6. Beginning on March 10, 2020, three similar actions were filed asserting violations of the federal securities laws against Defendants: (1) the above-captioned action (the "*Ferreira* Action"); (2) *Nahas v. Funko, Inc., et al.*, No. 2:20-cv-03130 (C.D. Cal.) (the "*Nahas* Action"); and (3) *Dachev v. Funko, Inc., et al.*, No. 2:20-cv-00544 (W.D. Wash.) (the "*Dachev* Action").

7. On June 11, 2020, the Court entered an Order (ECF No. 58): (i) consolidating the *Nahas* Action with the *Ferreira* Action; (ii) appointing Abdul Baker, Zhibin Zhang, and Huaiyu Zheng as Lead Plaintiffs for the proposed class; and (iii) appointing Bernstein Liebhard LLP and Pomerantz LLP as Co-Lead Counsel.

8. On June 24, 2020, the *Dachev* Action was voluntarily dismissed.

9. On July 31, 2020, Lead Plaintiffs filed a FAC alleging violations of Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 promulgated thereunder, against Defendants on behalf of all persons and entities that purchased or otherwise acquired Funko securities between August 8, 2019 and March 5, 2020, inclusive, and who were damaged thereby (the "Class").

10. On October 2, 2020, the Settling Defendants and the ACON Defendants filed separate motions to dismiss the FAC.

11. On December 1, 2020, Lead Plaintiffs filed an omnibus memorandum in opposition to the motions to dismiss the FAC.

12. On December 30, 2020, the Settling Defendants and the ACON Defendants filed separate reply briefs in support of their respective motions to dismiss the FAC.

13. On January 14, 2021, Lead Plaintiffs filed a corrected omnibus memorandum of law in opposition to the motions to dismiss the FAC.

14. On January 22, 2021, the Settling Defendants filed a supplemental reply brief in support of their motion to dismiss in response to Lead Plaintiffs' corrected omnibus memorandum of law.

15. On January 26, 2021, the Court issued an Order directing the parties to submit supplemental briefing addressing the impact of the Ninth Circuit's decision, *Wochos v. Tesla, Inc.*, 985 F.3d 1180 (9th Cir. 2021) on Defendants' pending motions to dismiss (*see* ECF 133).

16. On January 29, 2021, the parties submitted supplemental briefing addressing the impact of the Ninth Circuit's decision, *Wochos v. Tesla, Inc.*, 985 F.3d 1180 (9th Cir. 2021) on Defendants' pending motions to dismiss.

17. On February 25, 2021, the Court granted Defendants' motions to dismiss the FAC. The Court also granted Lead Plaintiffs leave to amend (*see* ECF 141).

18. On March 29, 2021, Lead Plaintiffs filed the operative, SAC against the Defendants.

19. On May 7, 2021, the Settling Defendants and the ACON Defendants filed separate motions to dismiss the SAC.

20. On June 11, 2021, Lead Plaintiffs filed oppositions to both motions to dismiss the SAC.

21. On June 16, 2021, the Court issued an Order directing Defendants to address the impact of *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687 (9th Cir. 2021), *cert. denied sub nom. Alphabet Inc. v. Rhode Island*, 142 S. Ct. 1227 (2022) ("*Alphabet*") on Defendants' motions to dismiss the SAC in their respective reply briefs. The Court also granted Lead Plaintiffs leave to file a sur-reply addressing *Alphabet* (*see* ECF 156).

22. On July 2, 2021, the Settling Defendants and the ACON Defendants filed separate reply memoranda in support of their respective motions to dismiss the SAC.

23. On July 16, 2021, Lead Plaintiffs filed a sur-reply in further support of their oppositions to the motions to dismiss the SAC.

24. On October 18, 2021, the Court issued its tentative ruling and heard oral argument on the motions to dismiss the SAC.

25. On October 22, 2021, the Court granted in part and denied in part the motions to dismiss the SAC (*see* ECF 165).

26. On November 22, 2021, Defendants filed their Answers to the SAC.

27. On January 6, 2022, the parties filed their Joint Rule 26(f) Report (*see* ECF 173).

28. On January 11, 2022, the parties served their Rule 26(a)(1) Initial Disclosures.

29. Between December 2021 and March 2022, the parties served and responded to various demands for the production of documents and interrogatories and engaged in a meet and confer with respect to Lead Plaintiffs' Objections and Responses to the Settling Defendants' Requests for Production of Documents and Interrogatories.

30. On February 15, 2022, the parties filed a Stipulated Protective Order (*see* ECF 175).

31. On March 4, 2022, the parties entered into a Stipulated Discovery Order Governing the Production of Documents and Discovery of Electronically Stored Information.

III. NEGOTIATION OF THE SETTLEMENT AND ITS TERMS

32. In late-2021, Lead Plaintiffs and the Settling Defendants began exploring the possibility of a settlement. The Parties agreed that holding a mediation session prior to briefing class certification could be beneficial to all parties.

33. On April 11, 2022, the Parties engaged Michelle Yoshida, a well-respected and highly experienced mediator associated with Phillips ADR to assist them in exploring whether a negotiated resolution was possible. Thereafter, the Parties exchanged confidential mediation statements.

34. In advance of the scheduled mediation session with Ms. Yoshida, Lead Plaintiffs and the Settling Defendants exchanged mediation statements and damages analyses.

35. On April 27, 2022, after a full day mediation session was held before Ms. Yoshida, the Parties were able to reach a settlement in principle to resolve the action, resulting in a Memorandum of Understanding (the "MOU"), entered into on April 29, 2022.

36. On May 2, 2022, the Parties informed the Court that they had reached a settlement in principle asked the Court to stay all deadlines.

37. The parties subsequently drafted a Stipulation, which sets forth the final terms and conditions of the Settlement, including, among other things, a dismissal with prejudice of all claims asserted in the Action, along with a release of any related claims ("Released Claims"), in return for a cash payment of $7,000,000 (the "Settlement Amount") for the benefit of the Settlement Class.

38. Lead Plaintiffs and Defendants thereafter memorialized the final terms of the Settlement in the Stipulation, which was executed by the parties on June 3, 2022.

39. On June 3, 2022, Lead Plaintiffs filed their Unopposed Motion for Preliminary Approval of Settlement, Preliminary Certification of Settlement Class, and Approval to Provide Notice to the Class and Memorandum of Points and Authorities in Support. Lead Plaintiffs requested that the Court approve the forms of notice, which, among other things, described the terms of the Settlement, advised Settlement Class Members of their rights in connection with the Settlement, set forth the Plan of Allocation, informed Settlement Class Members of the amount of attorneys' fees and expenses that Lead Counsel and Lead Plaintiffs would request, and explained the procedure and deadline for filing a Proof of Claim and Release form (the "Proof of Claim Form") in order to be eligible to receive a payment from the Net Settlement Fund. In addition, Lead Plaintiffs requested that the Court certify the Settlement Class for settlement purposes.

IV. COMPLIANCE WITH THE PRELIMINARY APPROVAL ORDER

40. By Order entered July 19, 2022, the Court preliminarily approved the Settlement and approved the forms of notice to the Settlement Class. ECF No. 193 (the "Preliminary Approval Order"). Pursuant to the Preliminary Approval Order, the Court appointed Strategic Claims Services ("SCS") as Claims Administrator and instructed SCS to disseminate copies of the Notice to the Settlement Class.

41. The Notice informed the Settlement Class members of the terms of the Settlement, their right to object or seek exclusion, and that Lead Counsel sought attorneys'

fees of up to 25% of the Settlement Fund and reimbursement of expenses not to exceed $250,000.

42. Attached as Exhibit 4 is the Declaration of Josephine Bravata Concerning: (A) Mailing of the Postcard Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections. This Declaration demonstrates that the Claims Administrator has provided Notice to the Settlement Class in compliance with the Preliminary Approval Order.

43. In addition to providing Noticed directly to Settlement Class Members, SCS caused the Summary Notice to be published in *Investors' Business Daily* and to be transmitted over *PR Newswire*. *Id*. at ¶ 9.

44. Lead Counsel has reviewed the Summary Notice as distributed to the Settlement Class.

45. SCS also maintains and posts information regarding the Settlement on a dedicated website established for the Action, https://www.strategicclaims.net/Funko/ to provide Settlement Class Members with information about the Action, as well as downloadable copies of the Notice, Claim Form and Stipulation. *Id*. at ¶ 11.

46. Lead Counsel reviewed the Claims Administrator's website for the Action and confirmed that it was operational and provided information to the Settlement Class.

47. Lead Counsel also posted Notice to the Settlement Class on their firm websites.

48. Pursuant to the terms of the Preliminary Order and the Order Setting Fairness Hearing and Other Deadlines dated July 29, 2022 (ECF No. 195), the deadline for Settlement Class Members to submit objections to the Settlement or the fee and expense application, or to request exclusion from the Settlement Class is October 17, 2022. To date, SCS reports that it has not received any objections and has received only one request for exclusion from the Settlement Class. *Id*. at ¶ 7.

49. Other than the one request for exclusion described above, Lead Counsel is unaware of any objections to the Settlement or requests for exclusion from the Settlement

Class. Should any objections or requests for exclusion be received, Lead Plaintiffs will address such in the reply papers.

50. As part of the Settlement, the Parties agreed that "[i]f any funds shall remain in the Net Settlement Fund six months after re-distribution, then the balance shall be contributed to the Legal Aid Foundation of Los Angeles or any non-profit successor of it." Stipulation at ¶ 32. In its Preliminary Approval Order, the Court explained that while "the proposed settlement is within the range of possible final approval," the Court declined to approve of the Legal Aid Foundation of Los Angeles as a recipient of remaining funds because its mission is "unrelated to both the injuries Plaintiffs suffered and the objectives of the underlying statutes on which Plaintiffs base their claims." Preliminary Approval Order at 25. The Preliminary Approval Order further explained that, "the Legal Aid Foundation of Los Angeles is a local charity, but class members exist throughout the United States." *Id.*

51. Accordingly, pursuant to the Preliminary Approval Order, Lead Counsel has selected Investor Protection Trust as the recipient of any funds remaining in the Net Settlement Fund after final distribution. Investor Protection Trust is a nonprofit organization devoted to independent and unbiased investor education, research, and support of investor protection efforts. *See* https://investorprotection.org/. Since 1993, the Investor Protection Trust has worked at the state and national level to provide independent and objective investor education to enable the public to make informed investment decisions. This is related to both the injuries Lead Plaintiffs suffered and the objectives of the underlying statutes on which Lead Plaintiffs base their claims. Moreover, Investor Protection Trust functions under the direction of a Board of Trustees which is composed of various State Securities Regulators.

V. THE SETTLEMENT IS AN EXCELLENT RESULT FOR THE SETTLEMENT CLASS

52. The $7,000,000 Settlement is a favorable and reasonable result for the Settlement Class, particularly when considered in view of the substantial risks and obstacles to recovery if the Action were to continue through summary judgment, to trial, and through likely post-trial motions and appeals.

53. The Settlement recovers approximately 8.7% of the $80 million in maximum estimated damages.[3] This percentage is above the median settlement amount as reported by Cornerstone Research in Laarni T. Bulan et al., *Securities Class Action Settlements: 2021 Review and Analysis*, which tracks and aggregates court-approved securities class action settlements. *See* Ex. 5.

54. The Settlement, when viewed as a percentage of maximum recoverable damages is likely even more favorable to the Settlement Class because Lead Plaintiffs' $80 million estimate would be subject to formidable challenges.

55. Though Lead Plaintiffs believe that the claims were strong, Lead Plaintiffs also recognize that there were considerable risks in continuing the Action against Defendants. Lead Plaintiffs and Lead Counsel carefully considered these risks during the months leading up to the Settlement and throughout the settlement discussions with the Settling Defendants and the Mediator.

56. In agreeing to settle, Lead Plaintiffs and Lead Counsel weighed, among other things, the substantial cash benefit to the Settlement Class Members against: (i) the uncertainties associated with trying complex securities cases; (ii) the difficulties and challenges involved in proving materiality, falsity, scienter, causation, and damages in this particular case; and (iii) the delays that would follow even a favorable final judgment, including appeals.

57. Proving loss causation and damages posed serious risks to recovery for the Settlement Class. The SAC alleged two general categories of false and misleading

[3] Lead Plaintiffs' $80 million damages estimate includes approximately $11 million in damages relating to Lead Plaintiffs' 20A claim and approximately $69 million relating to Lead Plaintiffs' 10(b) claims.

statements relating to Funko's financial condition: (i) the Company's risk warnings that warned investors of potential risks that could affect Funko's business operations if the Company accumulated excess inventory (the "Inventory Statements"); and (ii) Defendants' fiscal year 2019 financial projections (the "Projection Statements"). The SAC alleged that Funko's announcements on February 5, 2020 that the Company missed its fourth quarter 2019 and 2019 fiscal year earnings guidance and that it was taking a $16.9 million inventory write-down were corrective disclosures that caused a material price drop in Funko stock. However, the Court dismissed the Projection Statements claims in its Order granting in part and denying in part, Defendants' motions to dismiss the SAC. *See* ECF No. 165. As a result, Defendants would likely have contended that Lead Plaintiffs could not establish a causal connection between the alleged misrepresentations relating to Funko's inventory write-down and any loss allegedly suffered by investors. Indeed, Defendants likely would have argued that damages are zero because the stock price decline as a result of Funko's February 5, 2020 disclosures was not caused by Funko's announcement that it was taking a write-down of inventory, but instead was caused by the Company's announcement that it had missed its fourth quarter 2019 and 2019 fiscal year earnings guidance by over 25%. At the very least, Defendants would argue that Lead Plaintiffs would be required to "distinguish the impact" of the fraud (*i.e.*, damages relating to Funko's inventory write-down) and that of "non-fraud related news and events" (*e.g.*, damages relating to Funko's missed 4Q2019 and FY2019 projections), an argument which – if accepted by the Court – would reduce Lead Plaintiffs' damages estimate significantly.

58. Defendants would have also likely challenged Lead Plaintiffs' calculation of 20A damages, as there are differing calculations available, each having been accepted by different district courts. While Lead Plaintiffs would have argued in favor of a "disgorgement" of profits calculation, amounting to approximately $11 million in damages, Defendants likely would have argued that 20A damages are limited to the aggregate loss Defendant Mariotti avoided by selling prior to a corrective disclosure. Because Mariotti's

sales occurred in September 2019—more than a month before the alleged misstatement that was upheld by the Court—Defendants would likely argue that Mariotti did not avoid any losses because he was not able to take advantage of any artificial price inflation.

59. The Settlement also provides the Settlement Class with a prompt and substantial tangible recovery, without the considerable risk, expense, and delay of litigating to completion. Lead Plaintiffs faced risks in connection with their upcoming motion for class certification. While Lead Plaintiffs believe class certification would have been granted, the risks associated with continued litigation were shown through Defendants' motions to dismiss and the Court's Order dismissing a large portion of Lead Plaintiffs' claims.

60. Defendants would have also likely sought summary judgment and there was no guarantee that Lead Plaintiffs would prevail against Defendants' challenges and, even if they did, how the Court's rulings would affect damages or how the case would be presented to a jury.

61. These risks aside, discovery would have been protracted and the trial of Lead Plaintiffs' claims would inevitably be long and complex, and even a favorable verdict would undoubtedly spur a lengthy post-trial and appellate process.

62. Lead Plaintiffs' success was by no means assured. It is possible that a jury could have found no liability or no damages. Lead Counsel therefore respectfully submits that based upon the considerable risk factors present, this Settlement is an excellent result for the Settlement Class and involved a very substantial contingency risk to Lead Counsel.

63. As set forth above, the terms of the Settlement were negotiated by the Parties at arm's-length through adversarial good-faith negotiations.

VI. THE PLAN OF ALLOCATION

64. Pursuant to the Notice Order and as set forth in the Postcard Notice, Summary Notice, and Notice, all Settlement Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a timely and proper Proof of Claim form. As

provided in the Stipulation, after deducting all appropriate taxes, administrative costs, and attorneys' fees and expenses (as well as reimbursement of Lead Plaintiffs' time and expenses), the remainder of the Settlement Fund (the "Net Settlement Fund") shall be distributed among Settlement Class Members who submit valid Proof of Claim forms according to the Plan of Allocation.

65. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed. The proposed Plan of Allocation provides that, to qualify for payment, a claimant must be, among other things, an eligible member of the Settlement Class and must submit a valid Proof of Claim form that provides all of the requested information. The Settlement Fund will be distributed on a *pro rata* basis depending on the Settlement Class member's recognized losses. The Plan of Allocation is set forth in the Notice.

66. The proposed Plan of Allocation was formulated after consultation with Lead Counsels' damages consultant in order to calculate an equitable method to divide the Net Settlement Fund for distribution among Settlement Class members who submit valid claims. The proposed Plan of Allocation is designed to fairly and rationally allocate the proceeds of this Settlement among the Settlement Class.

VII. THE WORK OF LEAD COUNSEL AND THE LODESTAR CROSS-CHECK

67. 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. Among other efforts, described more fully *supra* ¶¶ 6-31 Lead Counsel conducted a comprehensive investigation into the Settlement Class's claims; researched and prepared a detailed first amended complaint; briefed thorough oppositions to Defendants' first round of motions to dismiss, including supplemental briefing the impact of the Ninth Circuit's decision, *Wochos v. Tesla, Inc.*, 985 F.3d 1180 (9th Cir. 2021) on Defendants' first round of motions to dismiss; researched and prepared a detailed second amended complaint; briefed thorough oppositions to Defendants' second round of motions

to dismiss, including supplemental briefing on the impact of the Ninth Circuit's decision in *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687 (9th Cir. 2021), *cert. denied sub nom. Alphabet Inc. v. Rhode Island*, 142 S. Ct. 1227 (2022) on Defendants' second round of motions to dismiss; worked closely with their damages experts to analyze loss causation and damages issues; served and responded to various demands for the production of documents and interrogatories; engaged in meet and confer sessions with Defendants with respect to discovery demands and responses; drafted a detailed mediation statement and engaged in a hard-fought settlement process with experienced defense counsel and an experienced Mediator; and reviewed hundreds of pages of confirmatory discovery produced by Funko in furtherance of the settlement negotiations.

68. At all times throughout the pendency of the Action, Lead Counsels' efforts were driven and focused on advancing the litigation to bring about the most successful outcome for the Settlement Class, whether through settlement or trial, by the most efficient means necessary.

69. Attached hereto are declarations from Lead Counsel, which are submitted in support of the request for an award of attorneys' fees and payment of expenses. *See* Declaration of Bernstein Liebhard LLP in Support of Lead Counsels' Motion for Payment of Attorneys' Fees and Expenses (attached as Exhibit 6 hereto); and Declaration of Pomerantz LLP in Support of Lead Counsels' Motion for Payment of Attorneys' Fees and Expenses (attached as Exhibit 7 hereto).

70. Included with these declarations are schedules that summarize the time of each firm (including by category of work conducted), as well as the expenses incurred by category (the "Fee and Expense Schedules"). The attached declarations report the amount of time spent by each attorney and professional support staff employed by Lead Counsel and the "lodestar" calculations, *i.e.*, their hours multiplied by their current rates. *See* Exs. 6-7. As explained in each declaration, they were prepared from daily time records regularly prepared and maintained by the respective firms.

71. Lead Counsels' time records contain privileged information and would be burdensome to redact. These records are available at the Court's request. If the Court requests such records, due to the large quantity of privileged information, and the burden associated with redactions, Lead Counsel requests to submit such records *in camera*.

72. Lead Counsel submits that their current rates are comparable, or less than, those used by peer defense side law firms litigating matters of similar magnitude (as shown by a sample of defense firm rates in 2019 from bankruptcy court filings nationwide – which often exceeded Lead Counsels' rates). *See* Ex. 8.

73. Lead Counsels' rates have been reviewed and approved by federal district courts in this district and across the country.

74. Lead Counsel are experienced and skilled securities litigation firms. The expertise and experience of the firms' attorneys is described in the firm biographies attached as exhibits to Lead Counsels' Declarations. *See* Exs. 6-7.

75. Defendants are represented by very experienced counsel – Latham & Watkins LLP and Aegis Law Group LLP – who spared no effort in defense of its clients. Defendants' counsel vigorously defended its clients, insisted they had no liability, and gave every indication that they were prepared to proceed with litigation to trial, if necessary, if a settlement was not reached.

VIII. LEAD COUNSELS' REQUEST FOR LITIGATION EXPENSES

76. Lead Counsel seeks payment from the Settlement Fund of litigation expenses reasonably and necessarily incurred in connection with commencing and prosecuting the claims against Defendants. The Notice informs the Settlement Class that Lead Counsel will apply for payment of litigation expenses of no more than $275,000, plus interest at the same rate earned by the Settlement Fund

77. As set forth in Lead Counsels' Declarations in support of Lead Counsels' motion for payment of attorneys' fees and expenses, Lead Counsel will incur a total of $141,142.47 in litigation expenses in connection with the prosecution of the Action. *See* Ex.

6 at ¶ 8; Ex. 7 at ¶ 8. The amounts requested herein are below the $275,000 estimate given to the Settlement Class in the Notice.

78. All of the litigation expenses were necessary to the successful prosecution and resolution of the claims against Defendants.

IX. LEAD PLAINTIFFS' REIMBURSEMENTS PURSUANT TO THE PSLRA

79. Pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), Lead Plaintiffs are seeking reimbursement related directly to their representation of the Settlement Class, including time reviewing pleadings, court filings, discussions with Lead Counsel, gathering and producing documents in response to document requests, responding to interrogatories, and participating in settlement. Such payments are expressly authorized and anticipated by the PSLRA.

80. As set forth in the Declaration of Abdul Baker, attached hereto as Exhibit 1, Dr. Baker seeks an award of $18,000 as reimbursement for the time he dedicated to the Action.[4]

81. As set forth in the Declaration of Zhibin Zhang, attached hereto as Exhibit 2, Mr. Zhang seeks an award of $14,100, as reimbursement for the time he dedicated to the Action.

82. As set forth in the Declaration of Huaiyu Zheng, attached hereto as Exhibit 3, Ms. Zheng seeks an award of $18,000, as reimbursement for the time she dedicated to the Action.

83. The Notice informed potential Settlement Class Members that Lead Counsel would be seeking payment of expenses in an amount not to exceed $275,000, including reimbursement to the Lead Plaintiffs directly related to their representation of the Settlement Class, as authorized by the PSLRA. *See* Ex. 4. The aggregate amount requested, $191,242.47 (which includes $141,142.47 in litigation expenses incurred by Lead Counsel

[4] As set forth in Lead Plaintiff Baker's and Lead Plaintiff Zheng's Declarations, the time they spent participating in this Action and protecting the interests of the Settlement Class exceeds the $18,000 cap included in the Notice. *See* Exs. 1, 3.

and $50,100 in PSLRA reimbursements to the Lead Plaintiffs) is below the $275,000 estimate given to the Settlement Class in the Notice.

X. CONCLUSION

84. In view of the significant recovery to the Settlement Class and the substantial risks of this litigation, as described above and in the accompanying memorandum of law, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate.

85. In view of the significant recovery in the face of substantial risks, the quality 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 submit that a fee in the amount of 25% of the Settlement Fund be awarded, that litigation expenses in the amount of $141,142.47 be paid, and that Lead Plaintiff Abdul Baker be awarded $18,000, Lead Plaintiff Zhibin Zhang be awarded $14,100, and Lead Plaintiff Huaiyu Zheng be awarded $18,000, pursuant to the PSLRA.

XI. TABLE OF EXHIBITS

86. The following documents are true and correct copies:

EXHIBIT	DOCUMENT
1	Declaration of Lead Plaintiff Abdul Baker
2	Declaration of Lead Plaintiff Zhibin Zhang
3	Declaration of Lead Plaintiff Huaiyi Zheng
4	Declaration of Josephine Bravata Concerning: (A) Mailing of the Postcard Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections
5	Cornerstone Research in Laarni T. Bulan et al., *Securities Class Action Settlements: 2021 Review and Analysis*
6	Declaration of Bernstein Liebhard LLP in Support of Lead Counsels' Motion for Payment of Attorneys' Fees and Expenses
7	Declaration of Pomerantz LLP in Support of Lead Counsels' Motion for Payment of Attorneys' Fees and Expenses

8	Representative fees awarded to counsel in Bankruptcy Court
9	Compendium of unreported decisions

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

Executed on October 3, 2022.

Stephanie M. Beige

EXHIBIT 1

POMERANTZ LLP
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Co-Lead Counsel for Lead Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. FUNKO, INC., et al., Defendants.	Case No. 2:20-cv-02319-VAP-PJW

DECLARATION OF ABDUL BAKER

I, Abdul Baker, declare, under penalty of perjury as follows:

1. I submit this declaration to provide the Court with a description of my efforts in pursuit of this Action, and to express my support for the proposed Settlement, attorneys' fees, and my request for an award pursuant to the Private Securities Litigation Reform Act ("PSLRA").

2. On June 11, 2020, the Court appointed me, along with Huaiyu Zheng and Zhibin Zhang, as Lead Plaintiffs in the Action. On July 19, 2022, and for settlement purposes only, the Court appointed me, along with Huaiyu Zheng and Zhibin Zhang, as Class Representatives for the Settlement Class. Throughout the course of the litigation, I

have independently monitored news about Funko, Inc. ("Funko") through internet financial sites to keep up to date on the status of the company.

3. I frequently corresponded with Lead Counsel throughout the pendency of this case, who kept me up to date on the developments in the case.

4. I reviewed the initial, amended and second amended complaints filed in this Action, as well as the briefing (and related Court orders and supplemental briefing) on the motions to dismiss, and the discovery requests served by Defendants, and was kept apprised of the status of mediation between the parties, the settlement and preliminary approval of the settlement by the Court. In addition, I independently followed this litigation and received copies of documents for review from counsel.

5. I reviewed Defendants' First Set of Requests for the Production of Documents and Defendants' First Set of Interrogatories, discussed these documents with Lead Counsel, searched for responsive documents, and responded to the Interrogatories. I also provided Lead Counsel with records of my trades in Funko common stock, which were requested by Defendants in this Action.

6. I expended a total of 15 hours pursuing the claims in this Action. I am a board-certified fellowship trained neurosurgeon and I regularly charge $1,500 per hour for my time.

7. I spent my time in this matter on the following:

a. Monitoring news of Funko;

b. Reviewing the initial, amended and second amended complaints, and briefing (and supplemental briefing) and orders on the motions to dismiss;

c. Communicating and corresponding with Lead Counsel regarding the litigation, mediation and settlement;

d. Gathering and producing information to Lead Counsel concerning my Funko investments in response to Defendants' interrogatories and requests for production of documents.

8. I fully support the proposed Settlement of this Action and believe that it is an excellent result for the Settlement Class.

9. I take seriously my role as a Class Representative and have monitored this litigation through communications with Lead Counsel throughout the course of the litigation and by reviewing all of the pleadings and motions that have been filed in the Action, in addition to any other materials provided to me by Lead Counsel.

10. I believe my request for an award pursuant to the PSLRA is fair in light of the time I devoted to this Action for the benefit of the Settlement Class.

11. Lead Counsel's fee request of 25% of the Settlement Fund is made in accordance with a retainer agreement I entered into with Pomerantz LLP at the beginning of the Action, which permitted Pomerantz LLP to seek fees up to 33.3% of any settlement or judgment achieved. I believe Lead Counsel's fee request is fair in light of the results achieved for the Settlement Class and reasonably compensate Lead Counsel for the work involved and the substantial risks they undertook in litigating the Action.

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

Executed on 9/27 2022.

Abdul Baker

EXHIBIT 2

POMERANTZ LLP
Jennifer Pafiti (SBN 282790)
1100 Glendon Avenue, 15th Floor
Los Angeles, CA 90024
Telephone: (310) 405-7190
jpafiti@pomlaw.com

Co-Lead Counsel for Lead Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. FUNKO, INC., et al., Defendants.	Case No. 2:20-cv-02319-VAP-PJW

DECLARATION OF ZHIBIN ZHANG

I, Zhibin Zhang, declare, under penalty of perjury as follows:

1. I submit this declaration to provide the Court with a description of my efforts in pursuit of this Action, and to express my support for the proposed Settlement, attorneys' fees, and my request for an award pursuant to the Private Securities Litigation Reform Act ("PSLRA").

2. On June 11, 2020, the Court appointed me, along with Abdul Baker and Huaiyu Zheng, as Lead Plaintiffs in the Action. On July 19, 2022, and for settlement purposes only, the Court appointed me, along with Abdul Baker and

Huaiyu Zheng, as Class Representatives for the Settlement Class. Throughout the course of the litigation, I have independently monitored news about Funko, Inc. ("Funko") through internet financial sites to keep up to date on the status of the company.

3. I frequently corresponded with Lead Counsel throughout the pendency of this case, who kept me up to date on the developments in the case.

4. I reviewed the initial, amended and second amended complaints filed in this Action, as well as the briefing (and related Court orders and supplemental briefing) on the motions to dismiss, the discovery requests served by Defendants, the mediation statement drafted by Lead Counsel, the Stipulation of Settlement and all associated settlement papers and notice documents, and the motion for preliminary approval of settlement. In addition, I independently followed this litigation and received copies of documents for review from counsel.

5. I reviewed Defendants' First Set of Requests for the Production of Documents and Defendants' First Set of Interrogatories, discussed these documents with Lead Counsel, searched for responsive documents, and responded to the Interrogatories. I also provided Lead Counsel with records of my trades in Funko common stock, which were requested by Defendants in this Action.

6. I expended a total of 94 hours pursuing the claims in this Action. I am a Software Engineer and I regularly charge $150 per hour for my time.

7. The breakdown of my time spent in this matter is as follows:

a. Monitoring news of Funko: 14 hours.

b. Reviewing the initial, amended and second amended complaints, and briefing (and supplemental briefing) and orders on the motions to dismiss: 21 hours.

c. Communicating and corresponding with Lead Counsel regarding the litigation and settlement: 15 hours.

d. Gathering and producing information to Lead Counsel concerning my Funko investments: 28.5 hours.

e. Reviewing the mediation statement and the settlement and notice documents pertaining to the settlement, including the motion for preliminary approval of the settlement and the notice documents: 15.5 hours.

8. I fully support the proposed Settlement of this Action and believe that it is an excellent result for the Settlement Class.

9. I take seriously my role as a Class Representative and have monitored this litigation through communications with Lead Counsel throughout the course of the litigation and by reviewing all of the pleadings and motions that have been filed in the Action, in addition to any other materials provided to me by Lead Counsel.

10. I believe my request for an award pursuant to the PSLRA is fair in light of the time I devoted to this Action for the benefit of the Settlement Class.

11. Lead Counsel's fee request of 25% of the Settlement Fund is made in accordance with a retainer agreement I entered into with Bernstein Liebhard LLP at the beginning of the Action, which permitted Bernstein Liebhard LLP to seek fees of 25% of any settlement or judgment achieved. I believe Lead Counsel's fee request is fair in light of the results achieved for the Settlement Class and reasonably compensate Lead Counsel for the work involved and the substantial risks they undertook in litigating the Action.

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

Executed on 09/10_, 2022.

Zhibin Zhang

Zhibin Zhang

EXHIBIT 3

POMERANTZ LLP
Jennifer Pafiti (SBN 282790)
1100 Glendon Avenue, 15th Floor
Los Angeles, CA 90024
Telephone: (310) 405-7190
jpafiti@pomlaw.com

Co-Lead Counsel for Lead Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. FUNKO, INC., et al., Defendants.	Case No. 2:20-cv-02319-VAP-PJW

DECLARATION OF HUAIYU ZHENG

I, Huaiyu Zheng, declare, under penalty of perjury as follows:

1. I submit this declaration to provide the Court with a description of my efforts in pursuit of this Action, and to express my support for the proposed Settlement, attorneys' fees, and my request for an award pursuant to the Private Securities Litigation Reform Act ("PSLRA").

2. On June 11, 2020, the Court appointed me, along with Abdul Baker and Zhibin Zhang, as Lead Plaintiffs in the Action. On July 19, 2022, and for settlement purposes only, the Court appointed me, along with Abdul Baker and Zhibin Zhang, as Class Representatives for the Settlement Class. Throughout the course of the

litigation, I have independently monitored news about Funko, Inc. ("Funko") through internet financial sites to keep up to date on the status of the company.

3. I frequently corresponded with Lead Counsel throughout the pendency of this case, who kept me up to date on the developments in the case.

4. I reviewed the initial, amended and second amended complaints filed in this Action, as well as the briefing (and related Court orders and supplemental briefing) on the motions to dismiss, the discovery requests served by Defendants, the mediation statement drafted by Lead Counsel, the Stipulation of Settlement and all associated settlement papers and notice documents, and the motion for preliminary approval of settlement. In addition, I independently followed this litigation and received copies of documents for review from counsel.

5. I reviewed Defendants' First Set of Requests for the Production of Documents and Defendants' First Set of Interrogatories, discussed these documents with Lead Counsel, searched for responsive documents, and responded to the Interrogatories. I also provided Lead Counsel with records of my trades in Funko common stock, which were requested by Defendants in this Action.

6. I expended a total of 98 hours pursuing the claims in this Action. I am a Supply Chain/Export Consultant and I regularly charge $185 per hour for my time.

7. The breakdown of my time spent in this matter is as follows:

a. Monitoring news of Funko: 10 hours.

b. Reviewing the initial, amended and second amended complaints, and briefing (and supplemental briefing) and orders on the motions to dismiss: 40 hours.

c. Communicating and corresponding with Lead Counsel regarding the litigation and settlement: 5 hours.

d. Gathering and producing information to Lead Counsel concerning my Funko investments at the onset of the case and in connection

with responding to documents requests and interrogatories: 21 hours.

e. Reviewing the mediation statement and the settlement and notice documents pertaining to the settlement, including the motion for preliminary approval of the settlement and the notice documents and the motions for final approval: 22 hours.

8. I fully support the proposed Settlement of this Action and believe that it is an excellent result for the Settlement Class.

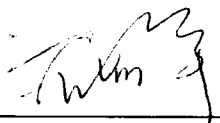
9. I take seriously my role as a Class Representative and have monitored this litigation through communications with Lead Counsel throughout the course of the litigation and by reviewing all of the pleadings and motions that have been filed in the Action, in addition to any other materials provided to me by Lead Counsel.

10. I believe my request for an award pursuant to the PSLRA is fair in light of the time I devoted to this Action for the benefit of the Settlement Class.

11. Lead Counsel's fee request of 25% of the Settlement Fund is made in accordance with a retainer agreement I entered into with Bernstein Liebhard LLP at the beginning of the Action, which permitted Bernstein Liebhard LLP to seek fees of 25% of any settlement or judgment achieved. I believe Lead Counsel's fee request is fair in light of the results achieved for the Settlement Class and reasonably compensate Lead Counsel for the work involved and the substantial risks they undertook in litigating the Action.

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

Executed on September 22, 2022.



Huaiyu Zheng

EXHIBIT 4

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. FUNKO, INC., et al., Defendants.	Case No. 2:20-cv-02319-VAP-(MAAx) Judge: Hon. Virginia A. Phillips Courtroom 8A—8th Floor **CLASS ACTION**

DECLARATION OF JOSEPHINE BRAVATA CONCERNING:
(A) MAILING OF THE POSTCARD NOTICE;
(B) PUBLICATION OF THE SUMMARY NOTICE; AND
(C) REPORT ON REQUESTS FOR EXCLUSION AND OBJECTIONS

I, Josephine Bravata, declare as follows:

1. I am the Quality Assurance Manager at 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 and twenty-five (525) class action settlements 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 POSTCARD NOTICE

2. Pursuant to the Court's Order Granting Motion for Preliminary Approval of Class Action Settlement, dated July 19, 2022 and Order Setting Fairness Hearing and Other Deadlines, dated July 29, 2022 (Dkt. No. 193 and 195, the "Preliminary Approval Orders"), SCS was approved to serve as the Claims Administrator in connection with the Settlement of the above-captioned action.[1] I submit this declaration in order to provide the Court and the Parties information regarding the mailing of the Postcard Notice to potential Settlement Class Members, as well as updates concerning other aspects of the Settlement administration process.

3. SCS sent the Depository Trust Company ("DTC") the Internet Notice of Pendency and Proposed Settlement of Class Action ("Notice") and Proof of Claim and Release Form ("Claim Form") (collectively, the "Notice and Claim") for the DTC to publish on its Legal Notice System ("LENS") on August 3, 2022. LENS provides DTC participants the ability to search and download legal notices as well as receive e-mail alerts based on particular notices or particular CUSIPs once a legal notice is posted. A true and correct copy of the Notice and Claim is attached as **Exhibit A**.

[1] All capitalized terms not otherwise defined herein have the meanings set forth in the Revised Stipulation and Agreement of Settlement, dated as of June 3, 2022 (Dkt. No. 186-1, the "Stipulation").

4. As in most class actions of this nature, the large majority of potential Settlement Class Members are expected to be beneficial purchasers whose securities are held in "street name" — *i.e.*, the securities are purchased 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 832 banks and brokerage companies ("Nominee Account Holders"), as well as 976 mutual funds, insurance companies, pension funds, and money managers ("Institutional Groups"). On August 3, 2022, SCS caused a letter to be mailed or e-mailed to the 1,808 nominees contained in the SCS master mailing list. The letter notified them of the Settlement and requested that within seven (7) calendar days from the date of the letter, they either (a) send a Postcard Notice to their customers who may be beneficial purchasers/owners within seven (7) calendar days after receipt of the copies of Postcard Notice; (b) email an electronic link of the Postcard Notice supplied by SCS to beneficial purchasers/owners; or (c) provide SCS with a list of the names, mailing addresses, and email addresses, to the extent email addresses were available, of such beneficial purchasers/owners so that SCS could promptly mail the Postcard Notice or email the link to the Postcard Notice on the settlement webpage directly to them. A copy of the letter sent to these nominees is attached as **Exhibit B.**

5. To provide actual notice to those persons and entities who purchased or otherwise acquired the common stock of Funko, Inc. ("Funko") on the open market during the period August 8, 2019 to March 5, 2020, inclusive (the "Class Period"), pursuant to the Preliminary Approval Orders, SCS printed and mailed the Postcard Notice to potential members of the Settlement Class. **Exhibit C** is a copy of the Postcard Notice.

6. SCS mailed, by first class mail, postage prepaid, the Postcard Notice to 14 individuals and organizations identified in the transfer records that were provided to SCS by Defendants' Counsel. These records reflect persons and entities that purchased Funko 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 August 3, 2022. Following this mailing, SCS received 13,562 additional names and addresses of potential Settlement Class Members from individuals or nominees requesting that a Postcard Notice be mailed by SCS, SCS received a request from a nominee for 7,440 Postcard Notices so that the nominee could forward them to their customers, and SCS received notification from four nominees that they mailed the Postcard Notices to 300 of their customers. To date, 21,316 Postcard Notices have been mailed to potential Settlement Class Members.

7. Additionally, SCS was notified by a nominee that they emailed 8,860 of their clients to notify them of this settlement and provide a direct link to the Postcard Notice on the settlement webpage.

8. In total, 30,176 potential Settlement Class Members were notified either by mailed Postcard Notice or emailed a direct link to the Postcard Notice.

PUBLICATION OF THE SUMMARY NOTICE

9. Pursuant to the Preliminary Approval Orders, SCS caused the Summary Notice of Pendency of Class Action, Proposed Settlement, Motion for Attorneys' Fees and Expenses, Settlement Fairness Hearing ("Summary Notice") to be transmitted once over the *PR Newswire* on August 2, 2022 and published in *Investor's Business Daily* on August 8, 2022. The confirmations of publication are included as **Exhibit D** hereto**.**

TOLL-FREE PHONE LINE

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

SETTLEMENT WEBPAGE

11. On August 2, 2022, SCS established a webpage for the Settlement on its website at www.strategicclaims.net/Funko/. The webpage is accessible 24 hours a day, 7 days a week. The webpage contains the current status of the case; the deadlines for the case; the online claim filing link; and important documents such as the Notice and Claim, the Postcard Notice, the Preliminary Approval Orders, and the Stipulation with exhibits.

REPORT ON EXCLUSIONS AND OBJECTIONS

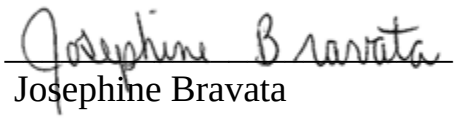
12. The Postcard Notice, Summary Notice, Notice, and the Settlement Webpage informed potential Settlement Class Members that written requests for exclusion are to be mailed to SCS such that they are received no later than October 17, 2022. SCS has been monitoring all mail delivered for this case. As of the date of this declaration, SCS has received one request for exclusion. A copy of the exclusion request is attached to **Exhibit E**.

13. According to the Postcard Notice, Summary Notice, Notice, and the Settlement Webpage, Settlement Class Members seeking to object to the Settlement or any of its terms, the proposed Plan of Allocation, and/or the Fee and Expense application, are required to submit their objection in writing such that the request is received by Lead Counsel and Defendants' Counsel, as well as filed with the Clerk of the Court, no later than October 17, 2022. As of the date of this declaration, SCS

has neither received any objections nor been notified that Lead Counsel has received any objections.

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

Signed this 3rd day of October 2022, in Media, Pennsylvania.



Josephine Bravata

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. FUNKO, INC., et al., Defendants.	Case No. 2:20-cv-02319-VAP-(MAAx) Judge: Hon. Virginia A. Phillips Courtroom 8A—8th Floor **CLASS ACTION**

INTERNET NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

If you purchased shares of Funko, Inc. ("Funko") on the open market during the period from August 8, 2019 to March 5, 2020 (the "Class Period"), you may be entitled to a payment from a class action settlement.

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

- **The purpose of this Notice is to inform you of the pendency of this securities class action (the "Action"), the proposed settlement of the Action (the "Settlement"), and a hearing to be held by the Court to consider: (i) whether the Settlement should be approved; (ii) whether the proposed plan for allocating the proceeds of the Settlement (the "Plan of Allocation") should be approved; (iii) Lead Counsel's application for attorneys' fees and expenses; and (iv) Lead Plaintiffs' applications for awards pursuant to the PSLRA. This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement, wish to object, or wish to be excluded from the Settlement Class.[1]**
- **If approved by the Court, the proposed Settlement will create a $7,000,000 settlement fund, plus earned interest, for the benefit of eligible Settlement Class Members, less any attorneys' fees, expenses, and reimbursements to Lead Plaintiffs that are awarded by the Court, Notice and Administration Expenses, and Taxes.**
- **The Settlement resolves all claims by Abdul Baker, Zhibin Zhang, and Huaiyu Zheng (collectively, "Lead Plaintiffs") that have been asserted on behalf of the proposed Settlement Class in the litigation captioned *Ferreira v. Funko, Inc., et al.*, Case No. 2:20-cv-02319-VAP-(MAAx).**

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

[1] All capitalized terms not otherwise defined in this notice shall have the meaning provided in the Stipulation and Agreement of Settlement, dated June 3, 2022 (the "Stipulation"), found at the Important Documents section of the Case Website, www.strategicclaims.net/Funko/.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY OCTOBER 17, 2022	The only way to get a payment. *See* Question 8 below for details.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY OCTOBER 17, 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 Defendants' Releasees concerning the Released Claims. *See* Question 11 below for details.
OBJECT BY OCTOBER 17, 2022	Write to the Court about why you object to the Settlement, the Plan of Allocation, the Fee and Expense Application, or Lead Plaintiff awards. If you object, you will still be a member of the Settlement Class. *See* Question 14 below for details.
GO TO A HEARING ON NOVEMBER 7, 2022 AND FILE A NOTIC EOF INTENTION TO APPEAR BY OCTOBER 17, 2022	Ask to speak in Court at the Settlement Fairness Hearing about the Settlement. *See* Question 16-18 below for details.
DO NOTHING	Get no payment AND give up your rights to bring your own individual action.

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

SUMMARY OF THE NOTICE

Statement of the Settlement Class's Recovery

1. Subject to Court approval, Lead Plaintiffs, on behalf of the Settlement Class, have agreed to settle the Action in exchange for a payment of $7,000,000 (the "Settlement Amount"), which will be deposited into an interest-bearing Escrow Account (the "Settlement Fund"). The Net Settlement Fund (as defined below) will be distributed to Settlement Class Members according to the Court-approved plan of allocation (the "Plan of Allocation" or "Plan"). The proposed Plan of Allocation is set forth on pages 12-15 below.

Estimate of Average Amount of Recovery Per Share

2. Based on Lead Plaintiffs' consulting damages expert's estimate of the number of shares of Funko common stock eligible to participate in the Settlement, and assuming that all such investors eligible to participate do so, Lead Plaintiffs estimate that the average recovery would be approximately $0.332 per allegedly damaged share (before deduction of any Court-approved fees and expenses, such as attorneys' fees and expenses, Taxes, and Notice and Administration Expenses). If the Court approves the Fee and Expense Application (discussed below), the average recovery would be approximately $0.244 per allegedly damaged share.[2] **Please note, however, that these average recovery amounts are only estimates, and Settlement Class Members may recover more or less than these estimated amounts.** An individual Settlement Class Member's actual recovery will depend on, for example: (i) the total number of claims submitted; (ii) the amount of the Net Settlement Fund;

[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.

(iii) when the Settlement Class Member purchased shares of Funko common stock on the open market; and (iv) whether and when the Settlement Class Member sold the securities. *See* the Plan of Allocation beginning on page 12 for information on the calculation of your Recognized Claim.

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

3. The parties disagree about both liability and damages and do not agree on the damages that would be recoverable if Lead Plaintiffs were to prevail on each claim asserted against Defendants. The issues on which the parties disagree include, for example: (i) whether Defendants made any statements or omitted any facts that were materially false or misleading, or otherwise actionable under the federal securities laws; (ii) whether any such allegedly materially false or misleading statements or omissions were made with the required level of intent or recklessness; (iii) the amounts by which the prices of Funko common stock was allegedly artificially inflated; (iv) the extent to which factors such as general market, economic and industry conditions, influenced the trading prices of Funko common stock during the Class Period; and (v) whether or not Defendants' allegedly false and misleading statements proximately caused the losses suffered by the Settlement Class.

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

Statement of Attorneys' Fees and Expenses Sought

5. Lead Counsel will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 25% of the Settlement Fund, which includes any accrued interest. Lead Counsel will also apply for payment of litigation expenses incurred by Lead Counsel in prosecuting the Action in an amount not to exceed $275,000, plus accrued interest, which will include an application pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for the reasonable costs and expenses (including lost wages) of Lead Plaintiffs not to exceed $18,000 each, directly related to their representation of the Settlement Class. If the Court approves Lead Counsel's Fee and Expense Application, the average amount of fees and expenses, assuming claims are filed for all shares eligible to participate in the Settlement, will be approximately $0.244 per allegedly damaged share of Funko common stock. A copy of the Fee and Expense Application will be posted on www.strategicclaims.net/Funko/ after it has been filed with the Court.

Reasons for the Settlement

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

Identification of Attorneys' Representatives

7. Lead Plaintiffs and the Settlement Class are represented by Lead Counsel, Bernstein Liebhard LLP, Stephanie M. Beige, Esq., 10 East 40th Street, New York, NY 10016, (212) 779-1414, funkoinfo@bernlieb.com, and Pomerantz LLP, Michael J. Wernke, 600 Third Avenue, 20th Floor, New York, NY 10016, (212) 661-1100, mjwernke@pomlaw.com.

8. Further information regarding the Action, the Settlement, and this Notice may be obtained by contacting the Claims Administrator:

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Suite 205
P.O. Box 230
Media, PA 19063
Tel.: 866-274-4004
Fax: (610) 565-7985
info@strategicclaims.net

or Lead Counsel, or visiting the Case Website at www.strategicclaims.net/Funko/.

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

BASIC INFORMATION

1. Why did I get this Notice?

9. You or someone in your family, or an investment account for which you serve as a custodian, may have purchased shares of Funko common stock on the open market during the Class Period from August 8, 2019 to March 5, 2020, and may be a Settlement Class Member. This Internet Notice explains the Action, the Settlement, Settlement Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them. 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. **If you wish to be eligible for a payment, you are required to submit the Claim Form. *See* Question 8 below.**

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

11. The Court in charge of the Action is the United States District Court for the Central District of California, and the case is known as *Ferreira v. Funko, Inc., et al*., Case No. 2:20-cv-092319-VAP-(MAAx). The Action is assigned to the Honorable Virginia A. Phillips, United States District Judge.

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

12. Funko is incorporated under the laws of Delaware with its principal executive offices located in Everett, Washington. Funko's common stock trades on the NASDAQ under the symbol "FNKO." Funko is a pop culture consumer products company that creates vinyl figures, action toys, plush, accessories, apparel, and homewares relating to movies, TV shows, video games, musicians, and sports teams. Funko is the world's largest seller of pop culture collectibles and is best known for its Pop! line of vinyl collectible figures, which account for over three-quarters of the Company's sales. Lead Plaintiffs allege that the Defendants made false and misleading statements and omissions during the Class Period regarding the Company's financial projections and the state of the Company's inventory.

13. Beginning on March 10, 2020, three similar actions were filed asserting violations of the federal securities laws against Defendants: (1) the above-captioned action (the "*Ferreira* Action"); (2) *Nahas v. Funko, Inc., et al.*, No. 2:20-cv-03130 (C.D. Cal.) (the "*Nahas* Action"); and (3) *Dachev v. Funko, Inc., et al.*, No. 2:20-cv-00544 (W.D. Wash.) (the "*Dachev* Action").

14. On June 11, 2020, the Court entered an Order (ECF No. 58): (i) consolidating the *Nahas* Action with the *Ferreira* Action; (ii) appointing Abdul Baker, Zhibin Zhang, and Huaiyu Zheng as Lead Plaintiffs for the proposed class; and (iii) appointing Bernstein Liebhard LLP and Pomerantz LLP as Co-Lead Counsel.

15. On July 31, 2020, Lead Plaintiffs filed a First Consolidated Amended Class Action Complaint, alleging violations of Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 promulgated thereunder, against Defendants on behalf of all persons and entities that purchased

or otherwise acquired Funko securities between August 8, 2019 and March 5, 2020, inclusive, and who were damaged thereby (the "Class").

16. On October 2, 2020, the Settling Defendants and the ACON Defendants (defined below) filed separate motions to dismiss the First Consolidated Amended Complaint.

17. On December 1, 2020 and January 14, 2021, respectively, Lead Plaintiffs filed an omnibus memorandum and a corrected omnibus memorandum in opposition to the motions to dismiss the First Amended Consolidated Complaint.

18. On December 30, 2020, the Settling Defendants and the ACON Defendants filed separate reply briefs in support of their respective motions to dismiss the First Consolidated Amended Complaint.

19. On January 22, 2021, the Settling Defendants filed a supplemental reply brief in support of their motion to dismiss in response to Lead Plaintiffs' corrected omnibus memorandum of law.

20. On January 26, 2021, the Court directed the parties to submit supplemental briefing addressing the impact of the Ninth Circuit's decision, *Wochos v. Tesla, Inc.*, 985 F.3d 1180 (9th Cir. 2021) on Defendants' pending motions to dismiss.

21. On January 29, 2021, the parties filed their supplemental briefing in accordance with the Court's January 26, 2021 Order.

22. On February 25, 2021, the Court granted Defendants' motions to dismiss the First Consolidated Amended Complaint. The Court also granted Lead Plaintiffs leave to amend.

23. On March 29, 2021, Lead Plaintiffs filed the operative, Consolidated Second Amended Complaint (the "SAC") against the Defendants.

24. On May 7, 2021, the Settling Defendants and the ACON Defendants filed separate motions to dismiss the SAC.

25. On June 11, 2021, Lead Plaintiffs filed oppositions to both motions to dismiss the SAC.

26. On June 16, 2021, the Court issued an Order directing Defendants to address the impact of *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687 (9th Cir. 2021), *cert. denied sub nom. Alphabet Inc. v. Rhode Island*, 142 S. Ct. 1227 (2022) ("*Alphabet*") on Defendants' motions to dismiss the SAC in their respective reply briefs. The Court also granted Lead Plaintiffs leave to file a sur-reply addressing *Alphabet*.

27. On July 2, 2021, the Settling Defendants and the ACON Defendants filed separate reply memoranda in support of their respective motions to dismiss the SAC.

28. On July 16, 2021, Lead Plaintiffs filed a sur-reply in further support of their oppositions to the motions to dismiss the SAC.

29. On October 18, 2021, the Court issued a tentative ruling and heard oral argument on the motions to dismiss the SAC.

30. On October 22, 2021, the Court granted in part and denied in part the motions to dismiss the SAC.

31. On November 22, 2021, Defendants filed their Answers to the SAC.

32. Between December 2021 and March 2022, the parties engaged in preliminary discovery by filing their Joint Rule 26(f) Report, serving their respective Rule 26(a)(1) Initial Disclosures, negotiating and filing a Stipulated Protective Order and a Stipulated Discovery Order Governing the Production of Documents and Discovery of Electronically Stored Information, serving and responding to various demands for the production of documents and interrogatories, and engaging in a meet and confer with respect to Lead Plaintiffs' Objections and Responses to the Settling Defendants' Requests for Production of Documents and Interrogatories.

33. On April 11, 2022, the Parties engaged Michelle Yoshida, a well-respected and highly experienced mediator associated with Phillips ADR to assist them in exploring whether a negotiated resolution was possible. Thereafter, the Parties exchanged confidential mediation statements.

34. On April 27, 2022, the Parties engaged in a full-day mediation session before the Mediator. The Parties were able to reach a settlement in principle to release all claims against Defendants in return for a cash payment of seven million ($7,000,000) for the benefit of the Settlement Class. A Memorandum of Understanding (the "MOU") was entered into on April 29, 2022.

35. On May 2, 2022, the Parties informed the Court that they had reached a settlement in principle asked the Court to stay all deadlines.

36. On July 19, 2022, the Court preliminary approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement.

3. Why is this a class action?

37. In a class action, one or more persons or entities (in this case, Lead Plaintiffs), sue on behalf of people and entities who or which have similar claims. Together, these people and entities are a "class," and each is a "class member." Bringing a case, such as this one, as a class action allows the adjudication of many similar claims of persons and entities which might be too small to bring economically as separate actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or "opt-out," from the class.

4. What are the reasons for the Settlement?

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

39. Defendants have denied and continue to deny any allegations of wrongdoing contained in the SAC and further deny that they did anything wrong, that Lead Plaintiffs or the Settlement Class suffered damages or that the price of Funko common stock was artificially inflated by reasons of alleged misrepresentations, nondisclosures or otherwise. The Settlement should not be seen as an admission or concession on the part of Defendants. Funko has taken into account the burden, expense, uncertainty, distraction, and risks inherent in any litigation and has concluded that it is desirable to settle upon the terms and conditions set forth in the Stipulation.

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

40. The Court directed, for the purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and is subject to the Settlement unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves from the Settlement Class (*see* Question 11 below): ***all Persons and entities who or which purchased or otherwise acquired shares of Funko publicly traded common stock during the period from August 8, 2019 to March 5, 2020, and who were damaged thereby***.

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

6. Are there exceptions to the definition of the Settlement Class and to being included?

42. Yes. There are some individuals and entities who or which are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any person who was an Officer or director of Funko; (iv) any firm or entity in which any Defendant has or had a controlling interest; (v) any person who participated in the wrongdoing alleged; (vi) Defendants' liability insurance carriers; (vii) any affiliates, parents, or subsidiaries of Funko; (viii) all Funko's plans that are covered by ERISA; and (ix) the legal representatives, agents, affiliates, heirs beneficiaries, successors-in interests, or assigns of any excluded person or entity in their respective capacity as such.

43. If you sold all of your Funko common stock prior to the first alleged corrective disclosure, which occurred after the market closed on February 5, 2020 and made no subsequent purchases from February 5, 2020 through March 5, 2020, you are not a member of the Settlement Class because you were not damaged.

44. Also excluded from the Settlement Class will be any Person who or which timely and validly seeks exclusion from the Settlement Class in accordance with the procedures described in Question 11 below or whose request is otherwise allowed by the Court.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

45. In exchange for the Settlement and the release of the Released Claims against the Defendants, Funko has agreed to create a $7,000,000 cash fund, which may accrue interest, to be distributed, after deduction of Court-awarded attorneys' fees and litigation expenses, PSLRA awards to Lead Plaintiffs, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court (the "Net Settlement Fund"), among all Settlement Class Members who submit valid Claim Forms and are found to be eligible to receive a distribution from the Net Settlement Fund ("Authorized Claimants").

8. How can I receive a payment?

46. To qualify for a payment, you must fill out a Claim Form online at www.strategicclaims.net/Funko/ ("Case Website"). Read the instructions carefully, fill out the Claim Form, and sign it in the location indicated. The Case Website also includes instructions on downloading your transaction data directly from your brokerage so that you do not have to manually enter each transaction. **The deadline to submit your Claim through the Case Website is 11:59 p.m. EST on October 17, 2022**.

47. If you are unable to fill out a Claim Form online, please print the Claim Form entitled "Proof of Claim and Release Form" (also called the "Claim Form") available on the Case Website, fill it out and mail it to the Claims Administrator at the address below, **postmarked no later than October 17, 2022**:

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St., Ste 205
Media, PA 19063
Fax: 610-565-7985
info@strategicclaims.net

48. Please note that if you choose to print and mail a form, you will need to manually enter each transaction.

49. Typically, most class members submit electronic claims. Submitting a claim by mail increases the time necessary to process the Claim.

50. The Claims Administrator will process your claim and determine whether you are an "Authorized Claimant."

9. When will I receive my payment?

51. The Court will hold a Settlement Fairness Hearing on **November 7, 2022** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

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

52. If you are a member of the Settlement Class, unless you exclude yourself, you will remain in the class, and that means that, upon the "Effective Date" of the Settlement, you will release all "Released Plaintiffs' Claims" against the Defendants' Releasees.

(a) **"Released Plaintiffs' Claims"** means any and all claims and causes of action, whether known claims or Unknown Claims, contingent or absolute, mature or not mature, liquidated or not liquidated, accrued or not accrued, concealed or hidden, regardless of legal or equitable theory and whether arising under federal, state, common or foreign law, that Lead Plaintiffs or any other Settlement Class Member (i) asserted in the Action; or (ii) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations, or omissions that were involved, set forth, or referred to in the Action and that relate to the purchase or acquisition of Funko common stock during the Class Period. For the avoidance of doubt, this release does not release or impair: (i) any claims relating to the enforcement of the

Settlement; (ii) any claims asserted derivatively in *Silverberg v. Funko, Inc.*, C.A. No. 2020-1043-MTZ (Del. Ch.), *In re Funko, Inc. Derivative Litigation*, Lead Case No. 20-cv-03740-VAP (C.D. Cal.), and *Smith v. Mariotti et al.*, (C.D. Cal. No. 22-cv-03155-VAP (C.D. Cal.); and (iii) any claims of persons or entities who or which submits a request for exclusion from the Settlement Class in connection with the Notice ("Excluded Plaintiffs' Claims). "Released Plaintiffs' Claims" include "Unknown Claims" as defined herein.

(b) "**Defendants' Releasees"** means Defendants, Russell Nickel, and all other of their current and former parents, affiliates, subsidiaries, related entities, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, principals, trustees, trusts, employees, Immediate Family members, insurers, advisors, estates, heirs, executors, administrators, shareholders, joint ventures, members, managers, supervisors, contractors, consultants, representatives, attorneys, and legal or personal representatives of the foregoing, in their capacities as such.

(c) **"Unknown Claims"** means any Released Plaintiffs' Claims which Lead Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment, shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Lead Plaintiffs, any Settlement Class Member, or any Defendant may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Released Plaintiffs' Claims and the Released Defendants' Claims, but the parties shall expressly, fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and each Settlement Class Member shall be deemed to have waived, compromised, settled, discharged, extinguished, and released, and upon the Effective Date and by operation of the Judgment shall have waived, comprised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Plaintiffs' Claims and Released Defendants' Claims, as applicable, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Parties acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

53. The "Effective Date" will occur when an Order entered by the Court approving the Settlement becomes Final and is not subject to appeal. If you remain a member of the Settlement Class, all of the Court's orders, whether favorable or unfavorable, will apply to you and legally bind you. Upon the Effective Date, Defendants will also provide a release of any claims against Lead 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

54. If you do not want to be eligible to receive a payment from the Settlement, but you want to keep any right you may have to sue or continue to sue the Released Defendants on your own for the Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or "opting out." **Please note: if you bring your own claims, Defendants will have the right to seek their dismissal. Also, Funko may terminate the Settlement if Settlement Class Members who purchased in excess of a certain amount of shares of Funko common stock seek exclusion from the Settlement Class.**

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

55. 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 *Ferreira v. Funko, Inc.*, Case No. 2:20-cv-02319-VAP-(MAAx) (C.D. Cal.)." You cannot exclude yourself by telephone or e-mail. Each request for exclusion must also: (i) state the name, address, and telephone number of the person or entity requesting exclusion; (ii) state the number of shares of Funko common stock that the person or entity purchased, acquired, and sold on the open market during the Class Period, as well as the dates and prices of each such purchase, acquisition, and sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion must be mailed, so that it is **received no later than October 17, 2022** to:

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

Your exclusion request must comply with these requirements in order to be valid, unless it is otherwise accepted by the Court.

56. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, you cannot object to the Settlement because you will not be a Settlement Class Member. However, if you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants in the future, assuming your claims are timely. If you have a pending lawsuit against any of the Defendants, please speak to your lawyer in the case immediately.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

57. The Court appointed the law firms of Bernstein Liebhard LLP and Pomerantz LLP to represent all Settlement Class Members. These lawyers are called "Lead Counsel" or "Co-Lead Counsel." You will not be separately charged for these lawyers. The Court will determine the amount of Lead Counsel's fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

58. Lead Counsel have not received any payment for their services in pursuing the claims against Defendants on behalf of the Settlement Class, nor have they been paid for their litigation expenses. Lead Counsel will ask the Court to award attorneys' fees of no more than 25% of the Settlement Fund, which will include any accrued interest. Lead Counsel are Bernstein Liebhard LLP and Pomerantz LLP. Lead Counsel intend to share part of any attorneys' fees awarded by the Court with Bronstein, Gewirtz & Grossman, LLC in accordance with its level of contribution to the initiation, prosecution, and resolution of the Action, in addition to other counsel performing work on behalf of the Settlement Class at the direction of Lead Counsel. Lead Counsel will also seek payment of litigation expenses incurred in the prosecution of the Action of no more than $275,000.00, plus accrued interest, which will include an application in accordance with the PSLRA for the reasonable costs and expenses of Lead Plaintiffs of no more than $18,000 each directly related to their representation of the Settlement Class.

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

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

59. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation, and/or the Fee and Expense Application. You can ask the Court not to approve the Settlement, but you cannot ask the Court to order a different settlement; the Court can only approve or deny this

Settlement. If the Court denies approval of the Settlement, no payments will be made to Settlement Class Members, the parties will return to the position they were in before the Settlement was agreed to, and the Action will continue.

60. To object, you must send a signed letter stating that you object to the proposed Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application in "*Ferreira v. Funko, Inc.*, Case No. 2:20-cv-02319-VAP-(MAAx) (C.D. Cal.)." Your objection must state why you are objecting and whether your objection applies only to you, a subset of the Settlement Class, or the entire Settlement Class. The objection must also: (i) include the name, address, and telephone number of the person or entity objecting; (ii) contain a statement of the objection and the specific reasons for it, including any legal and evidentiary support (including witnesses) the Settlement Class Member wishes to bring to the Court's attention; and (iii) documentation identifying the number of shares of Funko common stock the person or entity purchased, acquired, and sold on the open market during the Class Period, as well as the dates and prices of each such purchase, acquisition, and sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to the proposed Settlement, the Plan of Allocation, and/or Lead Counsel's Fee and Expense Application. Your objection must be filed with the Court at the address below, either by mail or in person, **no later than October 17, 2022** and be mailed or delivered to each of the following counsel so that it is received **no later than October 17, 2022**:

Court	Lead Counsel	Defendants' Counsel
Clerk of the Court United States District Court Central District of California 350 W 1st Street, 6th Floor Los Angeles, CA 90012	**Bernstein Liebhard LLP** Attn: Stephanie M. Beige 10 East 40th Street New York, NY 10016 **Pomerantz LLP** Attn: Michael J. Wernke 600 Third Avenue, 20th Fl New York, NY 10016	**Latham & Watkins LLP** Attn: Kevin M. McDonough 1271 Ave. of the Americas New York, NY 10020

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

61. 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 FAIRNESS HEARING

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

62. The Court will hold the Settlement Fairness Hearing on **November 7, 2022 at 2:00 p.m.**, in Courtroom 8A, United States District Court for the Central District of California, First Street U.S. Courthouse, 350 W. 1st Street, 8th Floor, Los Angeles, CA 90012. At this hearing, the Court will consider, whether: (i) the Settlement is fair, reasonable and adequate, and should be finally approved; (ii) the Plan of Allocation is fair and reasonable, and should be approved; (iii) Lead Counsel's Fee and Expense Application is reasonable and should be approved; and (iv) whether Lead Plaintiffs' applications for PSLRA awards 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.

63. You should be aware that the Court may change the date and time of the Settlement Fairness Hearing, or hold the hearing telephonically, without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel beforehand to be sure that the date and/or time has not changed, check the Case Website at www.strategicclaims.net/Funko/, or periodically check the Court's website at https://www.cand.uscourts.gov/cm-ecf to see if the Settlement Hearing stays as calendared or

is changed. Subscribers to PACER, a fee-based service, can also view the Court's docket for the Action for updates about the Settlement Hearing through the Court's on-line Case Management/Electronic Case Files System at https://www.pacer.gov.

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

64. No. Lead Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to come to Court to discuss it. You may have your own lawyer attend (at your own expense), but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 18 below **no later than October 17, 2022**.

18. May I speak at the Settlement Hearing?

65. You may ask the Court for permission to speak at the Settlement Fairness Hearing. To do so, you must include with your objection (see Question 14), **no later than October 17, 2022** a statement that you, or your attorney, intend to appear in "*Ferreira v. Funko, Inc.*, Case No. 2:20-cv-02319-VAP-(MAAx) (C.D. Cal.)." Persons who intend to present evidence at the Settlement Hearing must also include in their objections the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the hearing. You may not speak at the Settlement Fairness Hearing if you exclude yourself or if you have not provided written notice in accordance with the procedures described in this Question 18 and Question 14 above.

IF YOU DO NOTHING

19.What happens if I do nothing at all?

66. 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 Defendants concerning the Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (*see* Question 8 above). To start, continue or be part of any other lawsuit against Defendants or any other of the Released Defendants concerning the Released Claims in this case, to the extent it is otherwise permissible to do so, you must exclude yourself from the Settlement Class (*see* Question 11 above).

GETTING MORE INFORMATION

20. Are there more details about the Settlement?

67. This Notice summarizes the proposed Settlement. More details are in the Stipulation. Lead Counsel's motions in support of final approval of the Settlement, the request for attorneys' fees and litigation expenses, and approval of the proposed Plan of Allocation will be filed with the Court **no later than October 3, 2022**, and be available from Lead Counsel, the Claims Administrator, or the Court, pursuant to the instructions below.

68. You may review the Stipulation or documents filed in the case at the Office of the Clerk, United States District Court for the Central District of California, First Street Courthouse, 350 W. 1st Street, Suite 4311, Los Angeles, CA 90012, on weekdays (other than court holidays) between 9:00 a.m. and 4:00 p.m. Subscribers to PACER can also view the papers filed publicly in the Action through the Court's on-line Case Management/Electronic Case Files System at https://www.pacer.gov.

69. You can also get a copy of the Stipulation and other case documents by visiting the website dedicated to the Settlement, www.strategicclaims.net/Funko/ or the website of Lead Counsel, www.bernlieb.com.

Please do not call the Court with questions about the Settlement.

PLAN OF ALLOCATION OF NET SETTLEMENT FUND

21. How will my claim be calculated?

70. As discussed above, the Settlement Amount and any interest it earns constitute the Settlement Fund. The Settlement Fund, after the deduction of Court approved attorneys' fees and litigation expenses, Lead Plaintiff awards, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court, is the Net Settlement Fund. If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – *i.e.*, members of the Settlement Class who timely submit valid Claim Forms that are accepted for payment – in accordance with this proposed Plan of Allocation or such other plan of allocation as the Court may approve. Settlement Class Members who do not timely submit valid Claim Forms will not share in the Net Settlement Fund but will otherwise be bound by the Settlement. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Case Website, www.strategicclaims.net/Funko/.

71. To design the Plan, Lead Counsel have conferred with Lead Plaintiffs' consulting damages expert. The objective of the Plan of Allocation is to distribute the Net Settlement Fund equitably among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation is not intended to estimate, or be indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Because the Net Settlement Fund is less than the total losses alleged to be suffered by Settlement Class Members, the formulas described below for calculating Recognized Losses are not intended to estimate the amounts that will actually be paid to Authorized Claimants. The Plan of Allocation measures the amount of loss that a Settlement Class Member can claim for purposes of making *pro rata* allocations of the Net Settlement Fund to Authorized Claimants.

72. For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the change in the price of the securities at issue. In this case, Lead Plaintiffs alleged that Defendants issued false statements and omitted material facts during the Class Period that artificially inflated the price of Funko common stock. Lead Plaintiffs further allege that on February 5, 2020 and March 5, 2020, corrective information was released to the market that removed the artificial inflation from the market price of Funko common stock (deflation) and impacted the price of the stock in a statistically significant manner.

73. An individual Settlement Class Member's recovery will depend on, for example: (a) the total number and value of claims submitted; (b) when the claimant purchased or acquired Funko common stock; and (c) whether and when the claimant sold his, her, or its shares of Funko common stock.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

74. For purposes of determining whether a claimant has a Recognized Claim, purchases, acquisitions, and sales of Funko common stock will first be matched on a First In/First Out ("FIFO") basis. If a Settlement Class Member has more than one purchase, acquisition, or sale of Funko common stock during the Class Period, all purchases, acquisitions, and sales of the stock shall be matched on a FIFO basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases in chronological order, beginning with the earliest purchase made during the Class Period.

75. The Claims Administrator will calculate a "Recognized Loss Amount," as set forth below, for each share of Funko common stock purchased or otherwise acquired between August 8, 2019 and March 5, 2020 that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant's Recognized Loss Amount results in a negative number, that number shall be set to zero.

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

COMMON STOCK CALCULATIONS

77. For shares of Funko common stock purchased or otherwise acquired between August 8, 2019 and March 5, 2020, inclusive, and:

(a) held at the end of trading on June 3, 2020, the Recognized Loss shall be that number of shares multiplied by the lesser of:
   i. the applicable purchase date artificial inflation per share figure, as found in Table A; or
   ii. the difference between the purchase price per share and $4.37[3].

(b) sold between March 6, 2020 and June 3, 2020, the Recognized Loss shall be that number of shares multiplied by the lesser of:
   i. the applicable purchase date artificial inflation per share figure, as found in Table A; or
   ii. the difference between the purchase price per share and the sales price per share; or
   iii. the difference between the purchase price per share and the average closing price between March 6, 2020 and the date of sale, as found in Table B.[4]

(c) sold between August 8, 2019 and March 5, 2020, the Recognized Loss shall be that number of shares multiplied by the lesser of:
   i. the applicable purchase date artificial inflation per share figure less the applicable sales date artificial inflation per share figure, as found in Table A; or
   ii. the difference between the purchase price per share and the sales price per share.

78. For shares of Funko common stock purchased or otherwise acquired between August 8, 2019 and October 30, 2019, except for September 19, 2019 or September 20, 2019, the Recognized Loss calculated above in paragraph 77 shall be multiplied by a factor of 0.05 to account for additional litigation risk associated with the Section 10(b) and 20(a) claims based on these purchases, which were dismissed by the Court.

79. For shares of Funko common stock purchased or otherwise acquired on September 19, 2019 or September 20, 2019, the Recognized Loss shall be (i) the amount calculated above in paragraph 77 to account for these purchasers' claim associated with the alleged violations of Section 20(a) asserted against Defendant Brian Mariotti, which were sustained by the Court, plus (ii) the amount calculated above in paragraph 78 to account for additional litigation risk associated with the Section 10(b) and 20(a) claims based on these purchases, which were dismissed by the Court.

[3] Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated." The mean (average) closing price of FNKO common stock during the period beginning on March 6, 2020 and ending on June 3, 2020 was $4.37 per share.

[4] Pursuant to Section 21(D)(e)(2) of the Private Securities Litigation Reform Act of 1995, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security."

Table A	
Purchase or Sale Date Range	Artificial Inflation Per Share
08/08/2019 – 02/05/2020	$6.15
02/06/2020 – 03/05/2020	$0.02

Table B					
Date of Sale	Average Closing Price Between 03/06/2020 and Date of Sale	Date of Sale	Average Closing Price Between 03/06/2020 and Date of Sale	Date of Sale	Average Closing Price Between 03/06/2020 and Date of Sale
3/6/2020	$6.92	4/6/2020	$4.45	5/6/2020	$4.12
3/9/2020	$6.61	4/7/2020	$4.41	5/7/2020	$4.11
3/10/2020	$6.48	4/8/2020	$4.37	5/8/2020	$4.13
3/11/2020	$6.26	4/9/2020	$4.34	5/11/2020	$4.14
3/12/2020	$5.92	4/13/2020	$4.32	5/12/2020	$4.15
3/13/2020	$5.77	4/14/2020	$4.31	5/13/2020	$4.15
3/16/2020	$5.56	4/15/2020	$4.30	5/14/2020	$4.15
3/17/2020	$5.43	4/16/2020	$4.28	5/15/2020	$4.15
3/18/2020	$5.25	4/17/2020	$4.26	5/18/2020	$4.16
3/19/2020	$5.14	4/20/2020	$4.24	5/19/2020	$4.18
3/20/2020	$5.04	4/21/2020	$4.23	5/20/2020	$4.19
3/23/2020	$4.93	4/22/2020	$4.20	5/21/2020	$4.20
3/24/2020	$4.85	4/23/2020	$4.18	5/22/2020	$4.21
3/25/2020	$4.80	4/24/2020	$4.17	5/26/2020	$4.23
3/26/2020	$4.78	4/27/2020	$4.15	5/27/2020	$4.26
3/27/2020	$4.75	4/28/2020	$4.15	5/28/2020	$4.28
3/30/2020	$4.70	4/29/2020	$4.14	5/29/2020	$4.30
3/31/2020	$4.67	4/30/2020	$4.15	6/1/2020	$4.32
4/1/2020	$4.62	5/1/2020	$4.14	6/2/2020	$4.34
4/2/2020	$4.57	5/4/2020	$4.14	6/3/2020	$4.37
4/3/2020	$4.50	5/5/2020	$4.13		

ADDITIONAL PROVISIONS OF THE PLAN OF ALLOCATION

80. Funko common stock purchased on the open market is the only security eligible for recovery under the Plan of Allocation.

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

82. In accordance with the Plan of Allocation, the Recognized Loss Amount on any portion of a purchase of Funko common stock that matches against (or "covers") a "short sale" is zero. The Recognized Loss

Amount on a "short sale" that is not covered by a purchase is also zero. In the event that a claimant has an opening short position in Funko common stock at the start of the Class Period, the earliest Class Period purchases shall be matched against such opening short position in accordance with the FIFO matching described above and any portion of such purchases that covers such short sales will not be entitled to recovery. In the event that a claimant newly establishes a short position during the Class Period, the earliest subsequent Class Period purchase shall be matched against such short position on a FIFO basis and will not be entitled to a recovery.

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

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

85. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Settlement Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be re-distributed, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such redistribution, to Authorized Claimants who have cashed their checks and who would receive at least $10.00 from such re-distribution. If any funds shall remain in the Net Settlement Fund six months after such re-distribution, then such balance shall be contributed to a non-profit organization approved by the Court.

86. Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiffs, Lead Counsel, their damages expert, 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. Lead Plaintiffs, Defendants, and all other Released Defendants shall have no responsibility for or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the Plan of Allocation or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of Taxes owed by the Settlement Fund or any losses incurred in connection therewith.

SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES

87. If you purchased Funko common stock on the open market during the Class Period for the beneficial interest of a person or entity other than yourself, the Court has directed that **WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, YOU MUST** EITHER**:** (a) provide to the Claims Administrator the name and last known address of each such person or entity; (b) request additional copies of this Postcard Notice from the Claims Administrator, which will be provided to you free of charge, and **WITHIN SEVEN (7) DAYS** of receipt, mail the Postcard Notice directly to all such persons or entities; or (c) request an electronic copy of the Postcard Notice from the Claims Administrator, and **WITHIN SEVEN (7) DAYS** of receipt thereof, email the Postcard Notice directly to all purchasers for which email addresses are available. If they are available, you must also provide the Claims Administer with the e-mails of the beneficial owners. If you choose to follow procedures (b) or (c), 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, mailing addresses, and email addresses used. Upon full and timely compliance with these directions, you may seek reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, upon request and submission of appropriate documentation, up to a maximum of $0.05 plus postage at the current pre-sort rate used by the Claims Administrator per Postcard Notice mailed; $0.05 per Postcard Notice emailed; or $0.05 per name, address, and email address provided to the Claims Administrator. All communications concerning the foregoing should be addressed to the Claims Administrator:

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Suite 205
P.O. Box 230
Media, PA 19063
Tel.: 866-274-4004
info@strategicclaims.net

SO ORDERED this 19th day of July, 2022.

The Honorable Virginia A. Phillips
United States District Judge

PROOF OF CLAIM AND RELEASE FORM
"CLAIM FORM"

Deadline for Submission: October 17, 2022

If you purchased or otherwise acquired shares of Funko Inc., ("Funko" or the "Company") common stock on the open market from August 8, 2019 through March 5, 2020 (the "Class Period"), you may be a "Settlement Class Member" and you may be entitled to share in the settlement proceeds. (Excluded from the Settlement Class are: (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any person who was an Officer or director of Funko; (iv) any firm or entity in which any Defendant has or had a controlling interest; (v) any person who participated in the wrongdoing alleged; (vi) Defendants' liability insurance carriers; (vii) any affiliates, parents, or subsidiaries of Funko; (viii) all Funko plans that are covered by ERISA; and (ix) the legal representatives, agents, affiliates, heirs beneficiaries, successors-in-interests, or assigns of any excluded person or entity in their respective capacity as such.)

If you are a Settlement Class Member, you must complete and submit this form in order to be eligible for any settlement benefits.

Most claimants submit their Proof of Claim and Release Form electronically. To file your claim electronically, you must complete and submit the form online at www.strategicclaims.net/Funko/ no later than 11:59 p.m. EST on October 17, 2022. However, you may alternatively complete and sign this Proof of Claim and Release Form and mail it by first class mail, postmarked no later than October 17, 2022, to Strategic Claims Services, the Claims Administrator, at the following address:

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Suite 205
P.O. Box 230
Media, PA 19063
Tel.: 866-274-4004
Fax: 610-565-7985
info@strategicclaims.net

Your failure to submit your claim by October 17, 2022 will subject your claim to rejection and preclude you from receiving any money in connection with the settlement of this action. Do not mail or deliver your claim to the Court or to any of the parties or their counsel, as any such claim will be deemed not to have been submitted. Submit your claim only to the Claims Administrator. If you are a Settlement Class Member and do not submit a proper Proof of Claim and Release Form, you will not share in the Settlement, but you nevertheless will be bound by the Order and Final Judgment of the Court unless you exclude yourself. Submission of a Proof of Claim and Release Form does not assure that you will share in the proceeds of the Settlement.

CLAIMANT'S STATEMENT

1. I (we) purchased or otherwise acquired the common stock of Funko, Inc. ("Funko") on the open market between August 8, 2019 and March 5, 2020 ("the Class Period"). (Do not submit this Proof of Claim and Release Form if you did not purchase or acquire Funko common stock during the Class Period.)
2. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member(s) as defined above and in the Internet Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), or am (are) acting for such person(s); that I am (we are) not a Defendant in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Settlement Class Member [*e.g.*, as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)
3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim and Release Form. I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim and Release Form.
4. I (we) have set forth where requested below all relevant information with respect to each purchase and/or acquisition of Funko common stock, and each sale, if any, of such common stock. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.
5. I (we) have provided photocopies or scanned stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase, acquisition, and sale of Funko common stock listed below in support of my (our) claim. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER OR TAX ADVISOR BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM. DO NOT SEND STOCK CERTIFICATES.)
6. I (we) understand that the information contained in this Proof of Claim and Release Form is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your Recognized Claim. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)
7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) respective parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, heirs, representatives, joint tenants, tenants in common, beneficiaries, executors, administrators, insurers, legatees, and estates (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their respective parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, heirs, representatives, joint tenants, tenants in common, beneficiaries, executors, administrators, insurers, legatees, and estates) of each of the "Defendants' Releasees" of all "Released Claims."
8. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a covenant by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) to permanently refrain from prosecuting or attempting to prosecute any Released Claims against any of the Defendants' Releasees.

9. "Defendants' Releasees" means Defendants, Russell Nickel, and all other of their current and former parents, affiliates, subsidiaries, related entities, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, principals, trustees, trusts, employees, Immediate Family members, insurers, advisors, estates, heirs, executors, administrators, shareholders, joint ventures, members, managers, supervisors, contractors, consultants, representatives, attorneys, and legal or personal representatives of the foregoing, in their capacities as such.
10. "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Defendants, except for (i) claims relating to the enforcement of the Settlement or this Stipulation, or (ii) any claims against any person or entity who or which submits a request for exclusion from the Settlement Class in connection with the Notice ("Excluded Defendants' Claims"). "Released Defendants' Claims" include "Unknown Claims" as defined herein.
11. "Released Plaintiffs' Claims" means any and all claims and causes of action, whether known claims or Unknown Claims, contingent or absolute, mature or not mature, liquidated or not liquidated, accrued or not accrued, concealed or hidden, regardless of legal or equitable theory and whether arising under federal, state, common or foreign law, that Lead Plaintiffs or any other Settlement Class Member (i) asserted in the Action; or (ii) could have asserted in any forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations, or omissions that were involved, set forth, or referred to in the Action and that relate to the purchase or acquisition of Funko common stock during the Class Period. For the avoidance of doubt, this release does not release or impair: (i) any claims relating to the enforcement of the Settlement; (ii) any claims asserted derivatively in *Silverberg v. Funko, Inc*., C.A. No. 2020-1043-MTZ (Del. Ch.), *In re Funko, Inc. Derivative Litigation*, Lead Case No. 20-cv-03740-VAP (C.D. Cal.), and *Smith v. Mariotti et al*., (C.D. Cal. No. 22-cv-03155-VAP (C.D. Cal.); and (iii) any claims of persons or entities who or which submits a request for exclusion from the Settlement Class in connection with the Notice ("Excluded Plaintiffs' Claims"). "Released Plaintiffs' Claims" include "Unknown Claims" as defined herein.
12. "Released Claims" means all Released Defendants' Claims and all Released Plaintiffs' Claims.
13. "Unknown Claims" means any Released Plaintiffs' Claims which Lead Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiffs and Settling Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment, shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

Lead Plaintiffs, any Settlement Class Member, or any Defendant may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Released Plaintiffs' Claims and the Released Defendants' Claims, but the Parties shall expressly, fully, finally, and forever waive, compromise, settle, discharge, extinguish, and release, and each Settlement Class Member shall be deemed to have waived, compromised, settled, discharged, extinguished, and released, and upon the Effective Date and by operation of the Judgment shall have waived, comprised, settled, discharged, extinguished, and released, fully, finally, and forever, any and all Released Plaintiffs' Claims and Released Defendants' Claims, as applicable, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Parties acknowledge, and each of the other

Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

14. I (we) acknowledge that I (we) may hereafter discover facts in addition to or different from those which I (we) now know or believe to be true with respect to the subject matter of the Released Claims, but expressly fully, finally and forever settle and release, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of fiduciary duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.
15. I (We) acknowledge that the inclusion of "Unknown Claims" in the definition of claims released pursuant to the Stipulation and Agreement of Settlement, dated June 3, 2022 ("Stipulation") was separately bargained for and is a material element of the Settlement of which this release is a part.
16. NOTICE REGARDING ELECTRONIC FILES: Representatives with the authority to file on behalf of (a) accounts of multiple Persons and/or (b) institutional accounts with large numbers of transactions ("Representative Filers") must submit information regarding their clients' transactions in the approved electronic spreadsheet format, which is available by request to the Claims Administrator at efile@strategicclaims.net or by visiting the Case Website www.strategicclaims.net/institutional-filers/. One spreadsheet may contain the information for multiple Persons and institutional accounts, but all Representative Filers MUST also submit a manually signed Proof of Claim and Release Form, as well as proof of authority to file (see Item 2 of the Claimant's Statement) along with the electronic spreadsheet. The Claims Administrator reserves the right to request additional documentary proof regarding transactions and holdings in the Company's shares to prove and accurately process the Proof of Claim and Release Form. Any file not submitted in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing the file with claim number(s) and respective account information. Do not assume that the file has been received or processed until the Claims Administrator sends a confirmation email. If you do not receive such an email within 10 days of submission, please contact the electronic filing department at efile@strategicclaims.net to inquire about the file and confirm it was received and acceptable.
17. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Proof of Claim and Release Form hosted at www.strategicclaims.net/Funko/. If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing; you will receive an automated e-mail confirming receipt once your Proof of Claim and Release 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 showing your transactions to accompany your Proof of Claim and Release Form.

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's Name

Co-Beneficial Owner's Name

Entity Name (if Beneficial Owner is not an individual)

Representative or Custodian Name (if different from Beneficial Owner(s) listed above)

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City | State | Zip Code

Country

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (home) — —

Telephone Number (work) — —

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

Account Number (where securities were traded)[1]

Claimant Account Type (check appropriate box):

☐ Individual (includes joint owner accounts) ☐ Pension Plan ☐ Trust ☐ Corporation
☐ Estate ☐ IRA/401(k) ☐ Other _____(please specify)

[1] If the account number is unknown, you may leave blank. If filing for multiple accounts, file a separate Claim Form for each account.

II. SCHEDULE OF TRANSACTIONS IN FUNKO COMMON STOCK

1. Holdings as of August 7, 2019– State the total number of shares of FNKO common stock held at the close of trading on August 7, 2019. (Must be documented.) If none, write "zero" or "0."	**Confirm Proof of Position Enclosed** ☐

2. Purchases/Acquisitions from August 8, 2019 through June 3, 2020, inclusive – Separately list each and every purchase/acquisition (including free receipts) of FNKO common stock from after the opening of trading on August 8, 2019 through and including the close of trading on June 3, 2020. (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
/ /		$	$	☐
/ /		$	$	☐
/ /		$	$	☐
/ /		$	$	☐

3. Sales from August 8, 2019 through June 3, 2020, Inclusive – Separately list each and every sale/disposition (including free deliveries) of FNKO common stock from after the opening of trading on August 8, 2019 through and including the close of trading on June 3, 2020. (Must be documented.)	**IF NONE, CHECK HERE** ☐

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
/ /		$	$	☐
/ /		$	$	☐
/ /		$	$	☐
/ /		$	$	☐

4. Ending Holdings – State the total number of shares of FNKO common stock held at the close of trading on June 3, 2020. (Must be documented.) If none, write "zero" or "0."	**Confirm Proof of Position Enclosed** ☐

III. SUBSTITUTIVE FORM W-9

Request for Taxpayer Identification Number

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service ("I.R.S.") requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals)	Or	Taxpayer Identification (for estates, trusts, corporations, etc.)

IV. CERTIFICATION

I (We) submit this Proof of Claim and Release Form under the terms of the Stipulation described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Central District of California with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the release and covenant not to sue 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 this Action. I (We) have not submitted any other claim covering the same purchases or sales of Funko common stock during the Class Period and know of no other Person having done so on my (our) behalf.

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 because: (a) I am (We are) exempt from backup withholding; or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the I.R.S. that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT AND COMPLETE.

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign):

_____
(Signature)

_____
(Signature)

_____
(Capacity of person(s) signing, *e.g.* beneficial purchaser(s), executor, administrator, trustee, etc.)

☐ Check here if proof of authority to file is enclosed. (*See* Item 2 under Claimant's Statement)

Date: _____

To file this Proof of Claim and Release Form electronically, please visit the Funko Case Website, www.strategicclaims.net/Funko/. The Case Website has a link called "File a Claim Online" that will direct you to the electronic filing system. Once you click the File a Claim Online link, you will be given detailed instructions for filling out and submitting your Proof of Claim and Release Form online. Please read the instructions carefully and make sure that you have the information and documents necessary to complete your online claim. You will need to provide the contact information and list of transactions stated in the instructions, as well as attach the documentation listed in paragraph 5 on page 18 of this Proof of Claim and Release Form, in order to submit your claim electronically. If you do not provide all of the information and documents required, you will not be able to proceed with your submission through the electronic filing system. If you experience any issues while filling out your Proof of Claim and Release Form electronically, or if you have any questions about filing, you may contact the Claims Administrator via email at info@strategicclaims.net or by toll-free phone at (866) 274-4004.

IF YOU CHOOSE TO FILE YOUR CLAIM BY MAIL, THIS PROOF OF CLAIM AND RELEASE FORM MUST BE POSTMARKED NO LATER THAN OCTOBER 17, 2022 AND MUST BE MAILED TO:

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Tel.: 866-274-4004
Fax: 610-565-7985
info@strategicclaims.net

A Proof of Claim and Release Form received by the Claims Administrator shall be deemed to have been submitted when postmarked if mailed first class and addressed in accordance with the above instructions. In all other cases, a Proof of Claim and Release Form shall be deemed to have been submitted when actually received by the Claims Administrator. You should be aware that it will take a significant amount of time to process fully all of the Proof of Claim and Release Forms and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Proof of Claim and Release Form. Please notify the Claims Administrator of any change of address.

REMINDER CHECKLIST

- Please be sure to sign this Proof of Claim and Release Form on page 23. If this Proof of Claim and Release Form is submitted on behalf of joint claimants, then both claimants must sign.

- Please remember to attach or scan supporting documents. Do NOT send any stock certificates. Keep copies of everything you submit.

- Do NOT use highlighter on the Proof of Claim and Release Form or any supporting documents.

- If you move or change your address, telephone number or email address, please submit the new information to the Claims Administrator, as well as any other information that will assist us in contacting you. NOTE: Failure to submit updated information to the Claims Administrator may result in the Claims Administrator's inability to contact you regarding issues with your claim or to deliver payment to you.

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Suite 205
Media, PA 19063

IMPORTANT LEGAL NOTICE – PLEASE FORWARD

EXHIBIT B

REQUEST FOR NAMES, EMAILS AND ADDRESSES OF CLASS MEMBERS

STRATEGIC CLAIMS SERVICES
600 N. JACKSON STREET, SUITE 205
MEDIA, PA 19063
PHONE: (610) 565-9202 EMAIL: info@strategicclaims.net FAX: (610) 565-7985

August 3, 2022

This letter is being sent to all entities whose names have been made available to us, or which we believe may know of potential class members.

We request that you assist us in identifying any individuals who fit the following description:

ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED THE COMMON STOCK OF FUNKO, INC. ("FUNKO") ON THE OPEN MARKET DURING THE PERIOD AUGUST 8, 2019 TO MARCH 5, 2020, INCLUSIVE.

Excluded from the Settlement Class are: (i) Defendants; (ii) members of the Immediate Family of each Individual Defendant; (iii) any person who was an Officer or director of Funko; (iv) any firm or entity in which any Defendant has or had a controlling interest; (v) any person who participated in the wrongdoing alleged; (vi) Defendants' liability insurance carries; (vii) any affiliates, parents, or subsidiaries of Funko; (viii) all Funko's plans that are covered by ERISA; and (ix) the legal representatives, agents, affiliates, heirs beneficiaries, successors-in interests, or assigns of any excluded person or entity in their respective capacity as such.

The information below may assist you in finding the above requested information.

Funko, Inc. Securities Litigation Case No. 2:20-cv-02319-VAP-(MAAx) Claim Filing Deadline: October 17, 2022 Exclusion Deadline: October 17, 2022 Objection Deadline: October 17, 2022 Settlement Fairness Hearing: November 7, 2022	Cusip Number: 361008105

PER COURT ORDER, PLEASE RESPOND WITHIN 7 CALENDAR DAYS FROM THE DATE OF THIS NOTICE

Please comply in one of the following ways:

1. If you have no beneficial purchasers/owners, please so advise us in writing; or
2. **Supply us with email addresses**, if email addresses are not available, provide us with names and last known addresses of your beneficial purchasers/owners and we will do the emailing of the electronic copy of the Postcard Notice or mailing of the Postcard Notice. Please provide us this information electronically. If you are not able to do this, labels will be accepted, but it is important that a hardcopy list also be submitted of your clients; or
3. Advise us of how many beneficial purchasers/owners you have, and we will supply you with ample postcards to do the mailing. After the receipt of the Postcard Notice you have seven (7) calendar days to mail them; or
4. Request an electronic copy of the Postcard Notice and advise us that you will be emailing the Postcard Notice to your beneficial purchasers/owners within seven (7) days after receipt thereof.

You can bill us for any reasonable expenses actually incurred and **not to exceed**:

$0.05 per emailed Postcard Notice sent OR
$0.05 per name, address and email address if you are providing us the records OR
$0.05 per name and address, including materials, plus postage at the current pre-sort rate used by the Claims Administrator if you are requesting the Postcard Notice and performing the mailing.

All invoices must be received within 30 days of this letter.

You are on record as having been notified of the legal matter. A copy of the Internet Notice of Pendency and Proposed Settlement of Class Action and Proof of Claim Form and Release Form and all the important documents are available on our website at www.strategicclaims.net/Funko/. You can also request a copy via email at info@strategicclaims.net.

Thank you for your prompt response.

Sincerely,
Claims Administrator
Funko, Inc. Securities Litigation

Court-Ordered Legal Notice

Forwarding Service Requested

Important Notice about a Securities Class Action Settlement

You may be entitled to a payment. This Notice may affect your legal rights.

Please read it carefully.

Case Pending in the United States District Court for the Central District of California.

Case Number: 2:20-cv-02319-VAP-(MAAx)

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
Media, PA 19063

EXHIBIT C

THIS CARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT
PLEASE VISIT WWW.STRATEGICCLAIMS.NET/FUNKO/ FOR MORE INFORMATION.

The United States District Court for the Central District of California has preliminarily approved a proposed class action Settlement of all claims in the action captioned *Ferreira v. Funko, Inc., et al.*, Case No. 2:20-cv-02319-VAP-(MAAx). The Settlement resolves all of the claims that Defendants violated the Securities Exchange Act of 1934 by making allegedly false and misleading statements to the investing public, which allegedly caused the Settlement Class to purchase Funko, Inc. common stock at artificially inflated prices. Defendants expressly deny all Lead Plaintiffs' allegations of wrongdoing or liability whatsoever and deny that the Settlement Class Members' losses are compensable under the securities laws.

You received this Postcard Notice because you or someone in your family may have purchased Funko common stock between August 8, 2019 and March 5, 2020, inclusive, and you may be a Settlement Class Member. The Settlement provides that, in exchange for the dismissal and release of claims against Defendants, a fund consisting of $7,000,000, less attorneys' fees and expenses, will be divided among Settlement Class Members who timely submit a valid Proof of Claim and Release Form ("Claim Form"). The Claim Form can be found on the website, www.strategicclaims.net/Funko/, or will be mailed to you upon request to the Claims Administrator at the address below.

For a full description of the Settlement, your rights, and to make a claim, please view the Stipulation and Agreement of Settlement, the Internet Notice of Pendency and Proposed Settlement of Class Action ("Notice"), and Claim Form by visiting the website: www.strategicclaims.net/Funko/. You may also request copies of the Notice and Claim Form from the Claims Administrator through any of the following ways: (1) mail: *Funko, Inc. Securities Litigation*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St, Ste. 205, Media, PA 19063; (2) call toll-free: (866) 274-4004; (3) fax: (610) 565-7985; or (4) email: info@strategicclaims.net. **To qualify for payment, you must submit a Claim Form.**

Claim Forms must be electronically submitted at www.strategicclaims.net/Funko/ by 11:59 p.m. on October 17, 2022. Mailed Claim Forms must be postmarked by October 17, 2022 to the Claims Administrator at the address above. If you do not want to be legally bound by the Settlement, you must exclude yourself by October 17, 2022 or you will not be able to sue the Defendants about the legal claims in this case. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement, you may object to it by October 17, 2022. The detailed Notice explains how to submit a Claim Form, exclude yourself, or object.

The Court will hold a final settlement hearing in this case on November 7, 2022 at 2:00 p.m. at the United States District Court, Central District of California, First Street U.S. Courthouse, 350 W. First Street, Courtroom 8A, 8th Floor, Los Angeles, CA 90012, to consider whether to approve the Settlement, the Plan of Allocation, and a request by Lead Counsel for up to 25% of the Settlement Fund for attorneys' fees, plus up to $275,000 for actual expenses, and up to $18,000 in PSLRA awards for each of the Lead Plaintiffs. You may attend the hearing and ask to be heard by the Court, but you do not have to. For more information, call toll free (866-274-4004) or visit the website www.strategicclaims.net/Funko/.

EXHIBIT D

jbravata@strategicclaims.net

From: phhubs@prnewswire.com
Sent: Tuesday, August 2, 2022 5:08 PM
To: jbravata@strategicclaims.net
Subject: PR Newswire: Press Release Distribution Confirmation for Bernstein Liebhard LLP. ID# 3610502-1-1

Hello

Your press release was successfully distributed at: 02-Aug-2022 05:08:00 PM ET

Release headline: Pomerantz LLP and Bernstein Liebhard LLP Announce Proposed Class Action Settlement on Behalf of Purchasers of Funko, Inc. Common Stock – FNKO
Word Count: 1016
Product Selections:
US1
Visibility Reports Email
Complimentary Press Release Optimization
PR Newswire ID: 3610502-1-1

View your release:* https://www.prnewswire.com/news-releases/pomerantz-llp-and-bernstein-liebhard-llp-announce-proposed-class-action-settlement-on-behalf-of-purchasers-of-funko-inc-common-stock--fnko-301598447.html?tc=eml_cleartime

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INVESTOR'S BUSINESS DAILY®

Affidavit of Publication

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

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

I, **Shaun Shen** for the publisher of **IBD Weekly** , published in the city of Los Angeles , state of California , county of Los Angeles hereby certify that the attached notice(s) for FUNKO INC. was printed in said publication on the following date(s):

AUGUST 8, 2022

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 8th day of August , 2022 , by

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

Signature Richard C. Brand II (Seal)

RICHARD CHARLES BRAND II
Notary Public - California
Los Angeles County
Commission # 2276190
My Comm. Expires Feb 25, 2023

36 Mo Performance Rating	Fund	YTD % Chg	12Wk % Chg	5 Yr After Tax Rtn	Net Asset Value	NAV Chg
	$ 47.7 bil 800-480-4111					
A+	GrowthI	-18	+5	+111	50.63n	+.00
	JP Morgan Instl					
	$ 143 bil 800-480-4111					
A	BehaveVal	-3	+0	+50	80.94n	+.00
B+	EquityInc	-5	+1	+60	22.56n	+.00
A+	USEquityI	-12	+4	+77	19.29n	+.00
A+	USEquityL	-12	+4	+78	19.34n	+.00
A-	USSmallCo	-13	+5	+33	16.84n	+.00
	JP Morgan R5					
	$ 88.0 bil 800-480-4111					
E	CoreBond	-8	+1	+5	10.76n	+.00
A+	IntrpdGrth	-17	+7	+76	56.90n	+.00
A+	LgVal	-3	-2	+51	18.44n	+.00
A-	SmlCapVal	-9	+4	+28	27.72n	+.00
A+	USEqty	-12	+3	+78	19.34n	+.00
A+	USLgCrPls	-14	+5	+58	20.90n	+.00
	JP Morgan R6					
	$ 61.5 bil 800-480-4111					
E	Core Bond	-8	+1	+5	10.79n	+.00
A+	EnhanEqu	-12	+4	+76	32.15n	+.00
A-	SmlCapVal	-9	+4	+29	27.78n	+.00
	JP Morgan Selct					
	$ 134 bil 800-480-4111					
E	CoreBondI	-8	+1	+4	10.78n	+.00
A+	LgCapVal	-3	-2	+50	18.21n	+.00
A+	ResearchEn	-12	+4	+75	32.20n	+.00
A-	SmlCapVal	-9	+4	+27	27.68n	+.00
	Kinetics Funds					
	$ 4.7 bil 800-930-3828					
A+	ParaAdv	+6	+12	+111	68.29n	+.28
A+	Paradigm	+7	+12	+117	75.05	+.31
A+	ParadigmNL	+7	+12	+120	78.29n	+.32
A+	PardigmIns	+7	+12	+121	79.15n	+.32
A+	SmCpOpport	+11	+10	+165	109.43n	+.31
A+	SmlCapOpprt	+11	+10	+169	111.83n	+.31
A+	SmOppAdvC	+10	+10	+156	99.48n	+.28
	Lazard Instl					
	$ 88.9 bil 800-823-6300					
A	WindsrIIInv	-10	+2	+55	41.07n	+.00
	Legg Mason					
	$ 70.4 bil 800-822-5544					
A	CapEquityIS	-15	+2	+55	17.91n	+.00
A	CBApprecIS	-10	+3	+70	29.96n	+.04
A-	CBApprecR	-10	+3	+66	29.99n	+.04
A-	ClrBrdgVal	-9	+0	+44	106.63n	+.78
A-	StrategyR	-7	+1	+59	27.87n	+.03
	Legg Mason 1					
	$ 68.0 bil 800-822-5544					
E	CorePlusFI	-14	+1		10.11n	-.12
E	CorePlusIS	-14	+1	+1	10.10n	-.13
	Legg Mason A					
	$ 60.0 bil 800-822-5544					
A-	GlobalEqA	-12	+1	+41	18.26	-.06
A	S#P500Idx	-12	+3	+70	33.16n	-.05
A-	ValueA	-9	+0	+44	90.25	+.65
	Legg Mason C					
	$ 107 bil 800-822-5544					
A-	CBApprec	-10	+3	+63	28.69n	+.03
E	CoreBondC1	-14	+1	-1	10.13n	-.13
	Legg Mason I					
	$ 93.1 bil 800-822-5544					
A-	CBApprec	-10	+3	+70	29.84n	+.04
A-	CBEQincbld	-7	+1	+63	29.07n	+.03
A-	CBEQincbld	-7	+1	+63	28.12n	+.03
A-	Clearbrge	-9	+0	+46	111.11n	+.81
	Legg Mason Partners					
	$ 19.1 bil 800-822-5544					
A-	ApprecatnA	-10	+3	+67	30.03	+.04
	Lord Abbett A					
	$ 113 bil 888-522-2388					
A	Convertible	-16	+5	+53	13.46	+.07
A	GrowthLdrs	-25	+7	+85	30.33	+.05
E	ShrtDurInco	-4	+0	+3	3.93	-.01
	Lord Abbett C					
	$ 101 bil 888-522-2388					
A-	Convertible	-17	+5	+49	13.30n	+.07
E	ShrtDurInc	-4	-1	+2	3.95n	-.02
	Lord Abbett F					
	$ 90.9 bil 888-522-2388					
E	ShrtDurInc	-4	+0	+5	3.93n	-.01
	Lord Abbett I					
	$ 78.4 bil 888-522-2388					
A	Convertible	-16	+5	+54	13.58n	+.07
E	ShrtDurInc	-4	+0	+5	3.92n	-.02
	–M–N–O–					
	Madison Funds					
	$ 1.4 bil 800-877-6089					
A-	Investors	-9	+5	+69	25.44n	+.02
	MainStay A Fds					
	$ 27.2 bil 800-624-6782					
A-	LrgCapGrwth	-24	+7	+71	8.92	-.02
A+	MapEq	-5	+1	+59	28.42	-.01
A	SP500Idx	-12	+3	+63	51.82	-.08
	MainStay B Fds					
	$ 30.3 bil 800-624-6782					
A	MapEq	-5	+1	+49	20.56n	-.01
	MainStay C Fds					
	$ 14.2 bil 800-624-6782					
A	MapEqty	-5	+1	+49	20.57n	-.01
	Managed Portfolio Funds					
	$ 329 mil 855-822-3863					
A+	SmlCapGrw	-17	+12	+76	53.67n	+.38
	Mass Mutl Instl					
	$ 975 mil 800-272-2216					
A+	PrmDiscGroA	-19	+6	+58	8.60	-.03
	Mass Mutl Prem					
	$ 16.1 bil 800-272-2216					
A+	DiscplnGrwS	-19	+7	+62	8.94n	-.04
	Mass Mutl Select					
	$ 76.5 bil 800-272-2216					
A-	FocusVal	-6	+1	+52	17.88n	+.00
A-	FocusVal	-6	+1	+53	18.26n	+.00
A-	FundValZ	-5	-1	+34	9.50n	+.04
A	IndexEqA	-13	+3	+59	17.64	-.03
A	IndexEqS	-12	+3	+61	18.51n	-.02
	MassMutual					
	$ 6.4 bil 800-272-2216					
A	Index	-13	+3	+57	16.88n	-.02
A	IndexEqY	-12	+3	+60	17.99n	-.02
	Mathtew25					
	$ 772 mil 888-836-1777					
A+	EMSmCmsInst	-16	+4	+47	24.95n	+.00
	Matthews Intl					
	$ 773 mil 800-789-2742					
A	InnovatorIn	-21	+9	+41	14.87n	+.00
	Meridian Funds					
	$ 4.4 bil 800-446-6662					
A	ContraLeg	-13	+3	+64	39.89n	+.19
	Metro West					
	$ 259 bil 800-241-4671					
E	ReturnBdAdm	-10	+0	+4	9.69n	-.11
E	TotRetBdI	-10	+0	+4	9.68n	-.11
E	TRBdPlan	-10	+0	+4	9.08n	-.10
	MFS Funds A					
	$ 215 bil 800-225-2606					
A	CoreEquity	-12	+4	+72	42.09	+.09
A-	GrowthA	-21	+8	+88	143.03	-.02
A+	MAInvGrSk	-13	+5	+94	37.07	-.08
A-	MAInvTr	-12	+4	+62	35.91	+.04
A-	MidCapVal	-9	+0	+48	28.77	+.11
A-	Research	-12	+4	+65	53.18	+.11
B	ValueA	-8	+2	+44	49.81	+.09
	MFS Funds B					
	$ 204 bil 800-225-2606					
A-	CoreEquity	-12	+4	+66	35.60n	+.08
D	IntlVal	-21	+2	+21	39.14n	-.52
A	MAInvGrSk	-13	+4	+85	29.59n	-.06
B-	Value	-8	+2	+41	49.64n	+.09
	MFS Funds C					
	$ 168 bil 800-225-2606					
A-	CoreEquity	-12	+4	+66	34.99n	+.07
A	MAInvGrSk	-13	+4	+85	29.31n	-.06
B-	Value	-8	+2	+40	49.20n	+.08
	MFS Funds I					
	$ 153 bil 800-225-2606					
A-	Growth	-20	+8	+91	154.64n	-.01
A+	MAInvGrSk	-13	+5	+96	38.58n	-.08
A-	MassInvTr	-12	+4	+63	34.54n	+.04
A-	MidCapValI	-9	+0	+49	29.62n	+.11
A	ResCoreEqI	-11	+3	+58	29.91n	+.03
A-	Research	-12	+4	+67	54.89n	+.12
B	Value	-8	+2	+45	50.12n	+.09
	MgmtFunds					
	$ 93.8 bil 336-856-2911					
C-	RetireR1	-12	+1	+29	15.36n	-.06
C	SmlCapWrldA	-25	+3	+38	59.74	+.07
	Morgan Stan					
	$ 6.1 bil 888-454-3965					
A-	LrgCapEq	-14	+4	+56	22.02n	-.01
	Motley Fool Funds					
	$ 453 mil 888-863-8803					
A	Globalopps	0	+0	+80	30.93n	+.00
	Nationwide A					
	$ 10.7 bil 800-321-6064					
A	Nationwide	-14	+3	+60	26.41	-.04
A	S#P500Idx	-13	+3	+70	19.74	-.04
	Nationwide Fds Svc					
	$ 6.9 bil 800-321-6064					
A	S#P500Ins	-13	+3	+71	19.90n	-.03
A	S#P500Svc	-13	+3	+70	19.77n	-.03
	Nationwide Funds Instl					
	$ 4.0 bil 800-321-6064					
A	S#P500Idx	-12	+3	+73	19.97n	-.03
	Natixis Funds					
	$ 24.1 bil 617-449-2100					
A-	USMltCapEqY	-16	+3	+56	43.80n	-.14
A-	VaughSmValC	-7	+4	+20	6.12n	+.00
	Neubg Brm					
	$ 49.2 bil 800-223-6448					
A-	Intrinsic	-16	+2	+55	19.24	+.09
A+	LgCapVal	-6	-5	+69	41.54	+.13
A-	ResFdR6	-13	+4	+52	40.91n	-.06
A+	RskCmdA	+12	-11	+46	5.55	-.01
A+	Rskcommd	+13	-11	+48	5.71n	-.01
A-	SocResponsA	-13	+4	+165	40.97	-.06
A-	SocRespR3	-13	+4	+166	40.97n	-.07
	Neubg Brm Adv					
	$ 11.8 bil 800-223-6448					
A+	LgCapVal	-6	-5	+65	41.56n	+.12
	Neubg Brm Instl					
	$ 9.4 bil 800-223-6448					
A-	IntrnVal	-15	+2	+52	19.55n	+.09
A+	LgCapVal	-6	-5	+70	41.52n	+.13
A-	SustainEq	-13	+4	+52	40.91n	-.06
	Neubg Brm Inv					
	$ 16.6 bil 800-223-6448					
A+	Guardian	-14	+7	+88	23.17n	+.01
A+	LgCapVal	-6	-5	+71	41.54n	+.12
	Neubg Brm Tr					
	$ 16.0 bil 800-223-6448					
A+	LgCapVal	-6	-5	+69	41.56n	+.13
A-	SocRspons	-13	+4	+163	41.04n	-.06
	Nicholas Group					
	$ 450 mil 800-844-6541					
A-	EquityIncl	-8	+0	+50	19.79n	+.05
	Northern					
	$ 18.6 bil 800-595-9111					
A+	LrgCapCore	-11	+2	+81	23.66n	+.01
A	SustainIdx	-15	+2	+58	17.84n	+.00
	Oak Associates					
	$ 1.2 bil 888-462-5386					
A-	TechSelect	-19	+5	+86	34.56n	-.16
	Oakmark I					
	$ 80.9 bil 800-625-6275					
A	GlblSrvc	0	+0	+37	32.90n	+.00
D-	Intl	-17	-2	-6	23.22n	-.26
A+	ServcFd	0	+0	+73	117.07n	+.00
	Oppenheimer A					
	$ 2.3 bil 800-525-7048					
A-	SmallCapA	-12	+6	+47	18.61	+.07
	Oppenheimer I					
	$ 45.9 bil 800-525-7048					
E	DlvpMkt	-23	+3	-5	36.06n	+.15
	Optimum C					
	$ 5.0 bil 800-914-0278					
A	SmlCpGrow	-19	+9	+47	7.22n	+.05
	–P–Q–R–					
	Pace Funds A					
	$ 6.7 bil 800-647-1568					
A	LrgCoGr	-19	+5	+63	19.74	-.06
	Pace Funds P					
	$ 4.6 bil 800-647-1568					
A-	SmMdCoVal	-9	+3	+35	21.91n	+.01
	Parnassus					
	$ 27.5 bil 800-999-3505					
A	CoreEqInv	-13	+4	+75	54.89n	-.14
	Partners					
	$ 1.3 bil 207-495-9070					
A	USEquity	-7	+2	+61	20.09n	+.00
	PgimInvest					
	$ 117 bil 973-367-7930					
A	ConservGr	-22	+7	+54	8.90n	-.04
A+	DivGrowthA	-21	+7	+65	13.01	-.06
A-	FocusedZ	-28	+8	+75	18.16n	-.16
A	Growth	-26	+7	+69	30.56n	-.17
A	GrowthR	-26	+7	+74	36.01n	-.20
A	GrowthZ	-26	+8	+82	49.73n	-.27
A-	HealthSciA	-13	+7	+41	33.55	+.19
A-	HealthSciZ	-13	+8	+45	40.95n	+.23
A-	JennGlbOps	-31	+5	+76	31.04	-.53
A+	JennGlbOps	-31	+5	+91	31.80n	-.54
A	JennisonGrA	-26	+8	+78	44.14	-.24
A+	MidCapGr	-19	+6	+72	18.41n	+.20
A+	**NatlRsrc**	+10	-7	+51	48.34	..
A-	QmaSmalCap	-6	+3	+24	20.97	+.09
A+	**ResourcesC**	+10	-7	+46	37.94n	+.79
A+	**ResourcesR**	+10	-7	+49	47.43n	+.98
A+	**ResourcesR6**	+11	-7	+54	51.10n	+1.1
A+	**ResourcesZ**	+11	-7	+53	50.67n	+1.1
A+	SmallCo	-16	+2	+82	21.56n	+.24
A	StockIdxI	-12	+3	+62	41.57n	-.07
E	TotRetBd	-11	+1	-1	12.76n	+.00
A-	ValueR	-6	+3	+24	20.63n	+.08
	PIMCO A					
	$ 169 bil 888-877-4626					
A+	CommodRR	+17	-8	+51	6.14	+.00
A	StocksPLUS	-15	+3	+59	9.76	-.02
A-	StocksRet	-15	+2	+54	9.73	+.00
	PIMCO Admin					
	$ 171 bil 888-877-4626					
E	IncomeFd	-7	+1	+7	10.87n	-.04
A+	RealRet	+18	-8	+52	6.20n	+.00
	PIMCO C					
	$ 144 bil 888-877-4626					
A+	CommodRR	+17	-8	+47	5.59n	+.00
A-	StocksPlRet	-16	+2	+47	8.20n	+.00
A-	StocksPLUS	-15	+2	+54	8.88n	-.02
	PIMCO Inst I					
	$ 56.2 bil 800-927-4648					
A+	RAEfund	261	-4	+423	14.08n	+.07
A+	Stockplus	144	-1	+203	13.52n	-.13
	PIMCO P					
	$ 313 bil 888-877-4626					
D-	Income	-7	+1	+7	10.87n	-.04
A	StocksPlus	-15	+3	+56	9.83n	+.00
E	TotalRetrn	-10	+0	+2	9.08n	-.10
	Pioneer					
	$ 25.9 bil 800-225-6292					
A	FndmtlGrwth	-15	+7	+72	26.14n	-.05
A+	Pioneer	-13	+3	+73	33.17n	+.13
	Pioneer A					
	$ 27.0 bil 800-225-6292					
A	CoreEquity	-14	+1	+58	20.21	-.03
A-	Disciplined	-10	-4	+34	14.49	+.01
A	GlobalEq	-11	+0	+38	16.00	+.02
A+	Pioneer	-12	+3	+71	33.12	+.13
	Pioneer C					
	$ 36.8 bil 800-225-6292					
A+	Funds	-13	+3	+67	26.28n	+.09
A	Growth	-15	+7	+69	22.95n	-.05
	Pioneer Y					
	$ 27.0 bil 800-225-6292					
A	CoreEq	-13	+1	+59	20.63n	-.02
A-	Disciplined	-9	-4	+37	14.64n	+.01
A+	Pioneer	-12	+3	+77	33.79n	+.13
	PopForCap					
	$ 1.5 bil 626-304-6000					
A+	PartnerInst	-1	-1	+38	51.70n	+.07
A	PartnersA	-1	-1	+37	51.63	+.07
	Praxis					
	$ 2.8 bil 800-977-2947					
A+	GrwIndl	-17	+7	+99	35.85n	-.18
A+	GrwthIndex	-17	+7	+96	35.46	-.17
	Price Advisor					
	$ 257 bil 800-638-7890					
D	IntlStock	-14	+3	+9	17.09n	-.12
B	SmlCapVal	-12	+5	+42	54.17n	+.43
	PriceFds					
	$ 1661 bil 800-638-7890					
A-	Apprectnl	-7	+5	+60	34.56n	-.05
C+	BluChpGr	-24	+8	+64	131.17n	-.54
C	BlueChipGr	-25	+7	+62	124.32n	-.51
C+	BlueChipGrw	-24	+8	+66	134.48n	-.56
A-	CapApprAdv	-7	+5	+57	34.01n	-.05
A-	CapApprc	-7	+5	+59	34.51n	-.05
A+	CapOpport	-12	+4	+77	39.64n	-.09
A	DividendGr	-9	+3	+77	66.84n	+.07
A	DividendGr	-9	+3	+78	66.93n	+.07
A	EqIndex500	-12	+3	+75	109.12n	-.16
A-	FinanclSvc	-13	+0	+50	31.39n	+.24
A	GlobalStk	-22	+3	+72	49.47n	-.17
A	GloblStkAdv	-22	+3	+69	48.69n	-.17
A+	GrowthI	-16	+4	+96	57.53n	+.03
C	GrowthI	-18	+5	+53	96.47n	+.03
C+	GrowthI	-24	+8	+67	134.92n	-.55
C+	GrowthStk	-27	+7	+53	75.28n	-.24
B-	GrowthStk	-27	+7	+54	77.68n	-.24
C+	GrowthStkR	-27	+7	+51	71.83n	-.23
B-	GrwStk	-27	+7	+55	77.76n	-.25
A	HealthSci	-11	+10	+67	92.36n	+.50
A	HealthSci	-11	+10	+67	92.31n	+.50
A-	LgCpGrInstl	-23	+8	+83	56.43n	+.06
C	MidCapGr	-18	+5	+52	96.32n	+.02
C	MidCapGr	-18	+5	+50	92.00n	+.03
C-	MidCapGrR	-18	+5	+48	87.52n	+.02
A-	MidCapVal	-5	-1	+40	31.87n	+.21
A-	MidCapVal	-5	-1	+38	31.67n	+.20
A-	MidCapValR	-6	-1	+37	31.00n	+.20
A+	NewAmerGr	-16	+4	+92	55.41n	+.03
C+	**NewHorizns**	-26	+16	+69	57.05n	+1.1
E	NewIncome	-11	+0		8.55n	-.09
A+	OppFund	-16	+4	+94	57.47n	+.03
A	OpporAdv	-13	+4	+79	39.54n	-.09
A-	PriceValue	-11	-1	+49	42.63n	+.02
A-	PriValueAdv	-11	-1	+47	41.77n	+.03
C	Retire2030	-13	+2	+29	25.33n	-.05
C-	Retire2030R	-13	+2	+28	25.00n	-.06
A-	TaxEfficEqt	-20	+8	+89	48.49n	-.07
A	TotEqMktIdx	-13	+4	+69	44.85n	+.00
A-	USLgCapCore	-10	+5	+65	32.08n	+.01
A-	ValueI	-11	-1	+49	42.57n	+.02
	Principal Investors					
	$ 266 bil 800-222-5852					
A-	CapApprecC	-13	+4	+52	32.65n	+.10
A-	GrowthIInst	-23	+8	+79	17.12n	-.01
A	IndexJ	-12	+3	+67	20.96n	-.04
A	LgS#P500	-12	+3	+69	21.26n	-.04
A	LgS#P500A	-12	+3	+68	21.24	-.04
A-	LrgGrowIJ	-23	+8	+75	12.71n	-.01
A-	MidCapGroJ	-23	+7	+65	6.32n	+.03
A	MidValI	-6	+0	+49	16.47n	+.04
A-	SmValII	-6	+3	+33	12.08n	+.02
	PrncplFnds					
	$ 456 bil 800-222-5852					
A	BlueChipIns	-21	+9	+98	32.26n	-.05
A	CapitalApp	-12	+5	+66	58.48n	+.19
A	CaptlApprci	-12	+4	+65	57.68n	+.18
A-	GrowthI	-23	+8	+77	16.10n	-.01
A	LargeCap	-13	+3	+66	21.27n	-.03
A	LargeCap	-12	+3	+68	21.63n	-.04
A	LargeCap	-13	+3	+67	21.37n	-.03
A	LrgCapIdx	-13	+3	+62	20.50n	-.03
A	MidCapValue	-6	+0	+48	16.35n	+.05
A	MidcapValue	-6	+0	+47	16.24n	+.04
	Prudential Funds					
	$ 100 bil 800-225-1852					
E	BondQ	-10	+1	+4	12.75n	+.00
A+	**GrowthR6**	-37	+6	+54	19.41n	+.22
A+	Jennison20	0	+0	+70	11.43n	+.00
A+	JennSmlCoR	-16	+2	+80	17.15n	+.19
A+	JnsonMidCap	-20	+6	+73	11.27n	+.12
A+	SmallCoR6	-16	+2	+83	21.02n	+.23
E	TotlRtrnBnd	-11	+1	+1	12.80n	+.00
	Prudential A					
	$ 13.1 bil 800-225-1852					
A	StockIndexA	-13	+3	+59	41.20	-.07
	Prudential C					
	$ 23.6 bil 800-225-1852					
A+	20/20Focus	0	+0	+57	4.76n	+.00
A-	LgCpCorEq	-11	+2	+49	14.40n	-.02
A	StockIndexC	-13	+3	+55	40.36n	-.06
	Prudential Z&I					
	$ 57.6 bil 800-225-1852					
A+	20/20Focus	0	+0	+78	15.89n	+.00
A	LrgeCapEqZ	-10	+2	+57	17.41n	-.03
E	TotRetBdZ	-10	+1	+3	12.73n	+.00
A-	Utility	+2	+4	+51	16.21n	+.02
	Putnam					
	$ 11.1 bil 800-225-1581					
A+	GrwthOpp	-19	+8	+104	50.93n	-.23
	Putnam A					
	$ 28.0 bil 800-225-1581					
A+	HealthCareA	-8	+2	+52	58.32	+.11
A	Research	-12	+4	+69	40.64	-.02
A	SmCapVal	-8	+2	+27	14.60	+.03
	Putnam B					
	$ 63.4 bil 800-225-1581					
A+	GlbHlthCre	-8	+2	+37	24.65n	+.05
A	GrowOpp	-19	+8	+92	37.07n	-.16
A-	LargeCpVl	-5	-1	+55	29.01n	+.16
A-	Leaders	-17	+4	+69	67.31n	-.02
A	Research	-12	+4	+63	36.23n	-.02
A-	SmCapVal	-8	+2	+21	10.63n	+.03
	Putnam C					
	$ 56.9 bil 800-225-1581					
A+	GlbHlthCre	-8	+2	+43	37.07n	+.07
A	GrowthOpp	-19	+8	+92	37.95n	-.16
A-	LargeCpVl	-5	-1	+55	28.97n	+.16
A-	LeadersSus	-17	+4	+70	77.60n	-.03
A	Research	-12	+4	+61	36.14n	-.03
A-	SmCapVal	-8	+2	+21	10.52n	+.02
	Putnam Y					
	$ 41.4 bil 800-225-1581					
A	EquityInc	-5	+0	+61	29.43n	+.16
A+	GlbHlthCre	-8	+2	+55	64.34n	+.12
A+	GrowthOpp	-19	+8	+103	50.42n	-.22
A	MltCpGrw	-17	+5	+81	113.76n	-.04
A	Research	-12	+4	+70	41.18n	-.02
A	SmCapVal	-8	+2	+29	15.56n	+.04
	RBBFunds					
	$ 3.0 bil 866-780-0357					
A-	USequity	-9	+1	+45	21.59n	+.00
	RMBFunds					
	$ 2.0 bil 800-462-2392					
A-	FinServI	-15	+4	+34	52.48n	+.38
A-	ServicesA	-15	+4	+33	51.40	+.38
	Royce Funds					
	$ 5.7 bil 800-221-4268					
A+	OpportInv	-13	+3	+51	14.61n	+.05
	Russell Funds A					
	$ 12.9 bil 800-787-7354					
A-	USDefEq	-10	+4	+52	45.94	+.00
	Russell Funds C					
	$ 13.8 bil 800-787-7354					
A-	USDefEq	-10	+4	+47	44.24n	+.00
	Russell Funds S					
	$ 7.1 bil 800-787-7354					
A-	USDynEqt	0	+0	+34	5.76n	+.00
	Rydex C					
	$ 339 mil 800-820-0888					
A+	Nova	-21	+3	+81	89.18n	-.23
	–S–T–U–					
	Schwab Funds					
	$ 63.2 bil 800-435-4000					
A	HealthCare	-8	+3	+53	26.35n	+.00
A	Index	-13	+4	+72	89.84n	+.00
A+	LrgCapGrwth	-16	+8	+72	23.42n	+.00
A	TtlStkMkIdx	-13	+4	+72	71.30n	+.00
A+	USLrgIdx	-7	-1	+67	21.40n	+.00
	SEI Portfolios					
	$ 19.4 bil 610-676-1000					
A	S#P500IdxA	-12	+3	+72	83.43n	-.12
A-	TxMgdLgCpF	-12	+1	+62	32.50n	+.05
	SilverPepper					
	$ 552 mil 855-554-5540					
A+	CmtyStrtGl	+12	-9	+33	9.25n	-.06
A+	StrtGlbMac	+12	-9	+33	9.31n	-.07
	Sit Funds					
	$ 2.9 bil 800-332-5580					
A	DivGrowthI	-10	+3	+54	15.45n	+.03
A	DivGrowthS	-10	+3	+53	15.35n	+.02
	SmeadCapMan					
	$ 2.5 bil 877-701-2883					
A+	SmeadValInv	-7	-2	+77	64.60n	+.09
	Spirit of America					
	$ 1.1 bil 800-367-3000					
A+	EnergyA	+19	-5	+115	13.54	+.04
	State Frm Asc					
	$ 9.2 bil 855-733-7333					
A	Growth	-9	+2	+62	98.70n	-.04
	Steinberg					
	$ 1.5 bil 212-980-0080					
A	CapEqIncmIn	-4	+3	+75	27.37n	+.04
	Sterling Capital					
	$ 9.8 bil 704-927-4173					
A-	EqtyIncomeC	-4	+3	+69	26.99n	+.04
A	EquityIncA	-4	+3	+73	27.27	+.04
A-	SpecialIn	-13	+5	+57	29.69n	-.08
	TCW Funds					
	$ 23.4 bil 800-386-3829					
A-	SelectEqN	-25	+8	+71	25.23n	-.05
	Third Avenue					
	$ 2.8 bil 212-888-5222					
A+	ValueInst	+2	-5	+20	51.83n	+.01
	Thrivent Funds A					
	$ 22.4 bil 800-847-4836					
A+	LargeCapGrw	-21	+8	+89	15.98n	-.12
A	LgCapGrwthA	-21	+8	+84	13.81	-.10
A	LrgCapVal	-6	+0	+52	26.60	+.12
	Thrivent Funds Instl					
	$ 9.9 bil 800-847-4836					
A	MidCapStk	-14	+4	+59	32.85n	+.07
A+	**SmllCapStkS**	-7	+3	+67	29.92n	+.37
	TIAA-CREF FUNDS					
	$ 52.9 bil 800-842-2252					
A-	Growth#Inc	-16	+3	+56	14.42n	+.02
A	SclChcEqPrm	-14	+4	+67	24.29n	+.00
	TIAA-CREF Instl Ret					
	$ 71.9 bil 800-842-2252					
A	EquityIdx	-13	+4	+72	30.17n	+.00
A-	LgGrwth	-22	+6	+65	18.52n	-.11
A	S#P500Idx	-12	+3	+76	45.33n	-.07
A	SocialEqty	-14	+4	+65	24.83n	+.00
	TIAA-CREF Instl Funds Reta					
	$ 47.8 bil 800-842-2252					
A	EquityIndex	-13	+4	+72	30.28n	+.00
A-	Growth#Inc	-16	+3	+58	21.76n	+.02
A-	LrgCpGrowth	-22	+6	+65	18.64n	-.11
A	SocialEqty	-14	+4	+65	21.21n	+.00
	Tocqueville					
	$ 1.6 bil 917-318-7706					
A-	Tocqueville	-11	+0	+54	41.07n	+.08
	Touchstone					
	$ 40.4 bil 800-543-0407					
A+	CmmnStkA	-13	+3	+73	51.13	-.15
A+	FocusA	-14	+3	+61	54.90	-.15
A	FocusC	-14	+2	+54	49.96n	-.14
A+	FocusInstl	-13	+3	+62	56.02n	-.15
A+	FocY	-13	+3	+62	55.72n	-.14
A-	GrowthInstl	-18	+7	+64	41.37n	-.01
A+	GrowthOpper	-16	+7	+76	38.06n	+.02
A+	LrgCapFocsd	-13	+3	+75	51.09n	-.15
A	LrgCpFocsdC	-13	+2	+66	46.13n	-.15
A-	MidCapVal	-7	+0	+38	22.43n	+.15
A-	ValueInst	-6	+0	+38	22.57n	+.15
	TrilliumMutualFnds					
	$ 509 mil 866-209-1962					
A-	P21GlblEqty	-18	+3	+60	56.58n	-.34
	UBS Pace Y					
	$ 1.5 bil 800-647-1568					
A	LrgCoGr	-18	+5	+67	21.82n	-.07
	Undiscovered Mgrs					
	$ 12.0 bil 800-480-4111					
A	BehaveValA	-3	+0	+48	78.59	+.00
A	BehaveValC	-3	+0	+45	73.13n	+.00
	USAA Group					
	$ 107 bil 800-531-8722					
A+	500IndexRew	-13	+4	+77	53.88n	-.08
A+	Nasdaq100	-19	+7	+122	35.01n	-.27
	–V–W–X–					
	Value Line					
	$ 1.2 bil 800-243-2729					
A-	MidCap	-9	+7	+85	28.49n	+.12
A-	PremierGrow	-13	+10	+78	35.06n	-.02
	Vanguard Admiral					
	$ 2043 bil 800-523-1036					
A	500Index	-12	+3	+78	383.04n	-.57
C+	BalanceIdx	-12	+3	+42	42.78n	-.19
A-	ConsStpIdx	-3	-2	+47	94.80n	-.09
D-	EmgMkSt	-15	+0	+5	34.39n	+.07
A-	EquityInc	-4	-1	+53	87.78n	+.20
D	EuroStkIdx	-18	-1	+9	68.74n	-.69
A+	Growth#Inc	-11	+2	+69	91.62n	-.06
A+	GrowthIdx	-20	+8	+100	132.24n	-.65
A	HlthCare	-5	+6	+42	88.25n	+.11
D	InflProSecs	-6	+0	+14	25.71n	-.28
B+	IntlGrowth	-25	+7	+40	104.22n	-1.9
E	IntmdTaxEx	-6	+4	+7	13.69n	-.04
A	LargeCapIdx	-13	+4	+76	95.69n	-.13
E	LtdTrmTxEx	-2	+2	+6	10.83n	-.01
B+	MidCapIdx	-14	+3	+57	269.30n	+1.4
A	Primecap	-12	+2	+65	149.71n	-.55
E	ShTrmBdIdx	-4	+0	+4	10.07n	-.06
E	TotBdIdx	-9	+1	+4	10.01n	-.12
E	TotIntBdIdx	-7	+0	+3	20.34n	-.14
A	TotStMktIdx	-13	+4	+73	101.12n	-.02
A	TxMgdCap	-13	+4	+78	214.23n	-.17
B+	ValueIdx	-5	-1	+55	53.64n	+.15
D+	VangDev	-16	-1	+12	13.65n	-.10
D+	Wellesley	-8	+0	+22	63.87n	-.43
B-	Wellington	-11	+3	+37	73.71n	-.27
A+	Windsor	-3	+2	+50	78.20n	+.16
A	WindsorII	-10	+2	+56	72.85n	-.01
	Vanguard Index					
	$ 2967 bil 877-662-7447					
C+	BalancedInv	-12	+3	+41	42.78n	-.19
E	BondMrkt	-10	+0	-5	10.01n	-.12
D-	EmgMkSt	-15	+0	+5	26.20n	+.05
D-	EmgMkSt	-15	+0	+5	26.15n	+.05
D-	EmgMkStk	-15	+0	+5	86.98n	+.16
D	EuroStkIdx	-18	-1	+9	29.31n	-.30
D	EuroStkIdx	-18	-1	+9	29.53n	-.29
D	FTSEWlIdIsP	-15	-1	+10	106.89n	-.53
E	IntBdAdm	-9	+1	+6	10.67n	-.13
E	IntBdInst	-9	+1	+6	10.67n	-.13
A+	MegaCapIdx	-13	+4	+81	285.31n	-.78
E	STBondInv	-4	+0	+3	10.07n	-.05
E	TotBdMkt	-9	+1	+4	10.01n	-.12
D	TotInStk	-16	-1	+9	17.03n	-.08
D	TotInStk	-16	-1	+10	28.48n	-.13
D	TotInStk	-16	-1	+9	113.91n	-.54
E	TotMrktIdx	-10	+0	-5	9.89n	-.11
A	TotStkIdx	-13	+4	+73	101.14n	-.02
A	TotStMktInv	-13	+4	+72	101.10n	-.02
B+	ValueIndx	-5	-1	+54	53.65n	+.15
D+	VangDevIn	-16	-1	+12	21.37n	-.15
D+	VangDevM	-16	-1	+11	10.57n	-.08
	Vanguard Instl					
	$ 1190 bil 877-662-7447					
C+	BalanceIdx	-12	+3	+42	42.79n	-.19
D	ErSkInstPl	-18	-1	+9	130.97n	-1.3
A	FTSESocIndx	-16	+5	+81	28.04n	-.06
D	FTSEWlId	-15	-1	+10	100.94n	-.49
A+	IndexGr	-20	+8	+100	132.25n	-.65
A	IndexI	-12	+3	+76	351.50n	-.53
A+	IndexPlus	-12	+3	+76	351.50n	-.53
B+	IndexValue	-5	-1	+55	53.64n	+.15
D	InflaProtec	-6	+0	+14	10.47n	-.12
A	LargeCapIdx	-13	+4	+75	393.83n	-.53
A	MktIdx	-13	+4	+67	73.58n	-.01
E	ShInvGrd	-5	+0	+5	10.14n	-.05
E	STCorpBdIdx	-5	+0	+5	25.54n	-.14
E	TotBdInstPl	-9	+1	+4	10.01n	-.12
E	TotIntBdIdx	-7	+0	+3	30.53n	-.20
A	TxMdCpAp	-13	+4	+78	106.44n	-.08
A-	TxMgSCI	-11	+5	+52	82.92n	+.40
	Vanguard Funds					
	$ 966 bil 800-523-1036					
A	CapOpport	-13	+4	+63	72.84n	-.14
A-	CoreInv	-11	+1	+58	30.00n	-.03
A	DividendGr	-6	+3	+74	35.85n	+.01
A+	**EngrIndAdmr**	+35	-7	+38	51.34n	+1.1
A-	EqtyIncInv	-4	-1	+52	41.88n	+.09
E	GNMA	-7	+1	+2	9.75n	-.10
A+	GrwtIndxInv	-20	+8	+98	132.28n	-.65
A	HlthCareInv	-5	+6	+42	209.26n	+.25
D	InflProtSec	-6	+0	+13	13.09n	-.15
E	IntInvGdInv	-11	+1	+4	8.76n	-.09
B+	IntlGrowth	-25	+7	+40	32.76n	-.59
E	IntmdTaxEx	-6	+4	+7	13.69n	-.04
A	LargeCapInv	-13	+4	+76	76.52n	-.11
E	LtdTrmTxEx	-2	+2	+5	10.83n	-.01
E	TotIntBdIx	-7	+0	+3	10.18n	-.07
A-	TrgtRet	-5	+0	+52	32.25n	+.00
A-	TrgtRet	-5	+0	+47	30.89n	+.00
A-	TrgtRet	-5	+0	+51	31.89n	+.00
A-	TrgtRet	-5	+0	+52	32.18n	+.00
A-	TrgtRet	-5	+0	+52	32.04n	+.00
D+	VanDevMkt	-16	-1	+12	13.67n	-.10
D+	WellslyInc	-8	+0	+21	26.37n	-.17
	Victory Funds					
	$ 85.7 bil 877-660-4400					
A+	DivrsStkA	-12	+4	+56	20.02	+.09
A	DivrsStkC	-13	+4	+49	17.88n	+.08
A+	DivrsStkI	-12	+4	+56	20.01n	+.09
A	DivrsStkR	-12	+4	+54	19.41n	+.09
A+	EstblshValA	-4	+0	+62	47.23	+.14
A	EstblshValR	-4	+0	+60	46.43n	+.14
A-	GrowOppsC	-13	+4	+47	35.79n	+.16
A	MultiCapY	-12	+4	+59	54.90n	+.24
A+	SYCAest	-4	+0	+64	47.28n	+.15
	Virtus Funds A					
	$ 61.4 bil 800-243-1574					
A	SmlCapCore	-8	+9	+103	41.77	+.02
A-	TechA	-26	+7	+76	45.87	-.04
	Virtus Funds C					
	$ 34.3 bil 800-243-1574					
A+	AliFocGrwtC	-22	+6	+65	25.55n	-.17
A-	SmlCapCoreC	-9	+8	+94	32.07n	+.02
	Virtus Funds I					
	$ 28.9 bil 800-243-1574					
A	SmlCapCore	-8	+9	+105	45.00n	+.02
	VOYA Fds T,M,Q&I					
	$ 8.6 bil 855-337-3064					
A-	BaronGr	-22	+7	+67	24.99n	-.12
A-	LargeGrow	-20	+8	+65	46.61n	-.04
	Voyainvestment					
	$ 817 mil 800-386-3799					
A-	CorpLdrTr	0	-3	+69	52.49n	+.21
	Weitz Funds					
	$ 1.2 bil 800-304-9745					
A-	ValueInv	-14	+6	+61	53.12n	+.02
	Wells Fargo					
	$ 11.8 bil 800-359-3379					
A-	OpportAdvA	-13	+7	+58	47.85	+.02
	Wells Fargo Ad					
	$ 34.6 bil 800-359-3379					
A-	OppAdmn	-13	+7	+61	54.28n	+.02
A-	SpcMdVal	-7	+1	+50	46.79n	+.21
	Wells Fargo Inst					
	$ 26.2 bil 800-359-3379					
A-	SpcMdVal	-7	+1	+51	47.19n	+.21
	William Blair N					
	$ 2.0 bil 800-742-7272					
A	Growth	-19	+7	+76	9.56n	-.01
	Wilmington					
	$ 1.2 bil 800-836-2211					
A	LgCapStInst	-13	+4	+71	27.94n	-.01
	Wilshire Funds					
	$ 2.3 bil 855-626-8281					
A	5000IdxInv	-13	+4	+63	25.62n	-.01
A	LgCoGrInst	-21	+7	+67	41.09n	+.00
A	LrgCoGrtInv	-21	+7	+62	35.16n	+.00

36 Mo Performance Rating | Fund | YTD % Chg | 12Wk % Chg | 5 Yr After Tax Rtn | Net Asset Value | NAV Chg

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CITY OF HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM and PEMBROKE PINES PENSION FUND FOR FIREFIGHTERS AND POLICE OFFICERS, Individually and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

HENRY SCHEIN, INC., COVETRUS, INC., STEVEN PALADINO, BENJAMIN SHAW, and CHRISTINE T. KOMOLA,

Defendants.

No. 2:19-cv-5530 (GRB)(RLM)

CLASS ACTION

SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION, CERTIFICATION OF SETTLEMENT CLASS, AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: All persons and entities who or which purchased or otherwise acquired Covetrus, Inc. ("Covetrus" or the "Company") common stock during the period from February 8, 2019, through August 12, 2019, inclusive, (the "Settlement Class Period") and were allegedly damaged thereby (the "Settlement Class").

PLEASE READ THIS NOTICE CAREFULLY; YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT OF A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of New York, that the above-captioned litigation (the "Action") has been certified as a class action for settlement purposes only on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that Court-Appointed Lead Plaintiffs, City of Hollywood Police Officers' Retirement System and Pembroke Pines Pension Fund for Firefighters and Police Officers, on behalf of themselves and the Court-certified Settlement Class in the above-captioned securities class action (the "Action"), have reached a proposed settlement for $35,000,000.00 (the "Settlement"), that, if approved by the Court, will resolve all claims in the Action.

A hearing will be held on October 25, 2022, at 2:00 p.m., before the Honorable Roanne L. Mann at the United States District Court for the Eastern District of New York, United States Courthouse, Courtroom 13C-S, 225 Cadman Plaza East, Brooklyn, NY 11201. The hearing will determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Amended Stipulation and Agreement of Settlement dated June 17, 2022 (and in the Notice), should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Plaintiffs' application for an award of attorneys' fees and reimbursement of Litigation Expenses should be approved.

If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Net Settlement Fund. If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at Covetrus Securities Litigation, c/o A.B. Data, Ltd., P.O. Box 173059, Milwaukee, WI 53217, by telephone at (877) 354-3780, or by email at info@covetrussecuritieslitigation.com. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.CovetrusSecuritiesLitigation.com.

If you are a Settlement Class Member, in order to be potentially eligible to receive a payment under the proposed Settlement, you must submit a Claim Form online at the Settlement website or by mail. The Claim Form must be ***submitted online through the case website, www.CovetrusSecuritiesLitigation.com, or postmarked no later than December 3, 2022***. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is ***received no later than October 4, 2022***, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Plaintiffs' motion for attorneys' fees and reimbursement of Litigation Expenses, must be filed with the Court ***by October 4, 2022***, and served to representatives of Lead Counsel and Defendants' Counsel such that they are ***received no later than October 4, 2022***, in accordance with the instructions set forth in the Notice.

Please do not contact the Court, the Clerk's office, Covetrus, Benjamin Shaw, or Defendants' Counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to the Claims Administrator or Lead Counsel. Or you may visit www.CovetrusSecuritiesLitigation.com or call toll-free at (877) 354-3780.

Requests for the Notice or Claim Form should be made to:

Covetrus Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 173059
Milwaukee, WI 53217
(877) 354-3780
www.CovetrusSecuritiesLitigation.com
info@covetrussecuritieslitigation.com

Inquiries, other than requests for the Notice or Claim Form, may be made to the Claims Administrator or to Lead Counsel:

Covetrus Securities Litigation
c/o A.B. Data, Ltd.
P.O. Box 173059
Milwaukee, WI 53217
(877) 354-3780
www.CovetrusSecuritiesLitigation.com
info@covetrussecuritieslitigation.com

or

SAXENA WHITE P.A.
Lester R. Hooker, Esq.
7777 Glades Rd., Suite 300
Boca Raton, FL 33434
(561) 206-6708
lhooker@saxenawhite.com

Dated: July 15, 2022

By Order of the Court
United States District Court
Eastern District of New York

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated,
Plaintiff,
v.
FUNKO, INC., et al.,
Defendants.

Case No.
2:20-cv-02319-VAP-(MAAx)
Judge: Hon. Virginia A. Phillips
Courtroom 8A- 8th Floor
CLASS ACTION

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

To: All persons and entities who or which purchased the common stock of Funko, Inc. ("Funko") on the open market during the period from August 8, 2019 to March 5, 2020, inclusive, and who were damaged thereby ("Settlement Class").

Certain persons and entities are excluded from the Settlement Class as set forth in detail in the Stipulation and Agreement of Settlement, dated June 3, 2022 ("Stipulation") and the Internet Notice described below.

PLEASE READ THIS NOTICE CAREFULLY; YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

ADDITIONAL INFORMATION ABOUT THE SETTLEMENT IS AVAILABLE ON THE SETTLEMENT WEBSITE, www.strategicclaims.net/Funko/.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Central District of California (the "Court"), that the Court-appointed Lead Plaintiffs, on behalf of themselves and the proposed Settlement Class, and defendants Funko, Inc. ("Funko"), Brian Mariotti, Jennifer Fall Jung, Andrew Perlmutter, Ken Brotman, Gino Dellomo, Adam Kriger, ACON Investments, LLC, ACON Funko Manager, LLC, ACON Funko Investors, LLC, ACON Funko Investors Holdings 1, LLC, ACON Funko Investors Holdings 2, LLC, ACON Funko Investors Holdings 3, LLC, and ACON Equity GenPar, LLC (collectively, the "Defendants") have reached a proposed settlement of the claims in the above-captioned class action (the "Action") in the amount of $7,000,000 (the "Settlement").

A hearing will be held before the Honorable Virginia A. Phillips, on November 7, 2022, at 2:00 p.m., in the United States District Court for the Central District of California, First Street U.S. Courthouse, 350 W. 1st Street, Courtroom 8A, 8th Floor, Los Angeles, CA 90012 (the "Settlement Hearing") to, among other things, to determine whether to: (i) approve the proposed Settlement as fair, reasonable, and adequate; (ii) dismiss the Action with prejudice as provided in the Stipulation; (iii) certify the Action as a class action on behalf of the Settlement Class, certify Lead Plaintiffs as Class Representatives for the Settlement Class, and appoint Lead Counsel as Class Counsel for the Settlement Class; (iv) approve the proposed Plan of Allocation for distribution of the settlement funds to Settlement Class Members (the "Net Settlement Fund"); (v) approve Lead Counsel's application for an award of attorneys' fees of up to 25% of the Settlement Fund and reimbursement of Litigation Expenses of up to $275,000, which includes costs and expenses to Lead Plaintiffs of up to $18,000 each; and (vi) to consider any other matters that may properly be brought before the Court in connection with the Settlement. The Court may change the date of the Settlement Hearing, or hold it telephonically, without providing another notice. You do NOT need to attend the Settlement Hearing to receive a distribution from the Net Settlement Fund.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT, AND YOU MAY BE ENTITLED TO A MONETARY PAYMENT. You may obtain a Proof of Claim and Release Form ("Claim Form") and review the Internet Notice of Pendency and Proposed Settlement of Class Action ("Internet Notice") on the website www.strategicclaims.net/Funko/ or by contacting the Claims Administrator at:

Funko, Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Suite 205, P.O. Box 230, Media, PA 19063
Toll-Free: (866) 274-4004, Fax: (610) 565-7985
info@strategicclaims.net, https://www.strategicclaims.net/Funko/

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

BERNSTEIN LIEBHARD LLP
Stephanie M. Beige, Esq.
10 East 40th Street, 28th Floor, New York, NY 10016
212-779-1414
funkoinfo@bernlieb.com

POMERANTZ LLP
Attn: Michael J. Wernke
600 Third Avenue, 20th Floor, New York, NY 10016
212-661-1100
mjwernke@pomlaw.com

If you are a Settlement Class Member, to be eligible to share in the distribution of the Net Settlement Fund, you must submit a Claim Form ***postmarked (if mailed) or submitted online* at www.strategicclaims.net/Funko/ ("Case Website") no later than October 17, 2022 to the Claims Administrator at the address above**. Read the instructions carefully, fill out the Claim Form in accordance with the instructions set forth in the Claim Form, and sign it in the location indicated. The Case Website also includes instructions on downloading your transaction data directly from your brokerage so that you do not have to manually enter each transaction. If you are a Settlement Class Member and do not timely submit a valid Claim Form, you will not be eligible to share in the distribution of the Net Settlement Fund, but you will nevertheless be bound by all judgments or orders entered by the Court relating to the Settlement, whether favorable or unfavorable.

If you are a Settlement Class Member and wish to exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Internet Notice such that it is ***received* no later than October 17, 2022**. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court relating to the Settlement, whether favorable or unfavorable, and you will not be eligible to share in the distribution of the Net Settlement Fund.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses or awards to Lead Plaintiffs must be filed with the Court, either by mail or in person, and be mailed to counsel for the Parties in accordance with the instructions in the Internet Notice, such that they are ***received* no later than October 17, 2022.**

SO ORDERED this 19th day of July, 2022. The Honorable Virginia A. Phillips, United States District Judge

EXHIBIT E

September 17, 2022

To: *Funko, Inc. Securities Litigation*
c/o Strategic Claims Services
600 N. Jackson St., Suite 205
P. O. Box 230
Media, PA 19063

From: Jonathan D Sato

Subject: request to be excluded from the Settlement Class in *Ferreira v. Funko, Inc.*, Case No. 2:20-cv-02319-VAP-(MAAx) (C.D. Cal.).

To Whom It May Concern:

I, Jonathan D Sato, at the above address and phone number, purchased during the Class Period August 8, 2019 and March 5, 2020 inclusive, 100 shares of Funko common stock at a price of $8.84 on or about February 11, 2020, request to be excluded from the Settlement Class in *Ferreira v. Funko, Inc.*, Case No. 2:20-cv-02319-VAP-(MAAx) (C.D. Cal.).

Sincerely,

Jonathan D Sato
Enclosure (1)

Fidelity INVESTMENTS

Transaction Confirmation
Confirm Date: February 11, 2020

FOD

JONATHAN D SATO

SP 01 027395 21174 H 48 ASNQLP
JONATHAN D SATO

Online — Fidelity.com
FAST(sm) Automated Telephone — 800-544-5555
Premium Services — 800-544-4442
8am - 11pm ET Mon - Fri

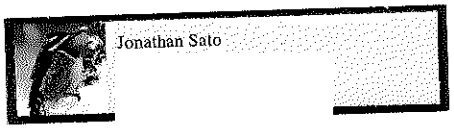
REFERENCE NO	TYPE	REG REP	TRADE DATE	SETTLEMENT DATE	CUSIP NO	ORDER NO		
20062-0FKCPT	1*	WKM	02-11-20	02-13-20	361008105	20042-PN186		

DESCRIPTION and DISCLOSURES

You Bought 100 at 8.8400
Symbol: FNKO
FUNKO INC COM CL A
WE HAVE ACTED AS AGENT

Principal Amount	884.00
Settlement Amount	884.00

ALL ORDERS ARE UNSOLICITED UNLESS SPECIFIED ABOVE



17 SEP 2022 PM 3 L

SEP 21 2022

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

19063-023030

EXHIBIT 5

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2021 Review and Analysis

Table of Contents

Table of Figures and Appendices

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

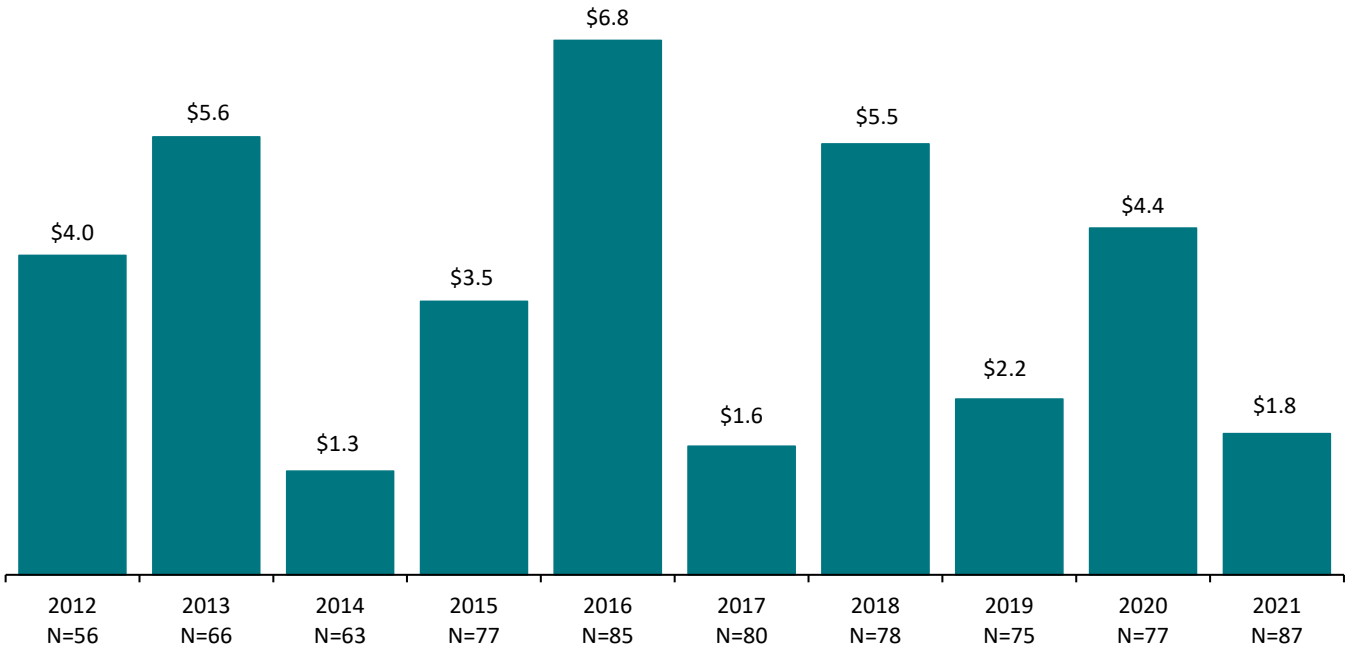
As has been observed in prior years, the presence or absence of just a few very large settlements can have an outsized effect on total reported settlement dollars.

- 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

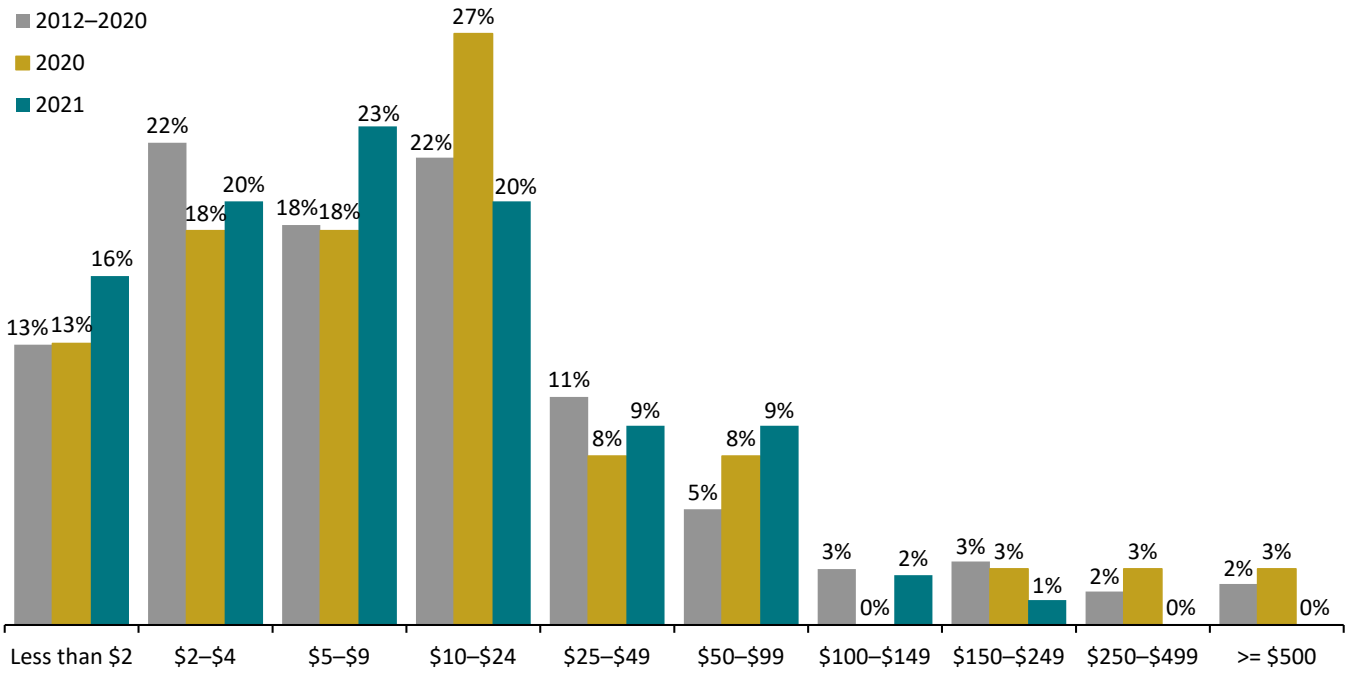
- The median settlement amount in 2021 was $8.3 million, a 22% decline from 2020 (adjusted for inflation), and a 10% decline from the 2012–2020 median.
- There were 14 cases that settled for less than $2 million in 2021 (historically referred to by commentators as nuisance suits).[5] This compares to 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.

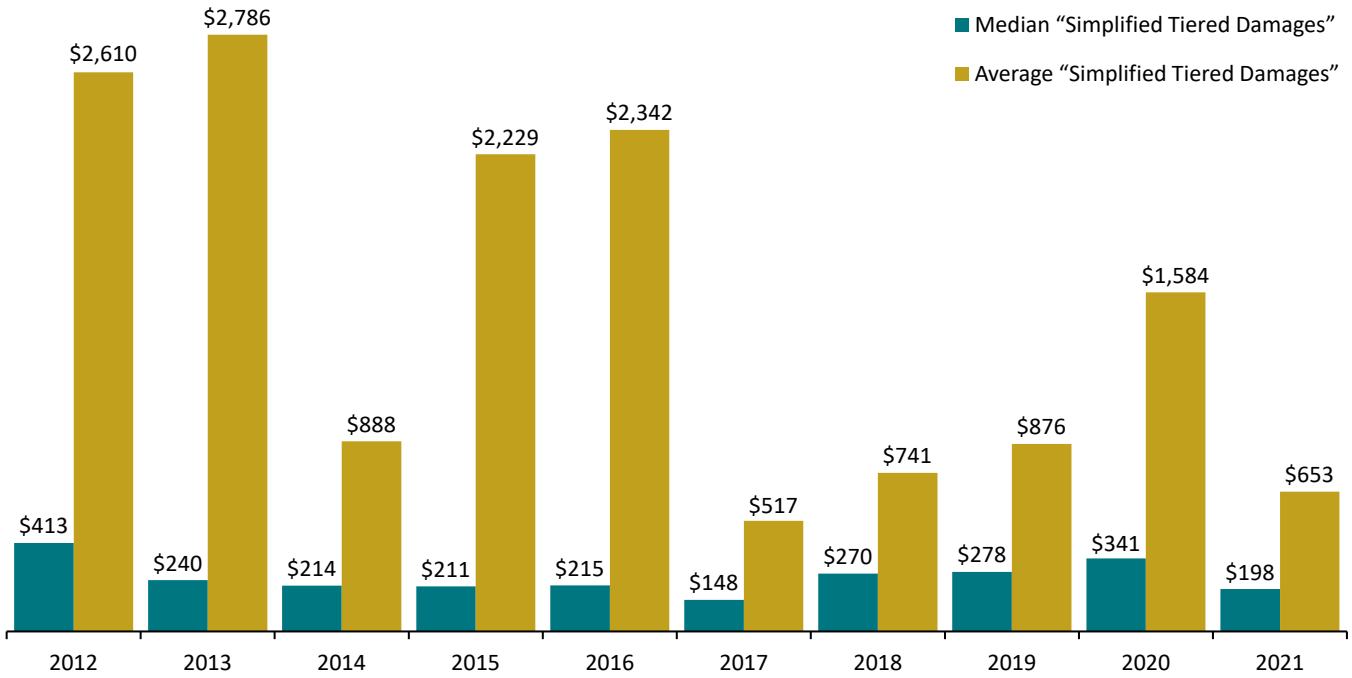
- Similar to settlement amounts, the average "simplified tiered damages" in 2021 declined to the lowest level since 2017. *(See Appendix 5 for additional information on median and average settlements as a percentage of "simplified tiered damages.")*

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 defendants[9] 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)



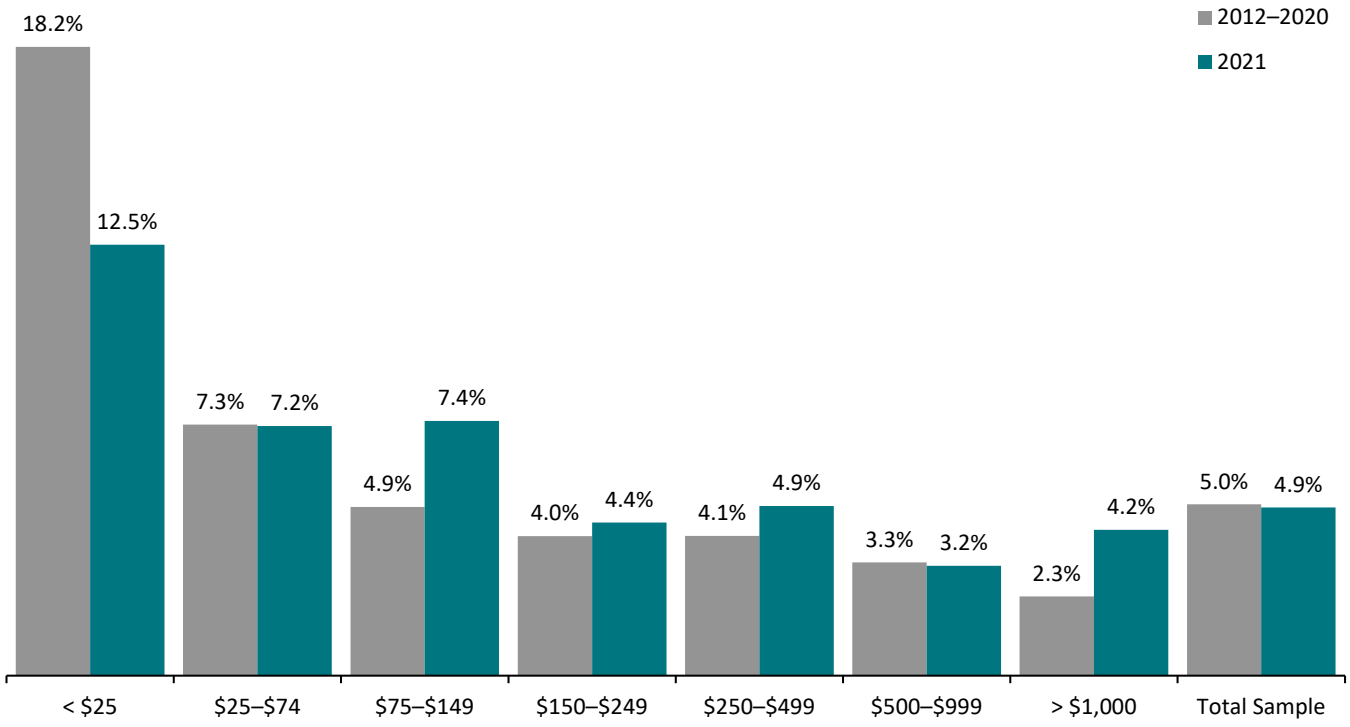
Note: "Simplified tiered damages" are adjusted for inflation based on class period end dates for common stock only; 2021 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

Type of Claim (continued)

- 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.

Type of Claim (continued)

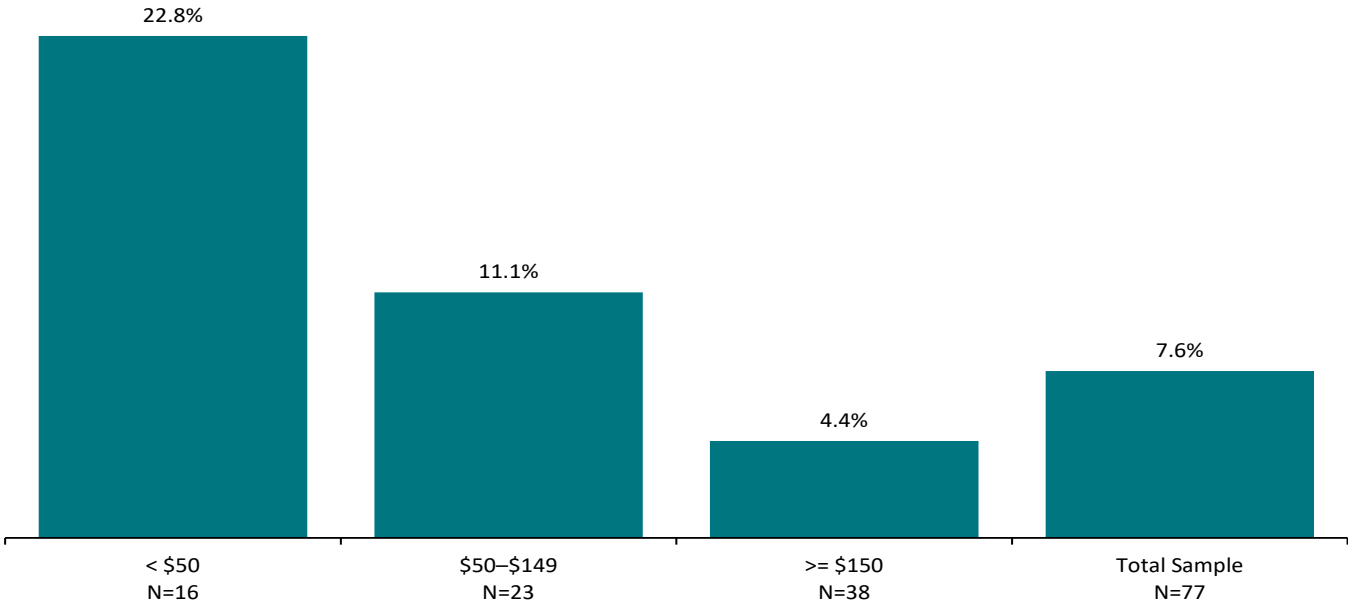
- More than 80% of cases with only ’33 Act claims involved an initial public offering (IPO).
- In 2021, 88% of the settled ’33 Act claim cases involved an underwriter (or underwriters) as a named codefendant.
- Among those cases with identifiable contributions, D&O liability insurance provided, on average, 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

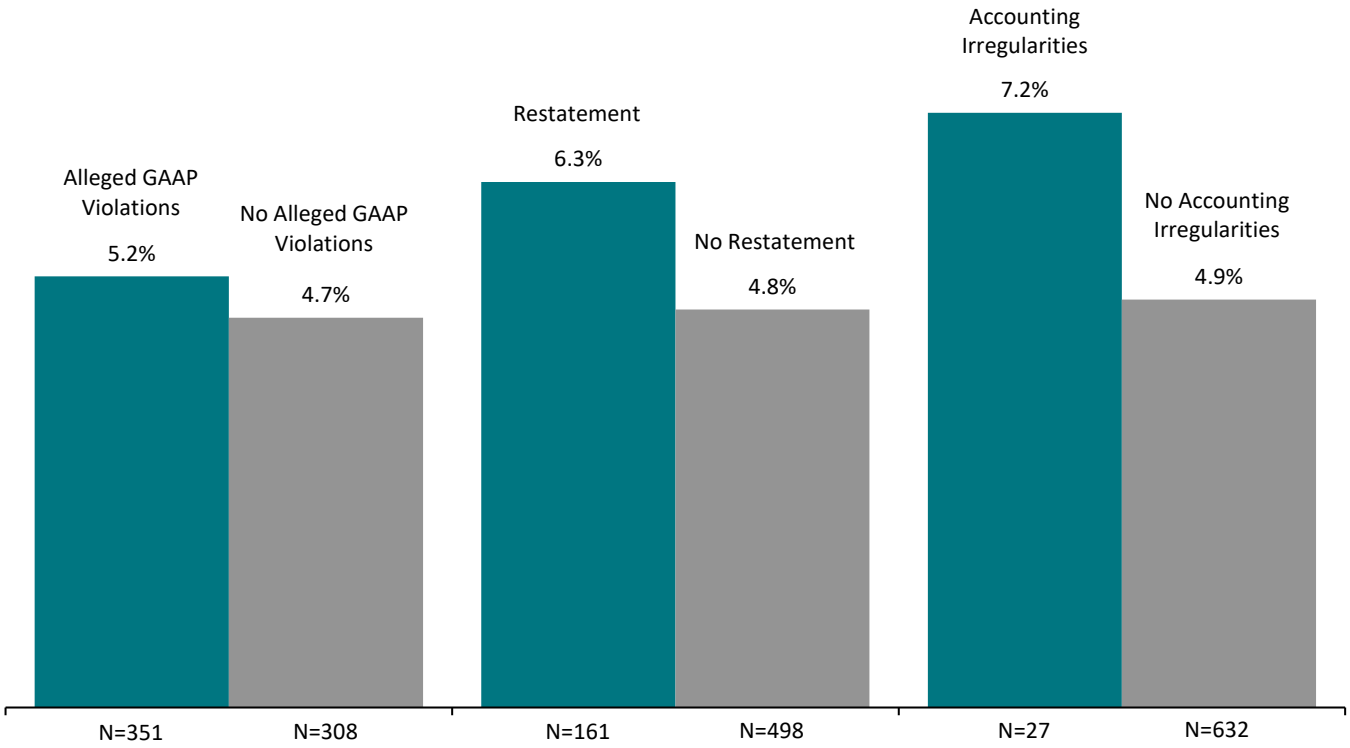
GAAP Violations

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

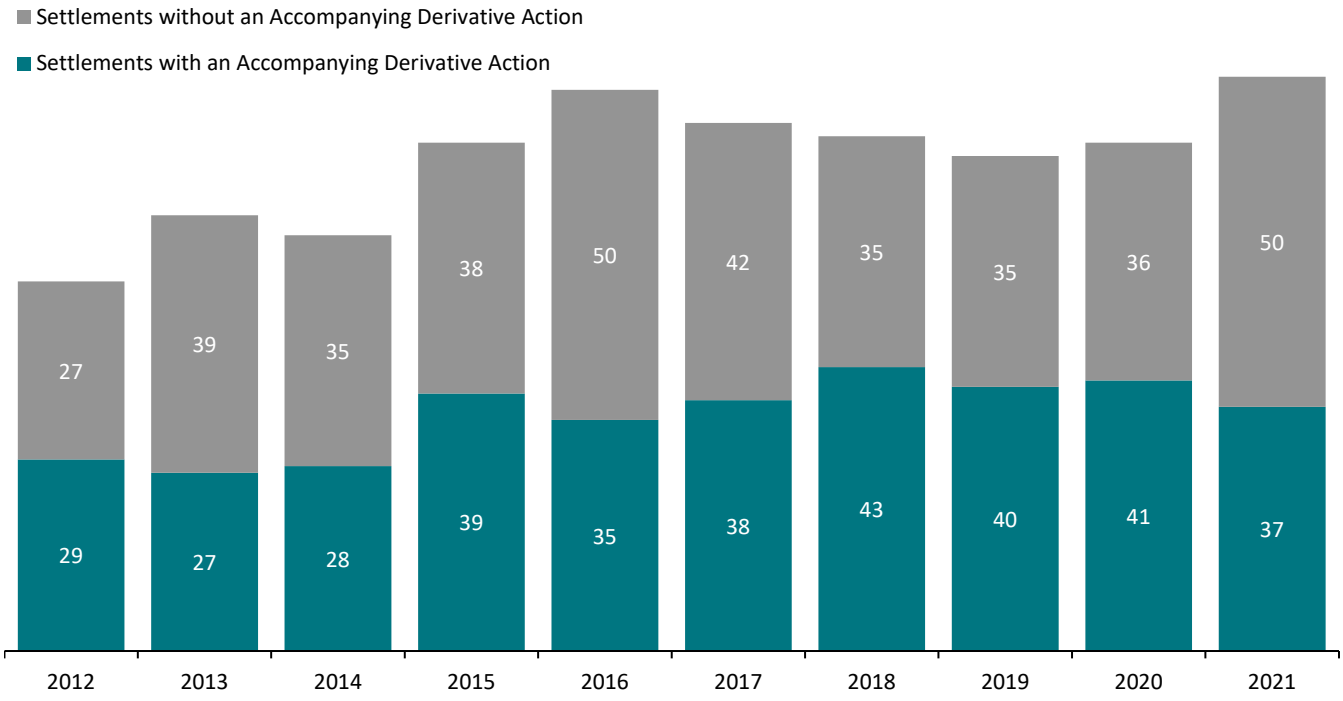
Historically, settled cases involving an accompanying derivative action have been associated with both larger cases (measured by "simplified tiered damages") and larger settlement amounts. For example, from 2012 to 2020, the median settlement for cases with an accompanying derivative action was nearly 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



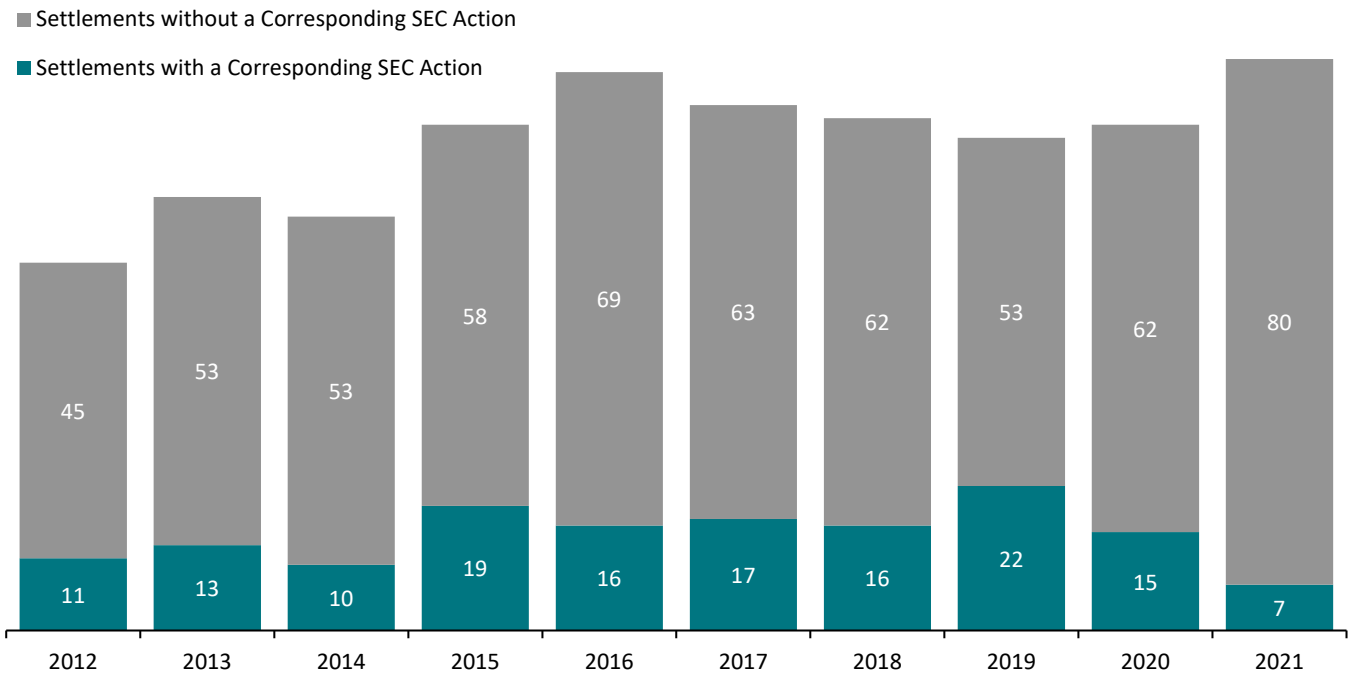
Corresponding SEC Actions

- 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.)*

In 2021, the number of settled cases involving a corresponding SEC action was the lowest in the past decade

- 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]

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.

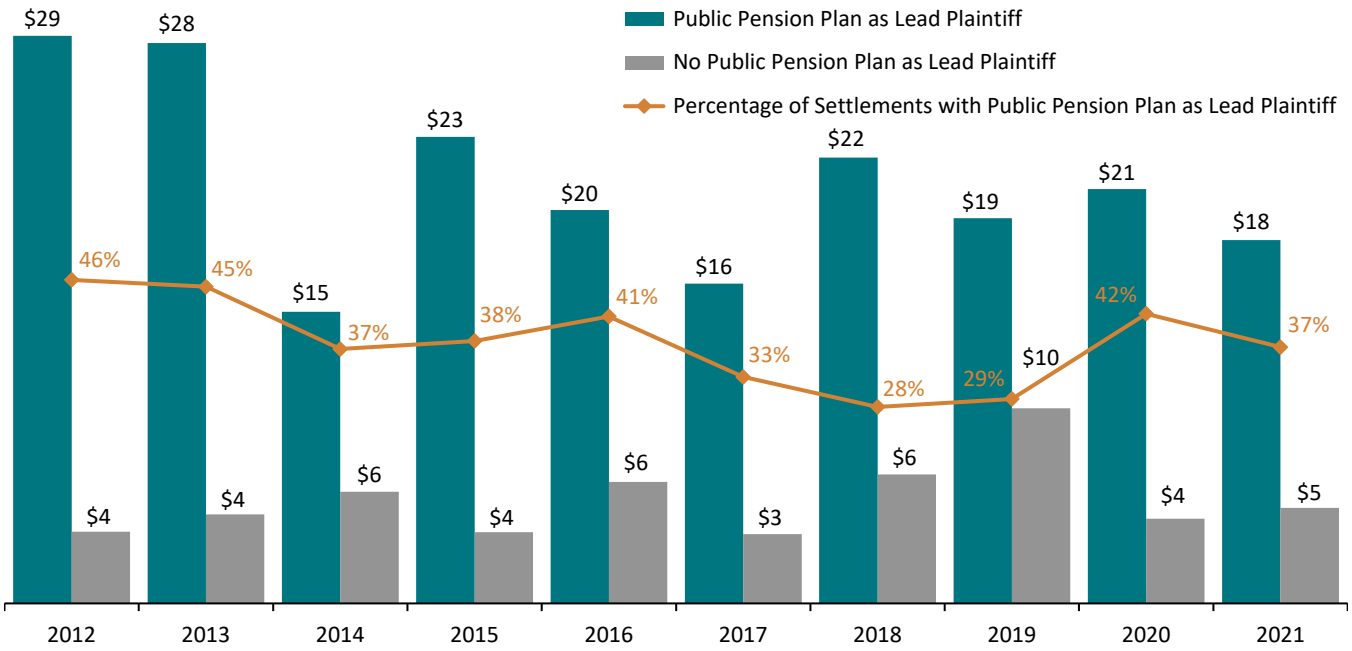
Since passage of the Reform Act, public pension plans have been the most frequent type of institutional lead plaintiff, and the presence of a public pension acting as a lead plaintiff is associated with higher settlement amounts. *(See page 15 for further discussion of factors that influence settlement 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.

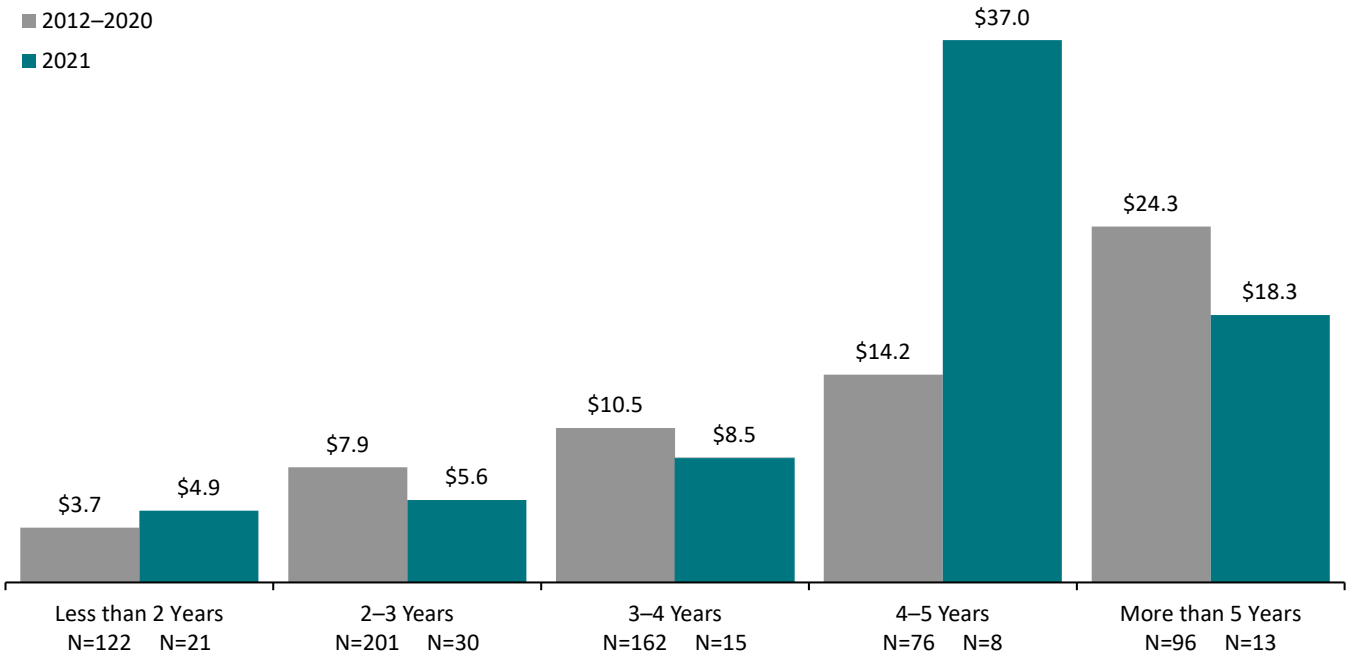
Time to Settlement and Case Complexity

- 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.

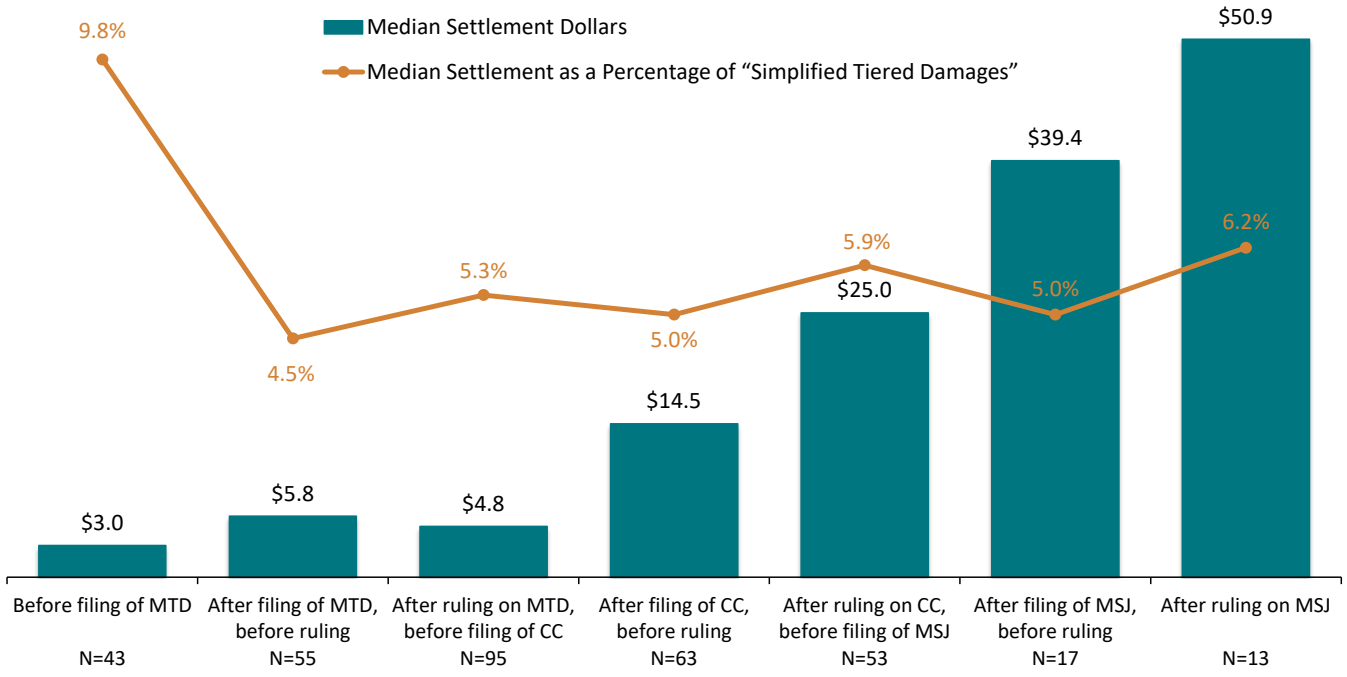
- Despite the overall smaller size of cases settled in 2021 and the shorter time to reach settlement, the stage at which cases settled remained largely unchanged. For example, in 2021, more than 60% of cases were resolved before a motion for class certification was filed, compared to 57% for 2017–2020 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.

Once a motion for class certification was filed, the median interval to the settlement hearing date for 2021 settlements was around 1.5 years.

- 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.

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.

Appendices (continued)

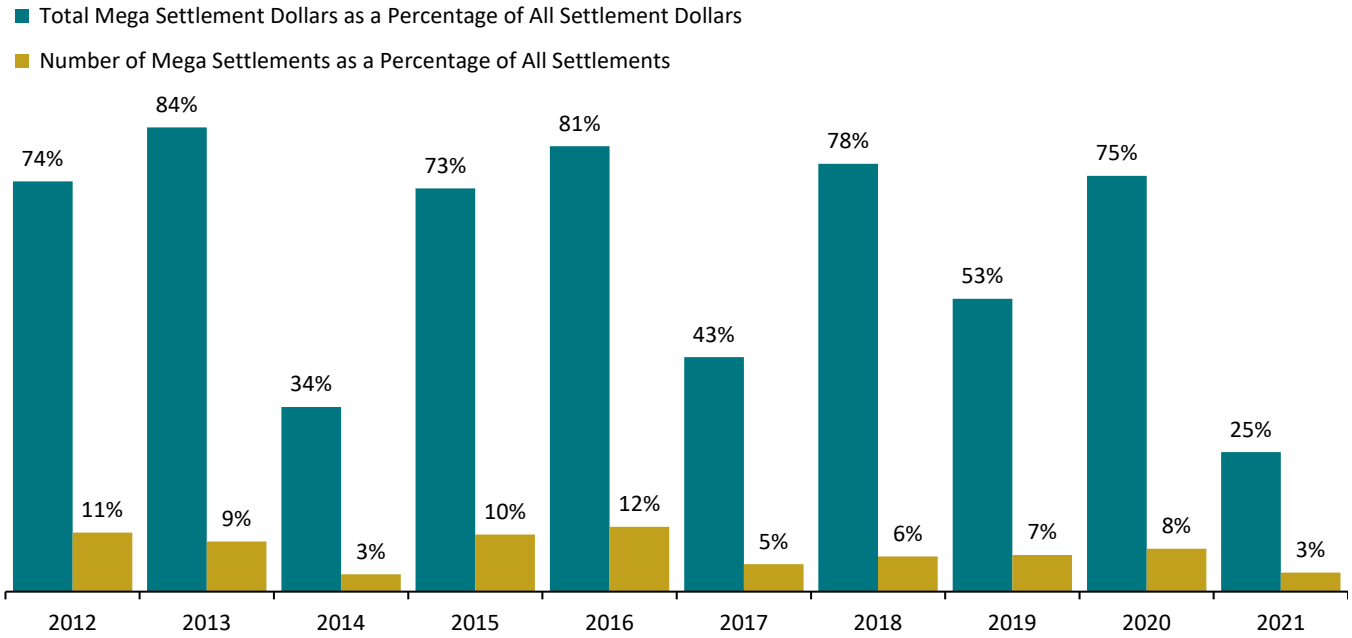
Appendix 3: Settlements by Federal Circuit Court
2012–2021

(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.

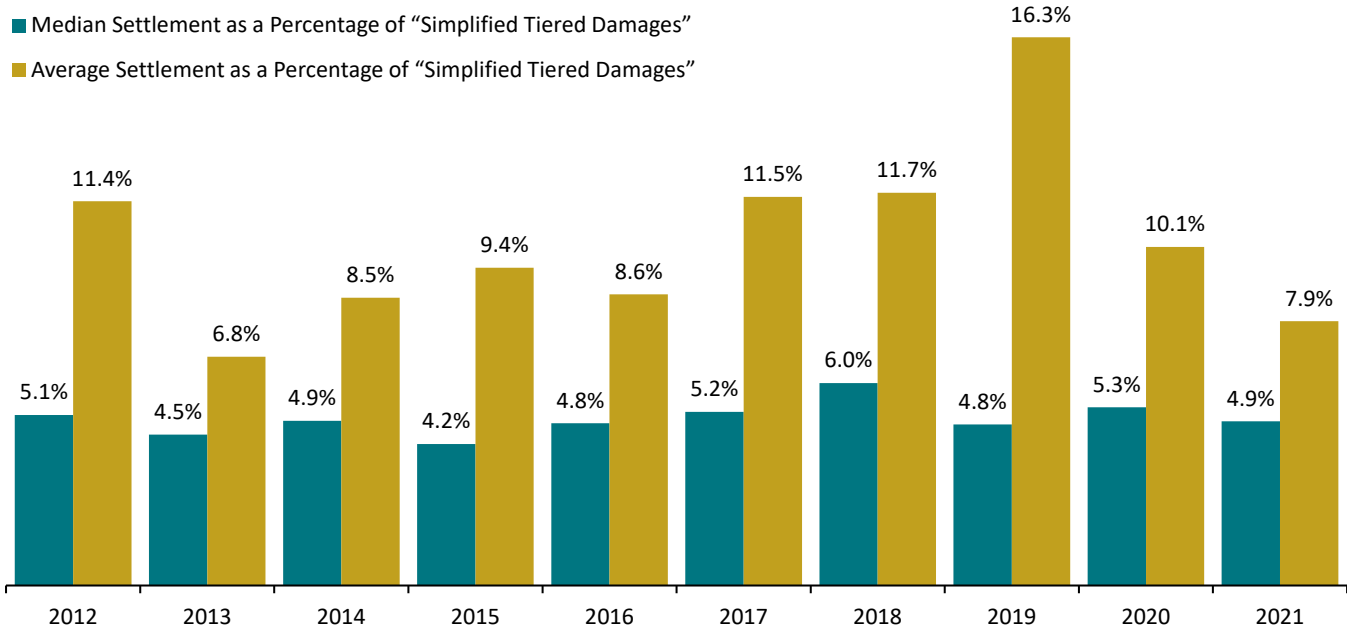
Appendix 4: Mega Settlements
2012–2021



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.

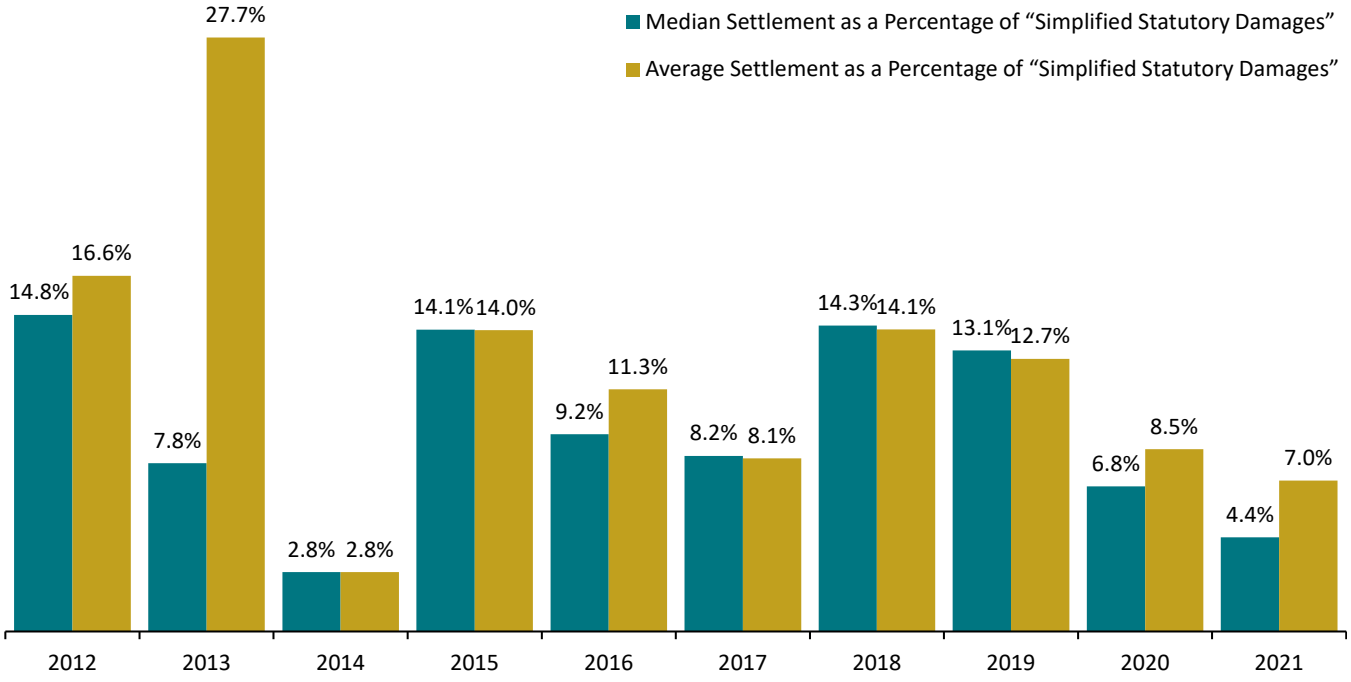
Appendices (continued)

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.

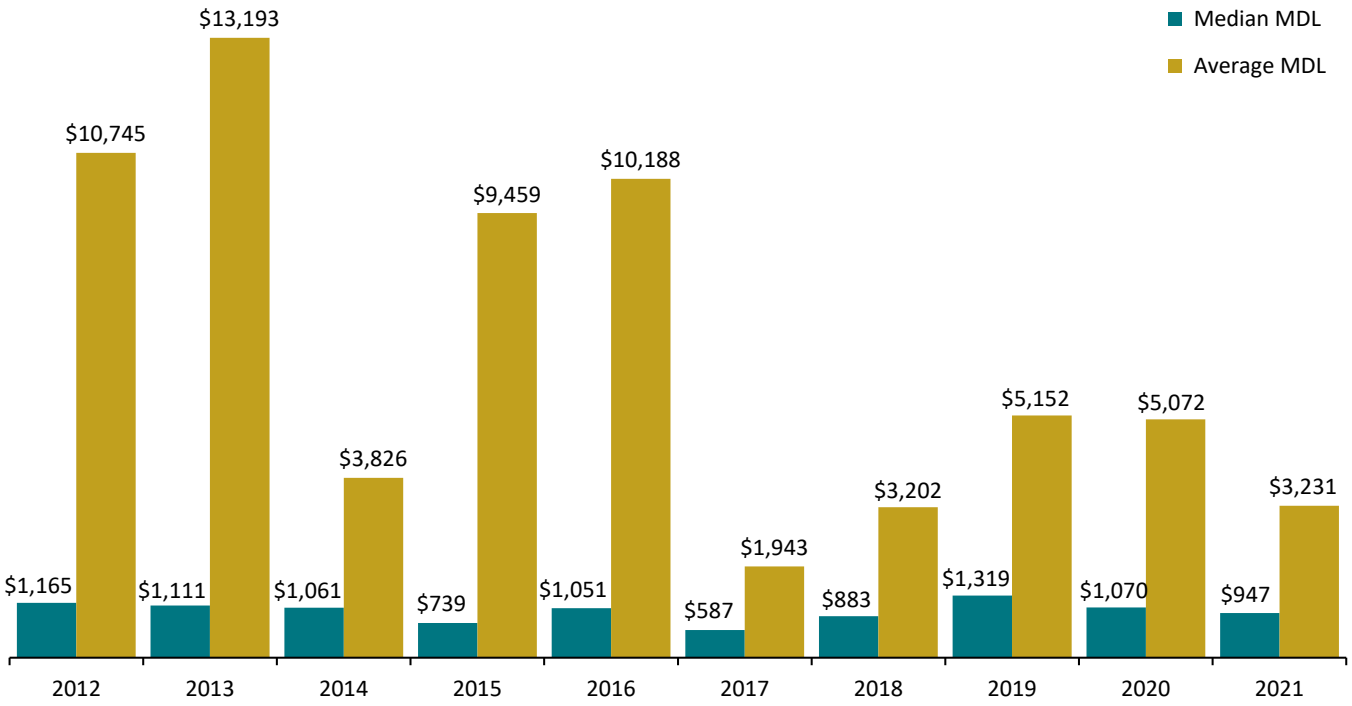
Appendix 6: Median and Average Settlements as a Percentage of "Simplified Statutory Damages"
2012–2021



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

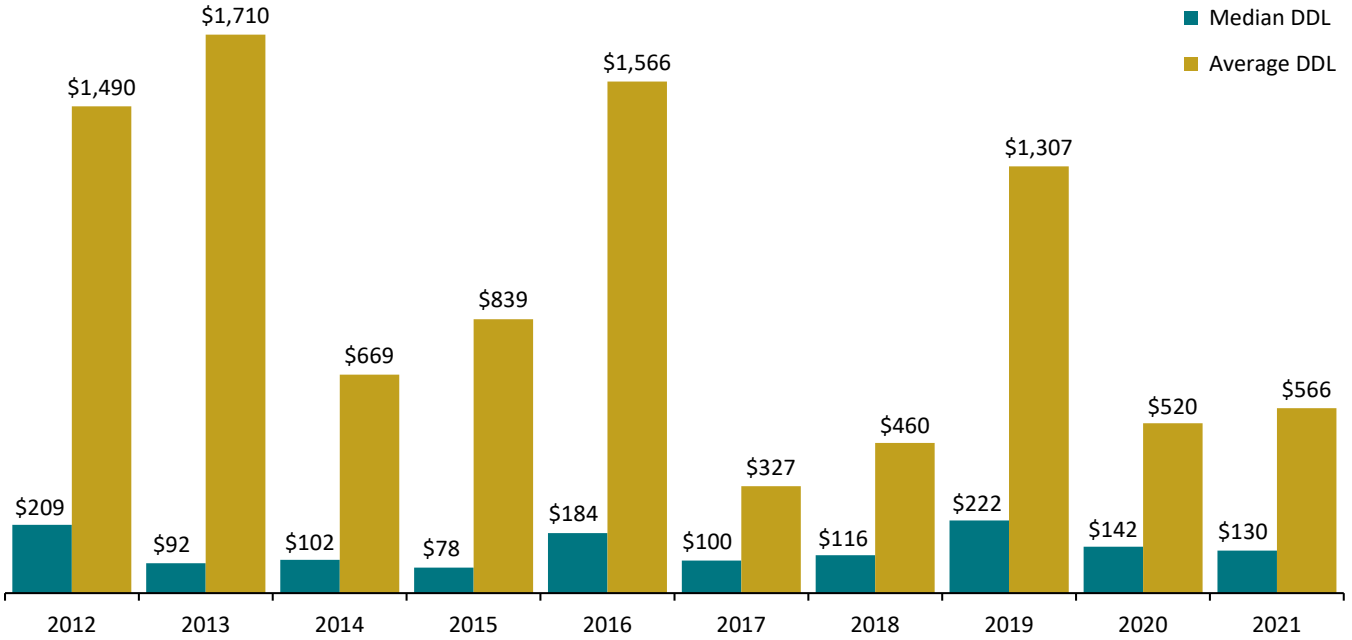
(Dollars in millions)



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)

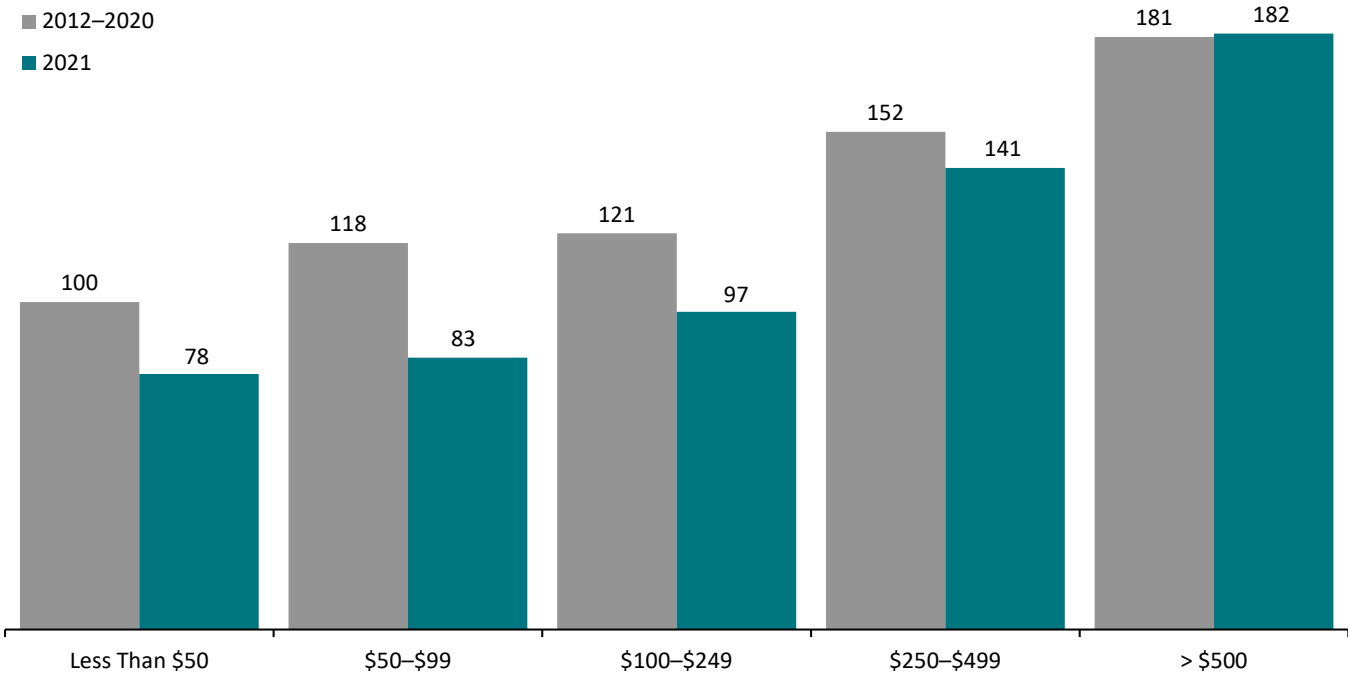


Note: DDL is adjusted for inflation based on class period end dates; 2021 dollar equivalents are presented. DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. This analysis excludes cases alleging '33 Act claims only.

Appendices (continued)

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

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

Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities 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
Ph.D., University of North Carolina at Chapel Hill; M.B.A., University of Houston; B.B.A., University of Texas at Austin

Laura Simmons is a senior advisor with Cornerstone Research. She 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.

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

Please direct any questions and requests for additional information to the settlement database administrator at settlementdatabase@cornerstone.com.

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EXHIBIT 6

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Co-Lead Counsel for Lead Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

FUNKO, INC., et al.,

Defendants.

Case No. 2:20-cv-02319-VAP (MAAx)

CLASS ACTION

DECLARATION OF BERNSTEIN LIEBHARD LLP IN SUPPORT OF LEAD COUNSELS' MOTION FOR PAYMENT OF ATTORNEYS' FEES AND EXPENSES

Hearing
Date: November 7, 2022
Time: 2:00 PM
Courtroom: 8A
Judge: Hon. Virginia A. Phillips

I, Stephanie M. Beige, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am an attorney admitted pro hac vice to this Court and a partner of Bernstein Liebhard LLP ("Bernstein Liebhard"). I have personal knowledge of the matters stated herein and, if called as a witness, I could and would testify thereto. I make this declaration in support of Lead Counsels' Motion for Attorneys' Fees and Payment of Expenses.

2. My firm was appointed Co-Lead Counsel in this action and litigated the action on behalf of Lead Plaintiffs Abdul Baker, Zhibin Zhang, and Huaiyu Zheng ("Lead Plaintiffs") and the Settlement Class.

3. The information in this declaration regarding my firm's time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the firm in the ordinary course of business. These reports (and back-up documentation where necessary) were reviewed by others at my firm, under my direction, in connection with the preparation of this declaration. In the course of recording professional time, reductions were made in the exercise of billing judgment. As a result, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The chart below is a summary indicating the amount of time spent by the attorneys and professional support staff members of my firm who were involved in the prosecution of the Action and the lodestar calculation based on my firm's current rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rates for such personnel in their final year of employment by the firm. The schedule was prepared from daily time records regularly prepared and maintained by my firm, which are

available at the request of the Court. Time expended in preparing this application for fees and expenses has not been included in this request.

5. The hourly rates for the attorneys and professional support staff of my firm are included in the chart below and are their usual and customary rates.

6. The total number of hours expended on this litigation by my firm during the Time Period is 2,442.90 hours. The total lodestar for my firm for those hours is $1,982,727.89.

LODESTAR REPORT

Inception through September 30, 2022

Name	Current Hourly Rate	Total Hours Worked on Case	Total Lodestar
Stanley D. Bernstein (P)	$1,150	39.50	$46.315.50
Stephanie Beige (P)	$1,000	1018.00	$1,035,700.00
Laurence Hasson (P)	$1,000	28.25	$28,250.00
Joseph Seidman (OC)	$900	64.50	$58.050
Peter Harrington (A)	$650	846.00	$558,312.50
Lisa Sriken (A)	$650	114.00	$74,100.00
Matthew Guarnero (A)	$650	41.75	$27,137.50
Jeffrey McEachern (A)	$575	106.40	$61,190.24
Adam Federer (A)	$575	65.00	$36,100.00
Noah Wiesner (LC)	$525	3.00	$1,575.15
Rujul Patel (LC)	$525	13.25	$6,956.25
Janna Birkeland (PL)	$475	103.25	$49,043.75
TOTALS		**2,442.90**	**$1,982,727.89**

(P) – Partner; (OC) - Of Counsel; (A) – Associate; (LC) - Law Clerk; (PL) - Paralegal

7. My firm also will advance a total of $82,800.69 in expenses and charges in connection with the prosecution of the litigation of the Action. These expenses and charges are summarized in the chart below:

EXPENSE REPORT

Inception through conclusion of the Action

Category of Expenses	Amount
Experts/Consultants/Mediation	$44,412.56
Filing Fees	$20.00
Online Legal and Factual Research (Westlaw)	$32,026.10
Work-Related Transportation, Hotels & Meals	$5,450.43
Overnight Delivery and Conference Call Fees	$891.60
TOTAL EXPENSES	**$82,800.69**

8. The following is additional information regarding certain of my firm's expenses:

a. Expert/Consultant/Mediation Fees: $44,412.56. Lead Plaintiffs retained experts in economics to assist with quantifying damages, causation issues, market analysis in connection with mediation, and creating the Plan of Allocation to disseminate settlement funds to the Settlement Class. Lead Plaintiffs also retained consultants to assist with the investigation of the Action and paid a portion of the fees associated with the mediation of this Action.

b. Filing Fees: $20.00. These expenses have been paid to courts in connection with certificates of good standing needed for pro hac vice motions.

c. Work-related Transportation, Hotels & Meals: $5,450.43. In connection with the prosecution of the Action, the firm has paid for work-related transportation expenses, meals, and travel expenses related to, attending court. This amount includes an additional $2,500 in anticipated travel and meal costs associated with Lead

Counsel's attendance at the Final Fairness Hearing on November 7, 2022. This expense will be reduced by the amount actually incurred and returned to the Settlement Fund.

d. Online Legal and Factual Research: $32,026.10. The firm conducted research using databases maintained by Westlaw and news services. These databases were used to obtain access to financial information, factual information, and to conduct legal research. These expenses represent the expenses incurred by my firm for use of these services in connection with the Action.

e. Overnight Delivery and Conference Call Fees: $891.60. These expenses represent the expenses incurred by my firm for the use of these services in connection with the Action.

9. With respect to the standing of my firm, attached hereto as Exhibit A is a firm resume, which includes the biographies of the firm's partners, senior counsel, and associates.

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

Executed on October 3, 2022.

Stephanie M. Beige

EXHIBIT A

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FIRM RESUME

Bernstein Liebhard LLP (the "Firm") was formed in 1993 as a boutique litigation practice to represent institutional and individual investors in shareholder class and derivative litigation and consumers in consumer fraud and antitrust litigation.

The Firm is the only firm in the country to be named by THE NATIONAL LAW JOURNAL to the "Plaintiffs' Hot List," recognizing the top plaintiffs' firms in the country, for thirteen years. The Firm is also included in THE NATIONAL LAW JOURNAL's "Plaintiffs' Hot List Hall of Fame" and was recognized by THE NATIONAL LAW JOURNAL as one of a select group of "America's Elite Trial Lawyers" for three consecutive years. The Firm was selected for its "exemplary and cutting-edge work" on behalf of plaintiffs in the Securities Law and Antitrust categories and for "big victories in complex cases that have a wide impact on the law and legal business."

The Firm has been listed for the fifteen consecutive years in THE LEGAL 500, a guide to the best commercial law firms in the United States. THE LEGAL 500 is an independent "guide to 'the best of the best' – the pre-eminent firms in the world's strongest and most competitive legal market." In addition, the Firm was listed for four consecutive years in BENCHMARK PLAINTIFF: THE DEFINITIVE GUIDE TO AMERICA'S LEADING PLAINTIFF FIRMS & ATTORNEYS ("BENCHMARK PLAINTIFF"). BENCHMARK PLAINTIFF focuses exclusively on plaintiff litigation, "highlighting firms and individuals responsible for bringing the cases that matter." The Firm has also received

Martindale-Hubbell's highest ratings for legal ability (A) and ethical standards (V) and "Peer Review Rated 2012" by the American Association of Justice.

Bernstein Liebhard has also been selected by the legal publication LAW360 to its list of the top six plaintiff-side securities firms in the nation. The Firm was recognized for its "leadership work" in connection with the $586 million settlement in *In re Initial Public Offering Securities Litigation*, No. 21 MC 92 (S.D.N.Y.) and the $400 million settlement in *In re Marsh & McLennan Cos., Inc. Securities Litigation*, No. 04-CV-8144 (CM) (S.D.N.Y.). The Firm was also recognized by RiskMetrics Group, Inc. for three consecutive years in its annual Securities Class Action Services list as one of the top plaintiffs' securities class action firms in the country, as measured by annual settlement amounts.

PRACTICE AREAS

SECURITIES LITIGATION

Since its inception in 1993, Bernstein Liebhard has represented individual and institutional investors in securities litigation, recovering over $3.5 billion for the classes we have represented. The Firm has successfully served as sole lead counsel and as co-lead counsel in some of the largest securities class action cases in the past decade and has actively litigated scores of actions to successful conclusions. For example, the Firm, as lead, executive committee counsel, and co-counsel has successfully obtained many multi-million dollar recoveries. These cases include, among others:

- ***In re Initial Public Offering Securities Litigation***, No. 21 MC 92 (S.D.N.Y. 2009) (a coordinated litigation of over 300 securities class actions, in which a $586 million settlement was obtained after seven full-day mediation sessions);
- ***In re Marsh & McLennan Cos., Inc. Securities Litigation***, No. 04-CV-8144 (CM) (S.D.N.Y. 2009) ($400 million settlement of an action brought against the world's largest insurance broker, arising from the company's improper practice of steering its clients to insurance companies that agreed to pay it billions of dollars in contingent commissions);

- ***In re Beacon Associates Litigation***, No. 09-CIV-0777 (LBS) (AJP) (S.D.N.Y. 2013) ($219 million settlement on behalf of hedge funds that invested with Bernard L. Madoff, which resolved claims in the *In re Beacon Associates Litigation*, No. 09-CIV-0777 (LBS) (AJP) (S.D.N.Y.) and *In re J.P. Jeanneret* Associates *Inc.*, No. 09-CIV-3907 (CM) (AJP) (S.D.N.Y.) class actions, as well as several additional lawsuits in federal and New York State court against the settling defendants, including suits brought by the United States Department of Labor and the New York Attorney General);

- ***In re Royal Dutch/Shell Transport Securities Litigation***, No. 04-374 (JAP) (D.N.J. 2008) (the case, which arose from Royal Dutch/Shell's 2004 announcements that it had overstated its proved oil and gas reserves by a material amount – about *one*-third of its proved reserves, settled for $166.6 million);

- ***In re Fannie Mae Securities Litigation,*** No. 04-1639 (FJL) (D.D.C. 2013) (settlement of $153 million, the largest securities settlement in the D.C. Circuit since the passage of the PSLRA, and ranks among the top 5% of securities class action settlements of all time);

- ***In re Tremont Securities Law, State Law and Insurance Litigation***, No. 08-CV-11117 (S.D.N.Y. 2011) (settlement in excess of $100 million, in which the Firm represents investors who lost millions of dollars in hedge funds that invested with Bernard L. Madoff);

- ***In re Cigna Corp. Securities Litigation***, No. 02-CV-8088 (E.D. Pa. 2007) ($93 million settlement obtained following four years of vigorous litigation);

- ***In re Bankers Trust Securities Litigation***, No. 98-CV-08460 (S.D.N.Y. 2002) ($58 million settlement; 100% recovery of loss);

- ***In re Procter & Gamble Co. Securities Litigation***, No. 00-CV-00190 (S.D. Ohio 2001) ($49 million settlement);

- ***In re Bausch & Lomb, Inc. Securities Litigation***, No. 94-CV-06270 (W.D.N.Y. 1998) ($42 million settlement);

- ***City of Austin Police Retirement System v. Kinross Gold Corp***. et al., No. 12-CV-01203-VEC (S.D.N.Y.) ($33 million settlement);

- ***In re BellSouth Corp. Securities Litigation***, No. 02-CV-2142 (N.D. Ga. 2007) ($35 million settlement);

- ***In re Beazer Homes U.S.A., Inc. Securities Litigation***, No. 07-CV-725-CC (N.D. Ga. 2009) ($30.5 million settlement);

- ***Di Giacomo v. Plains All American Pipeline, LP***, No. 99-CV-4137 (S.D. Tex. 2001) ($24.1 million settlement);

- ***In re Riscorp Inc. Securities Litigation***, No. 96-02374 (M.D. Fla. 1998) ($21 million settlement);

- ***In re Tower Group International, Ltd. Securities Litigation***, No. 13-CV-5852 (AT) (S.D.N.Y. 2015) ($20.5 million settlement partial settlement);

- ***In re Lumenis Securities Litigation***, No. 02-CV-1989 (S.D.N.Y. 2008) ($20.1 million settlement);

- ***Avila v. Lifelock Inc***., No. 15-cv-01398 (D. Ariz. 2019) ($20 million settlement);

- ***In re TASER International Securities Litigation***, No. C05-0115 (D. Ariz. 2007) ($20 million settlement);

- ***In re Gilat Satellite Networks, Ltd. Securities Litigation***, No. 02-CV-1510 (E.D.N.Y. 2007) ($20 million settlement);

- ***In re REV Group, Inc. Securities Litigation***, No. 2:18-cv-1268-LA (E.D. Wis. 2021) ($14.25 million settlement);

- ***In re Kit Digital, Inc. Securities Litigation***, No. 12-CV-04199 (VM) (S.D.N.Y. 2013) $6,001,999 settlement);

- ***Peters v. JinkoSolar Holdings***, No. 11-CV-07133 (JPO) (S.D.N.Y. 2015) ($5.05 million settlement); and

- ***Szymborski v. Ormat Technologies, Inc.***, No. 10-CV-00132-ECR (D. Nev. 2012) ($3.1 million settlement).

The Firm has also served as lead counsel in numerous corporate governance and corporate takeover litigations (both hostile and friendly) on behalf of stockholders of public corporations. The Firm has prosecuted actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. These cases have resulted in multi-million dollar improvements in transaction terms and in strengthening the democratic rights of public shareholders:

- ***In re Saks Inc. Shareholder Litigation***, No. 652725/2013 (N.Y. Sup. Ct. 2020) (The Firm, with co-counsel, obtained $21 million for shareholders in an action against the Saks Board of Directors for alleged breaches fiduciary duty in connection with the sale of Saks to Hudson's Bay Company ("HBC") for $2.9 billion in November 2013, which plaintiffs claimed was far below its true value);

- ***City of Hialeah Employees Retirement System v. Begley, et al.***, No. 2017-0463-JTL (Del. Ch. 2019) (The Firm, represented the City of Hialeah Employees Retirement System and obtained $16 million on behalf of DeVry, in a derivative action alleging that certain directors of DeVry Education Group ("DeVry") breached their fiduciary duties by allowing and approving a misleading advertising campaign);

- ***In re Freeport-McMoRan Copper & Gold, Inc. Derivative Litigation***, No. 8145-VCN (Del. Ch. 2015) (the Firm, as co-lead counsel, recovered $153.5 million for shareholders and obtained an unprecedented provision allowing the settlement to be distributed to Freeport shareholders in the form of a special dividend. The settlement is one of the largest derivative settlements in the Delaware Court of Chancery history);

- ***In re Great Wolf Resorts, Inc. Shareholders Litigation***, No. C.A. 7328-VCS (Del. Ch. 2012) (the Firm obtained the elimination of stand-still provisions that allowed third parties to bid for Great Wolf Resorts, Inc. ("Great Wolf") – resulting in the emergence of a third-party bidder and approximately $94 million in additional merger consideration for Great Wolf's shareholders);

- ***In re Atlas Energy, Inc. Shareholders Litigation***, No. C.A. 5990-VCL (Del. Ch. 2011) (the Firm obtained a settlement providing an additional $7.45 million in merger consideration for Atlas Energy shareholders);

- ***In re Pride International, Inc. Shareholders Litigation***, No. C.A. 6201-VCS (Del. Ch. 2011) (after the completion of expedited discovery and prior to a preliminary injunction hearing, the Firm obtained a proposed settlement providing material modifications to a contested merger agreement and the dissemination of supplemental disclosures in connection with a proxy statement sent to Pride shareholders);

- ***In re Mutual Funds Investment Litigation [Federated Sub-Track]***, No. 04-MD-15861 (CCB) (D. Md. 2010) (representing investors in Federated Investors Funds fluctuating mutual funds, the Firm obtained a total settlement of $3,381,500 in addition to significant corporate governance reforms. The benefits obtained by the Firm were in addition to $72 million that Federated Investors, Inc. ("Federated") paid pursuant to the settlement of regulatory investigations concerning Federated's alleged market-timing and late-trading activities. The Firm also obtained declaratory and injunctive relief to ensure that the alleged market-timing and late-trading activities would not be repeated);

- ***In re Mutual Funds Investment Litigation [Bank of America/Nations Sub-Track]***, No. 04-MD-15862 (JFM) (D. Md. 2010) (representing investors in Nations Fund Mutual Funds (the "Nations Funds"), the Firm, with lead counsel, achieved settlements that resolved the class action and several related litigations arising from alleged market timing and late trading in various mutual funds in the Bank of America mutual fund family. The settlements established a jointly-recommended minimum allocation of at least $60 million to shareholders of the Nations Funds from a fund created as a result of Bank of America's settlement of regulatory investigations. In addition to the monetary allocation, the settlements provide for corporate governance changes concerning the detection and prevention of future market timing and late trading in the Nations Funds. The Firm and lead counsel also recovered an additional $2,100,000 from non-Bank of America defendants);

- ***Kwait v. Berman***, No. 5306-CC (Del. Ch. 2010) (obtained significant amendments to a voting agreement agreed to by RiskMetrics Group, Inc.'s interested shareholders in connection with a proposed merger, as well as additional disclosures concerning the proposed merger);

- ***In re UnitedGlobalCom Shareholders Litigation***, No. 1012-VCS (Del. Ch. 2008) (plaintiffs, former shareholders of UnitedGlobalCom ("UGC"), successfully achieved a $25 million settlement in a case alleging that a minority exchange transaction with UGC's majority shareholder did not meet the entire fairness standard);

- ***In re Cablevision Systems Corp. Shareholders Litigation***, No. 05-009752 (N.Y. Sup. Ct. 2007) (plaintiffs successfully deterred a going-private transaction proposed by Cablevision's controlling shareholder at an inadequate price. The proposal was ultimately converted to a $2.5 billion special dividend payable ratably to all Cablevision shareholders. In connection with the settlement, Cablevision agreed to implement

corporate governance reforms and other procedures to ensure that the special dividend was financially fair to Cablevision and its public shareholders);

- ***In re Plains Resources, Inc. Shareholders Litigation***, No. 071-N (Del. Ch. 2004) (plaintiffs challenged the buyout of the public shares of Plains Resources by two of the company's senior executives and Vulcan Energy. Through the Firm's aggressive efforts as co-lead counsel, which included motions for expedited discovery and a preliminary injunction, the price paid for Plains Resources shares in connection with the buyout was increased twice, yielding an additional $67 million in merger consideration);

- ***In re MONY Group Inc. Shareholder Litigation***, No. 20554 (Del. Ch. 2004) (Delaware Chancery Court issued a preliminary injunction enjoining the shareholder vote on the merger pending the issuance of curative disclosures by the MONY defendants; as part of the settlement, certain of MONY's executives forfeited approximately $7.4 million in change-of-control payments, funding an increase in the consideration received by MONY's shareholders in the merger);

- ***In re Arco Chemical Co. Shareholders Litigation***, No. 16493-NC (Del. Sup. 2002) (the Firm's advocacy led the Delaware Supreme Court to require the company to broaden the rights of public shareholders in change-of-control transactions);

- ***In re AXA Financial Shareholders Litigation***, No. 18268 (Del. Ch. 2002) ($500 million increased merger consideration);

- ***In re Kroll-O'Gara Shareholders Litigation***, No. 99 CIV. 11387 (S.D.N.Y. and Ohio State Ct. 2002) (derivative case brought on behalf of Kroll-O'Gara to remedy internecine disputes among the company's senior management; the case settled with significant corporate governance changes, including an independent committee of directors to oversee change-of-control transactions and certain other internal management issues);

- ***Shapiro v. Quickturn Design Systems, Inc.***, No. 16850-NC (Del. Ch. 2002) (the Firm successfully represented public stockholders in a trial in Delaware Chancery Court that invalidated a modified "deadhand" poison pill anti-takeover provision; following the affirmance of the trial verdict by the Delaware Supreme Court, the Firm secured the implementation of procedures designed to ensure a full and active auction maximizing shareholder value, paving the way for a takeover of Quickturn at a premium of approximately $51 million);

- ***In re Ascent Entertainment Group Inc. Derivative Litigation***, No. 17201-NC (Del. Ch. 2000) (involving the proposed sale of the Colorado Avalanche and the Denver Nuggets, both owned at the time by Ascent, to Ascent's CEO and Chairman; by virtue of the Firm's representation, Ascent commenced a new auction for the sports teams, which resulted in a higher price (approximately $40 million) to be paid for the teams; also, by virtue of the settlement, the parties agreed that the plaintiffs could appoint a director of their choosing to the Ascent board);

- ***In re Foamex International Inc. Shareholders Litigation***, No. 16259-NC (Del. Ch. 2000) (the Firm's efforts culminated in the requirements that the company appoint two independent directors, that it constitute a nominating committee to search for and recommend new independent directors, and that any related-party transactions be reviewed and approved by a majority of disinterested directors);

- ***In re Archer Daniels Midland Corp. Derivative Litigation***, No. 14403 (Del. Ch. 1997) (the Firm, as lead counsel, effected important corporate governance improvements,

including the requirement that a majority of the board be comprised of outside directors; the creation of a nominating committee; the requirement that the audit committee oversee corporate compliance; and the requirement that the audit committee be composed of outside directors); and

- ***In re Sears, Roebuck Derivative Litigation***, No. 88 CH 10009 (Ill. Ch. Ct.) (Senior Partner Stanley D. Bernstein pioneered the use of litigation to achieve corporate governance reform in the early 1990s, gaining the addition of outside directors to Sears' board, and expanding the role of outside directors on the company's nominating committee).

ANTITRUST LITIGATION

The Firm's antitrust practice is also active and growing. Currently, the Firm is representing dentists in *In re Delta Dental Antitrust Litigation*, No. 19-CV-6734-EEB, MDL 2931 (N.D. Ill.), an antitrust class action filed against Delta Dental State Insurers, DeltaUSA, and Delta Dental Plans Association alleging a coordinated agreement not to compete among the various separate Delta Dental entities and the unlawful misuse of monopsony power in the market for dental insurance throughout the United States in violation of the Sherman Antitrust Act and the Clayton Act.

The Firm is also a member of the Executive Committee for the Direct Purchaser Plaintiffs in *In re Packaged Seafood Products Antitrust Litigation*, No. 15-md-2670-JLS (MDD) (S.D. Ca.), an action consolidated for pretrial proceedings in the Southern District of California. This action arises out of a conspiracy by the largest producers of packaged seafood products ("PSPs") in the United States to fix, raise, maintain, and/or stabilize prices for PSPs within the United States, and its territories and the District of Columbia, in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3).

The Firm is also part of the litigation team in *In re Broiler Chicken Antitrust Litigation*, No. 16-cv-08637 (N.D. Ill.), a national class action alleging that beginning in 2008, broiler chicken producers coordinated their efforts to artificially reduce the supply of broiler chickens for sale in the United States in violation of Section 1 of the Sherman Act.

Partner Stephanie M. Beige is a member of the Direct Purchaser Litigation Team in *Reece v. Altria, Inc., et al.*, 20-cv-02345 (WHO) (N.D. Ca.), a generic drug antitrust class action seeking damages for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 7 of the Clayton Act, 15 U.S.C. § 18. The e-cigarette antitrust claims stem from an allegedly anticompetitive agreement ("agreement") between Altria Group, Inc. ("Altria") and JUUL Labs, Inc. ("JUUL"), whereby Altria agreed to acquire an ownership interest in JUUL in exchange for over $12 billion in cash. Altria allegedly agreed not to compete with JUUL and to provide JUUL valuable retail shelf space in the e-cigarette market. Through this agreement, JUUL was able to maintain its dominance in the e-cigarette market and earn monopoly profits. Altria then shared these profits through its ownership stake in JUUL.

Over the past two decades, the Firm has served as lead, executive committee counsel, and co-counsel in many successful antitrust class actions, successfully obtaining multi-million dollar recoveries. These cases include, among others:

- ***In re Processed Egg Products Antitrust Litigation***, No. 08-MD-2002 (E.D. Pa.). The Firm served as co-lead counsel and co-trial counsel in this antitrust class against sixteen trade groups and egg producers alleging an industry-wide, price-fixing conspiracy that raised the price of shell eggs and egg products in violation of the Sherman Antitrust Act. $136 million was recovered for the class.

- ***In re Pool Products Distribution Market Antitrust Litigation***, No. MDL 2328 (E.D. La.). The Firm served as co-lead counsel in this antitrust case commenced on behalf of a nationwide class of direct purchasers of pool products, against a pool products distributor and the three largest manufacturers of pool products in the United States. The plaintiffs asserted claims against all defendants under Section 1 of the Sherman Act for conspiracy to restrain trade, and against the pool products distributor under Section 2 of the Sherman Act for attempted monopolization. $16 million was recovered for the class.

- ***In Re Polyurethane Foam Antitrust Litigation***, MDL No. 2196 (N.D. Ohio). The Firm served on the Plaintiffs' Executive Committee in this antitrust class action involving a price-fixing conspiracy by some of the world's largest manufacturers of flexible polyurethane foam. The case settled for over $400 million just days before trial.

- ***In re Fresh and Process Potatoes Antitrust Litigation***, No. 10-MD-02186-BLW-CWD (D. Idaho). The Firm served on the Direct Purchaser Plaintiffs' Executive Committee in this antitrust class action commenced on behalf of direct purchasers of fresh and processed potatoes that resulted in a $19.5 million settlement.

CONSUMER LITIGATION

Bernstein Liebhard also has an active consumer practice. The Firm represented thousands of affected tenants of the Stuyvesant Town and Peter Cooper Village rental apartment complexes in Manhattan. The case centered on allegations that landlords of the rental complexes have, for many years, illegally charged market-rate rents for apartments that should have been rent stabilized under New York City's Rent Stabilization Law, thereby overcharging each affected tenant thousands of dollars per year. The core legal issue was whether landlords could permissibly deregulate and charge market-rate rents for certain "luxury" apartment units in these complexes in years in which the landlords were simultaneously receiving New York City tax abatements, known as "J-51" benefits. Prior to obtaining the $146.85 million dollar settlement, the Firm, as co-lead counsel, obtained a landmark ruling in favor of tenants from the New York Court of Appeals, the highest appellate court in New York State. The Court of Appeals ruled that the New York statutory scheme prevented landlords of rent stabilized buildings from charging market-rate rents while receiving J-51 benefits for as long as they continue to receive those tax benefits. The Firm continued to aggressively litigate the case and brought nine other cases based on the this decision. The decision overturned state agency regulations that had been in effect for at least nine years. CRAIN'S NEW YORK BUSINESS described it as "a decision that will have colossal implications for tenants and landlords across the city."

The Firm won a verdict of $14.7 million in 2009 for the clients and class we represented in *Artie's Auto Body, Inc. v. Hartford Fire Insurance Co.*, No. X08-CV-03-0196141S (CLD) (Conn. Super. Ct.), following a four-week jury trial. In addition to the $14.7 million jury verdict, in 2013 the Firm obtained a $20 million punitive damage award – the largest punitive damage award in the history of Connecticut's Unfair Trade Practices Act. Regrettably, the verdict and the punitive damage award were reversed on appeal.

The Firm also successfully litigated a consumer class action which resulted in the re-labeling of a popular home medical testing device to properly reflect the product's limitation in

Wagner v. Inverness Medical Innovations, Inc., No. 03-cv-404-J-20 (M.D. Fla.) and obtained favorable settlements in consumer fraud class actions for classes consisting of owners and lessees of certain Volvo automobiles ($30 million) and certain Saab automobiles ($4.25 million).

COMMERCIAL LITIGATION

Bernstein Liebhard also has an active commercial litigation practice, where it represents businesses, public pension funds, and other entities in high stakes, complex litigation. For example, the Firm represented the New Mexico Public Employees Retirement Association ("PERA") in an individual action against Wells Fargo Bank and affiliates arising from defendants' mismanagement of PERA's securities lending program. On the eve of trial, the Firm negotiated a $50 million recovery for PERA, representing over 65% of PERA's damages.

The Firm represented the New Mexico Educational Retirement Board ("ERB") in an action against Wells Fargo Bank and affiliates arising from the mismanagement of ERB's securities lending program. After two years of litigation, the Firm successfully negotiated a $5 million recovery for the ERB – representing over 50% of its damages.

The Firm acted as special litigation counsel to the Creditors Committee of Pandick Inc. (formerly the largest financial printer in the country) in connection with a complex fraudulent conveyance litigation and successfully recovered from Pandick's banks and directors over $14 million for Pandick's creditors.

The Firm also represented the Actrade Liquidation Trust (the "Trust"), the successor to Actrade Financial Technologies, Ltd., a former publicly-traded company on NASDAQ, and Actrade Capital ("Actrade") in two actions – the first (*Meer v. Aharoni*, No. 5141-CC (Del. Ch.)) against Actrade's former Chairman of the Board of Directors related to his misappropriate from Actrade and his fraudulent inflation of Actrade's revenues in order to earn a profit on his options; the second (*Meer v. Deloitte & Touche LLP*, No. 11-cv-06994 (LAK) (S.D.N.Y.)) against Deloitte & Touche, LLP for auditing malpractice and negligence. The Firm negotiated a $3,050,000 global settlement for both actions in February 2013.

WHISTLEBLOWER LITIGATION

Bernstein Liebhard also has an active whistleblower practice. The False Claims Act has proven to be one of the most effective mechanisms to recover funds that have been stolen from the government through fraud by corporations, contractors, and individual wrongdoers. Since 1986, more than 5,500 *qui tam* actions have been filed and more than $20 billion in settlements and recoveries have been recouped by the government under the False Claims Act.

Although the False Claims Act covers numerous forms of fraud on the government, the False Claims Act does not cover tax fraud. Blowing the whistle on those who commit tax fraud on the government is governed by the Tax Relief and Health Care Act of 2006. As with the False Claims Act, the Tax Relief and Health Care Act offers individuals the opportunity to report tax fraud and receive a reward for helping the government recover money lost due to tax fraud or other violations of the tax laws.

In 2010, Congress enhanced the Securities and Exchange Commission's whistleblower program with the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The amendment, among other things, increases the amount of whistleblower awards payable by the SEC to those who provide the SEC with information concerning violations of the federal securities laws.

Bernstein Liebhard LLP is dedicated to providing experienced, dedicated, and aggressive representation for whistleblowers looking to blow the whistle on those who commit fraud on the government or who violate the tax laws and the federal securities laws. The Firm's whistleblower lawyers have extensive experience providing legal advice and representation to individuals filing lawsuits against persons and entities who commit fraud and other wrongdoing.

JUDICIAL PRAISE

Courts have repeatedly praised the efforts of the Firm and its partners:

"I would also like to commend the lawyers in this case. Extremely thorough professional presentations were made under very trying circumstances . . . . They were all done to the highest quality of the legal profession, and the advocacy was always aggressive but within the bounds of good professional propriety . . . thank you for the excellent job that you did."

- Honorable Alfred J. Jennings, Jr. of the Connecticut Superior Court (Stamford/Norwalk Division), following a successful four-week jury trial.[1]

"[L]et me say one more thing. I compliment[ ] everybody in the way they've presented themselves here and I want you to know that I mean that sincerely . . . . I'm happy to say that the lawyers in this case have, again, conducted themselves in the highest professional manner. And I'm also pleased to say that this does not surprise me, having had the opportunity to preside over a lot of these class action litigations . . . ."

- Honorable Joel A. Pisano of the United States District Court for the District of New Jersey.[2]

"the quality of the representation to achieve what they [Bernstein Liebhard] have achieved speaks for itself. The quality was extremely high."

- Honorable Deborah A. Batts of the United States District Court for the Southern District of New York.[3]

"[Bernstein Liebhard] accomplish[ed] an exceptional result because of the nationwide benefit to all women diagnosed with [Polycystic Ovarian Syndrome] and the benefit to the medical community."

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[1] *Artie's Auto Body, Inc. v. Hartford Fire Ins. Co.*, No. X08-CV-03-0196141S (CLD) (Conn. Super. Ct.), Trial Tr., Nov. 17, 2009 at 15.

[2] *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. 04-374 (JAP) (D.N.J.), Tr. of Hr'g, Sept. 26, 2008 at 60-61.

[3] *In re Lumenis Sec. Litig.*, No. 02-CV-1989 (S.D.N.Y.), Tr. of Hr'g, Aug. 25, 2008 at 6.

- Magistrate Judge (now District Court Judge) Marcia Morales Howard of the United States District Court for the Middle District of Florida.[4]

"But I did want to thank . . . counsel [Bernstein Liebhard] for excellent, excellent oral argument. Certainly helped the Court significantly. And I want to thank you . . . for what is a sterling indication of what the bar can produce when you have qualified people before it."

- Judge Stephen A. Bucaria of the Nassau County Supreme Court.[5]

"I'm impressed with the innovative nature . . . of the benefit that's been provided . . . It's my turn to make a compliment in open court: that the plaintiff is represented by highly competent counsel [Stanley D. Bernstein], a counsel that demonstrates consistently to me an incredible work ethic in achieving the benefits that were achieved here."

- Vice Chancellor (now Delaware Supreme Court Chief Justice) Myron T. Steele.[6]

"Plaintiffs are represented by counsel [Bernstein Liebhard] who are skilled in federal securities and class action litigation . . . . Counsel have been diligent and well prepared . . . Plaintiffs' counsel has performed an important public service in this action and have done so efficiently and with integrity . . . . You have the thanks of this court."

- Senior Judge Denise Cote of the United States District Court for the Southern District of New York.[7]

"The quality of the legal work throughout has been high and conscientious. . . ."

- Judge Reena Raggi of the United States District Court for the Eastern District of New York (now of the United States Court of Appeals for the Second Circuit).[8]

"the performance of counsel [Bernstein Liebhard] . . . has been absolutely outstanding. It has been a pleasure to be involved with each of you in handling this case."

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[4] Wagner v. Inverness Med. Innovations, Inc., No. 03-CV-404-J-20 (M.D. Fla.).

[5] *Carlson v. Long Island Jewish Hosp.*, No. 020098/05 (N.Y. Sup. Ct.).

[6] *In re Illinois Cent. Corp. S'holders Litig.*, No. 16184 (Del. Ch.), Tr. of Hr'g, Feb. 25, 1999 at 29-30.

[7] *In re Take Two Interactive Software, Inc. Sec. Litig.*, No. 01 CIV. 9919 (S.D.N.Y.), Tr. of Hr'g, Oct. 4, 2002 at 40, 44.

[8] *In re Tower Air, Inc. Sec. Litig.*, No. 94 CIV. 1347 (E.D.N.Y.), Tr. of Hr'g, Feb. 9, 1996 at 52.

- Chief Judge Gene Carter (now Senior District Judge) of the United States District Court for the District of Maine.[9]

"Mr. Bernstein, it has actually been a pleasure getting to know and work with you on this . . . . [Y]ou make a really good presentation."

- Former Judge Wayne R. Andersen (retired) of the United States District Court for the Northern District of Illinois.[10]

"Counsel [Bernstein Liebhard] . . . have been professional and realistic in this matter . . . . The court has been impressed with the competence and candor of counsel . . . ."

- Former Judge Robert J. Cindrich (retired) of the United States District Court for the Western District of Pennsylvania.[11]

[9] *Nensel v. Peoples Heritage Fin. Group, Inc.*, No. 91-324-P-C (D. Me.), Tr. of Hr'g, Dec. 17, 1992 at 12.

[10] *Hager v. Schawk, Inc.*, No. 95 C6974 (N.D. Ill.), Tr. of Hr'g, May 21, 1997 at 22.

[11] *DeCicco v. Am. Eagle Outfitters*, *Inc.*, No. 95-1937 (W.D. Pa.), Report and Recommendation of Magistrate Judge Kenneth Benson, Nov. 25, 1996 at 6 (adopted as opinion of court by Judge Cindrich, Dec. 12, 1996).

ATTORNEY BIOGRAPHIES

STANLEY D. BERNSTEIN

SENIOR PARTNER

Stanley D. Bernstein, founding partner of Bernstein Liebhard LLP, has successfully represented plaintiffs in securities fraud litigation, shareholder and derivative litigation, complex commercial litigation (representing corporations and businesses when they are plaintiffs in litigation), professional malpractice litigation, and antitrust litigation for over thirty-five years. Mr. Bernstein is a recognized leader in the securities and corporate governance bar. He frequently addresses lawyers and business professionals concerning various aspects of plaintiffs' litigation and was featured as the cover story in *Directorship* magazine in an article entitled "Investors v. Directors." Mr. Bernstein also heads the firm's *qui tam*/whistleblower practice group.

Education

- New York University School of Law, J.D., honors, 1980
- Cornell University, B.S., 1977

Admissions

New York

Florida

U.S. Supreme Court

U.S. Court of Appeals

- Second Circuit

U.S. District Courts

- Southern District of New York
- Eastern District of New York

Mr. Bernstein has been widely recognized for his achievements. Among other honors:

- *Lawdragon* named him one of the "500 Leading Lawyers in America," "500 Leading Litigators in America," "500 Leading Plaintiffs' Lawyers," and "100 Lawyers You Need to Know in Securities Litigation";
- The National Association of Corporate Directors and *Directorship* magazine listed him in the *Directorship 100* – the list of "The Most Influential People in the Boardroom" (2009-2012);
- *Super Lawyers* magazine named him a Super Lawyer (2007-2009; 2012-2021);

- *The Legal 500* has repeatedly recommended him (2011-2012; 2014-2016, 2019-2020);
- Recognized by *Benchmark Plaintiff: The Definitive Guide To America's Leading Plaintiff Firms & Attorneys* (2012-2015); and
- Ranked in *Chambers USA Guide* (2012-2016).

Mr. Bernstein litigates against the most prominent defense firms in the country and has earned a reputation for being a tenacious litigator who will try any case that does not settle on favorable terms. His experience and reputation for trying cases has enabled him to negotiate some of the largest securities fraud settlements in history. For example, Mr. Bernstein was the Chair of the Plaintiffs' Executive Committee in *In re Initial Public Offering Securities Litigation*, No. 21 MC 92 (S.D.N.Y.), a coordinated litigation of over 300 securities class actions, in which a $586 million settlement was obtained. Mr. Bernstein was also instrumental in negotiating a $400 million settlement in *In re Marsh & McLennan Cos., Inc. Securities Litigation*, No. 04-CV-8144 (CM) (S.D.N.Y.). In *In re Royal Dutch/Shell Transport Securities Litigation*, No. 04-374 (JAP) (D.N.J.), he negotiated a $166.6 million settlement of the U.S. action, in addition to a $350 million European settlement the firm was substantially responsible for obtaining. In *In re Bankers Trust Securities Litigation*, he recovered $58 million for investors, representing 100% of their losses.

Mr. Bernstein also led an individual action on behalf of the New Mexico Public Employees Retirement Association ("PERA") against Wells Fargo Bank and affiliates arising from defendants' mismanagement of PERA's securities lending program. On the eve of trial, Mr. Bernstein negotiated a $50 million recovery for PERA, representing over 65% of PERA's damages.

Mr. Bernstein has also been lead counsel in many of the leading securities cases enforcing and expanding the rights of shareholders, including in *In re Sears, Roebuck Derivative Litigation* and *In re Archer Daniels Midlands Corp. Derivative Litigation* (pioneering cases which improved corporate governance at both companies). He was also trial counsel for stockholders

in a trial in the Delaware Chancery Court that invalidated an anti-takeover device in *Shapiro v. Quickturn Design Systems, Inc.*

Most recently, Mr. Bernstein obtained a $16 million cash settlement of a derivative action alleging that certain current and former directors of DeVry Education Group (currently known as Adtalem Global Education, Inc.) breached their fiduciary duties by allowing and approving a misleading advertising campaign.

Mr. Bernstein also represents corporations and businesses when they are plaintiffs in litigation against other businesses and in litigation alleging professional malpractice against attorneys and accountants. For example, Mr. Bernstein recovered millions of dollars in a global settlement on behalf of the Trustee of the Actrade Liquidation Trust (overseeing the liquidation of assets previously held by Actrade Technologies, Ltd., a public company that formerly traded on NASDAQ), in connection with an accounting malpractice action against Actrade's accountant for failing to conduct proper audits, and an action against Actrade's former chairman for misappropriation of funds. He has also recovered millions of dollars for corporate plaintiffs in professional malpractice and other corporate litigations.

Mr. Bernstein represented the creditors' committee in the Altegrity, Inc. and USIS Investigations, Inc. ("USIS") bankruptcy proceedings in connection with claims against a USIS director and its former officers arising from their alleged failures to adequately protect the confidential information of tens of thousands of government employees from a cyberattack in 2013. A confidential multi-million dollar global settlement resolved both actions.

Mr. Bernstein also chairs the firm's antitrust practice and served as co-lead counsel and co-trial counsel in the *In re Processed Eggs Antitrust Litigation*, a case alleging a near industry-wide, price-fixing conspiracy among egg producers to raise the price of shell eggs in violation of the Sherman Antitrust Act ($130 million in settlements recovered prior to trial).

SANDY A. LIEBHARD

SENIOR PARTNER

Sandy A. Liebhard is a 1988 graduate of Brooklyn Law School and since that time has practiced all aspects of securities law. Mr. Liebhard has been repeatedly recognized as a "local litigation star" for his securities work in the 2012-2015 editions of BENCHMARK PLAINTIFF: THE DEFINITIVE GUIDE TO AMERICA'S LEADING PLAINTIFF FIRMS & ATTORNEYS and was recommended in the 2014 edition of THE LEGAL 500 for his work in securities litigation.

Education

- Brooklyn Law School, J.D., 1988
- Brooklyn College, B.S., 1985

Admissions

New York

U.S. District Courts

- Southern District of New York
- Eastern District of New York

For more than twenty years, Mr. Liebhard has been successfully representing plaintiffs in complex litigations. Mr. Liebhard served on the Plaintiffs' Executive Committee in *In re Initial Public Offering Securities Litigation* ($586 million recovery) and was involved in the *In re Fannie Mae Securities Litigation*, where a $153 million settlement received final approval.

Mr. Liebhard has been lead or co-lead counsel in such major securities cases as: *In re AXA Financial Shareholders Litigation* ($500 million in increased merger consideration); *In re Lin Broadcasting Corp. Shareholders Litigation* (recovering $64 million in increased merger consideration); *In re Tenneco Securities Litigation* ($50 million recovery); *In re Bausch & Lomb, Inc. Securities Litigation* (achieving $42 million recovery for defrauded shareholders); and *In re BellSouth Corp. Securities Litigation* ($35 million recovery).

Mr. Liebhard is also active in the Firm's complex litigation practice. Mr. Liebhard, serving as co-lead counsel in *Roberts v. Tishman Speyer Properties, L.P.*, secured a $146.85 million settlement ($68.75 million cash) on behalf of the tenants of the Stuyvesant Town and Peter Cooper Village rental apartment complexes in Manhattan for rent overcharges stemming from the landlord having illegally charged market-rate rents for apartments that should have been rent stabilized under New York City's Rent Stabilization Law.

Mr. Liebhard is admitted to the Bar of the State of New York, and the United States District Courts for the Southern and Eastern Districts of New York.

MICHAEL S. BIGIN

PARTNER

Michael S. Bigin has represented plaintiffs in securities fraud litigation, *qui tam* whistleblower litigation, and other complex litigation for over 20 years and has been recognized for his work in securities litigation. He was selected to Super Lawyers Magazine's New York Metro Rising Stars list in 2014 and has been named a Super Lawyer by *Super Lawyers Magazine* in 2017-2020. Mr. Bigin has also been recommended by *The Legal 500* in 2013, 2016, and 2019.

Mr. Bigin has worked on numerous securities fraud class actions and has achieved substantial recoveries for investors, including: *In re Marsh & McLennan Cos., Inc. Securities Litigation*, No. 04-CV-8144 (CM) (S.D.N.Y.) ($400 million recovery); *In re Royal Dutch/Shell Transport Securities Litigation*, No. 04-374 (JAP) (D.N.J.) ($166.6 million recovery); *In re IKON Office Solutions, Inc. Securities Litigation*, No. 98-CV-4606 (E.D. Pa.) ($111 million recovery); *In re Computer Associates Securities Litigation*, No. 02-CV-1226 (E.D.N.Y.) (settlement of 5.7 million shares, valued at $134 million); *In re Cigna Corp. Securities Litigation*, No. 02-CV-8088 (MMB) (E.D. Pa.) ($93 million recovery); *City of Austin Police Retirement System v. Kinross Gold Corp.*, No. 12-CV-01203-VEC (S.D.N.Y.) ($33 million recovery); *In re Gilat Satellite Networks, Ltd. Securities Litigation*, No. 02-CV-1510 (E.D.N.Y.) ($20 million); *In re Terayon Communication Systems, Inc. Securities Litigation*, No. C-00-1967 (N.D. Cal.) ($15 million); *Bitar v. REV Group, Inc.*, Case No. 2:18-CV-1268-LA (E.D. Wisc.) ($14.25 million); *Chupa v. Armstrong Flooring Inc.*, No. 2:19-cv-09840-CAS-MRW (C.D. Cal.) ($3.75 million); and *Szymborski v. Ormat Technologies, Inc.*, No. 10-CV-00132-ECR (D. Nev.) ($3.1 million).

Education

- St. John's University School of Law, J.D., 1999
- State University of New York at Oswego, B.A., B.S.,1995

Admissions

New York

Connecticut

U.S. Court of Appeals

- Second Circuit
- Ninth Circuit
- Eleventh Circuit

U.S. District Courts

- Southern District of New York
- Eastern District of New York
- Eastern District of Wisconsin

Mr. Bigin has also recovered funds for investors after winning appeals at the circuit court level in *Avila v. LifeLock Inc.*, 15-cv-01398-SRB (D. Ariz.) ($25 million) and in *Peters v. JinkoSolar Holding Co. Inc.*, No. 11-CV-07133-JPO (S.D.N.Y.) ($5.05 million settlement). In *JinkoSolar*, Mr. Bigin successfully briefed and argued the case before the Second Circuit Court of Appeals, which granted a rare reversal of the district court's decision and clarified the materiality standard under the Securities Act of 1933.

Currently, Mr. Bigin represents entities in various class actions. For example, Mr. Bigin represents the City of Atlanta Firefighters' Pension Fund in *Speaks v. Taro Pharmaceutical Industries, LTD*, 16-cv-08318-ALC (S.D.N.Y.), where investors allege that defendants inflated Taro's stock price by representing that Taro's growth occurred in a highly competitive environment, while Taro secretly colluded with its competition to fix generic drug prices. Mr. Bigin is also representing the Oklahoma Firefighters Pension and Retirement System in *In re Conduent Securities Litigation*, Case No. 2:19-cv-08237-SDW-AME (D.N.J.) where investors allege, *inter alia*, that defendants inflated Conduent's share price by knowingly and/or recklessly misleading investors about the severity of technology issues plaguing the company.

In addition to class actions, Mr. Bigin represents individual clients in commercial disputes, commercial insurance matters, *qui tam* actions, employment claims, and consumer protection matters. For example, Mr. Bigin won summary judgment on behalf of his client concerning a $1.9 million fee dispute after completing discovery, which involved obtaining testimony from multiple, senior partners of law firms. Additionally, Mr. Bigin has advised and represented individual whistleblowers alleging violations of the False Claims Act, violations of the Social Security Act, Medicare and Medicaid fraud, insider trading, and tax fraud.

Mr. Bigin is admitted to practice in the States of New York and Connecticut, the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, and the United States Court of Appeals for the Second, Ninth, and Eleventh Circuits.

STEPHANIE M. BEIGE

PARTNER

Stephanie M. Beige Stephanie M. Beige has devoted her entire career to representing plaintiffs in shareholder class actions, derivative litigation, antitrust litigation, and individual litigation. She has been named a Super Lawyer by *Super Lawyers Magazine* for her work in securities litigation and has been selected to the New York Metro "Super Lawyers Top Women List" in 2016-2020. Ms. Beige has also been recommended by *The Legal 500* (2013, 2015-2016, 2019-2021).

Education

- Touro College Jacob D. Fuchsberg Law Center, J.D., *summa cum laude*, 2000
- Dowling College, B.S., *magna cum laude*, 1996

Admissions

New York

U.S. Court of Appeals

- Second Circuit

U.S. District Courts

- Southern District of New York
- District of Colorado
- Eastern District of Wisconsin

Ms. Beige has been involved in the successful prosecution of numerous class actions on behalf of aggrieved investors. Notably, she was a member of the team representing the State of New Jersey, Department of Treasury, Division of Investment, as co-lead plaintiff in *In re Marsh & McLennan Cos., Inc. Securities Litigation* (S.D.N.Y.) where a $400 million recovery was obtained for investors. The litigation was brought against the world's largest insurance broker, Marsh & McLennan Cos., Inc., in connection with the company's improper practice of steering its clients to insurance companies that agreed to pay it billions of dollars in contingent commissions. Ms. Beige also represented the Mississippi Public Employees' Retirement System in *In re Cigna Corp. Securities Litigation* (E.D. Pa.), a securities class action which settled on the eve of trial for $93 million dollars. Other successes include: *In re TASER International Securities Litigation* (D. Ariz.) ($20 million recovery); *Rush v. Footstar, Inc*. (S.D.N.Y.) ($19.3 million recovery); *In re SeeBeyond Technologies Securities Litigation* (C.D. Cal.) ($13.1 million recovery); *In re Stellantis N.V., Securities Litigation* (E.D.N.Y.) ($5 million recovery).

Ms. Beige also represented investors who lost millions of dollars in hedge funds that invested with Bernard L. Madoff in *In re Tremont Securities Law, State Law and Insurance Litigation*, (S.D.N.Y.) ($100 million settlement), one of the few cases that successfully obtained a recovery for victims of Madoff's infamous Ponzi scheme.

Ms. Beige also litigated an individual action on behalf of the New Mexico Public Employees Retirement Association ("PERA") against Wells Fargo Bank and affiliates arising from defendants' mismanagement of PERA's securities lending program. Ms. Beige was instrumental in the negotiation of a $50 million recovery for PERA – obtained on the eve of trial – representing over 65% of PERA's damages. Ms. Beige litigated a similar action against Wells Fargo Bank on behalf of the New Mexico Educational Retirement Board ("ERB"). After two years of litigation, a $5 million settlement was obtained for ERB, representing over 50% of its damages.

Ms. Beige also represents plaintiffs in complex antitrust class actions. Currently, Ms. Beige is part of the team litigating an antitrust class action against the largest providers of dental insurance in the U.S. in *In re Delta Dental Antitrust Litigation* (N.D. Ill.) and is a member of the Litigation Team in *In re Juul Direct Purchaser Antitrust Action* (N.D. Ca.) (a generic drug antitrust class action). Ms. Beige also represented plaintiffs in *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio) ($400 million settlement).

Ms. Beige is also active in the firm's complex litigation practice where she represented the creditors' committee in the Altegrity, Inc. and USIS Investigations, Inc. ("USIS") bankruptcy proceedings in connection with claims against a USIS director and its former officers arising from their alleged failures to adequately protect the confidential information of tens of thousands of government employees from a cyberattack in 2013. A confidential multi-million dollar global settlement resolved both actions.

Ms. Beige received her bachelor's degree in 1996 from Dowling College, graduating *magna cum laude*, and received her J.D. in 2000 from Touro College Jacob D. Fuchsberg Law Center, graduating *summa cum laude*, where she was a member of the *Touro Law Review*.

Ms. Beige is admitted to the Bar of the State of New York and admitted to practice before the United States Court of Appeals for the Second Circuit and the United States District Courts for the Southern District of New York, the District of Colorado, and the Eastern District of Wisconsin.

DANIEL C. BURKE

PARTNER

Education

- St. John's University School of Law, J.D., 1993
- State University of New York at Albany, B.A., 1990

Admissions

New York

U.S. District Courts

- Southern District of New York
- Eastern District of New York
- Northern District of New York

Daniel C. Burke was recognized as a leader in the areas of class actions and mass torts by *Super Lawyers* from 2013-2017. In addition, he was named as one of the National Trial Lawyers Top 100 for 2014, and one of the Nation's Top One Percent by the *National Association of Distinguished Counsel* in 2015.

Mr. Burke's practice is focused on mass tort pharmaceutical, medical device and consumer products litigation. He has actively litigated high-profile cases on behalf of thousands of injured plaintiffs in cases involving prescription drugs including Yaz/Yasmin, medical devices such as the Biomet M2a Magnum hip prosthesis and Zimmer Nexgen knee prosthesis, as well as over-the-counter consumer products including Fixodent and Poligrip denture adhesives and ReNu with MoistureLoc contact lens solution. He has supervised the day-to-day management of complex, multi-party mass tort litigation in state and federal courts and multidistrict litigation throughout the United States.

His extensive experience has been recognized by his peers and the courts, and is reflected by Mr. Burke receiving multiple appointments to leadership positions in mass tort litigations over the past ten years including: Plaintiffs' Steering Committee in *In re: Biomet M2a Magnum Hip Implant Products Liability Litigation* (MDL 2391), Liaison Counsel in the *New York Coordinated Plavix-Related Proceedings* (Index No. 560001/12), Plaintiffs' Steering Committee in *In re: Zimmer Nexgen Knee Implant Products Liability Litigation* (MDL 2272), Discovery and Law & Briefing Sub-Committees for *In re: Denture Cream Products Liability Litigation* (MDL 2051); and the Science and Discovery Sub-Committees for *In re: Yasmin & Yaz (Drospirenone) Marketing, Sales Practices & Products Liability Litigation* (MDL 2100).

Most recently, in September 2018, Mr. Burke was appointed by the U.S District Judge Karen K. Caldwell, Eastern District of Kentucky, to serve on the Plaintiffs' Executive Committee in *In re: Onglyza (Saxagliptin)* and *Kombiglyze (Saxagliptin and Metformin) Products Liability Litigation* (MDL 2809).

Currently, Mr. Burke represents plaintiffs in a wide array of drug litigations including those involving Gadolinium-Based Contrast Agents, HIV antiviral medications (TDF), PPIs, Zofran, Fluoroquinolone Antibiotics, Testosterone Replacement Therapy, Incretins, SGLT-2 Inhibitors, Abilify, Actemra, Mirena IUD, Fosamax, Xarelto, Taxotere and Risperdal. Additionally, he is litigating matters involving medical devices including Forced Air Warming Blankets, IVC Filters, Defective Hip, Knee, Shoulder & Elbow Implants, Transvaginal and Hernia Mesh and Power Morcellators. He is also investigating consumer product claims related to various cancers caused by Cell Phone Radiation and the use of Talc.

Mr. Burke earned his bachelor's degree in 1990 from the State University of New York at Albany (B.A., English/History), and earned his J.D. in 1993 from St. John's University School of Law, where he was a member of *St. John's Journal of Legal Commentary*.

Mr. Burke is admitted to the Bar of the State of New York. He is also admitted to practice before the United States District Courts for the Southern, Eastern and Northern Districts of New York, and he is frequently admitted *pro hac vice* to represent clients in various state and federal courts throughout the United States.

LAURENCE J. HASSON
PARTNER

Laurence J. Hasson Laurence J. Hasson received his bachelor's degree in 2003 from Brandeis University (B.A., History and American Studies), graduating *magna cum laude* and with Phi Beta Kappa and Phi Alpha Theta honors, and received his J.D. in 2006 from the Benjamin N. Cardozo School of Law, where he was a Heyman Scholar, a board member of the award-winning Moot Court Honors Society, and selected to participate in the Bet Tzedek Legal Services Clinic.

Education

- Benjamin N. Cardozo School of Law, J.D., 2006
- Brandeis University, B.A., *magna cum laude*, 2003

Admissions

New York

U.S. Court of Appeals

- Second Circuit

U.S. District Courts

- Southern District of New York
- Eastern District of New York

Mr. Hasson concentrates his practice on securities, commercial, and complex class action litigation, and he is also a member of the firm's *qui tam*/whistleblower practice group. Mr. Hasson has been selected by *Super Lawyers*, a rating service of outstanding lawyers, to the New York Metro Rising Stars list for 2015-2020, and as a Super Lawyer for 2021. He was also recommended by *The Legal 500* in 2013 and 2019.

Since joining the firm in 2012, Mr. Hasson has worked on numerous securities fraud class actions that have resulted in substantial recoveries for investors, including: *City of Austin Police Retirement System v. Kinross Gold Corporation*, No. 12-CV-01203-VEC (S.D.N.Y.) ($33 million recovery), *In re Tower Group International, Ltd. Securities Litigation*, 13-CV-5852-AT (S.D.N.Y.) (settlement of $20.5 million); *Peters v. Jinkosolar Holding Co., Ltd.*, No. 11-CV-07133-JPO (S.D.N.Y.) ($5.05 million recovery); and *In re KIT Digital, Inc. Securities Litigation*, No. 12-CV-4199 (S.D.N.Y.) ($6 million recovery); *Chupa v. Armstrong Flooring, Inc. et al*., 2:19-cv-09840-CAS-MRW (C.D. Cal.) ($3.75 million).

Mr. Hasson has also represented shareholders in derivative claims, most recently recovering $16 million for shareholders in a derivative action alleging that certain current and

former directors of DeVry Education Group (currently known as Adtalem Global Education, Inc.) breached their fiduciary duties by allowing and approving a misleading advertising campaign.

Mr. Hasson also represented the creditors' committee in the Altegrity, Inc. and USIS Investigations, Inc. ("USIS") bankruptcy proceedings in connection with claims against a USIS director and its former officers arising from their alleged failures to adequately protect the confidential information of tens of thousands of government employees from a cyberattack in 2013. A confidential multi-million dollar global settlement resolved both actions.

Mr. Hasson was competitively selected to join the Federal Bar Council's Inn of Court, through which he, along with a small team led by a federal judge, develops and presents programming for continuing legal education. Mr. Hasson has presented in several such programs, including:

- *"First Amendment and National Security,"* which was held on January 8, 2013 at the Theodore Roosevelt United States Courthouse in Brooklyn, New York;
- "*Who Owns the Past? Cultural Property Repatriation and Where We Are Today,"* which was held on December 9, 2014 at the Museum of Jewish Heritage in New York, New York;
- "*United States v. New York Times*: A Reenactment of The Pentagon Papers Case," which was held on January 15, 2015 at the Thurgood Marshall U.S. Courthouse in New York, New York. This presentation was part of the 225th Anniversary Celebration of the U.S. District Court for the Southern District of New York;
- *"Sex, Lies, Still Photos & Videotape. Many Wrongs? Any Rights?,"* which was held on April 12, 2016 at the Daniel Patrick Moynihan United States Courthouse in New York, New York; and
- *"The Current Wars"*, which was held on November 15, 2016 at the Theodore Roosevelt United States Courthouse in Brooklyn, New York.

- *"A Jury of Her Peers: A True Crime and the Journalist Who Immortalized It"*, which was held on April 10, 2019 at the Theodore Roosevelt United States Courthouse in Brooklyn, New York.
- "*Marbury v. Madison*", December 10, 2019.
- "Which Juror Should I Challenge? Practical Tips for Selecting a Jury in Federal Court", May 11, 2021.

Mr. Hasson is admitted to the Bar of the State of New York and to practice before the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York.

REUBEN S. KERBEN
OF COUNSEL

Reuben S. Kerben received his bachelor's degree in 2004 from the Sy Syms School of Business at Yeshiva University (B.S., Business Management), and earned his J.D. in 2009 from the Maurice A. Deane School of Law at Hofstra University. During college Mr. Kerben received several awards following his participation in business competitions, including the Syracuse University Panasci Business Plan Competition, the Yeshiva University Dr. William Schwartz Student Business Plan Competition and the Palo Alto Software Business Plan Competition.

Education

- Maurice A. Dean School of Law at Hoftra University, J.D., 2009
- Sy Syms School of Business at Yeshiva University, B.S., 2004

Admissions

New York

U.S. District Courts

- Southern District of New York
- Eastern District of New York

Prior to law school, Mr. Kerben was the founder and chief executive officer of Spiral Universe Inc., a cloud based educational software company which was later acquired by Software Technology, Inc.

Mr. Kerben is active in the Firm's mass tort practice, focusing in the areas of pharmaceutical liability and defective medical devices. Currently, he is involved with cases associated with prescription drugs, such as Risperdal and Zofran, and defective medical devices, such as Transvaginal Mesh and Mirena IUD.

Mr. Kerben has argued appeals before the United States Court of Appeals for the Second Circuit, and has represented defendants in felony trials in New York City. Mr. Kerben is committed to pro bono practice; having represented many immigrant children facing deportation before the Immigration Courts in New York, New York.

Mr. Kerben is admitted to the Bar of the State of New York and to practice before the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York.

JOSEPH R. SEIDMAN, JR.

SENIOR COUNSEL

Education

- St. John's University School of Law, J.D., 1997
- Queens College of the City University of New York, B.S., 1994

Admissions

New York

U.S. Court of Appeals

- Sixth Circuit

U.S. District Courts

- Southern District of New York
- Eastern District of New York

Joseph R. Seidman, Jr. has litigated complex class actions for almost 25 years. Mr. Seidman has worked on numerous securities fraud cases from inception through settlement, including: *City of Austin Police Retirement System v. Kinross Gold Corp.*, No. 12-CV-01203-VEC (S.D.N.Y.) ($33 million recovery); *In re Beazer Homes U.S.A., Inc. Securities Litigation*, No. 07-CV-725-CC (N.D. Ga.) ($30.5 million recovery); *In re Tower Group International, Ltd. Securities Litigation*, 13-CV-5852 (S.D.N.Y.) ($20.5 million settlement); *In re Taser International Securities Litigation*, No. C05-0115 (D. Ariz.) ($20 million recovery); *Avila v. LifeLock Inc.*, 15-cv-01398-SRB (D. Ariz.) ($20 million); *Bitar v. REV Group, Inc.*, Case No. 2:18-cv-1268-LA (E.D. Wisc.) ($14.25 million); *In re Willbros Group, Inc. Securities Litigation*, No. 06-CV-1778 (S.D. Tex.) ($10.5 million recovery); *In re KIT Digital, Inc. Securities Litigation*, No. 12-CV-4199 (S.D.N.Y.) ($6 million recovery); and *Peters v. JinkoSolar Holding Ltd.*, 11-CV-7133 (S.D.N.Y.) ($5.05 million recovery).

Mr. Seidman was part of the team that successfully litigated an appeal before the Second Circuit Court of Appeals, which reversed a dismissal of the *JinkoSolar* case and affirmed the materiality standard for securities actions.

Mr. Seidman has represented shareholders in derivative actions, including recovering $16 million for shareholders in a derivative action alleging that certain current and former directors of DeVry Education Group (currently known as Adtalem Global Education, Inc.) breached their fiduciary duties by allowing and approving a misleading advertising campaign. Mr. Seidman also represented one of the lead plaintiffs in *In re Freeport-McMoRan Copper &*

Gold, Inc. Derivative Litigation, C.A. No. 8110-VCN (Del. Ch.), which resulted in a $153.5 million recovery that represented the second largest derivative settlement in Delaware.

Mr. Seidman represents a class of direct purchaser plaintiffs in an antitrust action, *In re Packaged Seafood Products Antitrust Litigation*, Case No. 15-MD-2670 JLS (MDD) (S.D. Cal.). The plaintiffs in *Packaged Seafood* allege, *inter alia*, that several seafood companies illegally conspired to raise prices on various tuna products.

Currently, Mr. Seidman represents the City of Atlanta Firefighters' Pension Fund in *Speaks v. Taro Pharmaceutical Industries, LTD*, 16-cv-08318-ALC (S.D.N.Y.), where investors allege that defendants inflated Taro's stock price by representing that Taro's growth occurred in a highly competitive environment, while Taro secretly colluded with its competition to fix generic drug prices. Plaintiffs successfully opposed Defendants' motion to dismiss in September 2018 and discovery is ongoing.

Mr. Seidman received his bachelor's degree in 1994 from Queens College of the City University of New York and received his J.D. in 1997 from St. John's University School of Law.

Mr. Seidman is admitted to the Bar of the State of New York. He is also admitted to practice before the United States Court of Appeals for the Sixth Circuit, and the United States District Courts for the Southern and Eastern Districts of New York.

MORRIS DWECK
ASSOCIATE

Education

- Benjamin N. Cardozo School of Law, J.D., 2014
- Macaulay Honors College at Brooklyn College, B.A., 2010

Admissions

New York

New Jersey

Morris Dweck received his J.D. in 2014 from the Benjamin N. Cardozo School of Law. He was awarded a Cardozo Scholarship Award throughout his three years in law school. His note concerning the rare side effects of drugs and diseases was published by the CARDOZO LAW JOURNAL OF PUBLIC LAW, POLICY AND ETHICS. Mr. Dweck was named a Rising Star by *Super Lawyers* in 2016-2019.

From the beginning of his legal career Mr. Dweck has worked in the field of Mass Torts, specifically in the areas of medical device and pharmaceutical product liability litigation. He has vigorously represented clients in various mass tort litigation including: Benicar (litigation discovery team), IVC Filter, DePuy ASR hip, Stryker Rejuvenate, ABGII and LFIT V40 hip implants, and Transvaginal Mesh litigation against Bard, J&J, and Boston Scientific. Mr. Dweck is currently handling the diverse and growing Hernia mesh litigation with various products and defendants, as well as the complex Proton Pump Inhibitor litigation.

Mr. Dweck is admitted to the Bars of the State of New York and New Jersey. As an active member of the New York City Bar Association, he is currently serving as a committee member on the Products Liability Committee. He is also a member of the New York State Trial Lawyers Association and the American Association for Justice. Mr. Dweck has served as a mentor for a number of students in law school. He currently serves as the Director of Ritual Programming at Congregation Magen David of Manhattan in the West Village, where he teaches classes on Jewish law and ethics.

ANDREA N. SMITHSON

ASSOCIATE

Education

- Brooklyn Law School, J.D., 2019
- University of South Florida, B.A., 2015

Admissions

New York

U.S. District Courts

- Southern District of New York

Andrea N. Smithson received her J.D. from Brooklyn Law School in 2019, where she was awarded the Raymond E. Lisle Scholarship and a Merit Scholarship. During her time at Brooklyn Law School, Ms. Smithson was a Senior Clinician with the Business Law Incubator and Policy ("BLIP") Clinic, competed in the 2018 CUBE Innovator Competition, and received the Cali award for Discovery. Ms. Smithson received her bachelor's degree from the University of South Florida in 2015 (Bachelor of Arts in Political Science, Honors).

Prior to joining the firm, Ms. Smithson was an associate at a New York law firm where she represented victims in mass tort cases.

Ms. Smithson concentrates her practice on multi-jurisdictional mass tort claims and is presently representing victims of dangerous and defective medical devices and pharmaceutical products, most notably, 3M Combat Earplugs, Uloric, Zantac, Paragard-IUD, Taxotere, and Talcum Powder.

Ms. Smithson is admitted to the Bar of the State of New York and the Southern District of New York.

ADAM FEDERER
ASSOCIATE

Adam M. Federer received his bachelor's degree in 2009 from Washington University (Bachelor of Science in Business Administration, Finance). He received his J.D. in 2017 from Temple University Beasley School of Law where he was awarded the Law Faculty Scholarship.

Mr. Federer concentrates his practice on representing aggrieved investors in complex securities class action litigation. He is currently representing plaintiffs in *In re Plug Power, Inc. Securities Litigation*.

Education

- Temple University Beasley School of Law, J.D., 2017
- Washington University, B.S., 2009

Admissions

New York

U.S. District Courts

- Southern District of New York
- Eastern District of New York

Prior to joining the firm, Mr. Federer was an Associate at Robert C. Gottlieb & Associates, where he practiced white-collar criminal and complex civil litigation. Mr. Federer has litigated complex civil matters in both federal and state courts in various jurisdictions, including commercial matters, business disputes, trademark infringement, counterfeiting, bankruptcy-related issues, and financial fraud. He has also defended a wide variety of both individual and corporate criminal and white-collar clients in federal and state courts contemporaneous with pending investigations and prosecutions commenced by the Department of Justice and state prosecuting agencies, including multibillion-dollar Ponzi-like schemes.

Before joining Robert C. Gottlieb & Associates, Mr. Federer spent several years working as a Corporate Communications and Crisis Management Consultant at Edelman and Abernathy MacGregor. Mr. Federer provided strategic public relations, investor relations and crisis management counsel to clients in a variety of industries. He has particularly strong expertise advising clients in all phases of crisis preparedness and response. His crisis management experience spans a broad range of issues, including regulatory matters, complex litigation

issues, product failures or recalls, facilities disasters, unexpected management changes, and other special crisis situations.

Mr. Federer is admitted to the Bar of the State of New York. He is also admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York.

JEFFREY MCEACHERN
ASSOCIATE

Mr. McEachern earned his Juris Doctor from Fordham University School of Law, *cum laude*, in 2019 where he was the Notes & Articles Editor of the *Fordham Environmental Law Review*, Ruth Whitehead Whaley Scholar, and recipient of the Archibald R. Murray Public Service Award. He earned his bachelor's degree in 2013 from the University of Vermont.

Mr. McEachern concentrates his practice on securities, commercial, and complex litigation. He has litigated individual and class actions in both federal and state courts, including merger and acquisition-related matters, regulatory issues, bankruptcy-related issues, and financial fraud.

Education

- Fordham University School of Law, J.D., 2019
- University of Vermont B.A., 2013

Admissions

New York

U.S. District Courts

- Southern District of New York
- Eastern District of New York

Prior to joining the firm, Mr. McEachern was an associate at a prominent plaintiffs' securities litigation firm where he prosecuted complex securities fraud cases on behalf of institutional investors, as well as cybersecurity and data privacy litigation. He was a member of the team that achieved a $650 million settlement in *In re Facebook Biometric Information Privacy Litigation*—the largest consumer data privacy settlement to date and one of the first cases asserting biometric privacy rights of consumers under Illinois' Biometric Information Privacy Act (BIPA). Mr. McEachern also served as a Judicial Extern for the Honorable Gerald Lebovits of the New York State Supreme Court.

Mr. McEachern is admitted to the Bar of the State of New York. He is also admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York.

HAIRONG BASIL
ASSOCIATE

Education

- Emory School of Law, J.D.
- University of Minnesota B.A., 2015

Admissions

New York

Hairong Basil received her Juris Doctorate degree from Emory University School of Law, where she served as an Executive Managing Editor of the *Emory Corporate Governance and Accountability Review* (Vol.5). She received her bachelor's degree from the University of Minnesota, Twin Cities and graduated with distinction in 2015.

Ms. Basil focuses her practice on complex securities class actions, representing individual and institutional investors in recovering losses from securities fraud. She also represents consumers in consumer fraud class actions. Currently, Ms. Basil is representing consumers *Kahn v. Walmart, Inc*. (N.D. Ill.) and *Khan v. Target Corporation* (N.D. Ill.), consumer class actions alleging that Walmart and Target overcharge consumers through unfair and deceptive pricing practices.

Prior to joining the firm, Ms. Basil was an associate at prominent plaintiffs' securities litigation firm where she specialized in securities and consumer fraud litigation.

Ms. Basil is fluent in English and Mandarin Chinese.

Ms. Basil is admitted to the Bar of the State of New York.

TRACEY NEHMAD

STAFF

Tracey Nehmad earned her Juris Doctor from The Benjamin N. Cardozo School of Law in 1990.

Ms. Nehmad focuses her practice on representing plaintiffs in securities class actions. Currently, she is part of the teams representing investors in In re *Conduent Securities Litigation*, Case No. 2:19-cv-08237-SDW-AME (D.N.J.) and *Speaks v. Taro Pharmaceutical Industries*, *LTD*, 16-cv-08318-ALC (S.D.N.Y.).

Prior to joining the firm, Ms. Nehmad worked as a Staff Attorney at Simpson, Thacher & Bartlett, LLP and Labaton Sucharow, LLP.

Ms. Nehmad is admitted the Bar of the States of New York and New Jersey.

Education

- Benjamin N. Cardozo School of Law, J.D., 1990

Admissions

New York

New Jersey

ELLEN TRASCHENKO

STAFF

Education

- Wayne State University Law School, J.D., 2010
- Wayne State University B.A., 1990
- Wayne State University M.D., 1993

Admissions

Michigan

Ellen Traschenko earned her Juris Doctor from the Wayne State University Law School in 2010 where she was an Assistant Editor of *The Wayne Law Review* and recipient of the Dimitrios Mehas Memorial Scholarship. She also earned both her master's degree in 1993 and her bachelor's degree in 1990 from Wayne State University.

Ms. Traschenko concentrates her practice on representing plaintiffs in complex class action litigation. Currently, she is part of teams representing investors in *Speaks v. Taro Pharmaceutical Industries*, LTD, 16-cv-08318-ALC (S.D.N.Y.) and plaintiffs in *In re Delta Dental Antitrust Litigation* (N.D. Ill.)

Prior to joining the firm, Ms. Traschenko worked as an independent E-Discovery Attorney on various complex litigation matters including class action, federal and state regulation, anti-trust, multi-national banking, pharmaceutical, merger and acquisition, fraud, intellectual property, and breach of contract.

Ms. Traschenko is admitted to the Bar of the State of Michigan.

CLARK A. BINKLEY
ASSOCIATE

Education

- New York University School of Law, J.D., 2015
- University of California - Berkeley B.A., 2008

Clark A. Binkley received his J.D. in 2015 from New York University School of Law, where he was awarded a merit scholarship. He earned his bachelor's degree in 2008 from the University of California – Berkeley.

Mr. Binkley concentrates his practice on mass torts claims regarding pharmaceutical products and medical devices. He currently leads the firm's cases on defective hernia mesh devices by a variety of manufacturers and Neocate hypoallergenic infant formula.

Mr. Binkley has dedicated his career to representing the underrepresented and holding corporate interests accountable. Prior to joining the firm, Mr. Binkley was the managing attorney at a public interest law firm, where he practiced in the areas of consumer class actions, environmental protection, human and civil rights, and animal welfare. He was part of the team that secured a $39.55 million settlement in litigation concerning Monsanto's marketing of its weedkiller products. In addition to representing consumers, Mr. Binkley has represented prominent nonprofit organizations like Greenpeace, Earthjustice, and the International Labor Rights Forum in litigation and other legal actions.

Mr. Binkley is active in the consumer protection movement and served as the outreach liaison for the New York branch of the National Association of Consumer Advocates from 2018 to 2022, during which time he spearheaded the organization's lobbying efforts to strengthen the state's consumer protection laws.

EXHIBIT 7

POMERANTZ LLP
Jennifer Pafiti (SBN 282790)
1100 Glendon Avenue, 15th Floor
Los Angeles, CA 90024
Telephone: (310) 405-7190
jpafiti@pomlaw.com

Co-Lead Counsel for Lead Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GILBERTO FERREIRA, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. FUNKO, INC., et al., Defendants.	Case No. 2:20-cv-02319-VAP (MAAx) **CLASS ACTION** **DECLARATION OF POMERANTZ LLP IN SUPPORT OF LEAD COUNSELS' MOTION FOR PAYMENT OF ATTORNEYS' FEES AND EXPENSES** Hearing Date: November 7, 2022 Time: 2:00 PM Courtroom: 8A Judge: Hon. Virginia A. Phillips

I, Michael J. Wernke, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am an attorney admitted pro hac vice to this Court and a partner of Pomerantz LLP ("Pomerantz"). I have personal knowledge of the matters stated herein and, if called as a witness, I could and would testify thereto. I make this declaration in support of Lead Counsels' Motion for Attorneys' Fees and Payment of Expenses.

2. My firm was appointed Co-Lead Counsel in this action and litigated the action on behalf of Lead Plaintiffs Abdul Baker, Zhibin Zhang, and Huaiyu Zheng ("Lead Plaintiffs") and the Settlement Class.

3. The information in this declaration regarding my firm's time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the firm in the ordinary course of business. These reports (and back-up documentation where necessary) were reviewed by others at my firm, under my direction, in connection with the preparation of this declaration. In the course of recording professional time, reductions were made in the exercise of billing judgment. As a result, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The chart below is a summary indicating the amount of time spent by the attorneys and professional support staff members of my firm who were involved in the prosecution of the Action and the lodestar calculation based on my firm's current rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rates for such personnel in their final year of employment by the firm. The schedule was prepared from daily time records regularly prepared and maintained by my firm, which are

available at the request of the Court. Time expended in preparing this application for fees and expenses has not been included in this request.

5. The hourly rates for the attorneys and professional support staff of my firm are included in Exhibit A and are their usual and customary rates.

6. The total number of hours expended on this litigation by my firm during the Time Period is 768.10 hours. The total lodestar for my firm for those hours is $564,086.50.

LODESTAR REPORT

Inception through September 30, 2022

Name	Current Hourly Rate	Total Hours Worked on Case	Total Lodestar
Jeremy A. Lieberman (P)	$1,025	16.00	$16,400.00
Michael J. Wernke (P)	$815	139.70	$113,85.50
Alex Hood (P)	$645	16.90	$10,900.50
Cara David (OC)	$730	561.10	$410,041.00
Thomas Pryzyblowski (A)	$515	5.10	$2,626.50
James LoPiano (A)	$415	5.20	$2,158.00
Jack Lo (PL)	$350	23.00	$8,050.00
Jessie Huang	$110	0.50	$55.00
TOTALS		**768.10**	**$564,086.50**

(P) – Partner; (OC) - Of Counsel; (A) – Associate; (LC) - Law Clerk; (PL) - Paralegal

7. My firm also will advance a total of $58,341.78 in expenses and charges in connection with the prosecution of the litigation of the Action. These expenses and charges are summarized in the chart below:

EXPENSE REPORT

Inception through conclusion of the Action

Category of Expenses	Amount
Experts/Consultants/Mediation	$43,416.69

Mediator Fees	$2,250.00
Filing Fees	$2,612.00
Online Legal and Factual Research	$1,605.71
Press Releases and Newswires	$2,171.87
Work-Related Transportation, Hotels & Meals	$4,050.33
Photocopying, Postage, Clerical Overtime	$2,235.18
TOTAL EXPENSES	**$58,341.78**

8. The following is additional information regarding certain of my firm's expenses:

a. Expert/Consultant/Mediation Fees: $43,416.69. Lead Plaintiffs retained experts in accounting and economics to assist with quantifying damages, causation issues, market analysis in connection with mediation, and creating the Plan of Allocation to disseminate settlement funds to the Settlement Class. Lead Plaintiffs also retained consultants to assist with the investigation of the Action and paid a portion of the fees associated with the mediation of this Action.

b. Filing Fees: $2,612.00. These expenses have been paid to courts in connection with certificates of good standing needed for pro hac vice motions.

c. Work-related Transportation, Hotels & Meals: $4,050.33. In connection with the prosecution of the Action, the firm has paid for work-related transportation expenses, meals, and travel expenses related to, attending court. This amount includes an additional $2,500 in anticipated travel and meal costs associated with Lead Counsel's attendance at the Final Fairness Hearing on November 7, 2022. This expense will be reduced by the amount actually incurred and returned to the Settlement Fund.

d. Online Legal and Factual Research: $1,605.71. The firm conducted research using databases maintained by Westlaw, Lexis Nexis, Bloomberg and news services. These databases were used to obtain access to financial information, factual

information, and to conduct legal research. These expenses represent the expenses incurred by my firm for use of these services in connection with the Action.

e. Photocopying, Postage, Clerical Overtime: $2,235.18. These expenses represent the expenses incurred by my firm for the use of these services in connection with the Action.

f. Press Releases and Newswires: $2,171.87. These expenses represent the expenses incurred by my firm for the use of these services in connection with the Action.

9. With respect to the standing of my firm, attached hereto as Exhibit A is a firm resume, which includes the biographies of the firm's partners, senior counsel, and associates.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 3, 2022.

Michael J. Wernke

EXHIBIT A

POMERANTZLLP

History Pomerantz LLP is one of the most respected law firms in the United States dedicated to representing investors. The Firm was founded in 1936 by the late Abraham L. Pomerantz, widely regarded as a legal pioneer and "dean" of the plaintiffs' securities bar, who helped secure the right of investors to bring class and derivative actions.

Leadership Today, led by Managing Partner Jeremy A. Lieberman, the Firm maintains the commitments to excellence and integrity passed down by Abe Pomerantz.

Results Pomerantz achieved a historic $3 billion settlement for defrauded investors in 2018 as well as precedent-setting legal rulings, in *In re Petrobras Securities Litigation*. Pomerantz consistently shapes the law, winning landmark decisions that expand and protect investor rights and initiating historic corporate governance reforms.

Global Expertise Jennifer Pafiti, Partner and Head of Client Services, is dually qualified to practice in the United States and United Kingdom. The Firm has offices in Paris, France and Tel Aviv, Israel. Pomerantz also partners with an extensive network of prominent law firms in the United Kingdom, Europe, and the Middle East, so that we are ready to assist clients, wherever they are situated, in recovering monies lost due to corporate misconduct and securities fraud. Our team of attorneys is collectively fluent in English, Arabic, Cantonese, Mandarin, French, Hebrew, Italian, Portuguese, Romanian, Russian, Spanish, and Ukrainian.

Practice Pomerantz protects, expands, and vindicates shareholder rights through our securities litigation services and portfolio monitoring service. The Firm represents some of the largest pension funds, asset managers and institutional investors around the globe, monitoring assets of $8 trillion. Pomerantz's practice includes corporate governance, antitrust, and strategic consumer litigation.

Recognition Pomerantz is a 2021 Legal 500 Tier 1 Firm. In 2020 Pomerantz was named Plaintiff Firm of the Year by Benchmark Litigation, ranked a top plaintiff firm by Chambers USA and The Legal 500, and honored with European Pensions' Thought Leadership Award. In 2019, Jeremy Lieberman was named Plaintiff Attorney of the Year by Benchmark Litigation, and Pomerantz received Benchmark Litigation's National Case Impact Award for *In re Petrobras Securities Litig*. In 2018, Pomerantz was a Law360 Securities Practice Group of the Year and a finalist for the *National Law Journal*'s Elite Trial Lawyers award; Jeremy Lieberman was named a Law360 Titan of the Plaintiffs' Bar and a Benchmark Litigation Star. Among other accolades, many of our attorneys have been chosen by their peers, year after year, as Super Lawyers® Top-Rated Securities Litigation Attorneys and Rising Stars.

Pomerantz is headquartered in New York City, with offices in
Chicago, Los Angeles, Paris, and Tel Aviv.

Securities Litigation

Significant Landmarks

***In re Petrobras Sec. Litig.*, No. 14-cv-9662 (S.D.N.Y. 2018)**

On January 3, 2018, in a significant victory for investors, Pomerantz, as sole Lead Counsel for the class, along with Lead Plaintiff Universities Superannuation Scheme Limited ("USS"), achieved a historic $2.95 billion settlement with Petróleo Brasileiro S.A. ("Petrobras") and its related entity, Petrobras International Finance Company, as well as certain of Petrobras' former executives and directors. On February 2, 2018, Pomerantz and USS reached a $50 million settlement with Petrobras' auditors, PricewaterhouseCoopers Auditores Independentes, bringing the total recovery for Petrobras investors to $3 billion.

This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

The class action, brought on behalf of all purchasers of common and preferred American Depositary Shares ("ADSs") on the New York Stock Exchange, as well as purchasers of certain Petrobras debt, principally alleged that Petrobras and its senior executives engaged in a multi-year, multi-billion-dollar money-laundering and bribery scheme, which was concealed from investors.

In addition to the multi-billion-dollar recovery for defrauded investors, Pomerantz secured precedent-setting decisions when the Second Circuit Court of Appeals squarely rejected defendants' invitation to adopt the heightened ascertainability requirement promulgated by the Third Circuit, which would have required plaintiffs to demonstrate that determining membership in a class is "administratively feasible." The Second Circuit's rejection of this standard is not only a victory for bondholders in securities class actions, but also for plaintiffs in consumer fraud class actions and other class actions where documentation regarding Class membership is not readily attainable. The Second Circuit also refused to adopt a requirement, urged by defendants, that all securities class action plaintiffs seeking class certification prove through direct evidence (i.e., an event study) that the prices of the relevant securities moved in a particular direction in response to new information.

***Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y)**

In August 2019, Pomerantz, as Lead Counsel, achieved final approval of a $110 million settlement for the Class in this high-profile securities class action. Plaintiffs alleged that Fiat Chrysler concealed from investors that it improperly outfitted its diesel vehicles with "defeat device" software designed to cheat NOx emissions regulations in the U.S. and Europe, and that regulators had accused Fiat Chrysler of violating the emissions regulations. The *Fiat Chrysler* recovery provides the class of investors with as much as 20% of recoverable damages—an excellent result when compared to historical statistics in class action settlements, where typical recoveries for cases of this size are between 1.6% and 3.3%.

In addition to creating precedent-setting case law in successfully defending the various motions to dismiss the *Fiat Chrysler* litigation, Pomerantz also significantly advanced investors' ability to obtain critically important discovery from regulators that are often at the center of securities actions. During the litigation, Pomerantz sought the deposition of a former employee of the National Highway Traffic Safety Administration ("NHTSA"). The United States Department of Transportation ("USDOT"), like most federal agencies, has enacted a set of regulations — known as "Touhy regulations" — governing when its employees may be called by private parties to testify in court. On their face, USDOT's regulations apply to both "current" and "former" employees. In response to Pomerantz's request to depose a former employee of NHSTA that interacted with Fiat Chrysler, NHTSA denied the request, citing the Touhy regulation. Despite the widespread application, and assumed appropriateness, of applying these regulations to former employees throughout the case law, Pomerantz filed an action against USDOT and NHTSA, arguing that the statute pursuant to which the Touhy regulations were enacted speaks only of "employees," which should be interpreted to apply only to current employees. The court granted summary judgment in favor of Pomerantz's clients, holding that "USDOT's Touhy regulations are unlawful to the extent that they apply to former employees." This victory will greatly shift the discovery tools available, so that investor plaintiffs in securities class actions against highly-regulated entities (for example, companies subject to FDA regulations) will now be able to depose former employees of the regulators that interacted with the defendants during the class period to get critical testimony concerning the company's violations and misdeeds.

***Strougo v. Barclays PLC,* No. 14-cv-5797 (S.D.N.Y.)**

Pomerantz, as sole Lead Counsel in this high-profile securities class action, achieved a $27 million settlement for defrauded investors in 2019. Plaintiffs alleged that defendants concealed information and misled investors regarding its management of its "LX" dark pool, a private trading platform where the size and price of the orders are not revealed to other participants. On November 6, 2017, the Second Circuit affirmed former District Court Judge Shira S. Scheindlin's February 2, 2016, Opinion and Order granting plaintiffs' motion for class certification in the case.

The Court of Appeals in *Barclays* held that direct evidence of price impact is not always necessary to demonstrate market efficiency, as required to invoke the *Basic* presumption of reliance, and was not required here. Significantly, when handing down its decision, the Second Circuit cited its own *Petrobras* decision, stating, "We have repeatedly—and recently—declined to adopt a particular test for market efficiency." *Waggoner v. Barclays PLC,* 875 F.3d 79, 94 (2d Cir. 2017).

The court held that defendants seeking to rebut the *Basic* presumption of reliance on an efficient market must do so by a preponderance of the evidence. The court further held that it would be inconsistent with *Halliburton II* to "allow [ ] defendants to rebut the *Basic* presumption by simply producing *some* evidence of market inefficiency, but not demonstrating its inefficiency to the district court." *Id.* at 100. The court rejected defendants' contention that Federal Rule of Evidence 301 applies and made clear that the *Basic* presumption is a judicially-created doctrine and thus the burden of persuasion properly shifts to defendants. The court thus confirmed that plaintiffs have no burden to show price impact at the class certification stage—a significant victory for investors.

***In re Yahoo! Inc. Sec. Litig.*, No. 17-cv-00373 (N.D. Cal.)**

On September 10, 2018, Pomerantz, as Co-Lead Counsel, achieved final approval of a historic $80 million settlement for the Class in this ground-breaking litigation. The complaint, filed in January 2017, alleged

that the internet giant intentionally misled investors about its cybersecurity practices in the wake of massive data breaches in 2013 and 2014 that compromised the personal information of all 3 billion Yahoo customers. Plaintiffs allege that Yahoo violated federal securities laws by failing to disclose the breaches, which caused a subsequent stock price dive. This represents the first significant settlement to date of a securities fraud class action filed in response to a data breach.

As part of due diligence, Pomerantz located critical evidence showing that Yahoo's management had concurrent knowledge of at least one of the data breaches. Importantly, these records showed that Yahoo's Board of Directors, including Defendant CEO Marissa Mayer, had knowledge of and received repeated updates regarding the breach. In its public filings, Yahoo denied that the CEO knew about the breach, and the CEO's knowledge was a key issue in the case.

After receiving Plaintiffs' opposition to the motion to dismiss, but before the federal District Court ruled on the motion, the case settled for $80 million. This early and large settlement reflects the strength of the complaint's allegations.

***Kaplan v. S.A.C. Capital Advisors, L.P*, No. 12-cv-9350 (S.D.N.Y.)**

In May 2017, Pomerantz, as Co-Lead Counsel, achieved final approval of a $135 million recovery for the Class in this securities class action that stemmed from what has been called the most profitable insider trading scheme in U.S. history. After years of vigorous litigation, billionaire Steven A. Cohen's former hedge fund, S.A.C. Capital Advisors LP, agreed to settle the lawsuit by investors in the drug maker Elan Corp, who said they lost money because of insider trading by one of his portfolio managers.

***In re BP p.l.c. Securities Litigation*, MDL No. 2185 (S.D. Tex.)**

Beginning in 2012, Pomerantz pursued ground-breaking individual lawsuits for institutional investors to recover losses in BP p.l.c.'s London-traded common stock and NYSE-traded American Depository Shares (ADSs) arising from its 2010 Gulf of Mexico oil spill. Over nine years, Pomerantz briefed and argued every significant dispute on behalf of 125+ institutional plaintiffs, successfully opposed three motions to dismiss, won other contested motions, oversaw e-discovery of 1.75 million party and non-party documents, led the Individual Action Plaintiffs Steering Committee, served as sole Liaison with BP and the Court, and worked tirelessly with our clients' outside investment management firms to develop crucial case evidence.

A threshold challenge was how to litigate in U.S. court given the U.S. Supreme Court's decision in *Morrison v. National Australia Bank*, 130 S. Ct. 2869 (2010), which barred recovery for losses in foreign-traded securities under the U.S. federal securities laws. In 2013 and 2014, Pomerantz won significant victories in defeating BP's *forum non conveniens* arguments, which sought to force dismissal of the English common law claims from U.S. courts for refiling in English courts, first as regards U.S. institutions and, later, foreign institutions. Pomerantz also defeated BP's attempt to extend the U.S. federal Securities Litigation Uniform Standards Act of 1998 to reach, and dismiss, these foreign law claims in deference to non-existent remedies under the U.S. federal securities laws. These rulings paved the way for 125+ global institutional investors to pursue their claims and marked the first time, post-*Morrison*, that U.S. and foreign investors, pursuing foreign claims seeking recovery for losses in a foreign company's foreign-traded securities, did so in a U.S. court. In 2017, Pomerantz earned an important victory that expanded investor rights under English law, permitting certain BP investors to pursue a

"holder claim" theory seeking to recover losses in securities held, rather than purchased anew, in reliance on the alleged fraud - a theory barred under the U.S. federal securities laws since *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975). This win was significant, given the dearth of precedent from anywhere recognizing the viability of a "holder claim" under any non-U.S. law and holding that a given plaintiff alleged facts sufficiently evidencing reliance and documenting the resulting retention of an identifiable amount of shares on a date certain.

In Q1 2021, Pomerantz secured confidential, favorable monetary settlements from BP for our nearly three dozen clients, including public and private pension funds, money management firms, partnerships, and investment trusts from the U.S., Canada, the U.K., France, the Netherlands, and Australia.

***In re Comverse Technology, Inc. Sec. Litig.*, No. 06-CV-1825 (E.D.N.Y.)**

In June 2010, Judge Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York granted final approval of a $225 million settlement proposed by Pomerantz and Lead Plaintiff the Menora Group, with Comverse Technology and certain of Comverse's former officers and directors, after four years of highly contested litigation. The *Comverse* settlement is one of the largest securities class action settlements reached since the passage of the Private Securities Litigation Reform Act ("PSLRA").[1] It is the second-largest recovery in a securities litigation involving the backdating of options, as well as one of the largest recoveries – $60 million – from an individual officer-defendant, Comverse's founder and former CEO, Kobi Alexander.

Other significant settlements

Even before the enactment of the PSLRA, Pomerantz represented state agencies in securities class actions, including the Treasurer of the Commonwealth of Pennsylvania (recovered $100 million) against a major investment bank. *In re Salomon Brothers Treasury Litig.*, No. 91-cv-5471 (S.D.N.Y.).

Pomerantz recovered $50 million for the Treasurer of the State of New Jersey and several New Jersey pension funds in an individual action. This was a substantially higher recovery than what our clients would have obtained had they remained in a related federal class action. *Treasurer of State of New Jersey v. AOL Time Warner, Inc.* (N.J. Super. Ct. Law Div., Mercer Cty.).

Pomerantz has litigated numerous cases for the Louisiana School Employees' Retirement System. For example, as Lead Counsel, Pomerantz recovered $74.75 million in a securities fraud class action against Citigroup, its CEO Sanford Weill, and its now infamous telecommunications analyst Jack Grubman. *In re Salomon Analyst AT&T Litig.*, No. 02-cv-6801 (S.D.N.Y.) Also, the Firm played a major role in a complex antitrust and securities class action which settled for over $1 billion. *In re NASDAQ Market-Makers Antitrust Litig.*, MDL No. 1023 (S.D.N.Y.). Pomerantz was a member of the Executive Committee in *In re Transkaryotic Therapies, Inc. Securities Litigation*, C.A. No. 03-10165 (D. Mass.), helping to win a $50 million settlement for the class.

In 2008, together with Co-Counsel, Pomerantz identified a substantial opportunity for recovery of losses in Countrywide mortgage-backed securities ("MBS") for three large New Mexico funds (New Mexico State Investment Council, New Mexico Public Employees' Retirement Association, and New Mexico

[1] Institutional Shareholder Services, *SCAS Top 100 Settlements Quarterly Report* (Sept. 30, 2010).

Educational Retirement Board), which had been overlooked by all of the firms then in their securities litigation pool. We then filed the first non-class lawsuit by a public institution with respect to Countrywide MBS. *See N.M. State Inv. Council v. Countrywide Fin. Corp.,* No. D-0101-CV-2008-02289 (N.M. 1st Dist. Ct.). In Fall 2010, we negotiated for our clients an extremely favorable but confidential settlement.

Over its long history, Pomerantz has achieved significant settlements in numerous cases, a sampling of which is listed below:

- *In re Petrobras Sec. Litig.*, No. 14-cv-9662 (S.D.N.Y. 2018)
  $3 billion settlement of securities class action in which Pomerantz was Lead Counsel.
- *Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y)
  $110 million settlement of securities class action in which Pomerantz was Lead Counsel
- *In re Yahoo! Inc. Sec. Litig.,* No. 17-cv-00373 (N.D. Cal. 2018)
  $80 million settlement of securities class action in which Pomerantz was Co-Lead Counsel
- *In re Libor Based Financial Instruments Antitrust Litig.,* 1:11-md-2262
  $31 million partial settlement with three defendants in this multi-district litigation in which Pomerantz represents the Berkshire Bank and the Government Development Bank for Puerto Rico
- *Kaplan v. S.A.C. Capital Advisors, L.P.*, No. 12-cv-9350 (S.D.N.Y. 2017)
  $135 million settlement of class action in which Pomerantz was Co-Lead Counsel.
- *In re Groupon, Inc. Sec. Litig.*, No. 12-cv-02450 (N.D. Ill. 2015)
  $45 million settlement of class action in which Pomerantz was sole Lead Counsel.
- *In re Elan Corp. Sec. Litig.*, No. 05-cv-2860 (S.D.N.Y. 2005)
  $75 million settlement in class action arising out of alleged accounting manipulations.
- *In re Safety-Kleen Corp. Stockholders Litig.*, No. 00-cv-736-17 (D.S.C. 2004)
  $54.5 million in total settlements in class action alleging accounting manipulations by corporate officials and auditors; last settlement reached on eve of trial.
- *Duckworth v. Country Life Ins. Co.*, No. 1998-CH-01046 (Ill. Cir. Ct., Cook Cty. 2000)
  $45 million recovery.
- *Snyder v. Nationwide Ins. Co.*, No. 97/0633 (N.Y. Sup. Ct. Onondaga Cty. 1998)
  Settlement valued at $100 million in derivative case arising from injuries to consumers purchasing life insurance policies.
- *In re National Health Lab., Inc. Sec. Litig.*, No. CV 92-1949 (S.D. Cal. 1995)
  $64 million recovery.
- *In re First Executive Corp. Sec. Litig.*, No. 89-cv-07135 (C.D. Cal. 1994)
  $102 million recovery for the class, exposing a massive securities fraud arising out of the Michael Milken debacle.
- *In re Boardwalk Marketplace Sec. Litig.*, MDL No. 712 (D. Conn. 1994)
  Over $66 million benefit in securities fraud action.
- *In re Telerate, Inc. S'holders Litig.*, C.A. No. 1115 (Del. Ch. 1989)
  $95 million benefit in case alleging violation of fiduciary duty under state law.

Pomerantz has also obtained stellar results for private institutions and Taft-Hartley funds. Below are a few examples:

- *In re Charter Commc'ns, Inc. Sec. Litig*., No. 02-cv-1186 (E.D. Mo. 2005) (sole Lead Counsel for Lead Plaintiff StoneRidge Investment Partners LLC); $146.25 million class settlement, where Charter also agreed to enact substantive improvements in corporate governance.
- *In re Am. Italian Pasta Sec. Litig.*, No. 05-cv-865 (W.D. Mo. 2008) (sole Lead Counsel for Lead Plaintiff Ironworkers Locals 40, 361 and 417; $28.5 million aggregate settlements).
- *Richardson v. Gray*, No. 116880/1995 (N.Y. Sup. Ct. N.Y. Cty. 1999); and *In re Summit Metals*, No. 98-2870 (Bankr. D. Del. 2004) (two derivative actions where the Firm represented C.C. Partners Ltd. and obtained judgment of contempt against controlling shareholder for having made "extraordinary" payments to himself in violation of a preliminary injunction; persuaded the court to jail him for two years upon his refusal to pay; and, in a related action, won a $43 million judgment after trial and obtained turnover of stock of two companies).

Shaping the Law

Not only has Pomerantz established a long track record of obtaining substantial monetary recoveries for our clients; whenever appropriate, we also pursue corporate governance reforms on their behalf. In *In re Chesapeake Shareholders Derivative Litig*ation, No. CJ-2009-3983 (Okla. Dist. Ct., Okla. Cty. 2011), for example, the Firm served as Co-Lead Counsel, representing a public pension client in a derivative case arising from an excessive compensation package granted to Chesapeake's CEO and founder. This was a derivative action, not a class action. Yet it is illustrative of the results that can be obtained by an institutional investor in the corporate governance arena. There we obtained a settlement which called for the repayment of $12.1 million and other consideration by the CEO. The Wall Street Journal (Nov. 3, 2011) characterized the settlement as "a rare concession for the 52-year-old executive, who has run the company largely by his own rules since he co-founded it in 1989." The settlement also included comprehensive corporate governance reforms.

The Firm has won many landmark decisions that have enhanced shareholders' rights and improved corporate governance. These include decisions that established that:

- defendants seeking to rebut the *Basic* presumption of reliance on an efficient market must do so by a preponderance of the evidence. *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017) (*Strougo v. Barclays PLC,* in the court below);
- plaintiffs have no burden to show price impact at the class certification stage. *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017) (*Strougo v. Barclays PLC,* in the court below);
- the ascertainability doctrine requires only that a class be defined using objective criteria that establish a membership with definite boundaries. *Universities Superannuation Scheme Ltd. v. Petróleo Brasileiro S.A. Petrobras*, 862 F.3d 250 (2d Cir. 2017);
- companies cannot adopt bylaws to regulate the rights of former stockholders. *Strougo v. Hollander*, C.A. No. 9770-CB (Del. Ch. 2015);
- a temporary rise in share price above its purchase price in the aftermath of a corrective disclosure does not eviscerate an investor's claim for damages. *Acticon AG v. China Ne. Petroleum Holdings Ltd.,* 692 F.3d 34 (2d Cir. 2012);
- an MBS holder may bring claims if the MBS price declines even if all payments of principal and interest have been made. Transcript of Proceedings, *N.M. State Inv. Council v. Countrywide Fin. Corp.,* No. D-0101-CV-2008-02289 (N.M. 1st Dist. Ct. Mar. 25, 2009);

- when a court selects a Lead Plaintiff under the Private Securities Litigation Reform Act ("PSLRA"), the standard for calculating the "largest financial interest" must take into account sales as well as purchases. *In re Comverse Tech., Inc. Sec. Litig*., No. 06-cv-1825, 2007 U.S. Dist. LEXIS 14878 (E.D.N.Y. Mar. 2, 2007);
- a managing underwriter can owe fiduciary duties of loyalty and care to an issuer in connection with a public offering of the issuer stock, even in the absence of any contractual agreement. Professor John C. Coffee, a renowned Columbia University securities law professor, commenting on the ruling, stated: "It's going to change the practice of all underwriting." *EBC I, Inc. v. Goldman Sachs & Co*., 5 N.Y. 3d 11 (2005);
- purchasers of options have standing to sue under federal securities laws. *In re Green Tree Fin. Corp. Options Litig.*, No. 97-2679, 2002 U.S. Dist. LEXIS 13986 (D. Minn. July 29, 2002);
- shareholders have a right to a jury trial in derivative actions. *Ross v. Bernhard*, 396 U.S. 531 (1970);
- a company may have the obligation to disclose to shareholders its Board's consideration of important corporate transactions, such as the possibility of a spin-off, even before any final decision has been made. *Kronfeld v. Trans World Airlines, Inc*., 832 F.2d 726 (2d Cir. 1987);
- specific standards for assessing whether mutual fund advisors breach fiduciary duties by charging excessive fees. *Gartenberg v. Merrill Lynch Asset Mgmt., Inc*., 740 F.2d 190 (2d Cir. 1984);
- investment advisors to mutual funds are fiduciaries who cannot sell their trustee positions for a profit. *Rosenfeld v. Black*, 445 F.2d 1337 (2d Cir. 1971); and
- management directors of mutual funds have a duty to make full disclosure to outside directors "in every area where there was even a possible conflict of interest." *Moses v. Burgin*, 445 F.2d 369 (1st Cir. 1971).

Comments from the Courts

Throughout its history, courts time and again have acknowledged the Firm's ability to vigorously pursue and successfully litigate actions on behalf of investors.

U.S. District Judge Noel L. Hillman, in approving the *In re Toronto-Dominion Bank Securities Litigation* settlement in October 2019, stated:

> I commend counsel on both sides for their hard work, their very comprehensive and thoughtful submissions during the motion practice aspect of this case. … It's clear to me that this was comprehensive, extensive, thoughtful, meaningful litigation leading up to the settlement. … This settlement appears to have been obtained through the hard work of the Pomerantz firm. … It was through their efforts and not piggybacking on any other work that resulted in this settlement.

In approving the settlement in *Strougo v. Barclays PLC* in June 2019, Judge Victor Marrero of the Southern District of New York wrote:

> Let me thank counsel on both sides for the extraordinary work both sides did in bringing this matter to a reasonable conclusion. As the parties have indicated, the matter was intensely litigated, but it was done in the most extraordinary fashion with cooperation, collaboration, and high levels of professionalism on both sides, so I thank you.

In approving the $3 billion settlement in *In re Petrobras Securities Litigation* in June 2018, Judge Jed S. Rakoff of the Southern District of New York wrote:

> [T]he Court finds that Class Counsel's performance was in many respects exceptional, with the result that, as noted, the class is poised to enjoy a substantially larger per share recovery [65%] than the recovery enjoyed by numerous large and sophisticated plaintiffs who separately settled their claims.

At the hearing for preliminary approval of the settlement in *In re Petrobras Securities Litigation* in February 2018, Judge Rakoff stated:

> [T]he lawyers in this case [are] some of the best lawyers in the United States, if not in the world.

Two years earlier, in certifying two Classes in *In re Petrobras Securities Litigation* in February 2016, Judge Rakoff wrote:

> [O]n the basis not only of USS's counsel's prior experience but also the Court's observation of its advocacy over the many months since it was appointed Lead Counsel, the Court concludes that Pomerantz, the proposed class counsel, is "qualified, experienced and able to conduct the litigation." ... [T]he Pomerantz firm has both the skill and resources to represent the Classes adequately.

In approving the settlement in *Thorpe v. Walter Investment Management Corp.*, No. 14-cv-20880, 2016 U.S. Dist. LEXIS 144133 (S.D. Fla. Oct. 14, 2016) Judge Ursula Ungaro wrote:

> Class Counsel has developed a reputation for zealous advocacy in securities class actions. ... The settlement amount of $24 million is an outstanding result.

At the May 2015 hearing wherein the court approved the settlement in *Courtney v. Avid Technology, Inc.*, No. 13-cv-10686 (D. Mass. May 12, 2015), following oral argument by Jeremy A. Lieberman, Judge William G. Young stated:

> This has been very well litigated. It is always a privilege. I don't just say that as a matter of form. And I thank you for the vigorous litigation that I've been permitted to be a part of. [Tr. at 8-9.]

At the January 2012 hearing wherein the court approved the settlement in *In re Chesapeake Energy Corp. Shareholder Derivative Litigation*, No. CJ-2009-3983 (Okla. Dist. Ct., Okla. Cty. Jan. 30, 2012), following oral argument by Marc I. Gross, Judge Daniel L. Owens stated:

> Counsel, it's a pleasure, and I mean this and rarely say it. I think I've said it two times in 25 years. It is an extreme pleasure to deal with counsel of such caliber.
> [Tr. at 48.])

In approving the $225 million settlement in *In re Comverse Technology, Inc. Securities Litigation*, No. 06-CV-1825 (E.D.N.Y.) in June 2010, Judge Nicholas G. Garaufis stated:

> As outlined above, the recovery in this case is one of the highest ever achieved in this type of securities action. ... The court also notes that, throughout this litigation, it has been impressed by Lead Counsel's acumen and diligence. The briefing has been thorough, clear, and convincing, and ... Lead Counsel has not taken short cuts or relaxed its efforts at any stage of the litigation.

In approving a $146.25 million settlement in *In re Charter Communications Securities Litigation*, No. 02-CV-1186, 2005 U.S. Dist. LEXIS 14772 (E.D. Mo. June 30, 2005), in which Pomerantz served as sole Lead Counsel, Judge Charles A. Shaw praised the Firm's efforts, citing "the vigor with which Lead Counsel ... investigated claims, briefed the motions to dismiss, and negotiated the settlement." He further stated:

> This Court believes Lead Plaintiff achieved an excellent result in a complex action, where the risk of obtaining a significantly smaller recovery, if any, was substantial.

In approving a $24 million settlement in *In re Force Protection, Inc.,* No. 08 CV 845 (D.S.C. 2011), Judge C. Weston Houk described the Firm as "attorneys of great ability and great reputation" and commended the Firm for having "done an excellent job."

In certifying a class in a securities fraud action against analysts in *DeMarco v. Robertson Stephens Inc.*, 228 F.R.D. 468 (S.D.N.Y. 2005), Judge Gerard D. Lynch stated that Pomerantz had "ably and zealously represented the interests of the class."

Numerous courts have made similar comments:

- Appointing Pomerantz Lead Counsel in *American Italian Pasta Co. Securities Litigation*, No 05-CV-0725 (W.D. Mo.), a class action that involved a massive fraud and restatements spanning several years, the District Court observed that the Firm "has significant experience (and has been extremely effective) litigating securities class actions, employs highly qualified attorneys, and possesses ample resources to effectively manage the class litigation and protect the class's interests."
- In approving the settlement in *In re Wiring Devices Antitrust Litigation*, MDL No. 331 (E.D.N.Y. Sept. 9, 1980), Chief Judge Jack B. Weinstein stated that "Counsel for the plaintiffs I think did an excellent job. ... They are outstanding and skillful. The litigation was and is extremely complex. They assumed a great deal of responsibility. They recovered a very large amount given the possibility of no recovery here which was in my opinion substantial."
- In *Snyder v. Nationwide Insurance Co.*, No. 97/0633, (N.Y. Supreme Court, Onondaga Cty.), a case where Pomerantz served as Co-Lead Counsel, Judge Tormey stated, "It was a pleasure to work with you. This is a good result. You've got some great attorneys working on it."
- In *Steinberg v. Nationwide Mutual Insurance Co.* (E.D.N.Y. 2004), Judge Spatt, granting class certification and appointing the Firm as class counsel, observed: "The Pomerantz firm has a strong reputation as class counsel and has demonstrated its competence to serve as class counsel in this motion for class certification." (224 F.R.D. 67, 766.)
- In *Mercury Savings & Loan*, No. 90-cv-00087 LHM (C.D. Cal. 1993), Judge McLaughlin commended the Firm for the "absolutely extraordinary job in this litigation."

- In *Boardwalk Marketplace Securities Litigation*, MDL No. 712 (D. Conn.), Judge Eginton described the Firm's services as "exemplary," praised it for its "usual fine job of lawyering ...[in] an extremely complex matter," and concluded that the case was "very well-handled and managed." (Tr. at 6, 5/20/92; Tr. at 10, 10/10/92.)
- In *Nodar v. Weksel*, No. 84 Civ. 3870 (S.D.N.Y.), Judge Broderick acknowledged "that the services rendered [by Pomerantz] were excellent services from the point of view of the class represented, [and] the result was an excellent result." (Tr. at 21-22, 12/27/90.)
- In *Klein v. A.G. Becker Paribas, Inc.*, No. 83 Civ. 6456 (S.D.N.Y.), Judge Goettel complimented the Firm for providing "excellent ...absolutely top-drawer representation for the class, particularly in light of the vigorous defense offered by the defense firm." (Tr. at 22, 3/6/87.)
- In *Digital Securities Litigation*, No. 83-3255 (D. Mass.), Judge Young lauded the Firm for its "[v]ery fine lawyering." (Tr. at 13, 9/18/86.)
- In *Shelter Realty Corp. v. Allied Maintenance Corp*., 75 F.R.D. 34, 40 (S.D.N.Y. 1977), Judge Frankel, referring to Pomerantz, said: "Their experience in handling class actions of this nature is known to the court and certainly puts to rest any doubt that the absent class members will receive the quality of representation to which they are entitled."
- In *Rauch v. Bilzerian*, No. 88 Civ. 15624 (N.J. Sup. Ct.), the court, after trial, referred to Pomerantz partners as "exceptionally competent counsel," and as having provided "top drawer, topflight [representation], certainly as good as I've seen in my stay on this court."

Corporate Governance Litigation

Pomerantz is committed to ensuring that companies adhere to responsible business practices and practice good corporate citizenship. We strongly support policies and procedures designed to give shareholders the ability to oversee the activities of a corporation. We vigorously pursue corporate governance reform, particularly in the area of excess compensation, where it can address the growing disparity between the salaries of executives and the workers of major corporations. We have successfully utilized litigation to bring about corporate governance reform in numerous cases, and always consider whether such reforms are appropriate before any case is settled.

Pomerantz's Corporate Governance Practice Group, led by Partner Gustavo F. Bruckner, enforces shareholder rights and prosecutes actions challenging corporate transactions that arise from an unfair process or result in an unfair price for shareholders.

In September 2017, New Jersey Superior Court Judge Julio Mendez, of Cape May County Chancery Division, approved Pomerantz's settlement in a litigation against Ocean Shore Holding Co. The settlement provided non-pecuniary benefits for a non-opt out class. In so doing, Judge Mendez became the first New Jersey state court judge to formally adopt the Third Circuit's nine-part *Girsh* factors, *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). There has never before been a published New Jersey state court opinion setting out the factors a court must consider in evaluating whether a class action settlement should be determined to be fair and adequate. After conducting an analysis of each of the nine *Girsh* factors and holding that "class actions settlements involving non-monetary benefits to the class are subject to more exacting scrutiny," Judge Mendez held that the proposed settlement provided a material benefit to the shareholders.

In February 2018, the Maryland Circuit Court, Montgomery County, approved a $17.5 million settlement that plaintiffs achieved as additional consideration on behalf of a class of shareholders of American Capital, Ltd. *In re Am. Capital, Ltd. S'holder Litig.*, C.A. No. 422598-V (2018). The settlement resolved Plaintiffs' claims regarding a forced sale of American Capital.

Pomerantz filed an action challenging the sale of American Capital, a Delaware corporation with its headquarters in Maryland. Among other things, American Capital's board of directors (the "Board") agreed to sell the company at a price below what two other bidders were willing to offer. Worse, the merger price was even below the amount that shareholders would have received in the company's planned phased liquidation, which the company was considering under pressure from Elliott Management, an activist hedge fund and holder of approximate 15% of American Capital stock. Elliott was not originally named as a defendant, but after initial discovery showed the extent of its involvement in the Board's breaches of fiduciary duty, Elliott was added as a defendant in an amended complaint under the theory that Elliott exercised actual control over the Board's decision-making. Elliott moved to dismiss on jurisdictional grounds and additionally challenged its alleged status as a controller of American Capital. In June 2017, minutes before the hearing on defendants' motion to dismiss, a partial settlement was entered into with the members of the Board for $11.5 million. The motion to dismiss hearing proceeded despite the partial settlement, but only as to Elliott. In July 2017, the court denied the motion to dismiss, finding that Elliott, "by virtue solely of its own conduct, … has easily satisfied the transacting business prong of the Maryland long arm statute." The court also found that the "amended complaint in this case sufficiently pleads that Elliott was a controller with respect to" the sale, thus implicating a higher standard of review. Elliott subsequently settled the remaining claims for an additional $6 million. Pomerantz served as Co-Lead Counsel.

In May 2017, the Circuit Court of the State of Oregon approved the settlement achieved by Pomerantz and co-counsel of a derivative action brought by two shareholders of Lithia Motors, Inc. The lawsuit alleged breach of fiduciary duties by the board of directors in approving, without any meaningful review, the Transition Agreement between Lithia Motors and Sidney DeBoer, its founder, controlling shareholder, CEO, and Chairman, who was stepping down as CEO. DeBoer and his son, the current CEO, Bryan DeBoer, negotiated virtually all the material terms of the Agreement, by which the company agreed to pay the senior DeBoer $1,060,000 and a $42,000 car allowance annually for the rest of his life, plus other benefits, in addition to the $200,000 per year that he would receive for continuing to serve as Chairman.

The *Lithia* settlement extracted corporate governance therapeutics that provide substantial benefits to Lithia and its shareholders and redress the wrongdoing alleged by plaintiffs. The board will now be required to have at least five independent directors -- as defined under the New York Stock Exchange rules -- by 2020; a number of other new protocols will be in place to prevent self-dealing by board members. Further, the settlement calls for the Transition Agreement to be reviewed by an independent auditor who will determine whether the annual payments of $1,060,000 for life to Sidney DeBoer are reasonable. Lithia has agreed to accept whatever decision the auditor makes.

In January 2017, the Group received approval of the Delaware Chancery Court for a $5.6 million settlement it achieved on behalf of a class of shareholders of Physicians Formula Holdings Inc. over an ignored merger offer in 2012. *In re Physicians Formula Holdings Inc.*, C.A. No. 7794-VCL (Del. Ch.).

The Group obtained a landmark ruling in *Strougo v. Hollander*, C.A. No. 9770-CB (Del. Ch.), that fee-shifting bylaws adopted after a challenged transaction do not apply to shareholders affected by the transaction. They were also able to obtain a *25% price increase* for members of the class cashed out in the going private transaction.

In *Miller v. Bolduc*, No. SUCV 2015-00807 (Mass. Super. Ct.), the Group caused Implant Sciences to hold its first shareholder annual meeting in five years and put an important compensation grant up for a shareholder vote.

In *Smollar v. Potarazu*, C.A. No. 10287-VCN (Del. Ch.), the Group pursued a derivative action to bring about the appointment of two independent members to the board of directors, retention of an independent auditor, dissemination of financials to shareholders and the holding of first ever in-person annual meeting, among other corporate therapeutics.

In *Hallandale Beach Police Officers & Firefighters' Personnel Retirement Fund vs. Lululemon athletica, Inc.,* C.A. No. 8522-VCP (Del. Ch.), in an issue of first impression in Delaware, the Chancery Court ordered the production of the chairman's 10b5-1 stock trading plan. The court found that a stock trading plan established by the company's chairman, pursuant to which a broker, rather than the chairman himself, would liquidate a portion of the chairman's stock in the company, did not preclude potential liability for insider trading.

In *Strougo v. North State Bancorp*, No. 15 CVS 14696 (N.C. Super. Ct.), the Group caused the Merger Agreement to be amended to provide a "majority of the minority" provision for the holders of North State Bancorp's common stock in connection with the shareholder vote on the merger. As a result of the Action, common shareholders could stop the merger if they did not wish it to go forward.

Pomerantz's commitment to advancing sound corporate governance principles is further demonstrated by the more than 26 years that we have co-sponsored the Abraham L. Pomerantz Lecture Series with Brooklyn Law School. These lectures focus on critical and emerging issues concerning shareholder rights and corporate governance and bring together top academics and litigators.

Our bi-monthly newsletter, *The Pomerantz Monitor*, provides institutional investors updates and insights on current issues in corporate governance.

Strategic Consumer Litigation

Pomerantz's Strategic Consumer Litigation practice group, led by Partner Jordan Lurie, represents consumers in actions that seek to recover monetary and injunctive relief on behalf of class members while also advocating for important consumer rights. The attorneys in this group have successfully prosecuted claims involving California's Unfair Competition Law, California's Consumers Legal Remedies Act, the Song Beverly Consumer Warranty Act and the Song Beverly Credit Card Act. They have resolved data breach privacy cases and cases involving unlawful recording, illegal background checks, unfair business practices, misleading advertising, and other consumer finance related actions. All of these actions also have resulted in significant changes to defendants' business practices.

Pomerantz currently represents consumers in a nationwide class action against Facebook for mistargeting ads. Plaintiff alleges that Facebook programmatically displays a material percentage of ads to users outside the defined target market and displays ads to "serial Likers" outside the defined target audience in order to boost Facebook's revenue. *IntegrityMessageBoards.com v. Facebook, Inc. (N.D. Cal.) Case No. 4:18 -cv-05286 PJH*.

Pomerantz has pioneered litigation to establish claims for public injunctive relief under California's unfair business practices statute. For example, Pomerantz has filed cases seeking to prevent major auto manufacturers from unauthorized access to, and use of, drivers' vehicle data without compensation, and seeking to require the auto companies to share diagnostic data extracted from drivers' vehicles. The Strategic Consumer Litigation practice group also is prosecuting class cases against auto manufacturers for failing to properly identify high-priced parts that must be covered in California under extended emissions warranties.

Other consumer matters handled by Pomerantz's Strategic Consumer Litigation practice group include actions involving cryptocurrency, medical billing, price fixing, and false advertising of various consumer products and services.

Antitrust Litigation

Pomerantz has earned a reputation for prosecuting complex antitrust and consumer class actions with vigor, innovation, and success. Pomerantz's Antitrust and Consumer Group has recovered billions of dollars for the Firm's business and individual clients and the classes that they represent. Time and again, Pomerantz has protected our free-market system from anticompetitive conduct such as price fixing, monopolization, exclusive territorial division, pernicious pharmaceutical conduct, and false advertising. Pomerantz's advocacy has spanned across diverse product markets, exhibiting the Antitrust and Consumer Group's versatility to prosecute class actions on any terrain.

Pomerantz has served and is currently serving in leadership or Co-Leadership roles in several high-profile multi-district litigation class actions. In December 2018, the Firm achieved a $31 billion partial settlement with three defendants on behalf of a class of U.S. lending institutions that originated, purchased or held loans paying interest rates tied to the U.S. Dollar London Interbank Offered Rate (USD LIBOR). It is alleged that the class suffered damages as a result of collusive manipulation by the LIBOR contributor panel banks that artificially suppressed the USD LIBOR rate during the class period, causing the class members to receive lower interest payments than they would have otherwise received. *In re Libor Based Financial Instruments Antitrust Litig.,* 1:11-md-2262.

Pomerantz represented baseball and hockey fans in a game-changing antitrust class action against Major League Baseball and the National Hockey League, challenging the exclusive territorial division of live television broadcasts, internet streaming, and the resulting geographic blackouts. *See Laumann v. NHL* and *Garber v. MLB* (S.D.N.Y. 2012).

Pomerantz has spearheaded the effort to challenge harmful anticompetitive conduct by pharmaceutical companies—including Pay-for-Delay Agreements—that artificially inflates the price of prescription drugs by keeping generic versions off the market.

Even prior to the 2013 precedential U.S. Supreme Court decision in *Actavis*, Pomerantz litigated and successfully settled the following generic-drug-delay cases:

- *In re Flonase Antitrust Litig.* (E.D. Pa. 2008) ($35 million);
- *In re Toprol XL Antitrust Litig.* (D. Del. 2006) ($11 million); and
- *In re Wellbutrin SR Antitrust Litig.* (E.D. Pa. 2004) ($21.5 million).

Other exemplary victories include Pomerantz's prominent role in *In re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y.), which resulted in a settlement in excess of $1 billion for class members, one of the largest antitrust settlements in history. Pomerantz also played prominent roles in *In re Sorbates Direct Purchaser Antitrust Litigation* (N.D. Cal.), which resulted in over an $82 million recovery, and in *In re Methionine Antitrust Litigation* (N.D. Cal.), which resulted in a $107 million recovery. These cases illustrate the resources, expertise, and commitment that Pomerantz's Antitrust Group devotes to prosecuting some of the most egregious anticompetitive conduct.

A Global Advocate for Asset Managers and Public and Taft-Hartley Pension Funds

Pomerantz represents some of the largest pension funds, asset managers, and institutional investors around the globe, monitoring assets of $8 trillion, and growing. Utilizing cutting-edge legal strategies and the latest proprietary techniques, Pomerantz protects, expands, and vindicates shareholder rights through our securities litigation services and portfolio monitoring program.

Pomerantz partners routinely advise foreign and domestic institutional investors on how best to evaluate losses to their investment portfolios attributable to financial misconduct and how best to maximize their potential recoveries worldwide. In particular, Pomerantz Partners, Jeremy Lieberman, Jennifer Pafiti, and Marc Gross regularly travel throughout the U.S. and across the globe to meet with clients on these issues and are frequent speakers at investor conferences and educational forums in North America, Europe, and the Middle East.

Pomerantz was honored by European Pensions with its 2020 Thought Leadership award in recognition of significant contributions the Firm has made in the European pension environment.

Institutional Investor Services

Pomerantz offers a variety of services to institutional investors. Through the Firm's proprietary system, PomTrack®, Pomerantz monitors client portfolios to identify and evaluate potential and pending securities fraud, ERISA and derivative claims, and class action settlements. Monthly customized PomTrack® reports are included with the service. PomTrack® currently monitors assets of over $8 trillion for some of the most influential institutional investors worldwide.

When a potential securities claim impacting a client is identified, Pomerantz offers to analyze the case's merits and provide a written analysis and recommendation. If litigation is warranted, a team of Pomerantz attorneys will provide efficient and effective legal representation. The experience and

expertise of our attorneys – which have consistently been acknowledged by the courts – allow Pomerantz to vigorously pursue the claims of investors, taking complex cases to trial when warranted.

Pomerantz is committed to ensuring that companies adhere to responsible business practices and practice good corporate citizenship. The Firm strongly support policies and procedures designed to give shareholders the ability to oversee the activities of a corporation. Pomerantz has successfully utilized litigation to bring about corporate governance reform, and always considers whether such reforms are appropriate before any case is settled.

Pomerantz provides clients with insightful and timely commentary on matters essential to effective fund management in our bi-monthly newsletter, *The Pomerantz Monitor* and regularly sponsors conferences and roundtable events around the globe with speakers who are experts in securities litigation and corporate governance matters.

Attorneys

Partners

Jeremy A. Lieberman

Jeremy A. Lieberman is Pomerantz's Managing Partner. He became associated with the Firm in August 2004 and was elevated to Partner in January 2010. The Legal 500, in honoring Jeremy as a Leading Lawyer and Pomerantz as a 2021 Tier 1 Plaintiffs Securities Law Firm, stated that "Jeremy Lieberman is super impressive – a formidable adversary for any defense firm." Among the client testimonials posted on The Legal 500's website: "Jeremy Lieberman led the case for us with remarkable and unrelenting energy and aggression. He made a number of excellent strategic decisions which boosted our recovery." Lawdragon named Jeremy among the 2021 Leading 500 Lawyers in the United States. Super Lawyers® named him among the Top 100 Lawyers in the New York Metro area in 2021. In 2020, Jeremy won a Distinguished Leader award from the *New York Law Journal*. He was honored as Benchmark Litigation's 2019 Plaintiff Attorney of the Year. In 2018, Jeremy was honored as a Titan of the Plaintiffs Bar by Law360 and as a Benchmark Litigation Star. The Pomerantz team that Jeremy leads was named a 2018 Securities Practice Group of the Year.

Jeremy led the securities class action litigation *In re Petrobras Securities Litigation,* which arose from a multi-billion-dollar kickback and bribery scheme involving Brazil's largest oil company, Petróleo Brasileiro S.A. – Petrobras, in which Pomerantz was sole Lead Counsel. The biggest instance of corruption in the history of Brazil ensnared not only Petrobras' former executives but also Brazilian politicians, including former president Lula da Silva and one-third of the Brazilian Congress. In January and February 2018, Jeremy achieved a historic $3 billion settlement for the Class. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

Jeremy also secured a significant victory for Petrobras investors at the Second Circuit Court of Appeals, when the court rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by the Third Circuit Courts of Appeals. The ruling will have a positive impact on plaintiffs in securities fraud litigation. Indeed, the *Petrobras* litigation was honored in 2019 as a National Impact Case by Benchmark Litigation.

Jeremy was Lead Counsel in *Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y), in which the Firm achieved a $110 million settlement for the class. Plaintiff alleged that Fiat Chrysler concealed from investors that it improperly outfitted its diesel vehicles with "defeat device" software designed to cheat NOx emissions regulations in the U.S. and Europe, and that regulators had accused Fiat Chrysler of violating the emissions regulations. The *Fiat Chrysler* recovery provided the class of investors with as much as 20% of recoverable damages—an excellent result when compared to historical statistics in class action settlements, where typical recoveries for cases of this size are between 1.6% and 3.3%.

In November 2019, Jeremy achieved a critical victory for investors in the securities fraud class action against Perrigo Co. plc when Judge Arleo of the United States District Court for the District of New Jersey certified classes of investors that purchased Perrigo securities on both the New York Stock Exchange and the Tel Aviv Stock Exchange. Pomerantz represents a number of institutional investors that purchased Perrigo securities on both exchanges after an offer by Mylan N.V. to tender Perrigo shares. This is the first time since *Morrison* that a U.S. court has independently analyzed the market of a security traded on a non-U.S. exchange and found that it met the standards of market efficiency necessary allow for class certification.

Jeremy heads the Firm's individual action against pharmaceutical giant Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. (together, "Teva"), and certain of Teva's current and former employees and officers, relating to alleged anticompetitive practices in Teva's sales of generic drugs. Teva is a dual-listed company, and the Firm represents several Israeli institutional investors who purchased Teva shares on the Tel Aviv Stock Exchange. In early 2021, Pomerantz achieved a major victory for global investors when the district court agreed to exercise supplemental jurisdiction over the Israeli law claims. *Clal Insurance Company Ltd. v. Teva Pharmaceutical Industries Ltd.*

In 2019, Jeremy achieved a $27 million settlement for the Class in *Strougo v. Barclays PLC*, a high-profile securities class action in which Pomerantz was Lead Counsel. Plaintiffs alleged that Barclays PLC misled institutional investors about the manipulation of the banking giant's so-called "dark pool" trading systems in order to provide a trading advantage to high-frequency traders over its institutional investor clients. This case turned on the duty of integrity owed by Barclays to its clients. In November 2017, Jeremy achieved precedent-setting victories for investors, when the Second Circuit Court of Appeals held that direct evidence of price impact is not always necessary to demonstrate market efficiency to invoke the presumption of reliance, and that defendants seeking to rebut the presumption of reliance must do so by a preponderance of the evidence rather than merely meeting a burden of production.

Jeremy led the Firm's securities class action litigation against Yahoo! Inc., in which Pomerantz, as Lead Counsel, achieved an $80 million settlement for the Class in 2018. The case involved the biggest data breaches in U.S. history, in which over 3 billion Yahoo accounts were compromised. This was the first significant settlement to date of a securities fraud class action filed in response to a data breach.

In 2018 Jeremy achieved a $3,300,000 settlement for the Class in the Firm's securities class action against Corinthian Colleges, one of the largest for-profit college systems in the country, for alleged misrepresentations about its job placement rates, compliance with applicable regulations, and enrollment statistics. Pomerantz prevailed in the motion to dismiss the proceedings, a particularly noteworthy victory because Chief Judge George King of the Central District of California had dismissed two prior lawsuits against Corinthian with similar allegations. *Erickson v. Corinthian Colleges, Inc.* (C.D. Cal.).

Jeremy led the Firm's litigation team that in 2018 secured a $31 million partial settlement with three defendants in *In re Libor Based Financial Instruments Antitrust Litigation*, a closely watched multi-district litigation, which concerns the London Interbank Offered Rate (LIBOR) rigging scandal.

In *In re China North East Petroleum Corp. Securities Litigation*, Jeremy achieved a significant victory for shareholders in the United States Court of Appeals for the Second Circuit, whereby the Appeals Court ruled that a temporary rise in share price above its purchase price in the aftermath of a corrective disclosure did not eviscerate an investor's claim for damages. The Second Circuit's decision was deemed "precedential" by the *New York Law Journal* and provides critical guidance for assessing damages in a § 10(b) action.

Jeremy had an integral role in *In re Comverse Technology, Inc. Securities Litigation*, in which he and his partners achieved a historic $225 million settlement on behalf of the Class, which was the second-largest options backdating settlement to date.

Jeremy regularly consults with Pomerantz's international institutional clients, including pension funds, regarding their rights under the U.S. securities laws. Jeremy is working with the Firm's international clients to craft a response to the Supreme Court's ruling in *Morrison v. National Australia Bank, Ltd*., which limited the ability of foreign investors to seek redress under the federal securities laws.

Jeremy is a frequent lecturer worldwide regarding current corporate governance and securities litigation issues.

Jeremy graduated from Fordham University School of Law in 2002. While in law school, he served as a staff member of the *Fordham Urban Law Journal*. Upon graduation, he began his career at a major New York law firm as a litigation associate, where he specialized in complex commercial litigation.

Jeremy is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York, the Southern District of Texas, the District of Colorado, the Eastern District of Michigan, the Eastern District of Wisconsin, and the Northern District of Illinois; the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Ninth, and Tenth Circuits; and the United States Supreme Court.

Gustavo F. Bruckner

Gustavo F. Bruckner heads Pomerantz's Corporate Governance practice group, which enforces shareholder rights and prosecutes litigation challenging corporate actions that harm shareholders. Under Gustavo's leadership, the Corporate Governance group has achieved numerous noteworthy litigation successes. He has been quoted on corporate governance issues by *The New York Times, The*

Wall Street Journal, *Bloomberg*, *Law360*, and *Reuters*, and was honored from 2016 through 2021 by Super Lawyers® as a "Top-Rated Securities Litigation Attorney," a recognition bestowed on no more than 5% of eligible attorneys in the New York Metro area. Gustavo regularly appears in state and federal courts across the nation. Gustavo presented at the prestigious Institute for Law and Economic Policy conference.

Gustavo is a fierce advocate of aggressive corporate clawback policies that allow companies to recover damages from officers and directors for reputational and financial harm. Most recently, in *McIntosh vs Keizer*, *et al*., Docket No. 2018-0386 (Del. Ch.), Pomerantz filed a derivative suit on behalf of Hertz Global Holdings, Inc. shareholders, seeking to compel the Hertz board of directors to claw back millions of dollars in unearned and undeserved payments that the Company made to former officers and directors who significantly damaged Hertz through years of wrongdoing and misconduct. Under pressure from plaintiff's ligation efforts, the Hertz board of directed elected to take unprecedented action and mooted plaintiff's claims, initiating litigation to recover tens of millions of dollars in incentive compensation and more than $200 million in damages from culpable former Hertz executives.

Pomerantz through initiation and prosecution of a shareholder derivative action, forced the Hertz board to seek clawback from former officers and directors of the company, unjustly enriched after causing the Company to file inaccurate and false financial statements leading to a $235 million restatement and $16 million fee to the SEC.

In September 2017, Gustavo's Corporate Governance team achieved a settlement in New Jersey Superior Court that provided non-pecuniary benefits for a non-opt out class. In approving the settlement, Judge Julio Mendez, of Cape May County Chancery Division, became the first New Jersey state court judge to formally adopt the Third Circuit's nine-part *Girsh* factors, *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). Never before has there been a published New Jersey state court opinion setting out the factors a court must consider in evaluating whether a class action settlement should be determined to be fair and adequate.

Gustavo successfully argued *Strougo v. Hollander*, C.A. No. 9770-CB (Del. Ch. 2015), obtaining a landmark ruling in Delaware that bylaws adopted after shareholders are cashed out do not apply to shareholders affected by the transaction. In the process, Gustavo and the Corporate Governance team beat back a fee-shifting bylaw and were able to obtain a 25% price increase for members of the class cashed out in the "going private" transaction. Shortly thereafter, the Delaware Legislature adopted legislation to ban fee-shifting bylaws.

In *Stein v. DeBoer* (Or. Cir. Ct. 2017), Gustavo and the Corporate Governance group achieved a settlement that provides significant corporate governance therapeutics on behalf of shareholders of Lithia Motors, Inc. The company's board had approved, without meaningful review, the Transition Agreement between the company and Sidney DeBoer, its founder, controlling shareholder, CEO, and Chairman, who was stepping down as CEO. DeBoer and his son, the current CEO, negotiated virtually all the material terms of the Agreement, by which the company agreed to pay the senior DeBoer $1,060,000 and a $42,000 car allowance annually for the rest of his life, plus other benefits, in addition to the $200,000 per year that he would receive for continuing to serve as Chairman.

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In *Strougo v. North State Bancorp*, No. 15 CVS 14696 (N.C. Super. Ct. 2015), Gustavo and the Corporate Governance team caused the North State Bancorp merger agreement to be amended to provide a "majority of the minority" provision for common shareholders in connection with the shareholder vote on the merger. As a result of the action, common shareholders had the ability to stop the merger if they did not wish it to go forward.

In *Hallandale Beach Police Officers and Firefighters' Personnel Retirement Fund vs. Lululemon athletica, Inc.*, C.A. No. 8522-VCP (Del. Ch. 2014), in an issue of first impression in Delaware, Gustavo successfully argued for the production of the company chairman's Rule 10b5-1 stock trading plan. The court found that a stock trading plan established by the company's chairman, pursuant to which a broker, rather than the chairman himself, would liquidate a portion of the chairman's stock in the company, did not preclude potential liability for insider trading.

Gustavo was Co-Lead Counsel in *In re Great Wolf Resorts, Inc. Shareholders Litigation*, C.A. No. 7328-VCN (Del. Ch. 2012), obtaining the elimination of stand-still provisions that allowed third parties to bid for Great Wolf Resorts, Inc., resulting in the emergence of a third-party bidder and approximately $94 million (57%) in additional merger consideration for Great Wolf shareholders.

Gustavo received his law degree in 1992 from the Benjamin N. Cardozo School of Law, where he served as an editor of the Moot Court Board and on the Student Council. Upon graduation, he received the award for outstanding student service.

After graduating law school, Gustavo served as Chief-of-Staff to a New York City legislator.

Gustavo is a Mentor and Coach to the NYU Stern School of Business, Berkley Center for Entrepreneurial Studies, New Venture Competition. He was a University Scholar at NYU where he obtained a B.S. in Marketing and International Business in 1988 and an MBA in Finance and International Business in 1989.

Gustavo is a Trustee and former Treasurer of the Beit Rabban Day School, and an arbitrator in the Civil Court of the City of New York.

Gustavo is admitted to practice in New York and New Jersey; the United States District Courts for the Eastern, Northern, and Southern Districts of New York and the District of New Jersey; the United States Courts of Appeals for the Second and Seventh Circuits; and the United States Supreme Court.

Emma Gilmore

Emma Gilmore is a Partner at Pomerantz and is regularly involved in high-profile class-action litigation. In 2021, Emma was awarded a spot on *National Law Journal*'s prestigious Elite Women of the Plaintiffs Bar list. In 2021 and 2020, she was named by Benchmark Litigation as one of the Top 250 Women in Litigation — an honor bestowed on only seven plaintiffs' lawyers in the U.S. those years. The *National Law Journal* and the *New York Law Journal* honored her as a "Plaintiffs' Lawyer Trailblazer". Emma was

honored by Law360 in 2018 as an MVP in Securities Litigation, part of an "elite slate of attorneys [who] have distinguished themselves from their peers by securing hard-earned successes in high-stakes litigation, complex global matters and record-breaking deals." Only up to six attorneys nationwide are selected each year as MVPs in Securities Litigation. Emma is the first woman plaintiff attorney to receive this outstanding award since it was initiated in 2011. Emma has been honored since 2018 as a Super Lawyer®. She has been recognized by Lawdragon as one of the top 500 Leading Plaintiff Financial Lawyers.

Emma is regularly invited to speak about recent trends and developments in securities litigation. She serves on the New York City Bar Association's Securities Litigation Committee. Emma regularly counsels clients around the world on how to maximize recoveries on their investments.

Emma played a leading role in the Firm's class action case in the Southern District of New York against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm was sole Lead Counsel. In a significant victory for investors, Pomerantz achieved a historic $3 billion settlement with Petrobras. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a class action involving a foreign issuer, the fifth-largest class action settlement ever achieved in the United States, and the largest settlement achieved by a foreign lead plaintiff. The biggest instance of corruption in the history of Brazil had ensnared not only Petrobras' former executives but also Brazilian politicians, including former president Lula da Silva and one-third of the Brazilian Congress. Emma traveled to Brazil to uncover evidence of fraud and drafted the complaint. She deposed and defended numerous fact and expert witnesses, including deposing the former CEO of Petrobras, the whistleblower, and the chief accountant. She drafted the appellate brief, playing an instrumental role in securing a significant victory for investors in this case at the Second Circuit Court of Appeals, when the Court rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by other circuit courts. She opposed defendants' petition for a writ of certiorari to the Supreme Court. Emma successfully obtained sanctions against a professional objector challenging the integrity of the settlement, both in the District Court and in the Court of Appeals for the Second Circuit.

Emma organized a group of twenty-seven of the foremost U.S. scholars in the field of evidence and spearheaded the effort to submit an amicus brief to the U.S. Supreme Court on their behalf in a critical issue for investors. One of the two pending issues before the High Court in *Goldman Sachs Group Inc. et al v. Arkansas Teachers Retirement System, et al.* (No. 20-222) squarely affected investors' ability to pursue claims collectively as a class: whether, in order to rebut the presumption of reliance originated by the Court in the landmark *Basic v. Levinson* decision, defendants bear the burden of persuasion, or whether they bear only the much lower burden of production. The scholars argued that defendants carry the higher burden of persuasion. In a 6-3 decision, the Supreme Court sided with Pomerantz and the scholars.

Emma leads the Firm's class action litigation against Deutsche Bank and its executives, arising from the Bank's improper anti-money-laundering and know-your-customer procedures, including the Bank's servicing and lending practices to disgraced financier and multiple sex offender Jeffrey Epstein. The District Court for the Southern District of New York sustained the majority of Plaintiffs' claims.

Emma is Lead Counsel in the Firm's class action litigation against Arconic, arising from the deadliest U.K. fire in more than a century.

Emma played a leading role in *Strougo v. Barclays PLC*, a high-profile securities class action that alleged Barclays PLC misled institutional investor clients about the extent of the banking giant's use of so-called "dark pool" trading systems. She drafted the complaint, defeated defendants' efforts to dismiss the action, and contributed to securing an important precedent-setting opinion from the Second Circuit. Emma organized a group of leading evidence experts who filed amicus briefs supporting plaintiffs' position in the Second Circuit.

Emma was Lead Counsel in the high-profile class action litigation against Yahoo! Inc., in which the Firm, as Lead Counsel, achieved an $80 million settlement for the Class. The case involved the biggest data breaches in U.S. history, in which over 3 billion Yahoo accounts were compromised.

Among other cases, Emma is part of the team prosecuting securities fraud claims against BP on behalf of many foreign and domestic public and private pension funds arising from the company's 2010 Deepwater Horizon oil spill. *In re BP p.l.c. Sec. Litig.*, No. 10-md-2185 (S.D. Tex.). She helped devise a cutting-edge strategy that established the right of individual foreign investors who purchased foreign-traded shares of a foreign corporation to pursue claims for securities fraud in a U.S. court, thereby overcoming obstacles created by the U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank Ltd*.

Emma secured a unanimous decision by a panel of the Ninth Circuit Court of Appeals, benefiting defrauded investors in *Costa Brava Partnership III LP v. ChinaCast Education Corp*. In an issue of first impression, the Ninth Circuit held that imputation of the CEO's scienter to the company was warranted vis-a-vis innocent third parties, despite the fact that the executive acted for his own benefit and to the company's detriment.

She has also devoted a significant amount of time to pro bono matters. She played a critical role in securing a unanimous ruling by the Arkansas Supreme Court striking down as unconstitutional a state law banning cohabiting individuals from adopting children or serving as foster parents. The ruling was a relief for the 1,600-plus children in the state of Arkansas who needed a permanent family. The litigation generated significant publicity, including coverage by the *Arkansas Times, the Wall Street Journal, and the New York Times.*

Before joining Pomerantz, Emma was a litigation associate with the firms of Skadden, Arps, Slate, Meagher and Flom, LLP, and Sullivan & Cromwell, LLP. She worked on the *WorldCom Securities Litigation,* which settled for $2 billion.

She also served as a law clerk to the Honorable Thomas C. Platt, former U.S. Chief Judge for the Eastern District of New York.

Emma graduated *cum laude* from Brooklyn Law School, where she served as a staff editor for the *Brooklyn Law Review*. She was the recipient of two CALI Excellence for the Future Awards, being the highest scoring student in the subjects of evidence and discovery. She graduated *summa cum laude* from Arizona State University, with a BA in French and a minor in Business.

She serves on the Firm's Anti-Harassment and Discrimination Committee.

Michael Grunfeld

Michael Grunfeld joined Pomerantz in July 2017 as Of Counsel and was elevated to Partner in 2019.

He has played a leading role in some of the Firm's significant class action litigation, including its case against Yahoo! Inc. arising out of the biggest data breaches in U.S. history, in which the Firm, as Lead Counsel, achieved an $80 million settlement on behalf of the Class. This settlement made history as the first substantial shareholder recovery in a securities fraud class action related to a cybersecurity breach. Michael also plays a leading role in many of the Firm's other ongoing class actions.

Michael is an honoree of Benchmark Litigation's 40 & Under Hot List 2020 and 2021, granted to a few of the "best and brightest law firm partners who stand out in their practices." He was named a 2019 Rising Star by Law360, a prestigious honor awarded to a select few top litigators under 40 years old "whose legal accomplishments transcend their age." In 2020 and 2021, Michael was recognized by Super Lawyers® as a Top-Rated Securities Litigation Attorney;" in 2018 and 2019 he was honored as a New York Metro Rising Star.

Michael leads Pomerantz's litigation on behalf of the Colorado Public Employees' Retirement System as an intervenor in *The Doris Behr 2012 Irrevocable Trust v. Johnson & Johnson.* At issue is an activist investor's attempt to have Johnson & Johnson ("J&J") shareholders vote on a proxy proposal instituting a corporate bylaw that would require all securities fraud claims against the company to be pursued through mandatory arbitration, and that would waive shareholder's rights to bring securities class actions. In June 2021, the district court handed down an important victory for shareholders when it granted J&J's and the Intervenor's Motion to Dismiss.

Michael is the co-author of a chapter on damages in securities class actions in the LexisNexis treatise, *Litigating Securities Class Actions*.

Michael served as a clerk for Judge Ronald Gilman of the Sixth Circuit Court of Appeals and as a foreign law clerk for Justice Asher Grunis of the Israeli Supreme Court. Before joining Pomerantz, he was a litigation associate at Shearman & Sterling LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Michael has extensive experience in securities, complex commercial, and white-collar matters in federal and state courts around the country. In particular, Michael has represented issuers, underwriters, and individuals in securities class actions dealing with a wide variety of industries. He has also represented financial institutions and individuals in cases related to RMBS, securities lending, foreign exchange practices, insider trading, and other financial matters.

Michael graduated from Columbia Law School in 2008, where he was a Harlan Fiske Stone Scholar and Submissions Editor of the Columbia Business Law Review. He graduated from Harvard University with an A.B. in Government, *magna cum laude*, in 2004.

Michael is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado; and the United States Courts of Appeal for the Second, Third, Fourth, and Sixth Circuits.

J. Alexander Hood II

J. Alexander Hood II joined Pomerantz in June 2015 and was elevated to Of Counsel to the Firm in 2019. He was elevated to Partner in 2022. Alex leads the Firm's case origination team, identifying and investigating potential violations of the federal securities laws. He has been named a Super Lawyers® Rising Star each year since 2019.

Alex played a key role in securing Pomerantz's appointment as Lead Counsel in actions against Yahoo! Inc., Fiat Chrysler Automobiles N.V., Wynn Resorts Limited, Mylan N.V., The Western Union Company, Perrigo Company plc, Blue Apron Holdings, Inc., AT&T Inc., Wells Fargo & Company, and Raytheon Technologies Corporation, among others.

Alex also oversees the firm's involvement on behalf of institutional investors in non-U.S. litigations, assisting Pomerantz clients with respect to evaluating and pursuing recovery in foreign jurisdictions, including matters in the Netherlands, Germany, the UK, Australia, Brazil, Denmark, and elsewhere.

Prior to joining Pomerantz, Alex practiced at nationally recognized law firms, where he was involved in commercial, financial services, corporate governance and securities matters.

Alex graduated from Boston University School of Law (J.D.) and from the University of Oregon School of Law (LL.M.). During law school, he served as a member of the Boston University Review of Banking & Financial Law and participated in the Thomas Tang Moot Court Competition. In addition, Alex clerked for the American Civil Liberties Union of Tennessee and, as a legal extern, worked on the Center for Biological Diversity's Clean Water Act suit against BP in connection with the Deepwater Horizon oil spill.

Alex is admitted to practice in New York; the United States District Courts for the Southern, Eastern, Western and Northern Districts of New York; the District of Colorado; the Eastern District of Michigan; the Eastern District of Wisconsin; the Northern District of Illinois; the Southern District of Texas; and the United States Courts of Appeals for the Second Circuit.

Jordan L. Lurie

Jordan L. Lurie joined Pomerantz as a partner in the Los Angeles office in December 2018. Jordan heads Pomerantz's Strategic Consumer Litigation practice. He was named a 2021 Southern California Super Lawyer®.

Jordan has litigated shareholder class and derivative actions, complex corporate securities and consumer litigation, and a wide range of fraud and misrepresentation cases brought under state and federal consumer protection statutes involving unfair competition, false advertising, and privacy rights. Among his notable representations, Jordan served as Lead Counsel in the prosecution and successful resolution of major nationwide class actions against Nissan, Ford, Volkswagen, BMW, Toyota, Chrysler and General Motors. He also successfully preserved a multi-million dollar nationwide automotive class action settlement by convincing the then Chief Judge of the Ninth Circuit and his wife, who were also class members and had filed objections to the settlement, to withdraw their objections and endorse the settlement.

Jordan has argued cases in the California Court of Appeals and in the Ninth Circuit that resulted in published opinions establishing class members' rights to intervene and clarifying the standing requirements for an objector to appeal. He also established a Ninth Circuit precedent for obtaining attorneys' fees in a catalyst fee action. Jordan has tried a federal securities fraud class action to verdict. He has been a featured speaker at California Mandatory Continuing Legal Education seminars and is a trained ombudsman and mediator.

Outside of his legal practice, Jordan is an active educator and community leader and has held executive positions in various organizations in the Los Angeles community. Jordan participated in the first Wexner Heritage Foundation leadership program in Los Angeles and the first national cohort of the Board Member Institute for Jewish Nonprofits at the Kellogg School of Management.

Prior to joining Pomerantz, Jordan was the Managing Partner of the Los Angeles office of Weiss & Lurie and Senior Litigator at Capstone Law APC.

Jordan graduated cum laude from Yale University in 1984 with a B.A in Political Science and received his law degree in 1987 from the University of Southern California Law Center, where he served as Notes Editor of the *University of Southern California Law Review*.

Jordan is a member of the State Bar of California and has been admitted to practice before the United States District Courts for the Northern, Southern, Central and Eastern Districts of California, the Eastern and Western Districts of Michigan, and the District of Colorado.

Jennifer Pafiti

Jennifer Pafiti became associated with the Firm in April 2014 and was elevated to Partner in December 2015. A dually qualified U.K. solicitor and U.S. attorney, she is the Firm's Head of Client Services and also takes an active role in complex securities litigation, representing clients in both class and non-class action securities litigation.

In 2021, Jennifer was selected as a "Women, Influence and Power in Law" honoree by Corporate Counsel, in the Collaborative Leadership – Law Firm category. Lawdragon named Jennifer among the 2021 Leading 500 Lawyers in the United States. In 2020 she was named a California Rising Star by Super Lawyers® and was recognized by Benchmark Litigation as a Future Star. Lawdragon has recognized Jennifer as a Leading Plaintiff Financial Attorney from 2019 through 2021. In 2019, she was also honored by Super Lawyers® as a Southern California Rising Star in Securities Litigation, named to Benchmark Litigation's *40 & Under Hot List* of the best young attorneys in the United States, and recognized by *Los Angeles Magazine* as one of Southern California's Top Young Lawyers. In 2018, Jennifer was recognized as a Lawyer of Distinction. She was honored by Super Lawyers® in 2017 as both a Rising Star and one of the Top Women Attorneys in Southern California. In 2016, the *Daily Journal* selected Jennifer for its "Top 40 Under 40" list of the best young attorneys in California.

Jennifer was an integral member of the Firm's litigation team for *In re Petrobras Securities Litigation,* a case relating to a multi-billion-dollar kickback and bribery scheme at Brazil's largest oil company, Petróleo Brasileiro S.A.- Petrobras, in which the Firm was sole Lead Counsel. She helped secure a significant victory for investors in this case at the Second Circuit Court of Appeals, when the court rejected the heightened ascertainability requirement for obtaining class certification that had been imposed by other Circuit courts such as the Third and Sixth Circuit Courts of Appeals. Working closely with Lead Plaintiff, Universities Superannuation Scheme Limited, she was also instrumental in achieving the historic settlement of $3 billion for Petrobras investors. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

Jennifer was involved, among other cases, in the securities class action against rare disease biopharmaceutical company, KaloBios, and certain of its officers, including CEO Martin Shkreli. In 2018, Pomerantz achieved a settlement of $3 million plus 300,000 shares for defrauded investors – an excellent recovery in light of the company's bankruptcy. *Isensee v. KaloBios*. Jennifer also helped achieve a $10 million recovery for the class in a securities litigation against the bankrupt Californian energy company, PG&E, which arose from allegedly false statements made by the company about its rolling power outages in the wake of the catastrophic wildfire incidents that occurred in California in 2015, 2017, and 2018. *Vataj v. Johnson, et al.*

Jennifer earned a Bachelor of Science degree in Psychology at Thames Valley University in England, prior to studying law. She earned her law degrees at Thames Valley University (G.D.L.) and the Inns of Court School of Law (L.P.C.) in the U.K.

Before studying law in England, Jennifer was a regulated financial advisor and senior mortgage underwriter at a major U.K. financial institution. She holds full CeFA and CeMAP qualifications. After qualifying as a solicitor, Jennifer specialized in private practice civil litigation, which included the representation of clients in high-profile cases in the Royal Courts of Justice. Prior to joining Pomerantz, Jennifer was an associate with Robbins Geller Rudman & Dowd LLP in their San Diego office.

Jennifer regularly travels throughout the U.S. and Europe to advise clients on how best to evaluate losses to their investment portfolios attributable to financial fraud or other misconduct, and how best to

maximize their potential recoveries. Jennifer is also a regular speaker at events on securities litigation and fiduciary duty.

Jennifer served on the Honorary Steering Committee of Equal Rights Advocates ("ERA"), which focuses on specific issues that women face in the legal profession. ERA is an organization that protects and expands economic and educational access and opportunities for women and girls.

Jennifer is a member of the National Association of Pension Fund Attorneys and represents the Firm as a member of the California Association of Public Retirement Systems, the State Association of County Retirement Systems, the National Association of State Treasurers, the National Conference of Employee Retirement Systems, the Texas Association of Public Employee Retirement Systems, and the U.K.'s National Association of Pension Funds.

Jennifer is admitted to practice in England and Wales; California; the United States District Courts for the Northern, Central and Southern Districts of California; and the United States Court of Appeals for the Ninth Circuit.

Joshua B. Silverman

Joshua B. Silverman is a partner in the Firm's Chicago office. He specializes in individual and class action securities litigation.

Josh was Lead Counsel in *In re Groupon, Inc. Securities Litigation,* achieving a $45 million settlement, one of the highest percentage recoveries in the Seventh Circuit. He was also Lead or Co-Lead Counsel in *In re MannKind Corp. Securities Litigation* ($23 million settlement); *In re AVEO Pharmaceuticals, Inc. Securities Litigation* ($18 million settlement, more than four times larger than the SEC's fair fund recovery in parallel litigation); *New Mexico State Investment Council v. Countrywide Financial Corp.* (very favorable confidential settlement); *New Mexico State Investment Council v. Cheslock Bakker & Associates* (summary judgment award in excess of $30 million); *Sudunagunta v. NantKwest, Inc.* ($12 million settlement); *Bruce v. Suntech Power Holdings Corp.* ($5 million settlement); *In re AgFeed, Inc. Securities Litigation* ($7 million settlement); and *In re Hemispherx BioPharma Securities Litigation* ($2.75 million settlement). Josh also played a key role in the Firm's representation of investors before the United States Supreme Court in *StoneRidge,* and prosecuted many of the Firm's other class cases, including *In re Sealed Air Corp. Securities Litigation* ($20 million settlement).

Josh, together with Managing Partner Jeremy Lieberman, achieved a critical victory for investors in the securities fraud class action against Perrigo Co. plc when Judge Arleo of the United States District Court for the District of New Jersey certified classes of investors that purchased Perrigo securities on both the New York Stock Exchange and the Tel Aviv Stock Exchange. Pomerantz represents a number of institutional investors that purchased Perrigo securities on both exchanges after an offer by Mylan N.V. to tender Perrigo shares. This is the first time since *Morrison* that a U.S. court has independently analyzed the market of a security traded on a non-U.S. exchange, and found that it met the standards of market efficiency necessary allow for class certification.

Several of Josh's cases have set important precedent. For example, *In re MannKind* established that investors may support complaints with expert information. *New Mexico v. Countrywide* recognized that investors may show Section 11 damages for asset-backed securities even if there has been no

interruption in payment or threat of default. More recently, *NantKwest* was the first Section 11 case in the nation to recognize statistical proof of traceability.

In addition to prosecuting cases, Josh regularly speaks at investor conferences and continuing legal education programs.

Before joining Pomerantz, Josh practiced at McGuireWoods LLP and its Chicago predecessor, Ross & Hardies, where he represented one of the largest independent futures commission merchants in commodities fraud and civil RICO cases. He also spent two years as a securities trader, and continues to actively trade stocks, futures, and options for his own account.

Josh is a 1993 graduate of the University of Michigan, where he received Phi Beta Kappa honors, and a 1996 graduate of the University of Michigan Law School.

Josh is admitted to practice in Illinois; the United States District Court for the Northern District of Illinois; the United States Courts of Appeals for the First, Second, Third, Seventh, Eighth and Ninth Circuits; and the United States Supreme Court.

Brenda Szydlo

Brenda Szydlo joined Pomerantz in January 2016 as Of Counsel and was elevated to Partner in 2022. She brings to the Firm extensive experience in complex civil litigation in federal and state court on behalf of plaintiffs and defendants, with a particular focus on securities and financial fraud litigation, litigation against pharmaceutical corporations, accountants' liability, and commercial litigation. She was honored as a Super Lawyers® "Top-Rated Securities Litigation Attorney" in 2020 and 2022.

Brenda played a leading role in the Firm's securities class action case in the Southern District of New York against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a precedent-setting legal ruling and a historic $3 billion settlement for the Class. This is not only the largest securities class action settlement in a decade but is the largest settlement ever in a securities class action involving a foreign issuer, the fifth-largest securities class action settlement ever achieved in the United States, the largest securities class action settlement achieved by a foreign Lead Plaintiff, and the largest securities class action settlement in history not involving a restatement of financial reports.

Brenda has represented investors in additional class and private actions that have resulted in significant recoveries, such as *In re Pfizer, Inc. Securities Litigation*, where the recovery was $486 million, and *In re Refco, Inc. Securities Litigation*, where the recovery was in excess of $407 million. She has also represented investors in opt-out securities actions, such as investors opting out of *In re Bank of America Corp. Securities, Derivative & ERISA Litigation* in order to pursue their own securities action.

Prior to joining Pomerantz, Brenda served as Senior Counsel in a prominent plaintiff advocacy firm, where she represented clients in securities and financial fraud litigation, and litigation against pharmaceutical corporations and accounting firms. Brenda also served as Counsel in the litigation department of one of the largest premier law firms in the world, where her practice focused on defending individuals and corporation in securities litigation and enforcement, accountants' liability actions, and commercial litigation.

Brenda is a graduate of St. John's University School of Law, where she was a St. Thomas More Scholar and member of the Law Review. She received a B.A. in economics from Binghamton University.

Brenda is admitted to practice in New York; United States District Courts for the Southern and Eastern Districts of New York; the U.S. Courts of Appeals for the Second and Ninth Circuits; and the United States Supreme Court.

Matthew L. Tuccillo

A Partner since 2013, Matthew L. Tuccillo joined Pomerantz in 2011. With 22+ years of experience, he is recognized as a top national securities litigator.

Matt was named a Super Lawyers® "Top-Rated Securities Litigation Attorney" (2016-present), Legal 500 recommended securities litigator (2021, 2016), Benchmark Litigation Star (2021), American Lawyer Northeast Trailblazer (2021), Lawdragon Leading Plaintiff Financial Lawyer (2019-2020), Lawyer Monthly's 2018 U.S. Federal Tort Lawyer of the Year (2018), and Martindale-Hubbell AV® Preeminent™ peer-rated attorney (2014-present). His advocacy has been covered by Bloomberg, Law360, the Houston Chronicle, the Hartford Business Journal, and other outlets.

Matt regularly serves as Pomerantz's lead litigator on securities fraud lawsuits pending nationwide, including these representative matters:

- In *Edwards v. McDermott Int'l, Inc.,* No. 4:18-cv-4330-AB (S.D. Tex.), Matt successfully opposed a motion to dismiss class action claims alleging a multi-year, several-prong fraud by a leading oil and gas technology, engineering, and construction company that completed a risky merger, belatedly reported massive write-downs of distressed projects, and declared bankruptcy. The lawsuit is proceeding through discovery.

- In *Odonate Therapeutics, Inc., et al.*, No. 3:20-01828-H-LL (S.D. Cal.), Matt successfully opposed a motion to dismiss in a securities lawsuit arising from a company's failure to complete clinical trials and gain FDA approval of a drug candidate. Notably, the court held that defendants' scienter was sufficiently alleged, even though they bought, rather than sold, company stock during the period of alleged fraud. After a mediation, the case settled for $12.75 million, and the settlement was granted preliminary approval by the court in early 2022.

- In *Chun v. Fluor Corp., et al.*, No. 3:18-cv-01338-S (N.D. Tex.), working with co-lead counsel, Matt succeeded in partially opposing the motion to dismiss a class action lawsuit alleging a company's underbidding and misrepresenting the status of large, fixed-price projects. After a lengthy mediation process, a tentative settlement has been reached, for which court approval will be sought in early 2022.

- In *Crutchfield v. Match Group, et al.*, No. 3:19-cv-2356 (N.D. Tex.), Matt persuaded the court, after an initial dismissal, to uphold a second amended complaint alleging a multi-year, multi-

prong fraud by the largest online dating company, based on misstatements and nondisclosures as to underlying bad actor user accounts, marketing based thereon, and the impacts to the company's GAAP-compliant reported results. The lawsuit is proceeding through discovery.

- In *In re BP p.l.c. Secs. Litig.*, No. 4:10-md-2185 (S.D. Tex.), where the court praised the "uniformly excellent" "quality of lawyering," Matt spearheaded lawsuits over BP's Gulf of Mexico oil spill by 125+ global institutional investors. Over 9 years, he successfully opposed three motions to dismiss, oversaw e-discovery of 1.75 million documents, led the Plaintiffs Steering Committee, was the sole interface with BP and the Court, and secured some of the Firm's most ground-breaking rulings. In a ruling of first impression, he successfully argued that investors asserted viable English law "holder claims" for losses due to retention of already-owned shares in reliance on a fraud, a theory barred under U.S. law since Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975). He successfully argued against forum non conveniens (wrong forum) dismissal of 80+ global institutions' lawsuits - the first ruling after Morrison v. Nat'l Australia Bank Ltd., 130 S. Ct. 2869 (2010), to permit foreign investors to pursue in U.S. court their foreign law claims for losses in a foreign company's securities traded on a foreign exchange. He successfully argued that the U.S. Securities Litigation Uniform Standards Act of 1998 (SLUSA), which extinguishes U.S. state law claims in deference to the U.S. federal law, should not extend to the foreign law claims of U.S. and foreign investors, a ruling that saved those claims from dismissal where U.S. federal law afforded no remedy after Morrison. In 2021, Matt achieved mediator-assisted, confidential, favorable monetary settlement for all 35 Firm clients, including public and private pension funds, money management firms, partnerships, and trusts from the U.S., Canada, the U.K., France, the Netherlands, and Australia.

- In *In re Toronto-Dominion Bank Sec. Litig.*, No. 1:17-cv-01735 (D.N.J.), Matt pled a multi-year fraud arising at one of Canada's largest banks, based on extensive statements by former employees detailing underlying retail banking misconduct. Matt persuaded the court to reject defendants' motion to dismiss and to approve a $13.25 million class-wide settlement.

- In *Perez v. Higher One Holdings, Inc., et al.*, No. 14-cv-00755-AWT (D. Conn.), Matt persuaded the court, after an initial dismissal, to uphold a second amended complaint asserting five threads of fraud by an education funding company and its founders and to approve a $7.5 million class-wide settlement. Notably, the court held that the company's reported financial results violated SEC Regulation S-K, Item 303, for failure to disclose known trends and impacts from underlying misconduct – a rare ruling absent an accounting restatement.

- *In re KaloBios Pharmaceuticals, Inc. Sec. Litig.*, No. 15-cv-05841 (N.D. Cal.) concerned a bankrupt drug company and its jailed ex-CEO. Matt negotiated two class-wide settlements totaling $3.25+ million, including cash payments and stock from the company, approved by the bankruptcy court and district court.

- *In re Silvercorp Metals, Inc. Sec.s Litig.*, No. 1:12-cv-09456 (S.D.N.Y.) concerned a Canadian company with mining operations in China and NYSE-traded stock. Matt worked with mining,

accounting, damages, and market efficiency experts to survive a motion to dismiss, oversee discovery, and negotiate a $14 million class-wide settlement after two mediations. In approving the settlement, Judge Rakoff called the case was "unusually complex," given the technical nature of mining metrics, the need to compare mining standards in Canada, China, and the U.S., and the volume of Chinese-language evidence.

Matt's prior casework includes litigation and resolution of complex disputes over roll up combinations. At Pomerantz, he was on the multi-firm team that litigated and settled *In re Empire State Realty Trust, Inc. Investor Litig*., No. 650607/2012 (N.Y. Sup. Ct.), representing investors in public and private commercial real estate interests against the Empire State Building's long-term lessees/operators regarding a consolidation, REIT formation, and IPO centered around it. These efforts achieved broad class-wide relief, including a $55 million cash/securities settlement fund, a $100 million tax benefit from restructured terms, remedial disclosures, and deal protections.

Matt regularly counsels institutional investors, both foreign and domestic, regarding pending or contemplated complex litigation in the U.S. He is skilled at identifying potential securities frauds early, regularly providing clients with the first opportunity to evaluate and pursue their claims, and he has worked extensively with outside investment management firms retained by clients to identify a winning set of supporting evidence. When litigation is filed, he fully oversees its conduct and resolution, counseling clients throughout every step of the process. These skills have enabled him to sign numerous institutional clients for litigation and portfolio monitoring services, including public and private pension plans, investment management firms and sponsored investment vehicles, from both the U.S. and abroad. Matt's clients have successfully litigated claims in the BP, McDermott, and Fluor litigations discussed above.

Matt's signed clients include public and private pension funds and money management firms from the U.S. and abroad. He takes great pride in representing union clients. He got his own union card as a teenager (United Food & Commercial Workers International Union, Local 371), following in the footsteps of his grandfather (International Brotherhood of Teamsters, Local 560).

Before joining Pomerantz, Matt worked at a large full-service firm and plaintiff-side boutique firms in Boston and Connecticut, litigating complex business disputes and securities, consumer, and employment class actions. His pro bono work included securing Social Security benefits for a veteran with non-service-related disabilities.

At the Georgetown University Law Center, Matt made the Dean's List, competed on and coached award-winning teams in the Jessup International Law Moot Court Competition, and was Foreign Publications Editor of the Georgetown International Environmental Law Review. He represented Virginia's Mattaponi Tribe, as part of Georgetown's top-ranked clinical program, in its fight to block a Virginia dam project on ancestral burial grounds.

Matt earned his undergraduate degree from Wesleyan University and has devoted countless post-graduate hours to developing and supporting its pre-law programs and counseling its students and

young alumni interested in the legal profession. Matt served as President of the Wesleyan Lawyers Association from 2017-2020.

Since 2015, Matt has served as volunteer Director of his children's award-winning elementary school and middle school chess clubs, whose 100+ members compete in external tournaments; participate in goodwill exchanges to spread the game to other children; won 2018, 2019, and 2020 grade-level and divisional State Championships; and were named the Connecticut 2021 Scholastic Chess Clubs of the Year.

Austin P. Van

Austin focuses his practice on high-profile securities class actions. In 2020, Austin was named by Law360 in 2020 as an MVP in Securities Litigation, part of an "elite slate of attorneys [who] have distinguished themselves from their peers by securing hard-earned successes in high-stakes litigation, complex global matters and record-breaking deals." Only up to six attorneys nationwide are selected each year as MVPs in Securities Litigation. Austin was name to Benchmark Litigations "40 and Under Hotlist" in 2020 and 2021. Austin has been recognized by Lawdragon as one of the top 500 Leading Plaintiff Financial Lawyers and has been named as a Recommended Lawyer by The Legal 500. Every year from 2018 through 2021, Austin has been honored as a Super Lawyers® Rising Star.

With Pomerantz Managing Partner Jeremy Lieberman, Austin heads the firm's representation of lead plaintiffs in a securities class action against drug behemoth Mylan N.V. This multi-billion-dollar litigation is one of the largest securities class actions pending anywhere. The complaint alleges that Mylan misled investors about wide-ranging wrongful conduct in what some estimate to be the largest price-fixing conspiracy in U.S. history. Austin devised the central theories of the case and authored all three amended complaints in this matter, which has continued to expand. He authored all of lead plaintiffs' three successful opposition briefs to defendants' motions to dismiss, in 2018, 2019, and 2020 respectively, as well as lead plaintiffs' successful arguments for class certification in 2019. In April 2020, the court rejected the Defendants' motion to dismiss the third amended complaint in a precedent-setting decision concerning scheme liability, and certified a class of investors spanning five years, all based on Austin's arguments. He led fact discovery in the matter, which consisted of review and distillation of millions of documents, orchestrated the Class's thirty fact depositions, and most recently, completed overseeing the Class's submission of five expert reports, totaling thousands of pages of expert disclosures.

Austin was in charge of Pomerantz's securities class action against TechnipFMC, an oil and gas services provider. He uncovered the theory of this case: that TechnipFMC massively overstated its net income in its initial registration statement due to its use of incorrect foreign exchange rates. Austin successfully argued at oral argument in 2018 that the Court should deny defendants' motion to dismiss the central claim in the matter. In 2019, Austin successfully argued lead plaintiff 's motion for class certification. He led the class through complete preparations for trial. The case settled in 2020 for approximately $20 million.

Austin led a successful securities class action at Pomerantz against Rockwell Medical, Inc. and served as co-lead counsel on the matter with another firm. Austin extensively investigated the facts of this case and drafted the operative complaint. At a pre-motion conference for Defendants' motion to dismiss,

District Senior Judge Allyn R. Ross stated: "based on what I have reviewed, it is virtually inconceivable to me that the consolidated amended complaint could possibly be dismissed on a Rule 12(b)(6) motion or a Rule 9(b) motion" and that the proposed motion practice "would be a complete waste of time and resources of counsel, of the clients' money, and my time." Defendants declined even to move to dismiss the complaint and settled the case in 2019 for $3.7 million—a highly favorable settlement for the Class.

Austin received a J.D. from Yale Law School, where he was an editor of the Yale Law Journal and the Yale Journal of International Law. He has a B.A. from Yale University and an M.Sc. from the London School of Economics.

Austin is admitted to practice law in New York and New Jersey; the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, the Northern District of Illinois, and the Southern District of Texas; and the United States Courts of Appeals for the First and Second Circuits.

Murielle Steven Walsh

Murielle Steven Walsh joined the Firm in 1998 and was elevated to Partner in 2007. In 2022, Murielle was selected to participate on Law360's Securities Editorial Board. She was named a 2020 Plaintiffs' Lawyer Trailblazer by the *National Law Journal*, an award created to "honor a handful of individuals from each practice area that are truly agents of change" and was also honored as a 2020 Plaintiffs' Trailblazer by the *New York Law Journal*. Murielle was honored in 2019, 2020 and 2021 as a Super Lawyers® "Top-Rated Securities Litigation Attorney," a recognition bestowed on 5% of eligible attorneys in the New York Metro area. Lawdragon name her a Top Plaintiffs' Financial Lawyer in 2019 and 2020.

During her career at Pomerantz, Murielle has prosecuted highly successful securities class action and corporate governance cases. She was one of the lead attorneys litigating *In re Livent Noteholders' Securities Litigation*, a securities class action in which she obtained a $36 million judgment against the company's top officers, a ruling which was upheld by the Second Circuit on appeal. Murielle was also part of the team litigating *EBC I v. Goldman Sachs*, where the Firm obtained a landmark ruling from the New York Court of Appeals, that underwriters may owe fiduciary duties to their issuer clients in the context of a firm-commitment underwriting of an initial public offering.

Murielle leads the Firm's securities class action against Wynn Resorts Ltd., in which Pomerantz is lead counsel. The litigation arises from the company's concealment of a long-running pattern of sexual misconduct against Wynn employees by billionaire casino mogul Stephen Wynn, the company's founder and former Chief Executive Officer. In May 2020, the court granted the defendants' motion to dismiss while granting Pomerantz leave to amend. In May 2020, the court granted the defendants' motion to dismiss while granting Pomerantz leave to amend its complaint. The defendants moved to dismiss the newly amended complaint, but the court denied their motion in part, sustaining claims that arose from critical misstatements by the company. The case is now in discovery. *Ferris v. Wynn Resorts Ltd*., No. 18-cv-479 (D. Nev.)

In a securities class action against Ormat Technologies, Inc., Murielle achieved a $3,750,000 settlement on behalf of defrauded investors in January 2021. Ormat's securities are dual-listed on the NYSE and the Tel Aviv Stock Exchange. Murielle persuaded the district court in exercise supplemental jurisdiction in

order to apply U.S. securities law to the claims in the case, regardless of where investors purchased their securities.

Murielle led the Firm's ground-breaking litigation that arose from the popular Pokémon Go game, in which Pomerantz was lead counsel. Pokémon Go is an "augmented reality" game in which players use their smart phones to "catch" Pokémon in real-world surroundings. GPS coordinates provided by defendants to gamers included directing the public to private property without the owners' permission, amounting to an alleged mass nuisance. *In re Pokémon Go Nuisance*, No. 3:16-cv-04300 (N.D. Cal.)

Murielle was co-lead counsel in *Thorpe v. Walter Investment Management Corp.*, No. 14-cv-20880 (S.D. Fla.), a securities fraud class action challenging the defendants' representations that their lending activities were regulatory-compliant, when in fact the company's key subsidiary engaged in rampant violations of federal consumer financial protection laws, subjecting it to various government investigations and a pending enforcement action by the CFPB and FTC. In 2016, the Firm obtained a $24 million settlement on behalf of the class. She was also co-lead counsel in *Robb v. Fitbit Inc.*, No. 16-cv-00151 (N.D. Cal.), a securities class action alleging that the defendants misrepresented that their key product delivered "highly accurate" heart rate readings when in fact their technology did not consistently deliver accurate readings during exercise and its inaccuracy posed serious health risks to users of Fitbit's products. The Firm obtained a $33 million settlement on behalf of the investor class in this action.

In 2018 Murielle, along with then-Senior Partner Jeremy Lieberman, achieved a $3,300,000 settlement for the Class in the Firm's case against Corinthian Colleges, one of the largest for-profit college systems in the country, for alleged misrepresentations about its job placement rates, compliance with applicable regulations, and enrollment statistics. Pomerantz prevailed in the motion to dismiss the proceedings, a particularly noteworthy victory because Chief Judge George King of the Central District of California had dismissed two prior lawsuits against Corinthian with similar allegations. *Erickson v. Corinthian Colleges, Inc.*, No. 2:13-cv-07466 (C.D. Cal.).

Murielle serves as a member and on the Executive Committee of the Board of Trustees of the non-profit organization Court Appointed Special Advocates for Children ("CASA") of Monmouth County. She served on the Honorary Steering Committee of Equal Rights Advocates ("ERA"), which focuses on and discusses specific issues that women face in the legal profession. ERA is an organization that protects and expands economic and educational access and opportunities for women and girls. In the past, Murielle served as a member of the editorial board for Class Action Reports, a Solicitor for the Legal Aid Associates Campaign, and has been involved in political asylum work with the Association of the Bar of the City of New York.

Murielle serves on the Firm's Anti-Harassment and Discrimination Committee.

Murielle graduated *cum laude* from New York Law School in 1996, where she was the recipient of the Irving Mariash Scholarship. During law school, Murielle interned with the Kings County District Attorney and worked within the mergers and acquisitions group of Sullivan & Cromwell.

Murielle is admitted to practice in New York; the United States District Court for the Southern District of New York; and the United States Courts of Appeals for the Second and Sixth Circuits.

Tamar A. Weinrib

Tamar A. Weinrib joined Pomerantz in 2008. She was Of Counsel to the Firm from 2014 through 2018 and was elevated to Partner in 2019. In 2020, The Legal 500 honored her as a Next Generation Partner. Tamar was named a 2018 Rising Star under 40 years of age by Law360, a prestigious honor awarded to a select few "top litigators and dealmakers practicing at a level usually seen from veteran attorneys." Tamar has been recognized by Super Lawyers® as a 2021 "Top-Rated Securities Litigation Attorney;" she was honored as a New York Metro Rising Star every year from 2014 to 2019.

In 2019, Tamar and Managing Partner Jeremy Lieberman achieved a $27 million settlement for the Class in *Strougo v. Barclays PLC*, a high-profile securities class action in which Pomerantz was Lead Counsel. Plaintiffs alleged that Barclays PLC misled institutional investor clients about the extent of the banking giant's use of so-called "dark pool" trading systems. This case turned on the duty of integrity owed by Barclays to its clients. In November 2016, Tamar and Jeremy achieved precedent-setting victories for investors, when the Second Circuit Court of Appeals held that direct evidence of price impact is not always necessary to demonstrate market efficiency to invoke the presumption of reliance, and that defendants seeking to rebut the presumption of reliance must do so by a preponderance of the evidence rather than merely meeting a burden of production. In 2018, Tamar successfully opposed Defendants' petition to the Supreme Court for a writ of certiorari.

In approving the settlement in *Strougo v. Barclays PLC* in June 2019, Judge Victor Marrero of the Southern District of New York stated:

> Let me thank counsel on both sides for the extraordinary work both sides did in bringing this matter to a reasonable conclusion. As the parties have indicated, the matter was intensely litigated, but it was done in the most extraordinary fashion with cooperation, collaboration, and high levels of professionalism on both sides, so I thank you.

Tamar headed the litigation of *In re Delcath Systems, Inc. Securities Litigation*, in which Pomerantz achieved a settlement of $8,500,000 for the class. She successfully argued before the Second Circuit in *In re China North East Petroleum Securities Litigation,* to reverse the district court's dismissal of the defendants on scienter grounds.

Among other securities fraud class actions that Tamar led to successful settlements are *KB Partners I, L.P. v. Pain Therapeutics, Inc.* ($8,500,000); *New Oriental Education & Technology Group, Inc.* ($3,150,000 pending final approval); and *Whiteley v. Zynerba Pharmaceuticals Inc. et al.* ($4,000,000 pending final approval).

Before coming to Pomerantz, Tamar had over three years of experience as a litigation associate in the New York office of Clifford Chance US LLP, where she focused on complex commercial litigation. Tamar has successfully tried pro bono cases, including two criminal appeals and a housing dispute filed with the Human Rights Commission.

Tamar graduated from Fordham University School of Law in 2004 and while there, won awards for successfully competing in and coaching Moot Court competitions.

Tamar is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York; and the United States Courts of Appeals for the Second, Third, Fourth, and Ninth Circuits.

Michael J. Wernke

Michael J. Wernke joined Pomerantz as Of Counsel in 2014 and was elevated to Partner in 2015. He was named a 2020 Plaintiffs' Lawyer Trailblazer by the *National Law Journal*, an award created to "honor a handful of individuals from each practice area that are truly agents of change."

Michael, along with Managing Partner Jeremy Lieberman, led the litigation in *Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y), in which the Firm, as Lead Counsel, achieved a $110 million settlement for the class. This high-profile securities class action alleges that Fiat Chrysler concealed from investors that it improperly outfitted its diesel vehicles with "defeat device" software designed to cheat NOx emissions regulations in the U.S. and Europe, and that regulators had accused Fiat Chrysler of violating the emissions regulations. The *Fiat Chrysler* recovery provides the class of investors with as much as 20% of recoverable damages—an excellent result when compared to historical statistics in class action settlements, where typical recoveries for cases of this size are between 1.6% and 3.3%.

Michael led the securities class action *Zwick Partners, LP v. Quorum Health Corp., et al.*, No. 3:16-cv-2475, achieving a settlement of $18,000,000 for the class in June 2020. The settlement represented between 12.7% and 42.9% of estimated recoverable damages. Plaintiff alleged that defendants misrepresented to investors the poor prospects of hospitals that the parent company spun off into a stand-alone company. In defeating defendants' motions to dismiss the complaint, Michael successfully argued that company from which Quorum was spun off was a "maker" of the false statements even though all the alleged false statements concerned only Quorum's financials and the class involved only purchasers of Quorum's common stock. This was a tremendous victory for plaintiffs, as cases alleging false statements of goodwill notoriously struggle to survive motions to dismiss.

Along with Managing Partner Jeremy Lieberman, Michael leads the Firm's individual action against pharmaceutical giant Teva Pharmaceutical Industries Ltd. and Teva Pharmaceuticals USA, Inc. (together, "Teva"), and certain of Teva's current and former employees and officers, relating to alleged anticompetitive practices in Teva's sales of generic drugs. Teva is a dual-listed company; the Firm represents several Israeli institutional investors who purchased Teva shares on the Tel Aviv Stock Exchange. In early 2021, Pomerantz achieved a major victory for global investors when the district court agreed to exercise supplemental jurisdiction over the Israeli law claims. *Clal Insurance Company Ltd. v. Teva Pharmaceutical Industries Ltd.*

In December 2018, Michael, along with Pomerantz Managing Partner Jeremy A. Lieberman, secured a $31 million partial settlement with three defendants in *In re Libor Based Financial Instruments Antitrust Litigation*, a closely watched multi-district litigation, which concerns the LIBOR rigging scandal.

In October 2018, Michael secured a $15 million settlement in *In re Symbol Technologies, Inc. Securities Litigation*, No. 2:05-cv-03923-DRH-AKT (E.D.N.Y.), a securities class action that alleges that, following an

accounting fraud by prior management, Symbol's management misled investors about state of its internal controls and the Company's ability to forecast revenues.

He was Lead Counsel in *Thomas v. Magnachip Semiconductor Corp.*, in which he achieved a $23.5 million partial settlement with certain defendants, securing the settlement despite an ongoing investigation by the Securities and Exchange Commission and shareholder derivative actions. He played a leading role in *In re Lumber Liquidators, Inc. Securities Litigation*, in which Pomerantz, as Co-Lead Counsel, achieved a settlement of $26 million in cash and 1,000,000 shares of Lumber Liquidators common stock for the Class. Michael also secured a $7 million settlement (over 30% of the likely recoverable damages) in the securities class action *Todd v. STAAR Surgical Company, et. al.*, No. 14-cv-05263-MWF-RZ (C.D. Cal.), which alleged that STAAR concealed from investors violations of FDA regulations that threatened the approval of STAAR's long awaited new product.

In the securities class action *In re Atossa Genetics, Inc. Securities Litigation*, No. 13-cv-01836-RSM (W.D. Wash.), Michael secured a decision by the Ninth Circuit Court of Appeals that reversed the district court's dismissal of the complaint. The Ninth Circuit held that the CEO's public statements that the company's flagship product had been approved by the FDA were misleading despite the fact that the company's previously filed registration statement stated that that the product did not, at that time, require FDA approval.

During the nine years prior to coming to Pomerantz, Michael was a litigator with Cahill Gordon & Reindel LLP, with his primary focus in the securities defense arena, where he represented multinational financial institutions and corporations, playing key roles in two of only a handful of securities class actions to go to jury verdict since the passage of the PSLRA.

In 2020 and 2021, Michael was honored as a Super Lawyers® "Top Rated Securities Litigation Attorney." In 2014 and 2015, he was recognized as a Super Lawyers® New York Metro Rising Star.

Michael received his J.D. from Harvard Law School in 2004. He also holds a B.S. in Mathematics and a B.A. in Political Science from Ohio State University, where he graduated *summa cum laude*.

He serves on the Firm's Anti-Harassment and Discrimination Committee.

Michael is admitted to practice in New York; the United States District Court for the Southern District of New York; and the United States Supreme Court.

Senior Counsel

Stanley M. Grossman

Stanley M. Grossman, Senior Counsel, is a former Managing Partner of Pomerantz. Widely recognized as a leader in the plaintiffs' securities bar, he was honored in 2020 with a Lifetime Achievement award by the *New York Law Journal*. Martindale Hubbell awarded Stan its 2021 AV Preeminent Rating®, "given to attorneys who are ranked at the highest level of professional excellence for their legal expertise, communication skills, and ethical standards by their peers." Stan was selected by *Super Lawyers*® as an outstanding attorney in the United States for the years 2006 through 2020 and was featured in the *New*

*York Law Journa*l article *Top Litigators in Securities Field -- A Who's Who of City's Leading Courtroom Combatants*. Lawdragon named Stan a Leading Plaintiff Financial Lawyer in 2019 and 2020. In 2013, Brooklyn Law School honored Stan as an Alumnus of the Year.

Stan has primarily represented plaintiffs in securities and antitrust class actions, including many of those listed in the Firm biography. *See, e.g., Ross v. Bernhard*, 396 U.S. 531 (1970); *Rosenfeld v. Black*, 445 F.2d 137 (2d Cir. 1971); *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433 (9th Cir. 1987); and *In re Salomon Bros. Treasury Litig.*, 9 F.3d 230 (2d Cir. 1993). In 2008 he appeared before the United States Supreme Court to argue that scheme liability is actionable under Section 10(b) and Rule 10b-5(a) and (c). *See StoneRidge Inv. Partners, LLC v. Sci.-Atlanta*, *Inc.,* No. 06-43 (2008). Other cases where he was the Lead or Co-Lead Counsel include: *In re Salomon Brothers Treasury Litigation*, No. 91 Civ. 5471 (S.D.N.Y. 1994) ($100 million cash recovery); *In re First Executive Corporation Securities Litigation*, No. CV-89-7135 (C.D. Cal. 1994) ($100 million settlement); and *In re Sorbates Direct Purchaser Antitrust Litigation*, No. C98-4886 (N.D. Cal. 2000) (over $80 million settlement for the class).

In 1992, Senior Judge Milton Pollack of the Southern District of New York appointed Stan to the Executive Committee of counsel charged with allocating to claimants hundreds of millions of dollars obtained in settlements with Drexel Burnham & Co. and Michael Milken.

Many courts have acknowledged the high quality of legal representation provided to investors by Stan. In *Gartenberg v. Merrill Lynch Asset Management, Inc.*, No. 79 Civ. 3123 (S.D.N.Y.), where Stan was lead trial counsel for plaintiff, Judge Pollack noted at the completion of the trial:

> [I] can fairly say, having remained abreast of the law on the factual and legal matters that have been presented, that I know of no case that has been better presented so as to give the Court an opportunity to reach a determination, for which the court thanks you.

Stan was also the lead trial attorney in *Rauch v. Bilzerian* (N.J. Super. Ct.) (directors owed the same duty of loyalty to preferred shareholders as common shareholders in a corporate takeover), where the court described the Pomerantz team as "exceptionally competent counsel." He headed the six week trial on liability in *Walsh v. Northrop Grumman* (E.D.N.Y.) (a securities and ERISA class action arising from Northrop's takeover of Grumman), after which a substantial settlement was reached.

Stan frequently speaks at law schools and professional organizations. In 2010, he was a panelist on *Securities Law: Primary Liability for Secondary Actors*, sponsored by the Federal Bar Council, and he presented *Silence Is Golden – Until It Is Deadly: The Fiduciary's Duty to Disclose*, at the Institute of American and Talmudic Law. In 2009, Stan was a panelist on a Practicing Law Institute "Hot Topic Briefing" entitled StoneRidge - *Is There Scheme Liability or Not?*

Stan served on former New York State Comptroller Carl McCall's Advisory Committee for the NYSE Task Force on corporate governance. He is a former president of NASCAT. During his tenure at NASCAT, he represented the organization in meetings with the Chairman of the Securities and Exchange Commission and before members of Congress and of the Executive Branch concerning legislation that became the PSLRA.

Stan served for three years on the New York City Bar Association's Committee on Ethics, as well as on the Association's Judiciary Committee. He is actively involved in civic affairs. He headed a task force on behalf of the Association, which, after a wide-ranging investigation, made recommendations for the future of the City University of New York. He was formerly on the board of the Appleseed Foundation, a national public advocacy group.

Stan is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York, Central District of California, Eastern District of Wisconsin, District of Arizona, District of Colorado; the United States Courts of Appeals for the First, Second, Third, Ninth and Eleventh Circuits; and the United States Supreme Court.

Marc I. Gross

Marc I. Gross has been with Pomerantz LLP for over four decades, serving as its Managing Partner from 2009 to 2016. During that time frame, Marc led securities lawsuits against SAC Capital (Steven Cohen - insider trading); Chesapeake Energy (Aubrey McClendon - insider bail out); Citibank (analyst Jack Grubman - AT&T research report upgrade to facilitate underwriting role); Charter Communications (Paul Allen - accounting fraud); and numerous others. He also litigated the market efficiency issues in the firm's landmark $3 billion recovery in *Petrobras*. He is currently Senior Counsel to the firm. Marc has been recognized by Super Lawyers® as a "Top-Rated Securities Litigation Attorney" every year from 2013 through 2021.

Marc is the President of the Institute of Law and Economic Policy ("ILEP"), which has organized symposiums each year where leading academics have presented papers on securities law and consumer protection issues. These papers have been cited in over 60 cases, including several in the United States Supreme Court. http://www.ilep.org.

Marc was invited to join the Lawyers Cabinet for the George Washington Law School Complex Litigation Center, an institution that brings top academics and practitioners together to identify and develop practical solutions for emerging and pressing problems in complex litigation. Members of the Cabinet are 100 of the most prominent plaintiff and defense lawyers who are recognized both nationally and globally as leaders in complex litigation.

Marc has addressed numerous forums in the United States on shareholder-related issues, including ILEP; Loyola University Chicago School of Law's Institute for Investor Protection Conference; the National Conference on Public Employee Retirement Systems' ("NCPERS") Legislative Conferences; PLI conferences on Current Trends in Securities Law; and a panel entitled *Enhancing Consistency and Predictability in Applying Fraud-on-the-Market Theory*, sponsored by the Duke Law School Center for Judicial Studies, well as students at NYU and Georgetown Law schools.

Marc is also valued by foreign investors for his expertise, having addressed the Tel Aviv Institutional Investors Forum, the National Association of Pension Funds Conference in Edinburgh, and law students at Bar Ilan University in Tel Aviv.

Among other articles, Marc co-authored, with Jeremy Lieberman, *Back to Basic(s): Common Sense Trumps Econometrics*, N.Y.L.J. (Jan. 8, 2018); *Class Certification in a Post-Halliburton II World*, 46 Loyola-

Chicago L.J. 485 (2015); and *Loser-Pays - or Whose "Fault" Is It Anyway: A Response to Hensler-Rowe's "Beyond 'It Just Ain't Worth It,'"* 64 L. & Contemp. Probs. 163 (Duke Law School 2001).

Marc was honored in 2022 by T'ruah, the Rabbinic Call to Human Rights, for his pro bono work in support of the Coalition of Immokalee Workers in Florida in their battle for recognition by Wendy's. Marc brought a lawsuit on behalf of Wendy's shareholders, arguing that by refusing to join the Coalition of Immokalee Workers' Fair Food Program, the company had flouted industry standards on human rights.

Marc is a graduate of NYU Law '76 and Columbia College '73.

Marc is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York; the United States Courts of Appeals for the First, Second, Eighth, and Ninth Circuits; and the United States Supreme Court.

Patrick V. Dahlstrom

Patrick Dahlstrom joined Pomerantz as an associate in 1991 and was elevated to Partner in January 1996. He served as Co-Managing Partner with Jeremy Lieberman in 2017 and 2018 and is now Senior Counsel. Patrick heads the Firm's Chicago office. He was honored as a Super Lawyers® "Top-Rated Securities Litigation Attorney" from 2018 – 2021.

Patrick, a member of the Firm's Institutional Investor Practice and New Case Groups, has extensive experience litigating cases under the PSLRA. He led *In re Comverse Technology, Inc. Securities Litigation*, No. 06-CV-1825 (E.D.N.Y.), in which the Firm, as Lead Counsel, recovered a $225 million settlement for the Class – the second-highest ever for a case involving back-dating options, and one of the largest recoveries ever from an individual officer-defendant, the company's founder and former CEO. In *Comverse*, the Firm obtained an important clarification of how courts calculate the "largest financial interest" in connection with the selection of a Lead Plaintiff, in a manner consistent with *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005). Judge Garaufis, in approving the settlement, lauded Pomerantz: "The court also notes that, throughout this litigation, it has been impressed by Lead Counsel's acumen and diligence. The briefing has been thorough, clear, and convincing, and ... Lead Counsel has not taken short cuts or relaxed its efforts at any stage of the litigation."

In *DeMarco v. Robertson Stephens Inc.*, 228 F.R.D. 468 (S.D.N.Y. 2005), Patrick obtained the first class certification in a federal securities case involving fraud by analysts.

Patrick's extensive experience in litigation under the PSLRA has made him an expert not only at making compelling arguments on behalf of Pomerantz' clients for Lead Plaintiff status, but also in discerning weaknesses of competing candidates. *In re American Italian Pasta Co. Securities Litigation* and *Comverse* are the most recent examples of his success in getting our clients appointed sole Lead Plaintiff despite competing motions by numerous impressive institutional clients.

Patrick was a member of the trial team in *In re ICN/Viratek Securities Litigation* (S.D.N.Y. 1997), which, after trial, settled for $14.5 million. Judge Wood praised the trial team: "[P]laintiffs counsel did a superb job here on behalf of the class. ...This was a very hard fought case. You had very able, superb opponents,

and they put you to your task. ...The trial work was beautifully done and I believe very efficiently done."

Patrick's speaking engagements include interviews by NBC and the CBC regarding securities class actions, and among others, a presentation at the November 2009 State Association of County Retirement Systems Fall Conference as the featured speaker at the Board Chair/Vice Chair Session entitled: "Cleaning Up After the 100 Year Storm. How trustees can protect assets and recover losses following the burst of the housing and financial bubbles."

Patrick is a 1987 graduate of the Washington College of Law at American University in Washington, D.C., where he was a Dean's Fellow, Editor in Chief of the *Administrative Law Journal*, a member of the Moot Court Board representing Washington College of Law in the New York County Bar Association's Antitrust Moot Court Competition, and a member of the Vietnam Veterans of America Legal Services/Public Interest Law Clinic. Upon graduating, Patrick served as the Pro Se Staff Attorney for the United States District Court for the Eastern District of New York and was a law clerk to the Honorable Joan M. Azrack, United States Magistrate Judge.

Patrick is admitted to practice in New York and Illinois; the United States District Courts for the Southern and Eastern Districts of New York, Northern District of Illinois, Northern District of Indiana, Eastern District of Wisconsin, District of Colorado, and Western District of Pennsylvania; the United States Courts of Appeals for the First, Fourth, Sixth, Seventh, Eighth, and Ninth Circuits; and the United States Supreme Court.

Of Counsel

Samuel J. Adams

Samuel J. Adams became an Associate at Pomerantz in January 2012 and was elevated to Of Counsel to the Firm in 2021. He has been recognized as a Super Lawyers® "Rising Star" every year from 2015 through 2021.

Sam focuses his practice on corporate governance litigation and has served as a member of the litigation team in numerous actions that concluded in successful resolutions for stockholders. He was an integral member of the litigation team that secured a $5.6 million settlement on behalf of a class of shareholders of Physicians Formula Holdings, Inc. following an ignored merger offer. *In re Physicians Formula Holdings Inc. S'holder Litig.*, C.A. No. 7794-VCL (Del. Ch. Ct.). Sam was also instrumental in achieving a settlement in *Strougo v. Hollander*, C.A. No. 9770-CB (Del. Ch. Ct.) which provided for a 25% price increase for members of the class cashed out in the going-private transaction and established that fee-shifting bylaws adopted after a challenged transaction do not apply to stockholders affected by the transaction. Additionally, he was on the team of Pomerantz attorneys who obtained the elimination of stand-still provisions that allowed third parties to bid for Great Wolf Resorts, Inc., resulting in the emergence of a third-party bidder and approximately $94 million (57%) in additional merger consideration for Great Wolf shareholders. *In re Great Wolf Resorts, Inc. S'holder Litig.*, C.A. No. 7328-VCN (Del. Ch.).

Sam is a 2009 graduate of the University of Louisville Louis D. Brandeis School of Law. While in law school, he was a member of the National Health Law Moot Court Team. He also participated in the Louis D. Brandeis American Inn of Court.

Sam is admitted to practice in New York; and the United States District Courts for the Southern, Northern, and Eastern Districts of New York and the Eastern District of Wisconsin.

Ari Y. Basser

Ari Y. Basser joined Pomerantz as an associate in April 2019 and was elevated to Of Counsel in January 2022. He focuses his practice on strategic consumer litigation by representing consumers in unfair competition, fraud, false advertising, and auto defect actions that recover monetary and injunctive relief on behalf of class members while also advocating for important consumer rights. Ari has successfully prosecuted claims involving California's Unfair Competition Law, California's Consumers Legal Remedies Act, the Song-Beverly Consumer Warranty Act, and the Magnusson-Moss Warranty Act.

Prior to joining Pomerantz, Ari was an associate at major litigation law firms in Los Angeles. Ari also worked as a Law Clerk in the Economic Crimes Unit of the Santa Clara County Office of the District Attorney. Ari has litigated antitrust violations, product defect matters, and a variety of fraud and misrepresentation cases brought under state and federal consumer protection statutes involving unfair competition and false advertising. He has also been deputized in private attorneys general enforcement actions to recover civil penalties from corporations, on behalf of the State of California, for violations of the Labor Code.

Ari is a contributing author to the *Competition Law Journal*, the official publication of the Antitrust, UCL, and Privacy Section of the State Bar of California, where he has examined trends in antitrust litigation and the regulatory authority of the Federal Trade Commission.

Ari received dual degrees in Economics and Psychology from the University of California, San Diego in 2004. He earned his Juris Doctor in 2010 from Santa Clara University School of Law.

Brian Calandra

Brian Calandra joined Pomerantz in June 2019 as Of Counsel. He has extensive experience in securities, antitrust, complex commercial, and white-collar matters in federal and state courts nationwide. Brian has represented issuers, underwriters, and individuals in securities class actions involving the financial, telecommunications, real estate, and pharmaceutical industries. He has also represented financial institutions in antitrust class actions concerning foreign exchange; supra-national, sub-sovereign and agency bonds; bonds issued by the government of Mexico; and credit card fees. In 2021, Brian was honored as a Super Lawyers® "Top-Rated Securities Litigation Attorney".

Brian has written multiple times on developments in securities law and other topics, including co-authoring an overview of insider trading law and enforcement for *Practical Compliance & Risk Management for the Securities Industry*, co-authoring an analysis of anti-corruption compliance risks posed by sovereign wealth funds for *Risk & Compliance*, and authoring an analysis of the effects of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act on women in bankruptcy for the *Women's Rights Law Reporter*.

Before joining Pomerantz, Brian was a litigation associate at Shearman & Sterling LLP. Brian graduated from Rutgers School of Law-Newark in 2009, *cum laude*, Order of the Coif. While at Rutgers, Brian was co-editor-in-chief of the *Women's Rights Law Reporter* and received the Justice Henry E. Ackerson Prize for Distinction in Legal Skills and the Carol Russ Memorial Prize for Distinction in Promoting Women's Rights.

Brian is admitted to practice in New York; the United States District Courts for the Southern, Eastern, and Northern Districts of New York; the District of New Jersey, and the Eastern District of Wisconsin; the United States Courts of Appeals for the First, Third, Fifth and Tenth Circuits; and the United States Supreme Court.

Cheryl D. Hamer

Cheryl D. Hamer joined Pomerantz in 2003 as an associate, served as a partner from 2007 to 2015 and is now Of Counsel to the Firm. She is based in San Diego.

Before joining Pomerantz, she served as counsel to nationally known securities class action law firms focusing on the protection of investors rights. In private practice for over 20 years, she has litigated, at both state and federal levels, Racketeer Influenced and Corrupt Organizations, Continuing Criminal Enterprise, death penalty and civil rights cases and grand jury representation. She has authored numerous criminal writs and appeals.

Cheryl was an Adjunct Professor at American University, Washington College of Law from 2010-2011 and served as a pro bono attorney for the Mid-Atlantic Innocence Project. She was an Adjunct Professor at Pace University, Dyson College of Arts and Sciences, Criminal Justice Program and The Graduate School of Public Administration from 1996-1998. She has served on numerous non-profit boards of directors, including Shelter From The Storm, the Native American Preparatory School and the Southern California Coalition on Battered Women, for which she received a community service award.

Cheryl has been a member of the Litigation and Individual Rights and Responsibilities Sections of the American Bar Association, the Corporation, Finance & Securities Law and Criminal Law and Individual Rights Sections of the District of Columbia Bar, the Litigation and International Law Sections of the California State Bar, and the National Association of Public Pension Attorneys (NAPPA) and represents the Firm as a member of the Council of Institutional Investors (CII), the National Association of State Treasurers (NAST), the National Conference on Public Employees Retirement Systems (NCPERS), the International Foundation of Employee Benefit Plans (IFEBP), the State Association of County Retirement Systems (SACRS), the California Association of Public Retirement Systems (CALAPRS) and The Association of Canadian Pension Management (ACPM/ACARR).

Cheryl is a 1973 graduate of Columbia University and a 1983 graduate of Lincoln University Law School. She studied tax law at Golden Gate University and holds a Certificate in Journalism from New York University and a Certificate in Photography: Images and Techniques from The University of California San Diego.

Omar Jafri

Omar Jafri became associated with Pomerantz in April 2016 and was elevated to Of Counsel in January 2021. Omar was honored as a 2021 Rising Star of the Plaintiffs' Bar by the *National Law Journal*.

Omar played an integral role in *In re Juno Therapeutics, Inc. Securities Litigation*, in which the Firm, as Lead Counsel, achieved a $24 million settlement for the Class in 2018. Omar also played an integral role where Pomerantz was Lead or Co-Lead Counsel in *In re Aveo* Pharmaceuticals*, Inc. Securities Litigation* ($18 million settlement, which was more than four times larger than the SEC's fair fund recovery in its parallel litigation); *Sudunagunta v. NantKwest, Inc.* ($12 million settlement); *Cooper v. Thoratec Corporation et. al.* ($11.9 million settlement); *Thomas v. MagnaChip Semiconductor Corp. Securities Litigation* ($6.2 million settlement with majority shareholder, Avenue Capital); and *In re Sequans Communications S.A. Securities Litigation* ($2.75 million settlement). Omar currently plays a key role in the Firm's representation of investors in connection with several complex cases that involve billions of dollars in damages. In 2021, Omar was recognized by Super Lawyers® as a Rising Star in Securities Litigation.

During the last several years, Omar has litigated major disputes on behalf of institutional investors arising out of the credit crisis, including disputes relating to Collateralized Debt Obligations, Residential Mortgage-Backed Securities, Credit Default Swaps and other complex financial investments. He also has provided pro bono representation to several individuals charged with first-degree murder and attempted murder in the State and Federal courts of Illinois.

Before joining Pomerantz LLP, Omar was a law clerk to Judge William S. Duffey, Jr. of the United States District Court for the Northern District of Georgia. He was also an associate at Jenner & Block LLP's Chicago Office, where he represented clients in a wide variety of matters, including securities litigation, complex commercial litigation, white collar criminal defense, and internal investigations.

Omar graduated, *magna cum laude* and *Order of the Coif*, from the University of Illinois College of Law, where he was a Harno Scholar and a recipient of the Rickert Award for Excellence in Advocacy. He received his B.A. from the University of Texas at Austin, where he was on the Dean's Honor List and the University Honors List.

Omar is admitted to practice in Illinois; the United States District Courts for the Northern District of Illinois and the Northern District of Indiana; and the United States Courts of Appeals for the First, Fifth, and Ninth Circuits.

Louis C. Ludwig

Louis C. Ludwig joined Pomerantz in April 2012 and was elevated to Of Counsel in 2019. He has been honored as a 2016 and 2017 Super Lawyers® Rising Star and as a 2018 and 2019 Super Lawyers® Top-Rated Securities Litigation Attorney.

Louis focuses his practice on securities litigation, and has served as a member of the litigation team in multiple actions that concluded in successful settlements for the Class, including *Satterfield v. Lime Energy Co.*, (N.D. Ill.); *Blitz v. AgFeed Industries*, *Inc.* (M.D. Tenn.); *Frater v. Hemispherx Biopharma, Inc.*

(E.D. Pa.); *Bruce v. Suntech Power Holdings Co.* (N.D. Cal.); *In re: Groupon, Inc. Securities Litigation* (N.D. Ill.); *Flynn v. Sientra, Inc.* (C.D. Cal.); *Thomas v. MagnaChip Semiconductor Corp.* (N.D. Cal.); *In re: AVEO Pharmaceuticals, Inc. Securities Litigation* (N.D. Cal.); and *In re: Akorn, Inc. Securities Litigation* (N.D. Ill.).

Louis graduated from Rutgers University School of Law in 2007, where he was a Dean's Law Scholarship Recipient. He served as a law clerk to the Honorable Arthur Bergman, Superior Court of New Jersey. Prior to joining Pomerantz, Louis specialized in litigating consumer protection class actions at Bock & Hatch LLC in Chicago, Illinois.

Louis is admitted to practice in New Jersey and Illinois; the United States District Courts for the District of New Jersey and the Northern District of Illinois; and the United States Courts of Appeals for the Seventh and Ninth Circuits.

Veronica V. Montenegro

Veronica V. Montenegro became associated with Pomerantz in August 2016 and was elevated to Of Counsel in January 2021. She focuses her practice on securities litigation. In 2020 and 2021, Veronica was recognized as a Super Lawyers® Rising Star.

Prior to joining Pomerantz, Veronica served for seven years as an Assistant Attorney General in the Investor Protection Bureau in the Office of the New York State Attorney General. Veronica represented the Office in some of its most high-profile financial fraud prosecutions. She worked on a case against a Madoff feeder-fund manager which resulted in the return of millions of dollars to defrauded investors. She was a member of the Residential Mortgage-Backed Securities (RMBS) Working Group, comprised of State and Federal prosecutors tasked with investigating and prosecuting mortgage securities fraud, which has resulted in billions of dollars in recoveries. In recognition of her work in the RMBS Working Group, Veronica was awarded the Louis Lefkowitz Award for Exceptional Service. Veronica also worked on cases involving insider trading, auction rate securities and foreign exchange execution.

At Pomerantz, Veronica played an integral role, and was the lead associate, in *Pirnik v. Fiat Chrysler Automobiles N.V. et al.*, No. 1:15-cv-07199-JMF (S.D.N.Y) and *In re Libor Based Financial Instruments Antitrust Litigation,* sophisticated, high-profile and closely watched litigations where the Firm secured settlements totaling over $140 million.

Veronica graduated from Fordham University School of Law in 2008. During law school, she served as a member of the Fordham International Law Journal and in Fordham's Moot Court Board. Additionally, she served as a judicial extern to the Honorable Ronald L. Ellis, Magistrate Judge for the Southern District of New York. Veronica graduated from New York University's College of Arts and Science in 2004, *cum laude*, with a double major in Political Science and Latin American Studies.

Veronica is admitted to practice in the New York and New Jersey and the United States District Court for the Southern District of New York.

Jonathan D. Park

Jonathan D. Park joined Pomerantz as Of Counsel in April 2022. Prior to joining Pomerantz, he was associated with a prominent plaintiff-side litigation firm, where he represented clients in securities and investment litigation. He has been recognized as a Super Lawyers® Rising Star every year from 2017 through 2021.

Jonathan focuses his practice on securities litigation. He was a key member of the litigation team that obtained $19 million for the class in *In re Synchronoss Technologies, Inc. Securities Litigation*, and he represented investors in *In re JPMorgan Chase & Co. Securities Litigation*, which arose from the "London Whale" scandal and was settled for $150 million. He has also represented investors in opt-out securities actions against pharmaceutical manufacturers and other companies.

Jonathan also has experience representing investors in breach of contract actions. He was a key member of the team representing institutional investors injured by the early redemption of bonds issued by CoBank, ACB and AgriBank, FCB. In the litigation against CoBank, the plaintiffs secured a summary judgment ruling on liability, and in the litigation against AgriBank, the plaintiffs defeated a motion to dismiss, permitting the claims to proceed though the plaintiffs were beneficial owners and not record holders of the bonds at issue. Both cases were resolved on confidential terms.

At the New York City Bar Association, Jonathan has served on the Task Force on Puerto Rico, the New Lawyers Council, and the International Human Rights Committee. He also served on the board of his non-profit running club, the Dashing Whippets Running Team.

Jonathan earned his J.D. in 2013 from Fordham University School of Law, where he served on the school's Moot Court Board as the Editor of the Jessup International Law Competition Team. During law school, he was a Crowley Scholar in International Human Rights, received the Archibald R. Murray Public Service Award, and interned with a refugee law project in Cairo, Egypt. He received a B.A. in 2006 from Vassar College, where he majored in Africana Studies.

Lesley Portnoy

Lesley Portnoy joined Pomerantz as Of Counsel in January 2020, bringing to the Firm more than a decade of experience representing investors and consumers in recovering losses caused by corporate fraud and wrongdoing. Lesley is based in Los Angeles.

Lesley has assisted in the recovery of billions of dollars on behalf of aggrieved investors, including the victims of the Bernard M. Madoff bankruptcy. Courts throughout the United States have appointed him as Lead Counsel to represent investors in securities fraud class actions. Lesley has been recognized as a Super Lawyers® Rising Star every year from 2017 through 2021.

As co-Lead Counsel with Pomerantz in *In re Yahoo! Inc. Sec. Litig.*, a high-profile class action litigation against Yahoo! Inc., Lesley helped achieve an $80 million settlement for the Class in 2018. The case involved the biggest data breaches in U.S. history, in which over 3 billion Yahoo accounts were compromised.

Other securities fraud cases that Lesley successfully litigated include *Parmelee v. Santander Consumer USA Holdings Inc.*; *In re Fifth Street Asset Management, Inc. Sec. Litig.*; *In re ITT Educational Services, Inc. Sec. Litig.*; *In re Penn West Petroleum Ltd. Sec. Litig.*; *Elkin v. Walter Investment Management Corp.*; *In re CytRx Corporation Sec. Litig.*; *Carter v. United Development Funding IV*; and *In re Akorn, Inc. Sec. Litig.*

Lesley received his B.A. in 2004 from the University of Pennsylvania. In 2009, he simultaneously received his JD magna cum laude from New York Law School and his Master's of Business Administration from City University of New York. At New York Law School, Lesley was on the Dean's List-High Honors and an Articles Editor for the New York Law School Law Review.

Lesley is admitted to practice in New York and California; the United States District Courts for the Southern and Eastern Districts of New York, the Central, Northern, and Southern Districts of California and the Northern District of Texas; and the United States Court of Appeals for the Second Circuit.

Jennifer Banner Sobers

Jennifer Banner Sobers is Of Counsel to the Firm.

In 2021, Jennifer was honored as a Super Lawyers® "Top-Rated Securities Litigation Attorney". She was also named a 2020 Rising Star by Super Lawyers®, Law360, and the *New York Law Journal*, all separate and highly competitive awards that honor attorneys under 40 whose legal accomplishments transcend their age. After a rigorous nomination and vetting process, Jennifer was honored in 2019 and 2020 as a member of the National Black Lawyers Top 100, an elite network of the top 100 African American attorneys from each state.

Jennifer played an integral role on the team litigating *In re Petrobras Securities Litigation,* in the Southern District of New York, a securities class action arising from a multi-billion-dollar kickback and bribery scheme involving Brazil's largest oil company, Petróleo Brasileiro S.A. - Petrobras. The Firm, as sole Lead Counsel, achieved a historic $3 billion settlement on behalf of investors in Petrobras securities. Among Jennifer' contributions to the team's success were: managing the entire third-party discovery in the United States, which resulted in the discovery of key documents and witnesses; deposing several underwriter bank witnesses; drafting portions of Plaintiffs' amended complaints that withstood motions to dismiss the claims and Plaintiffs' successful opposition to Defendants' appeal in the Second Circuit, which resulted in precedential rulings, including the Court rejecting the heightened ascertainability requirement for obtaining class certification that had been imposed by other circuit courts; and second chaired argument in the Second Circuit that successfully led to the Court upholding the award of sanctions against a professional objector challenging the integrity of the settlement.

Jennifer played a leading role in *In re Toronto-Dominion Bank Securities Litigation*, an action in the District of New Jersey alleging a multi-year fraud arising from underlying retail banking misconduct by one of Canada's largest banks that was revealed by investigative news reports. Jennifer undertook significant work drafting the briefing to oppose Defendants' motion to dismiss the claims, which the Court denied. She oversaw the discovery in the action, which included, among other things, heading the complicated process of obtaining documents in Canada and being a principal drafter of the motion to partially lift the PSLRA stay in order to obtain discovery. Jennifer successfully presented oral argument which led to the Court approval of a $13.25 million class-wide settlement.

U.S. District Judge Noel L. Hillman, in approving the *Toronto-Dominion Bank* settlement, stated, "I commend counsel on both sides for their hard work, their very comprehensive and thoughtful submissions during the motion practice aspect of this case. I paused on it because it was a hard case. I paused on it because the lawyering was so good. So, I appreciate from both sides your efforts." He added, "It's clear to me that this was comprehensive, extensive, thoughtful, meaningful litigation leading up to the settlement." Singling out Pomerantz's role as lead counsel, the judge also said, "This settlement appears to have been obtained through the hard work of the Pomerantz firm… It was through their efforts and not piggybacking on any other work that resulted in this settlement."

Jennifer was a key member of the team litigating individual securities actions against BP p.l.c. in the Northern District of Texas on behalf of institutional investors in BP p.l.c. to recover losses in BP's common stock (which trades on the London Stock Exchange), arising from BP's 2010 Gulf oil spill. The actions were resolved in 2021 in a confidential, favorable monetary settlement for all 35 Firm clients.

Jennifer is a lead litigator in *Crutchfield v. Match Group, Inc.*, pending. Jennifer is also a key member of the litigation teams of other nationwide securities class action cases, including: *In re Ubiquiti Networks, Inc. Sec. Litig.*, an action in the Southern District of New York, for which Jennifer was one of the principal drafters of the amended complaint—the strength of which led the Court to deny permission to the defendants to file a formal motion to dismiss it—which secured a court-approved $15 million class-wide settlement; *In re KaloBios Pharmaceuticals Inc. Securities Litigation,* an action in the Northern District of California, which successfully secured settlements from the bankrupt company and its jailed CEO worth over $3.25 million for the Class that were approved by the Court as well as the bankruptcy court; *Perez v. Higher One Holdings, Inc.,* an action in the District of Connecticut, for which Jennifer was one of the principal drafters of the successful opposition to Defendants' motion to dismiss, and which secured a court-approved $7.5 million class-wide settlement; *Edwards v. McDermott Int'l, Inc.* pending in the Southern District of Texas; *Chun v. Fluor Corp.* pending in the Northern District of Texas; and *Kendall v. Odonate Therapeutics, Inc.*, pending in the Southern District of California.

Prior to joining Pomerantz, Jennifer was an associate with a prominent law firm in New York where her practice focused on complex commercial litigation, including securities law and accountants' liability. An advocate of pro bono representation, Jennifer earned the Empire State Counsel honorary designation from the New York State Bar Association and received an award from New York Lawyers for the Public Interest for her pro bono work.

Jennifer received her B.A. from Harvard University (with honors), where she was on the Dean's List, a Ron Brown Scholar, and a recipient of the Harvard College Scholarship. She received her J.D. from University of Virginia School of Law where she was a participant in the Lile Moot Court Competition and was recognized for her pro bono service.

She is a member of the Securities Litigation and Public Service Committees of the Federal Bar Council, and the New York City Bar Association.

Jennifer is admitted to practice in New York; the United States District Court for the Southern and Eastern Districts of New York; and the United States Courts of Appeals for the Second and Ninth Circuits.

Nicolas Tatin

French lawyer Nicolas Tatin joined Pomerantz in April 2017 as Of Counsel. He heads the Firm's Paris office and serves as its Director-Business Development Consultant for France, Benelux, Monaco and Switzerland. Nicolas advises institutional investors in the European Union on how best to evaluate losses to their investment portfolios attributable to financial misconduct, and how best to maximize their potential recoveries in U.S. and international securities litigations.

Nicolas was previously a financial lawyer at ERAFP, France's €24bn pension and retirement fund for civil servants, where he provided legal advice on the selection of management companies and the implementation of mandates entrusted to them by ERAFP.

Nicolas began his career at Natixis Asset Management, before joining BNP Paribas Investment Partners, where he developed expertise in the legal structuring of investment funds and acquired a global and cross-functional approach to the asset management industry.

Nicolas graduated in International law and received an MBA from IAE Paris, the Sorbonne Graduate Business School.

Associates

Daryoush Behbood

Daryoush joined Pomerantz as an Associate in 2019. He focuses his practice on corporate governance litigation. In 2021, Daryoush was named a Rising Star of the Plaintiffs Bar by *National Law Journal's* Elite Trial Lawyers (ALM). In 2021 and 2022, he was named a New York Metro Super Lawyers Rising Star.

Daryoush earned his Bachelor of Business Administration in Marketing from the University of Texas at Austin in 2012. There, he honed and developed his understanding of complex business matters and procedure.

In 2015, Daryoush graduated with honors from the University of Texas School of Law. While in law school, he was a member of the 2L and 3L Interscholastic Mock Trial Teams as well as the Board of Advocates. As a member of Texas Law's rigorous Advocacy Program, Daryoush developed the trial and litigation skills necessary to handle even the most complex and demanding of cases. During his final year, Daryoush won the Lone Star Classic National Mock Trial Championship and was one of only ten graduates from Texas Law's class of 2015 to be inducted into the Order of Barristers, an organization recognizing a select few graduating law students who demonstrated outstanding ability in the preparation and presentation of mock trial and moot appellate argument.

Following graduation, Daryoush clerked for the Fourteenth Court of Appeals, where he helped the Justices of the Court research and analyze complex criminal and civil cases.

Prior to joining Pomerantz, Daryoush was an associate at law firms in Texas and New York, where his practice included commercial and business litigation in both state and federal courts.

Daryoush is admitted to practice in New York, Texas, New Jersey, and Washington D.C.

Brandon M. Cordovi

Brandon M. Cordovi focuses his practice on securities litigation.

Prior to joining Pomerantz, Brandon was an associate at a law firm in New York that specializes in the defense of insurance claims. Brandon's practice focused on the defense of transportation, premises and construction liability matters.

Brandon earned his J.D. in 2018 from Fordham University School of Law, where he served on the Moot Court Board and was the recipient of a merit-based scholarship. While at Fordham Law, Brandon participated in the Securities Litigation and Arbitration Clinic, where he prepared for the negotiation and arbitration of claims brought on behalf of clients with limited resources. During his second summer of law school, Brandon was a summer associate at a major plaintiffs securities firm.

Brandon earned his B.S. from the University of Delaware where he double-majored in Sport Management and Marketing.

Brandon is admitted to practice in New York.

Jessica N. Dell

Jessica Dell focuses her practice on securities litigation.

She has worked on dozens of cases at Pomerantz, including the Firm's securities fraud lawsuits arising from BP's 2010 Gulf oil spill, pending in Multidistrict Litigation. Jessica has expertise in managing discovery and a nose for investigating complex fraud across many sectors, including pharmaceuticals, medical devices, and data security. True to her roots in public interest law, she has also worked in complex pro bono class action litigation at Pomerantz.

Jessica graduated from CUNY School of Law in 2005. She was the recipient of an Everett fellowship for her work at Human Rights Watch. She also interned at the Urban Justice Center and National Advocates for Pregnant Women. While in the CUNY clinical program, she represented survivors of domestic violence facing deportation and successfully petitioned under the Violence Against Women Act. She also successfully petitioned for the release of survivors incarcerated as drug mules in Central America. After Hurricane Katrina, Jessica traveled to Louisiana to aid emergency efforts to reunite families and restore legal process for persons lost in the prison system weeks after the flood.

Jessica is a member of the New York City and State Bar Associations and the National Lawyers Guild.

Dolgora Dorzhieva

Dolgora Dorzhieva focuses her practice on securities litigation. In 2022, she was named a New York Metro Super Lawyers Rising Star.

Prior to joining Pomerantz, Dolgora was an associate at a major plaintiffs firm, where her practice focused on consumer fraud litigation.

Dolgora earned her J.D. in 2015 from the University of California, Berkeley, School of Law, where she served as an Executive Editor of the *California Law Review*. In 2010, she graduated *summa cum laude*, Phi Beta Kappa from City College of New York.

Following graduation from law school, she clerked for the Honorable Edward M. Chen in the United States District Court for the Northern District of California.

Dolgora is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York; and the United States Court of Appeals for the Second Circuit.

Dean P. Ferrogari

Dean P. Ferrogari focuses his practice on securities litigation.

Dean earned his Juris Doctor in 2020 from Brooklyn Law School, where he served as an Associate Managing Editor for the Brooklyn Law Review. While in law school, Dean was initiated into the International Legal Honor Society of Phi Delta Phi and was an extern for the Brooklyn Volunteer Lawyers Project. He was recognized by the New York State Unified Court System's Office for Justice Initiatives for his distinguished service in assisting disadvantaged civil litigants in obtaining due process in consumer credit actions. Dean also authored the publication "The Dark Web: A Symbol of Freedom Not Cybercrime," New York County Lawyers Association CLE Institute, Security in a Cyber World: Whistle Blowers, Cyber Threats, Domestic Terrorism, Financial Fraud, Policy by Twitter … and the Evolving Role of the Attorney and Firm, Oct. 4, 2019, at 321.

Dean earned his B.A. from the University of Maryland, where he majored in Economics and was awarded the President's Transfer Scholarship.

James M. LoPiano

James M. LoPiano focuses his practice on securities litigation.

Prior to joining Pomerantz, James served as a Fellow at Lincoln Square Legal Services, Inc., a non-profit law firm run by faculty of Fordham University School of Law.

James earned his J.D. in 2018 from Fordham University School of Law, where he was awarded the Archibald R. Murray Public Service Award, *cum laude*, and merit-based scholarship. While in law school, James served as Senior Notes and Articles Editor of the *Fordham Intellectual Property, Media and Entertainment Law Journal*. James also completed a legal internship at Lincoln Square Legal Services, Inc.'s *Samuelson-Glushko Intellectual Property and Information Law Clinic*, where he counseled clients and worked on matters related to Freedom of Information Act litigation, trademarks, and copyrights. As part of his internship, James was granted temporary permission to appear before the United States

Patent and Trademark Office for trademark-related matters. Additionally, James completed both a legal externship and legal internship with the Authors Guild. James also served as a judicial intern to the Honorable Stephen A. Bucaria in the Nassau County Supreme Court, Commercial Division, of the State of New York, where he drafted legal memoranda on summary judgment motions, including one novel issue pertaining to whether certain service fees charged by online travel companies were commingled with county taxes.

James earned his B.A. from Stony Brook University, where he double-majored in English and Cinema and Cultural Studies, completed the English Honors Program, and was inducted into the Stony Brook University chapter of the International English Honors Society. Additionally, James earned the university's Thomas Rogers Award, given to one undergraduate student each year for the best analytical paper in an English course.

James has authored several publications over the course of his legal career, including "Public Fora Purpose: Analyzing Viewpoint Discrimination on the President's Twitter Account," Note, 28 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 511 (2018); "Lessons Abroad: How *Access Copyright v. York University* Helped End Canada's Educational Pirating Regime," Legal Watch, Authors Guild Fall 2017/Winter 2018 Bulletin; and "International News: Proposal for New EU Copyright Directive and India High Court's Educational Photocopy Decision," Legal Watch, Authors Guild Summer 2017 Bulletin.

James is admitted to practice in New York and the United States District Courts for the Southern and Eastern Districts of New York.

Lauren K. Molinaro

Lauren K. Molinaro focuses her practice on securities litigation.

Lauren earned her J.D. in 2021 from Fordham University School of Law, where was a staff editor for the Fordham International Law Journal. She was awarded the Archibald R. Murray Award for demonstrable commitment to public service and was the recipient of a merit-based scholarship. Lauren served as a judicial intern to the Honorable Gerald Lebovits of the New York State Supreme Court. She also completed an internship at the Law Reform Commission of Ireland in Dublin, Ireland, where she performed research on knowledge or belief concerning consent in Ireland's rape law. The law was subsequently amended to raise the threshold for consent.

Lauren earned her B.A. from the University of Wisconsin-Madison where she double-majored in English Literature and Communications – Radio, Television, and Film.

Brian P. O'Connell

Brian P. O'Connell focuses his practice on securities and financial services litigation.

Prior to joining Pomerantz in its Chicago office, Brian was an associate at a Cafferty Clobes Meriwether & Sprengel LLP, where he specialized in antitrust and commodity futures litigation. Brian has successfully litigated complex class actions involving manipulation of futures and options contracts. Brian also

previously worked at the Financial Regulatory Authority (FINRA), focusing on options trading regulation. Following law school, Brian was a legal fellow at the chambers of Judge Marvin E. Aspen in the United States District Court for the Northern District of Illinois.

Brian is passionate about finance and securities law, having previously interned for the Chicago Board Options Exchange and for Susquehanna International Group. Brian serves as Vice Chair of the Chicago Bar Association Securities Law Committee.

Brian earned his Juris Doctor from Northwestern University Pritzker School of Law. During his time there, he had the opportunity to work at the Center on Wrongful Convictions, where he argued in court on behalf of a client serving a life sentence and later exonerated. Brian also served as Executive Articles Editor on the *Journal of International Human Rights Law* and as a teaching assistant for the Northwestern Center on Negotiation and Mediation.

A graduate of Stanford University, Brian majored in Political Science and minored in Economics. During his senior year, he was Editor-in-Chief of *The Stanford Review*, where he had previously been a Features Editor and a staff writer.

Brian is admitted to practice in Illinois and California, the United States District Courts for the Northern District of Illinois, and the Northern and Central Districts of California.

Thomas H. Przybylowski

Thomas H. Przybylowski focuses his practice on securities litigation.

Prior to joining Pomerantz, Thomas was an associate at a large New York law firm, where his practice focused on commercial and securities litigation, and regulatory investigations. In 2020 and 2021, Thomas was honored as a Super Lawyers® Rising Star.

Thomas earned his J.D. in 2017 from the Georgetown University Law Center. While in law school, Thomas served as a Notes Editor for the *Georgetown Journal of Legal Ethics* and authored the publication "A Man of Genius Makes No Mistakes: Judicial Civility and the Ethics of the Opinion," Note, 29 Geo. J. Legal Ethics 1257 (2016). Thomas earned his B.A. from Lafayette College in 2014, where he double majored in English and Philosophy.

Thomas is admitted to practice in New York and New Jersey, and the United States District Courts for the Eastern and Southern Districts of New York and the District of New Jersey.

Elina Rakhlin

Elina Rakhlin focuses her practice on securities litigation. Prior to joining Pomerantz, Elina was an associate at a major complex-litigation practice, focused on class action, mass tort and commercial matters.

Elina earned her J.D. in 2017 from the Benjamin N. Cardozo School of Law, where she served as an Acquisitions Editor for the Cardozo Arts & Entertainment Law Journal. In 2014, she received her undergraduate degree from Baruch College, where she double majored in English and Political Science.

While in law school, she was an intern in the Enforcement Division of the U.S. Securities and Exchange Commission and in the Bureau of Consumer Protection of the Federal Trade Commission. Elina was also selected for the Alexander Fellows Judicial Clerkship where she served as a law clerk to the Honorable Jack B. Weinstein of the United States District Court for the Eastern District of New York.

Elina is admitted to practice in New York and the United States District Court for the Southern District of New York.

Villi Shteyn

Villi Shteyn focuses his practice on securities litigation.

Villi worked on individual securities lawsuits concerning BP's 2010 Gulf of Mexico oil spill, which proceeded in *In re BP p.l.c. Secs Litig.*, No. 4:10-md-2185 (S.D. Tex.) and were resolved in 2021 in a confidential, favorable monetary settlement for all 35 firm clients, including public private pension funds, money management firms, partnerships, and investment trusts from U.S., Canada, the U.K., France, and the Netherlands, and Australia. He also worked on a successful 2021 settlement for investors in a case against Chinese company ChinaCache.

Villi is currently pursing claims against Deutsche Bank for its lending activities to disgraced financier Jeffrey Epstein and is involved in the Firm's class action litigation against Arconic, arising from the deadliest U.K. fire in more than a century. He is also representing investors in a case against AT&T for widespread fraud relating to their rollout of DirecTVNow, and against Frutarom for fraud related to widespread bribery in Russia and Ukraine. He also represents Safra Bank in a class action against Samarco Mineração S.A., in connection with Fundao dam-burst disaster, which is widely regarded as the worst environmental disaster in Brazil's history. He is also representing investors against Recro Pharma in relation to their non-opioid pain-relief product IV Meloxicam, and against online education companies 2U and K12. Villi also worked on a pending consumer class action against Apple Inc. in relation to alleged slowdowns of the iPhone product.

Before joining Pomerantz, Villi was employed by a boutique patent firm, where he worked on patent validity issues in the wake of the landmark *Alice* decision and helped construct international patent maintenance tools for clients and assisted in pursuing injunctive relief for a patent-holder client against a large tech company.

Villi was recently recognized as a 2021 Super Lawyers® Rising Star.

Villi graduated from The University of Chicago Law School (J.D., 2017). In 2014, he graduated *summa cum laude* from Baruch College with a Bachelor of Science in Public Affairs.

Villi is admitted to practice in New York, and the United States District Courts for the Southern District of New York and the Eastern District of New York, and the United States Court of Appeals for the Second Circuit.

Christopher Tourek

Christopher focuses his practice on securities litigation.

Prior to joining Pomerantz in its Chicago office, Christopher was an associate at a prominent complex-litigation firm and specialized in consumer protection, antitrust, and securities litigation. Christopher has successfully litigated securities fraud, antitrust violations, and consumer protection violations on behalf of plaintiffs in state and federal court. His litigation experience has led to his being honored as a Super Lawyers® Rising Star in the area of Mass Torts litigation from 2016 through 2021, and in the area of Securities litigation for 2022.

Christopher graduated *cum laude* in 2013 from the University of Illinois College of Law, where he obtained his pro bono notation, honors in legal research, and was a member of the Federal Civil Rights Clinic, in which he first-chaired the case of *Powers v. Coleman* in the United States District Court for the Central District of Illinois. He earned his bachelor's degree in Government & Law, with a minor in Anthropology & Sociology, from Lafayette College in 2010.

Christopher is admitted to practice in Illinois and the United States District Courts for the District of Columbia, the Northern and Southern Districts of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri.

Staff Attorneys

Jay Douglas Dean

Jay Dean focuses on class action securities litigation. He has been a commercial litigator for more than 30 years.

Jay has been practicing with Pomerantz since 2008, including as an associate from 2009-2014, interrupted by a year of private practice in 2014-2015. More recently, he was part of the Pomerantz teams prosecuting the successful *Petrobras* and *Yahoo* actions. Prior to joining Pomerantz, he served as an Assistant Corporation Counsel in the Office of the Corporation Counsel of the City of New York, most recently in its Pensions Division. While at Pomerantz, in the Corporation Counsel's office and previously in large New York City firms, Jay has taken leading roles in trials, motions and appeals.

Jay graduated in 1988 from Yale Law School, where he was Senior Editor of the *Yale Journal of International Law*.

Jay is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York; and the United States Court of Appeals for the Second Circuit. Jay has also earned the right to use the Chartered Financial Analyst designation.

Timor Lahav

Timor Lahav focuses his practice on securities litigation.

Timor participated in the Firm's securities class action case against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a historic $3 billion settlement for the Class, as well as precedent-setting legal rulings. Timor also participated in the firm's landmark litigation against Yahoo! Inc., for the massive security breach that compromised 1.5 billion users' personal information.

Timor received his LL.B. from Tel Aviv University School of Law in Israel, following which he clerked at one of Israel's largest law firms. He was an associate at a law firm in Jerusalem, where, among other responsibilities, he drafted motions and appeals, including to the Israeli Supreme Court, on various civil matters.

He received his LL.M. from Benjamin N. Cardozo School of Law in New York. There, Timor received the Uriel Caroline Bauer Scholarship, awarded to exceptional Israeli law graduates.

Timor brings to Pomerantz several years' experience as an attorney in New York, including examining local SOX anti-corruption compliance policies in correlation with the Foreign Corrupt Practices Act; and analysis of transactions in connection with DOJ litigation and SEC enforcement actions.

Timor was a Captain in the Israeli Defense Forces. He is a native Hebrew speaker and is fluent in Russian.

He is admitted to practice in New York and Israel.

Laura M. Perrone

Laura M. Perrone focuses on class action securities litigation.

Prior to joining Pomerantz, Laura worked on securities class action cases at Labaton Sucharow. Preceding that experience, she represented plaintiffs at her own securities law firm, the Law Offices of Laura M. Perrone, PLLC.

At Pomerantz, Laura participated in the Firm's securities class action case against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a historic $3 billion settlement for the Class, as well as precedent-setting legal rulings.

Laura has also represented bondholders against Citigroup for its disastrous investments in residential mortgage-backed securities, shareholders against Barclays PLC for misrepresentations about its dark

pool trading system known as Barclays LX, and shareholders against Fiat Chrysler Automobiles for misrepresentations about its recalls and its diesel emissions defeat devices.

Laura graduated from the Benjamin N. Cardozo School of Law, where she was on the editorial staff of Cardozo's Arts and Entertainment Law Journal and was the recipient of the Jacob Burns Merit Scholarship.

Laura is admitted to practice in New York; the United States District Courts for the Southern and Eastern Districts of New York; and the United States Court of Appeals for the Second Circuit.

Jason Ratigan

Jason Ratigan brings to Pomerantz over a decade of litigation and e-discovery practice experience. Prior to joining the Firm, Jason worked on a wide variety of large-scale civil and government discovery cases.

Jason earned his law degree from Washington & Lee University School of Law where he served as senior articles editor for the Journal of Civil Rights and Social Justice and graduated magna cum laude. In 2006, he graduated magna cum laude and Phi Beta Kappa from Texas Christian University with a B.A. in History.

Jason is also an avid photographer and data analyst.

He is admitted to practice in New York.

Allison Tierney

Allison Tierney focuses her practice on securities litigation.

Allison brings to Pomerantz her 10 years' expertise in large-scale securities class action litigation. She participated in the Firm's securities class action case against Brazil's largest oil company, Petrobras, arising from a multi-billion-dollar kickback and bribery scheme, in which the Firm, as sole Lead Counsel, achieved a historic $3 billion settlement for the Class, as well as precedent-setting legal rulings.

Prior to joining Pomerantz, Allison worked on securities class action cases at several top New York law firms, representing institutional investors. She has represented plaintiffs in disputes related to antitrust violations, corporate financial malfeasance, and residential mortgage-backed securities fraud.

Allison earned her law degree from Hofstra University School of Law, where she served as notes and comments editor for the *Cyberlaw Journal*. She received her B.A. in Psychology from Boston University, where she graduated magna cum laude.

Allison is conversant in Spanish and studying to become fluent.

Allison is admitted to practice in New York.

EXHIBIT 8

Partners

	Count	Low	25th Percentile	Median	75th Percentile	High
1) Davis Polk & Wardwell LLP	6	$1,445	$1,585	$1,645	$1,695	$1,695
2) Skadden, Arps, Slate, Meagher, & Flom LLP	20	$613	$743	$1,300	$1,485	$1,695
3) Weil, Gotshal & Manges LLP	54	$765	$1,200	$1,350	$1,525	$1,600
4) Willkie Farr & Gallagher LLP	23	$1,100	$1,350	$1,450	$1,500	$1,600
5) Kirkland & Ellis LLP	91	$980	$1,135	$1,240	$1,495	$1,595
6) Wilmer Cutler Pickering Hale and Dorr LLP	5	$995	$1,028	$1,050	$1,238	$1,570
7) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	13	$1,125	$1,255	$1,455	$1,560	$1,560
8) Akin Gump Strauss Hauer & Feld LLP	71	$855	$1,040	$1,180	$1,305	$1,550
9) Milbank LLP	11	$1,155	$1,390	$1,540	$1,540	$1,540
10) Morrison & Foerster LLP	13	$925	$1,075	$1,125	$1,225	$1,500
11) Latham & Watkins LLP	24	$1,050	$1,147	$1,305	$1,370	$1,495
12) Proskauer Rose LLP	4	$1,025	$1,115	$1,295	$1,445	$1,445
13) Sidley Austin LLP	27	$875	$931	$1,050	$1,181	$1,425
14) Paul Hastings LLP	8	$1,050	$1,094	$1,163	$1,263	$1,375
15) Jones Day	30	$837	$975	$975	$1,100	$1,350
16) Kramer Levin Naftalis & Frankel	9	$995	$1,100	$1,175	$1,225	$1,350

Of Counsel

	Count	Low	25th Percentile	Median	75th Percentile	High
1) Willkie Farr & Gallagher LLP	7	$1,070	$1,070	$1,070	$1,070	$1,998
2) Kirkland & Ellis LLP	4	$1,055	$1,255	$1,315	$1,325	$1,390
3) Latham & Watkins LLP	7	$785	$1,039	$1,040	$1,040	$1,305
4) Davis Polk & Wardwell LLP	2	$1,225	$1,225	$1,225	$1,225	$1,225
5) Weil, Gotshal & Manges LLP	11	$1,050	$1,050	$1,050	$1,075	$1,215
6) Paul Hastings LLP	3	$795	$960	$1,125	$1,163	$1,200
7) Akin Gump Strauss Hauer & Feld LLP	74	$495	$825	$905	$940	$1,170
8) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	3	$1,125	$1,143	$1,160	$1,160	$1,160
9) Morrison & Foerster LLP	8	$750	$878	$925	$990	$1,150
10) Skadden, Arps, Slate, Meagher, & Flom LLP	9	$600	$1,050	$1,140	$1,140	$1,140
11) Milbank LLP	4	$1,080	$1,110	$1,120	$1,120	$1,120
12) Jones Day	5	$746	$775	$950	$950	$1,075
13) Kramer Levin Naftalis & Frankel	3	$980	$980	$980	$980	$980
14) Sidley Austin LLP	1	$925	$925	$925	$925	$925

Associates

	Count	Low	25th Percentile	Median	75th Percentile	High
1) Kirkland & Ellis LLP	164	$270	$595	$783	$920	$1,362
2) Jones Day	48	$400	$450	$550	$706	$1,240
3) Davis Polk & Wardwell LLP	37	$645	$735	$1,010	$1,040	$1,075

	Count	Low	25th Percentile	Median	75th Percentile	High
4) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	9	$640	$835	$835	$1,030	$1,065
5) Skadden, Arps, Slate, Meagher, & Flom LLP	30	$448	$507	$660	$873	$1,050
6) Willkie Farr & Gallagher LLP	40	$370	$690	$890	$995	$1,050
7) Latham & Watkins LLP	43	$565	$655	$809	$1,015	$1,035
8) Milbank LLP	17	$595	$595	$830	$920	$995
9) Weil, Gotshal & Manges LLP	139	$410	$690	$790	$950	$995
10) Paul Hastings LLP	15	$570	$645	$710	$863	$980
11) Akin Gump Strauss Hauer & Feld LLP	123	$350	$544	$660	$760	$975
12) Kramer Levin Naftalis & Frankel	12	$550	$699	$785	$925	$970
13) Proskauer Rose LLP	4	$770	$770	$823	$891	$940
14) Morrison & Foerster LLP	17	$460	$525	$713	$804	$895
15) Sidley Austin LLP	33	$475	$590	$675	$795	$890
16) Wilmer Cutler Pickering Hale and Dorr LLP	2	$730	$751	$773	$794	$815

EXHIBIT 9

d r r d

1. *Chupa v. Armstrong Flooring*, 2:19cv09840CAS(MRWx) (C.D. Cal. July 19, 2021) (Dkt. 113)
2. *Fitzpatrick v. Berryhill*, No. 1:15-cv-1865-WTL-MJD (S.D. Ind. Oct. 30, 2017) (Dkt. 33)
3. *Hashem v. NMC Health*, No. 2:20-cv-02303-CBM-MAA (C.D. Cal. Aug. 16, 2022) (Dkt. 145)
4. *In re Broadcom Corp. Class Action Litig.*, No. CV-06-5036-R (CWx) (C.D. Cal. Dec. 4, 2012) (Dkt. 454)
5. *In re Finisar Corp. Sec. Litig.*, No. 5.11-cv-01252-EJD (N.D. Cal. Feb. 16, 2021) (Dkt. 214)
6. *In re Goldman Sachs*, 21-3105 (2d Cir. Mar. 9, 2022) (Dkt. 102)
7. *In re HP Sec. Litig.*, No. 3.12cv-05980-CRB (N.D. Cal. Nov. 16, 2015) (Dkt. 279)
8. *In re Intuitive Surgical Sec. Litig.*, No. 5.13-cv-01920 EJD (HRL) (N.D. Cal. Dec. 20, 2018) (Dkt. 317)
9. *In re JDS Uniphase Sec. Litigation*, No. C-02-1486 (N.D. Cal. Nov. 27, 2007) (Dkt. 1883)
10. *In re Portland Gen. Electric Sec. Litig.*, No. 20-cv-1583-SI (D. Or. Mar. 22, 2022) (Dkt. 54)
11. *In re Silver Wheaton Corp. Sec. Litig.* 2:15-cv-05146-CAS-PJWx (C.D. Cal. Mar. 9, 2020) (Dkt. 487)
12. *In re Stellantis N.V. Sec. Litig.*, 1.19-cv-06770 (E.D.N.Y. Feb. 23, 2022) (Dkt. 70)
13. *Klein v. Altria Group, Inc.*, No. 3.20-cv-00075 (E.D. Va. Mar. 31, 2022) (Dkt. 320)
14. *Steinberg v. Opko Health, Inc.*, No. 1.18-cv-23786 (S.D. Fl. Apr. 29, 2021) (Dkt. 131)
15. *Vitiello v. Bed Bath Beyond, Inc.*, No. 2.20-CV-04240 (D.N.J. June 3, 2022) (Dkt. 90)
16. *Zwick v. Partners, LP v. Quorum Health Corp.*, No. 3.16-cv-02475 (M.D. Tenn. Nov. 30, 2020) (Dkt. 359)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MICHAEL CHUPA, Individually and on behalf of all others similarly situated,

Plaintiff,

v.

ARMSTRONG FLOORING, INC., et al.,

Defendants.

Case No.: 2:19cv09840CAS(MRWx)

CLASS ACTION

ORDER AWARDING PAYMENT OF ATTORNEYS' FEES AND EXPENSES

Hon. Christina A. Snyder

WHEREAS:

On July 19, 2021, a hearing having been held before this Court to determine, among other things, whether and in what amount to award: (1) Lead Counsel in the above captioned securities class action (the "Action") fees and litigation expenses; and (2) Lead Plaintiff's costs and expenses (including lost wages), pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), relating to his representation of the Settlement Class.[1]

[1] All capitalized terms used in this order that are not otherwise defined herein have the meanings defined in the Stipulation and Agreement of Settlement, dated as of

The Court having considered all matters submitted to it, and it appearing that a notice of the hearing substantially in the form approved by the Court (the Notice) was sent to all reasonably identified Settlement Class Members; and that a Summary Notice of the hearing, substantially in the form approved by the Court, was published in Investor's Business Daily and transmitted over PR Newswire; and the Court having considered, among other things, whether and in what amount to award: (1) Lead Counsel in the Action fees and litigation expenses; and (2) Lead Plaintiff's costs and expenses (including lost wages), pursuant to the PSLRA, relating to representation of the Settlement Class.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all Settlement Class Members who have not timely and validly requested exclusion, Plaintiffs' Counsel, and the Claims Administrator.

2. Notice of Lead Counsel's application for attorneys' fees and payment of expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the application for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, and due process, and constituted the best notice practicable under the circumstances, and due and sufficient notice to all persons and entities entitled thereto.

3. Lead Counsel is hereby awarded, on behalf of all Plaintiffs' Counsel, attorneys' fees in the amount of $937,500.00 (which is 25% of the Settlement Fund), and payment of litigation expenses in the amount of up to $67,460.97, which the Court finds to be fair and reasonable.

January 15, 2021 (the "Stipulation").

4. The award of attorneys' fees and litigation expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

5. In making this award of attorneys' fees and payment of litigation expenses to be paid from the Settlement Fund, the Court has analyzed the factors considered within the Ninth Circuit and found that:

a) The Settlement has created a common fund of $3.75 million in cash, which is a favorable result, and that Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of counsel;

b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Lead Plaintiff, who has a substantial interest in ensuring that any fees paid to counsel are duly earned and not excessive;

c) Plaintiffs' Counsel undertook the Action on a contingent basis, and have received no compensation during the years the Action was litigated, and any fee and expense award has been contingent on the result achieved;

d) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy challenging proceedings the resolution of which would be uncertain;

e) Plaintiffs' Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

f) Plaintiffs' Counsel have devoted approximately 939.05 hours, with a reasonable lodestar of $744,523.25 to achieve the Settlement;

g) The amount of attorneys' fees awarded are fair and reasonable and are consistent with fee awards approved in cases within the Ninth Circuit; and

h) Notice was disseminated to putative Settlement Class Members stating that Lead Counsel would be submitting an application for attorneys' fees in an amount not to exceed 25% of the Settlement Fund, which includes accrued interest, and payment of litigation expenses incurred in connection with the prosecution of this Action not to exceed $75,000 and that such application also might include a request that Lead Plaintiffs be reimbursed their reasonable costs and expenses (including lost wages) directly related to their representation of the Settlement Class.

i) No Settlement Class Member objected to the Settlement or Lead Counsel's application for attorneys' fees and litigation expenses.

6. In accordance with the PSLRA, the Court also awards Lead Plaintiff $1,360.00 for costs and expenses directly related to their representation of the Settlement Class.

7. Any appeal or challenge affecting this Court's approval of the attorneys' fees, expense application, or award of costs and expenses to Lead Plaintiff in the Action, shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. Exclusive jurisdiction is retained over the subject matter of this Action and over all parties to the Action, including the administration of the Settlement.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

Dated this 19th day of July, 2021.

Christina A. Snyder

Christina A. Snyder
United States District Court Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MICHAEL D. FITZPATRICK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Cause No. 1:15-cv-1865-WTL-MJD**
	)	
NANCY A. BERRYHILL, Acting Commissioner of the Social Security Administration,[1]	)	
	)	
Defendant.	)	

ENTRY ON MOTION FOR ATTORNEY FEES

After this case was remanded to the Commissioner for further proceedings, Plaintiff Michael D. Fitzpatrick received a fully favorable decision and was awarded disability insurance benefits, including a back pay award of $74,461.00. Plaintiff's counsel now requests an award of attorney fees pursuant to 42 U.S.C. § 406(b) in the amount of $18,615.25 which, consistent with the agreement between counsel and Mr. Fitzpatrick, is 25% of his back pay award. As is her right, the Commissioner has filed a response to the fee petition; she points out that given the fact that counsel's firm spent 6.4 attorney hours and 11.4 non-attorney staff hours on Mr. Fitzpatrick's appeal before this Court, the fee award sought would correspond to an implied hourly rate somewhere between $1,045 per hour (counting non-attorney time as equal to attorney time) and $2,908 per hour (counting solely attorney time).

The question before the Court is whether $18,615.25 is a reasonable attorney fee in this

[1]Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill automatically became the Defendant in this case when she succeeded Carolyn Colvin as the Acting Commissioner of Social Security on January 23, 2017.

case. 42 U.S.C. § 406(b)(1)(a) ("Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment . . . ."); *McGuire v. Sullivan*, 873 F.2d 974, 981 (7th Cir. 1989) ("[T]he court should consider the reasonableness of the contingency percentage to make sure the attorney does not receive fees which are out of proportion to the services performed, the risk of loss and the other relevant considerations."). At first blush, an award of over $1,000 per hour for this type of case might seem unreasonable. However, the fact is that Plaintiff's counsel handled this case in a very efficient manner, making a clear, concise and targeted argument that maximized the Plaintiff's chance of success of receiving an order of remand from this Court and ultimately an award of benefits from the Commissioner. Further, while there is obviously some risk of loss in virtually any case, in the Court's experience it is particularly difficult to predict with any certainty how a case will be handled by the Commissioner, especially at the ALJ level. Given this fact, and also considering the need to encourage high quality representation of those seeking disability benefits, the Court finds that the fee award requested by Plaintiff's counsel is this case is reasonable, and the motion is **GRANTED.**

Plaintiff's counsel Joseph R. Wambach is entitled to a fee award of $18,615.25 pursuant to 42 U.S.C. § 406(b) and the Commissioner shall release those funds to him. Upon receipt of these funds, Mr. Wambach shall refund to Mr. Fitzgerald the $2,324.00 he has received pursuant to the Equal Access to Justice Act.

SO ORDERED: 10/30/17

William T Lawrence

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Copies to all counsel of record via electronic communication

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRIS HASHEM, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

NMC HEALTH PLC, PRASANTH MANGHAT, KHALIFA BIN BUTTI, PRASHANTH SHENOY, H.J. MARK TOMPKINS, and B.R. SHETTY,

Defendants.

Case No.: 2:20-cv-02303-CBM-MAA

(Consolidated with Case No. 2:20-cv-02895-CBM-MAA)

[~~PROPOSED~~] ORDER AND PARTIAL FINAL JUDGMENT

[Honorable Consuelo B. Marshall]

CBM

(135)

[PROPOSED] ORDER AND PARTIAL FINAL JUDGMENT

On the 16th day of August, 2022 a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated February 17, 2022 ("Settlement Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against Dr. B.R. Shetty ("Settling Defendant" or "Dr. Shetty"), including the release of the Released Claims against the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Settling Defendant with prejudice; (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members; (4) whether and in what amount to award attorneys' fees to Co-Lead Counsel; (5) whether and in what amount to award Co-Lead Counsel reimbursement of litigation expenses; and (6) whether and in what amount to award compensation to Lead Plaintiffs.

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

It appearing in the record that the Summary Notice substantially in the form approved by the Court in the Court's Order Granting Plaintiffs' Motion for Preliminary Approval of Partial Class Action Settlement, dated April 8, 2022 ("Preliminary Approval Order") was published; the Postcard Notice was mailed to all reasonably identifiable Settlement Class Members; a link to the Notice was emailed to all reasonably identifiably Settlement Class Members and the Notice was posted to the website of the Claims Administrator; all in accordance with the Preliminary Approval Order and the specifications of the Court; and

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

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

2. The Court has jurisdiction over the subject matter of the Action.

3. The Court finds that, for settlement purposes only, the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that:

(a) the number of 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 Lead Plaintiffs are typical of the claims of the Settlement Class they seek to represent;

(d) Lead Plaintiffs and Co-Lead Counsel fairly and adequately represent the interests of the Settlement Class;

(e) 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 this Action, considering:

i. the interests of the Settlement Class Members in individually controlling the prosecution of the separate actions;

ii. the extent and nature of any litigation concerning the controversy already commenced by Settlement Class Members;

iii. the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and

iv. the difficulties likely to be encountered in the management of the class action.

The Settlement Class is being certified for settlement purposes only.

4. The Court hereby finally certifies this action as a class action for purposes of the Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all Persons (including, without limitation, their

beneficiaries) who purchased or acquired NMC Health PLC ("NMC" or the "Company") American Depositary Shares ("ADSs") between March 13, 2016 and March 10, 2020, both dates inclusive. Excluded from the Settlement Class are (i) Defendants; (ii) current and former officers and directors of NMC and any Released Parties defined in paragraph 1.26 of the Settlement Stipulation; (iii) the Persons deemed Related Parties to the Released Parties as defined in paragraph 1.24 of the Settlement Stipulation; (iv) the respective spouses, children, or parents of any Person excluded under subparagraphs (i) through (iii) of this paragraph; (v) any Person more than 5% owned or directly or indirectly controlled by any Person excluded under subparagraphs (i) through (iv) of this paragraph or any trust of which such a Person is a beneficiary or of which any Person is related or affiliated to a beneficiary or a trustee; (vi) the respective heirs, successors, trustees and assigns of any Person excluded under paragraphs (i) through (v); and (vii) those Persons who file valid and timely requests for exclusion in accordance with the Court's Preliminary Approval Order.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of this Settlement only, Lead Plaintiffs are certified as the class representatives on behalf of the Settlement Class and Co-Lead Counsel previously selected by Lead Plaintiffs and appointed by the Court is hereby appointed as class counsel for the Settlement Class ("Co-Lead Counsel").

6. In accordance with the Court's Preliminary Approval Order, the Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all Persons entitled to

such notice. No Settlement Class Member is relieved from the terms and conditions of the Settlement, including the releases provided for in the Settlement Stipulation, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby determined that all Settlement Class Members are bound by this Order and Partial Final Judgment except those Persons listed on Exhibit A to this Order and Partial Final Judgment.

7. The Settlement is approved as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure, and in the best interests of the Settlement Class. This Court further finds that the Settlement set forth in the Settlement Stipulation is the result of good faith, arm's-length negotiations between experienced counsel representing the interests of Lead Plaintiffs, Settlement Class Members, and the Settling Defendant. The Settling Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Settlement Stipulation.

8. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against Dr. Shetty and the Released Parties. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Stipulation.

9. The Court orders:

(a) In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out of the Released Claims by any Person against any of the Released Parties (other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii)) are hereby permanently barred, extinguished, discharged, satisfied and unenforceable. Accordingly, without limitation to any of the above, any Person is hereby permanently enjoined from commencing, prosecuting, or

asserting against any of the Released Parties any such claim for contribution. In accordance with 15 U.S.C. § 78u-4(f)(7)(B), any final verdict or judgment that might be obtained by or on behalf of the Lead Plaintiffs, the Settlement Class or a Settlement Class Member against any Person for loss for which such Person and any Released Parties are found to be jointly responsible shall be reduced by the greater of (i) an amount that corresponds to the total amount of the Settling Defendant's percentage of responsibility for the loss to the Lead Plaintiffs, the Settlement Class or Settlement Class Member, or (ii) the Settlement Amount.

(b) Any and all Persons are permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim against any of the Released Parties arising under any federal, state, or foreign statutory or common-law rule, however styled, whether for indemnification or contribution or otherwise denominated, including claims for breach of contract or for misrepresentation, where the claim is or arises from a Released Claim and the alleged injury to such Person arises from that Person's alleged liability to Lead Plaintiffs, the Settlement Class or any Settlement Class Member, including any claim in which a Person seeks to recover from any of the Released Parties any amounts such Person has or might become liable to pay to Lead Plaintiffs or the Settlement Class or any Settlement Class Member (hereafter the "Complete Bar Order"). All such claims are hereby extinguished, discharged, satisfied, and unenforceable. The provisions of the Complete Bar Order are intended to preclude any liability of any of the Released Parties to any Person for indemnification, contribution, or otherwise on any claim that is or arises from a Released Claim and where the alleged injury to such Person arises from that Person's alleged liability to the Lead Plaintiffs, the Settlement Class or any Settlement Class Member; provided however, that if the Lead Plaintiffs, Settlement Class or any Settlement Class Member obtains any

judgment against any such Person based upon, arising out of, or relating to any Released Claim for which such Person and any of the Released Parties are found to be jointly responsible, that Person shall be entitled to a judgment credit equal to an amount that is the greater of (i) an amount that corresponds to such Released Party's or Parties' percentage of responsibility for the loss to the Lead Plaintiffs or Settlement Class or Settlement Class Member, or (ii) the Settlement Amount.

(c) If any term of the Complete Bar Order entered by the Court is held to be unenforceable after the date of entry, such provision shall be substituted with such other provision as may be necessary to afford all of the Released Parties the fullest protection permitted by law from any claim that is based upon, arises out of, or relates to any Released Claim.

(d) Notwithstanding the Complete Bar Order or anything else in the Settlement Stipulation, nothing shall release, interfere with, limit, or bar the assertion by any Released Party of any claim for or defense to the availability of insurance coverage under any insurance, reinsurance or indemnity policy that provides coverage respecting the conduct at issue in this Action, except as limited by the insurance agreement.

(e) Nothing in this Order or the Settlement shall be deemed to release any claim by Lead Plaintiffs or the Settlement Class against any Defendant in this Action other than Dr. Shetty.

10. The Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim and Release Form, any disbursement from the Settlement Fund, shall be deemed to have, and by operation of this Order and Partial Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the

Released Parties. The Releasing Parties shall be deemed to have, and by operation of this Order and Partial Final Judgment shall have, covenanted not to sue the Released Parties with respect to any and all Released Claims in any forum and in any capacity. The Releasing Parties shall be and hereby are permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, in any capacity, against any of the Released Parties. Nothing contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of the Settlement Stipulation or this Order and Partial Final Judgment.

11. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members, and Co-Lead Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Settlement Stipulation.

12. The Court awards fees to Co-Lead Counsel in the amount of $ 100k and reimbursement of expenses to Co-Lead Counsel in the amount of $ 3,382.83 said amounts to be paid from the Settlement Fund. The Court also awards each Lead Plaintiff a compensatory award in the amount of $ 3,000, also to be paid from the Settlement Fund.

13. The Court finds that the Settling Parties and their counsel have complied with all requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private Securities Litigation Record Act of 1995 as to all proceedings herein.

14. Neither this Order and Partial Final Judgment, the Settlement Stipulation (nor the Settlement contained therein), nor any of its terms and provisions, nor any of the negotiations, documents or proceedings connected with them:

(a) is or may be deemed to be, or may be used as an admission, concession, or evidence of, the validity or invalidity of any Released Claims, the truth or falsity of any fact alleged by Lead Plaintiffs, the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing, liability, negligence or fault of Settling Defendant, the Released Parties, or each or any of them;

(b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by the Settling Defendant or Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal;

(c) is or may be deemed to be or shall be used, offered or received against the Settling Parties, Settling Defendant or the Released Parties, or each or any of them, as an admission, concession or evidence of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by the Lead Plaintiffs or the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

(d) is or may be deemed to be or shall be construed as or received in evidence as an admission or concession against the Settling Defendant, or the Released Parties, or each or any of them, that any of Lead Plaintiffs' claims or Settlement Class Members' claims are with or without merit, that a litigation class should or should not be certified, that damages recoverable in the Action would have been greater or less than the Settlement Fund or that the consideration to be given pursuant to the Settlement Stipulation represents an amount equal to, less than or greater than the amount which could have or would have been recovered after trial.

15. The Released Parties may file the Settlement Stipulation and/or this Order and Partial Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settling Parties may file the Settlement Stipulation and/or this Order and Partial Final Judgment in any proceedings that may be necessary to consummate or enforce the Settlement Stipulation, the Settlement, or this Order and Partial Final Judgment.

16. Except as otherwise provided herein or in the Settlement Stipulation, all funds held by the Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed or returned pursuant to the Settlement Stipulation and/or further order of the Court.

17. Without affecting the finality of this Order and Partial Judgment in any way, this Court hereby retains continuing exclusive jurisdiction regarding the administration, interpretation, effectuation or enforcement of the Settlement Stipulation and this Order and Partial Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Settlement Class Members.

18. Without further order of the Court, Settling Defendant and Lead Plaintiffs may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Stipulation.

19. There is no just reason for delay in the entry of this Order and Partial Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

20. The finality of this Order and Partial Final Judgment is not contingent on rulings that the Court may make on any of Co-Lead Counsel's applications in the

Action for fees or expenses to Co-Lead Counsel, or compensatory awards to Lead Plaintiffs.

21. If the Settlement is not consummated in accordance with the terms of the Settlement Stipulation, then the Settlement Stipulation and this Order and Partial Final Judgment (including any amendment(s) thereof, and except as expressly provided in the Settlement Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties or the Released Parties, and each Settling Party shall be restored to his, her or its respective litigation positions as they existed prior to December 27, 2021, pursuant to the terms of the Settlement Stipulation.

Dated: 8/16, 2022

HON. CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In re BROADCOM CORPORATION CLASS ACTION LITIGATION	Lead Case No.: CV-06-5036-R (CWx)
	ORDER AWARDING CLASS COUNSEL ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES
	Date: December 3, 2012 Time: 10:00 a.m. Before: The Hon. Manuel L. Real

THIS MATTER having come before the Court on Class Counsel's Unopposed Motion for Attorneys' Fees and Reimbursement of Litigation Expenses and Memorandum of Points and Authorities in Support Thereof; the Court having considered all papers filed and proceedings had therein, having found the settlement of this action to be fair, reasonable, and adequate and otherwise being fully informed;

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 and Agreement of Settlement with Ernst & Young LLP, dated as of September 27, 2012 (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 Class Counsel attorneys' fees of 18.5% of the Settlement Fund, plus reimbursement of litigation expenses in the amount of $_____, 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 appropriate and is fair and reasonable under the "percentage-of-the-recovery" method, given the results obtained for the Class, the substantial risks of non-recovery, the time and effort involved, and the quality of Class Counsel's work. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).

4. The fees shall be allocated among counsel for the Class Representatives by Class Counsel in a manner that reflects each such counsel's contribution to the institution, prosecution, and resolution of the captioned action.

5. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Class Counsel subject to the terms, conditions, and

obligations of the Stipulation, and pursuant to the timing set forth in ¶12 thereof, which terms, conditions and obligations are incorporated herein.

6. The Court hereby awards Class Representative New Mexico State Investment Council, as Class Representative, reimbursement of its reasonable lost wages directly relating to its representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4(a)(4). The Court awards Class Representative the requested amount of $21,087, which may be paid upon entry of this Order.

IT IS SO ORDERED.

DATED: Dec. 4, 2012, 2012

THE HONORABLE MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

In re FINISAR CORPORATION SECURITIES LITIGATION	Case No. 5:11-CV-01252-EJD CLASS ACTION ~~[PROPOSED]~~ **ORDER AWARDING ATTORNEYS' FEES AND PAYMENT OF EXPENSES** Hon. Edward J. Davila

On February 11, 2021, a hearing having been held before this Court to determine, among other things, (1) whether and in what amount to award fees and reimbursement of Litigation Expenses to Lead Counsel Abraham, Fruchter &Twersky, LLP ("Lead Counsel") for Lead Plaintiff Oklahoma Firefighters Pension and Retirement System ("Lead Plaintiff" or "Oklahoma Firefighters") directly relating their representation of the Settlement Class; and (2) whether and in what amount to award Lead Plaintiff an incentive award pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court (the "Settlement Notice") was mailed to all reasonably identified Settlement Class Members; and that a summary notice of the hearing (the "Summary Notice"), substantially in the form approved by the Court, was published in *Investor's Business Daily* and transmitted over *PR Newswire*; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement, dated July 8, 2020 (Dkt. 199-1) (the "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 over the subject matter of this Action and over all parties to the Action, including all Settlement Class Members who have not timely and validly requested exclusion, Lead Counsel, and the Claims Administrator.

3. Notice of Class Counsel's application for attorneys' fees and payment of Litigation Expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the application for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, due process, and other applicable law, constituted the best notice

practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel are hereby awarded attorneys' fees in the amount of $1,700,000 (which is 25% of the Settlement Fund), and payment of Litigation Expenses in the amount of $381,496.40, which sums the Court finds to be fair and reasonable.

5. The award of attorneys' fees and Litigation Expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

6. In making this award of attorneys' fees and payment of Litigation Expenses to be paid from the Settlement Fund, the court has analyzed the factors considered within the Ninth Circuit and found that:

(a) The Settlement has created a common fund of $6.8 million in cash and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Lead Counsel;

(b) Lead Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

(c) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(d) Lead Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy; and

(e) The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method and Ninth Circuit precedent.

7. Pursuant to the PSLRA, 15 U.S.C. §78u-4(a)(4), the Court hereby awards $5,000 to Lead Plaintiff Oklahoma Firefighters directly related to its representation of the Settlement Class in this Action.

8. Any appeal or challenge affecting this Court's approval of any attorneys' fee and expense application by Lead Counsel, or incentive award to Lead Plaintiff, shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. Exclusive jurisdiction is retained over the subject matter of this Action and over all parties to the Action, including the administration of the Settlement.

10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: February 16, 2021

Honorable Edward J. Davila
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of March, two thousand twenty-two.

Before: Richard C. Wesley,
Denny Chin,
Richard J. Sullivan,
Circuit Judges.

Goldman Sachs Group, Inc., Lloyd C. Blankfein, David A. Viniar, Gary D. Cohn,

Petitioners,

v.

Arkansas Teachers Retirement System, West Virginia Investment Management Board, Plumbers and Pipefitters Pension Group,

Respondents.

ORDER

Docket No. 21-3105

Petitioners request, pursuant to Federal Rule of Civil Procedure 23(f), leave to appeal the December 8, 2021 order of the district court granting class certification.

IT IS HEREBY ORDERED that the Rule 23(f) petition is GRANTED. The merits of the appeal shall be referred to this panel.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE HP SECURITIES LITIGATION,

This Document Relates To: All Actions

MASTER FILE NO. 3:12-CV-05980-CRB

CLASS ACTION

[~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND LITIGATION EXPENSES

This matter came for hearing on November 13, 2015 (the "Settlement Hearing"), on Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee and Expense Application"). The Court having considered Lead Counsel's Fee and Expense Application and all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that due and adequate notice of the Settlement, the Settlement Hearing and related matters, including Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses, was given to the Settlement Class as required by the Court's July 17, 2015 Order (the "Preliminary Approval Order").

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order hereby incorporates by reference the definitions in the Stipulation of Settlement and Release dated as of June 8, 2015 (the "Stipulation"), and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

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

3. Notice of Lead Counsel's Fee and Expense Application was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of Lead Counsel's Fee and Expense Application met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, the Constitution of the United States, and any other applicable law, and constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto.

4. Settlement Class Members have been given the opportunity to object to Lead Counsel's Fee and Expense Application in compliance with Rule 23(h)(2) of the Federal Rules of Civil Procedure.

5. Lead Counsel is hereby awarded attorneys' fees in the amount of 11% of the Settlement Amount, net of Court-approved Litigation Expenses, which sum the Court finds to be fair and reasonable, and $1,023,971.29 in reimbursement of Litigation Expenses, plus interest earned on both amounts at the same rate as earned by the Settlement Fund. The foregoing attorneys' fees and Litigation Expenses shall be paid from the Settlement Fund in accordance with the terms of the Stipulation.

6. Lead Plaintiff PGGM Vermogensbeheer B.V. is hereby awarded $162,900 from the Settlement Fund as reimbursement for its costs and expenses directly related to its representation of the Settlement Class.

7. In making the foregoing awards of attorneys' fees and Litigation Expenses to be paid from the Settlement Fund, the Court has considered and found that:

a. The Settlement has created a fund of $100 million in cash that has been deposited into an escrow account for the benefit of the Settlement Class pursuant to the terms of the Stipulation, and eligible members of the Settlement Class who submit acceptable Claim Forms will benefit from the Settlement that occurred because of Lead Counsel's efforts;

b. Lead Counsel's Fee and Expense Application has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiff, a large, sophisticated institutional investor that was actively involved in the prosecution and resolution of the Action;

c. Copies of the Notice which stated that Lead Counsel would apply to the Court for attorneys' fees in an amount not to exceed eleven percent (11%) of the Settlement Amount, net of Litigation Expenses, and reimbursement of Litigation Expenses in an amount not to exceed $1.25 million, were mailed to over 809,000 potential Settlement Class Members or their nominees. In addition, the Notice stated that the maximum amount of Litigation Expenses included reimbursement of costs

and expenses (including lost wages) incurred by Lead Plaintiff in connection with its representation of the Settlement Class, in an amount not to exceed $175,000;

d. There were no objections to Lead Counsel's Fee and Expense Application;

e. Lead Counsel has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

f. The Action involves complex factual and legal issues and was actively prosecuted for nearly three years;

g. Had Lead Counsel not achieved the Settlement, there would remain a significant risk that Lead Plaintiff and the other members of the Settlement Class may have recovered less or nothing from the Defendants;

h. Lead Counsel devoted over 17,723 hours, with a lodestar value of approximately $9.4 million, to achieve the Settlement; and

i. The amount of attorneys' fees and Litigation Expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

8. Any appeal or any challenge affecting this Court's award of attorneys' fees and Litigation Expenses shall in no way disturb or affect the finality of the Judgment.

9. 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.

10. 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 Stipulation and shall be vacated in accordance with terms of the Stipulation.

11. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: 11/13/2015

The Honorable Charles R. Breyer
United States District Judge

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Lead Counsel for Plaintiffs and the Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE INTUITIVE SURGICAL SECURITIES LITIGATION	Case No. 5:13-cv-01920 EJD (HRL) CLASS ACTION **[~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES, PAYMENT OF EXPENSES, AND PAYMENT OF CLASS REPRESENTATIVES' EXPENSES**

On December 20, 2018, a hearing having been held before this Court to determine, among other things, whether and in what amount to award (1) Class Counsel in the above-captioned consolidated securities class action (the "Action") fees and litigation expenses directly

relating to their representation of the Class; and (2) Class Representatives their costs and expenses (including lost wages), pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court (the "Settlement Notice") was mailed to all reasonably identified Class Members; and that a summary notice of the hearing (the "Summary Notice"), substantially in the form approved by the Court, was published in *Investor's Business Daily* and transmitted over *PR Newswire*; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested;

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

1. The Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all Class Members who have not timely and validly requested exclusion, Plaintiffs' counsel, and the Claims Administrator.

2. All capitalized terms used herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated as of September 11, 2018 (the "Stipulation").

3. Notice of Class Counsel's application for attorneys' fees and payment of litigation expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the application for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, due process, and 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. Class Counsel are hereby awarded, on behalf of all Plaintiffs' counsel, attorneys' fees in the amount of $8,075,000 plus interest at the same rate earned by the Settlement Fund (which is 19% of the Settlement Fund), and payment of litigation expenses in the amount of $1,988,789.66, which sums the Court finds to be fair and reasonable.

5. The award of attorneys' fees and litigation expenses may be paid to Class Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

6. In making this award of attorneys' fees and payment of litigation expenses to be paid from the Settlement Fund, the Court has analyzed the factors considered within the Ninth Circuit and found that:

(a) The Settlement has created a common fund of $42.5 million in cash and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Class Representatives, sophisticated institutional investors that were directly involved in the prosecution and resolution of the Action and who have a substantial interest in ensuring that any fees paid to counsel are duly earned and not excessive;

(c) Class Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

(d) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(e) Class Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(f) Plaintiffs' counsel have devoted approximately 41,813.90 hours, with a lodestar value of $21,548,609.00 to achieve the Settlement;

(g) The amount of attorneys' fees awarded are fair and reasonable and are less than fee awards approved in cases within the Ninth Circuit with similar recoveries;

(h) Notice was disseminated to putative Class Members stating that Class Counsel would be submitting an application for attorneys' fees in an amount not to exceed 19% of the Settlement Fund, which includes interest, and payment of litigation expenses incurred in connection with the prosecution of this Action up to $2,500,000 plus interest, and that such application also might include a request that Class Representatives be reimbursed their reasonable costs and expenses (including lost wages) directly related to their representation of the Class; and

(i) There were no objections to the application for attorneys' fees or expenses.

7. In accordance with the PSLRA, the Court hereby awards Class Representative Employees' Retirement System of the State of Hawaii $49,754.18 for its costs and expenses directly related to its representation of the Class, and Class Representative Greater Pennsylvania Carpenters' Pension Fund $9,100.00 for its costs and expenses directly related to its representation of the Class.

8. Any appeal or challenge affecting this Court's approval of any attorneys' fee, expense application, or award of costs and expenses to Class Representatives in the Action, shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. Exclusive jurisdiction is retained over the subject matter of this Action and over all parties to the Action, including the administration of the Settlement.

10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

Dated: December 20, 2018

HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

1

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re JDS UNIPHASE CORPORATION SECURITIES LITIGATION

No. C 02-1486 CW

VERDICT QUESTIONS FORM

E01

Part A--Section 10(b) and Section 20 False or Misleading Statements Liability

Please answer the questions below for each of the statements on the Table of Challenged Statements and indicate your unanimous answers on the Verdict Table. If a box on the Verdict Table is blacked out or already filled in, that means that the question does not apply to the corresponding statement or that the parties have agreed to an answer. Please skip any question that is blacked out or already answered. A "yes" answer favors Plaintiffs; a "no" answer favors Defendants.

1. 1/20 Do you find that this challenged statement contains an untrue statement of material fact, or omits a material fact necessary under the circumstances to keep the statement that was made from being misleading? Answer Yes or No.

If you answered "Yes," please proceed to Question 2, and if Question 2 is blacked out, please skip to Question 3. If you answered "No," please return to Question 1 for the next statement.

2. 1/20 Do you find that the challenged statement was <u>not</u> accompanied by meaningful cautionary statements as defined in the instructions? Answer Yes or No.

If you answered "Yes," please proceed to Question 3. If you answered "No," please return to Question 1 for the next statement.

3. 1/20 Please enter "Yes" in the box representing any Individual Defendant who you find was substantially involved in the preparation of the challenged statement.

If you identified any Individual Defendant, or if any Individual Defendant was already marked, please proceed to Question 4a. If you did not identify any Individual Defendant and no Individual Defendant was already marked, please return to Question 1 for the next statement.

4a. Do you find that any Individual Defendant who you found in Question 3 made or was responsible for the statement, or who the parties agree made the statement, did so with actual knowledge that the statement was materially false or misleading? Answer Yes or No.

If you answered "No" for any Individual Defendant identified in Question 4a, please answer Question 4b for that Individual Defendant. Otherwise, skip to Question 5.

4b. Do you find that any Individual Defendant who you found in Question 3 made or was responsible for the statement, or who the parties agree made the statement, did so with deliberate recklessness? Answer Yes or No.

If you answered "Yes" to Question 4a or 4b for any Individual Defendant, please proceed to Question 5. Otherwise, please return to Question 1 for the next statement.

5. Do you find that the untrue statement of material fact, or the omitted material fact, played a substantial part in causing a loss to Plaintiffs? Answer Yes or No.

If you answered "Yes," please proceed to Question 6. If you answered "No," please return to Question 1 for the next statement.

6. Please enter "Yes" in the box representing any Individual Defendant who you find directly or indirectly controlled the person who made the challenged statement, directly or indirectly induced the person to make the statement, and did not act in good faith.

Please return to Question 1 for the next statement. When you have completed the chart for all statements, please review your answers recorded on the Verdict Table. If you found for Plaintiff on any statement (i.e. if you answered "yes" in Column 5 for any statement), please proceed to Part B, Question 7. Otherwise, please skip to Part D, Question 14.

Part B--Section 10(b) and Section 20 False or Misleading Statements Damages

7. Which of these two methods do you find is the most accurate method for calculating damages in this case?

___ Dollar Inflation ___ Percentage Inflation

If you selected "Dollar Inflation," please complete Question 8. If you selected "Percentage Inflation," please complete Question 9 on Page 5. (Do not complete both tables.)

8. If you answered "Dollar Inflation," please complete the table, following the instructions below.

a. Please black out Column 2 for any date on which you do not find that the challenged statement(s) on that date caused a loss (i.e. for which you answered "No" in Column 5 of the Verdict Table).
b. Beginning with the first date that is not blacked out in Column 2, please enter the dollar amount by which you find the false or misleading statement(s) made on that date inflated the price of JDSU stock.
c. For this first row only, please copy the amount you entered in Column 2 into Column 4.
d. Proceed to the next row. If Column 2 is not blacked out, enter the dollar amount by which you find the false or misleading statement(s) made on this date inflated the price of JDSU stock. Enter, in Column 3, the amount, if any, by which you find that any corrective disclosures, since the date of the previous row, have reduced the inflation created by false or misleading statements. Take the number from Column 4 in the previous row, add the number, if any, in Column 2, subtract the number, if any, in Column 3, and enter the result in Column 4.
e. Please continue to complete each row.

When you are finished, please skip to Part C, Question 10.

Dollar Inflation Table

COLUMN 1	COLUMN 1a	COLUMN 2	COLUMN 3	COLUMN 4
Date	Price per share on this Date	Inflation created by false or misleading statement(s) on this date	Reduction in inflation due to corrective disclosures, if any, since previous date	Total inflation due to challenged statements on this date
4/25/00	$93.38	$	[redacted]	$
5/25/00	$79.00	[redacted]	$	$
6/25/00	$123.44	[redacted]	$	$
7/26/00	$135.94	$	$	$
8/25/00	$125.31	[redacted]	$	$
9/1/00	$123.81	$	$	$
9/7/00	$119.88	$	$	$
10/26/00	$74.44	$	$	$
10/30/00	$71.31	$	$	$
11/14/00	$75.63	$	$	$
11/17/00	$70.13	$	$	$
12/20/00	$46.00	[redacted]	$	$
1/25/01	$55.19	$	$	$
2/12/01	$40.63	$	$	$
2/13/01	$38.50	$	$	$
3/23/01	$23.19	$	$	$
4/24/01	$20.82	$	$	$
5/11/01	$20.69	$	$	$
6/15/01	$12.44	[redacted]	$	$
7/26/01	$8.47	[redacted]	$	$

9. If you selected "Percentage Inflation" in Question 7 above, please complete the table, following the instructions below.

a. Please black out Column 2 for any date on which you do not find that the challenged statement(s) on that date caused a loss (i.e. for which you answered "No" in Column 5 of the Verdict Table).

b. Beginning with the first date that is not blacked out in Column 2, please enter the percent by which you find the false or misleading statement(s) made on that date inflated the price of JDSU stock.

c. For this first row only, please copy the amount you entered in Column 2 into Column 4.

d. Proceed to the next row. If Column 2 is not blacked out, enter the percent by which you find that any false or misleading statement(s) made on this date inflated the price of JDSU stock. Enter, in Column 3, the amount, if any, by which you find that any corrective disclosures, since the date of the previous row, have reduced the inflation created by false or misleading statements. Take the number from Column 4 in the previous row, add the number, if any, in Column 2, subtract the number, if any, in Column 3, and enter the result in Column 4.

e. Please continue to complete each row.

When you are finished, please proceed to Part C, Question 10.

Percentage Inflation Table

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Date	Inflation created by false or misleading statement(s) on this date	Reduction in inflation due to corrective disclosures since previous date	Total inflation due to challenged statements on this date
4/25/00	%	[redacted]	%
5/25/00	[redacted]	%	%
6/25/00	[redacted]	%	%
7/26/00	%	%	%
8/25/00	[redacted]	%	%
9/1/00	%	%	%
9/7/00	%	%	%
10/26/00	%	%	%
10/30/00	%	%	%
11/14/00	%	%	%
11/17/00	%	%	%
12/20/00	[redacted]	%	%
1/25/01	%	%	%
2/12/01	%	%	%
2/13/01	%	%	%
3/23/01	%	%	%
4/24/01	%	%	%
5/11/01	%	%	%
6/15/01	[redacted]	%	%
7/26/01	[redacted]	%	%

Part C--Section 14(a) Misrepresentation in a Proxy Statement for Merger Liability & Damages

If you found in answer to Question 1 above that Statement 10 was materially false or misleading, please answer Question 10. Otherwise, please skip to Part D, Question 14.

10. Do you find that statement 10 was an essential link in the accomplishment of the JDS-SDL merger?

___ Yes X No

Please proceed to Question 11

11. Do you find that Defendant Straus failed to act with ordinary or reasonable care when he made statement 10?

11/20

___ Yes ✓ No

Please proceed to Question 12.

12. Do you find that Defendant Muller failed to act with ordinary or reasonable care when he made statement 10?

11/20

___ Yes ✓ No

If you have answered "Yes" to Question 10 and to either Question 11 and/or Question 12, please proceed to Question 13. Otherwise, please skip to Part D, Question 14.

13a. If you did not determine damages for Statement 10 on the Verdict Table, do you find that Statement 10 played a substantial part in causing a loss to Plaintiffs?

11/20

___ Yes ✓ No

If you answered "Yes," please proceed to Question 13b. Otherwise, please skip to Part D, Question 14.

13b. What is the dollar amount or percentage amount that Statement 10 inflated the price of JDSU stock on February 13, 2001? Please answer only once, using the method you selected in response to Question 7.

$_____ or _____%

Please proceed to Part D, Question 14.

Part D--Section 20A Trading on Inside Information Liability & Damages

14. Do you find that one or more of the Individual Defendants made a decision to sell shares of JDSU stock using material, non-public information about the company?

Defendant Abbe	Yes	____	No	X
Defendant Kalkhoven	Yes	____	No	X
Defendant Muller	Yes	____	No	X
Defendant Straus	Yes	____	No	X

If you answered "Yes" as to any defendant, please proceed. Otherwise, sign, date and return your verdict.

If, in answer to Question 7, you selected "Dollar Inflation," please complete Question 15. If you selected "Percentage Inflation," please skip to Question 16 on Page 12. (Do not complete both tables.)

15. If you selected "Dollar Inflation" in Question 7, please complete the table below for any Defendant who you found sold JDSU stock using material, non-public information.

a. Enter "Yes" in Column 2 for the date of any stock sale which you find the Individual Defendant made using material, non-public information about the company.
b. For every date on which you answered "Yes", please enter the dollar amount by which the price of JDSU stock was inflated because the public did not have this material information.

Then sign, date and return your verdict.

Dollar Inflation Tables

Defendant Abbe

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
8/1/00	$116.87		$
8/11/00	$117.75		$
2/26/01	$32.63		$
2/27/01	$27.81		$
2/28/01	$26.75		$

Defendant Kalkhoven

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
5/22/00	$85.31		$
5/24/00	$83.50		$
7/31/00	$118.16		$
8/4/00	$115.94		$
8/7/00	$121.19		$
8/21/00	$124.38		$
8/22/00	$124.50		$
8/31/00	$124.48		$
9/1/00	$123.81		$
9/7/00	$119.88		$
9/12/00	$103.19		$
9/13/00	$104.81		$

9/18/00	$97.81		$
9/19/00	$107.94		$
9/20/00	$107.13		$
9/22/00	$107.00		$
9/25/00	$106.81		$
10/4/00	$94.06		$
10/5/00	$95.06		$
10/11/00	$85.88		$
10/13/00	$94.38		$
10/16/00	$94.44		$
10/20/00	$102.38		$
10/27/00	$77.25		$
11/1/00	$78.56		$
1/18/01	$60.31		$

Defendant Muller

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
5/22/00	$85.31		$
5/30/00	$91.38		$
7/31/00	$118.13		$
8/1/00	$116.88		$
8/2/00	$112.63		$
8/4/00	$115.94		$
8/7/00	$121.19		$
8/8/00	$119.88		$
8/11/00	$117.75		$
8/14/00	$120.25		$

Defendant Straus

Column 1	Column 1a	Column 2	Column 3
Date	Market Price Per Share on Date	Used Material, Non-Public Information?	Dollar Inflation on Date of Sale
8/1/00	$116.88		$
8/4/00	$115.94		$
8/7/00	$121.19		$
*	$55.81	11/30/00	2/1/01 $
*	$28.00	11/30/00	3/6/01 $

*You must determine whether Defendant Straus used material, non-public information on November 30, 2000 in deciding whether he is liable for insider trading based on these sales. However, the damages must be calculated as of the actual date of the sales.

16. If you selected "Percentage Inflation" in Question 7, please complete the table below for any Defendant who you found sold JDSU stock using material, non-public information.

a. Enter "Yes" in Column 2 for the date of any stock sale which you find the Individual Defendant made while using material, non-public information about the company.

b. For every date on which you answered "Yes", please enter the percentage by which the price of JDSU stock was inflated because the public did not have this material information.

Then sign, date and return your verdict.

Percentage Inflation Tables

Defendant Abbe

Column 1	Column 2	Column 3
Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
8/1/00		%
8/11/00		%
2/26/01		%
2/27/01		%
8/1/00		%

Defendant Kalkhoven

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
5/22/00		%
5/24/00		%
7/31/00		%
8/4/00		%
8/7/00		%
8/21/00		%
8/22/00		%
8/31/00		%
9/1/00		%
9/7/00		%
9/12/00		%
9/13/00		%
9/18/00		%
9/19/00		%
9/20/00		%
9/22/00		%

9/25/00		%
10/4/00		%
10/5/00		%
10/11/00		%
10/13/00		%
10/16/00		%
10/20/00		%
10/27/00		%
11/1/00		%
1/18/01		%

Defendant Muller

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
5/22/00		%
5/30/00		%
7/31/00		%
8/1/00		%
8/2/00		%
8/4/00		%
8/7/00		%
8/8/00		%
8/11/00		%
8/14/00		%

Defendant Straus

Date	Used Material, Non-Public Information?	Percentage Inflation on Date of Sale
8/1/00		%
8/4/00		%
8/7/00		%
*	11/30/00	2/1/01 %
*	11/30/00	3/6/01 %

*You must determine whether Defendant Straus used material, non-public information on November 30, in deciding whether he is liable for insider trading based on these sales. However, the damages must be calculated as of the actual date of the sales.

Please sign, date and return this form.

Dated:

Jury Foreperson

11/27/07. 1515 HRS.

VERDICT TABLE

	Quest. No. 1	Quest. No. 2	Quest. No. 3				Quest. No. 4a				Quest. No. 4b				Quest. No. 5	Quest. No. 6			
	Materially False or Misleading	Lacks Cautionary Language	Person(s) Making Statement				Actual Knowledge				Reckless Disregard				Caused Loss	Controlling Person			
			Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus		Abbe	Kalkhoven	Muller	Straus
Statement No. 1 "... the market is exceeding, you know, our ability to ramp up ..."	11/20 NO					Yes													
Statement No. 2 "In all of these markets, the demand for bandwidth technology and components remains incredibly strong, and I believe we will see this demand accelerated."	11/20 NO			Yes															
Statement No. 3 "Two-and-a-half-gigabit modulators continue to demonstrate strong growth ..."	11/20 NO					Yes													
(Goodwill) Statement No. 4 JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion.	11/22 NO				Yes														
(Goodwill) Statement No. 5 JDSU's intangible assets, including goodwill, were $22.3 billion at June 30, 2000.	11/22 NO				Yes	Yes													
Statement No. 6 "... we still are ... capacity constrained ..."	11/22 NO		Yes																
Statement No. 7 "These results reflect ... our substantial progress in expanding capacity to enable us to meet customer demand and serve the needs of our markets."	11/22 NO				Yes														
(Goodwill) Statement No. 8 JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion.	11/22 NO				Yes	Yes													
(Goodwill) Statement No. 9 JDSU's goodwill was "21.1 [billion]" at September 30, 2000.	11/29 NO				Yes														

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	Quest. No. 1	Quest. No. 2	Quest. No. 3				Quest. No. 4a				Quest. No. 4b				Quest. No. 5	Quest. No. 6			
	Materially False or Misleading	Lacks Cautionary Language	Person(s) Making Statement				Actual Knowledge				Reckless Disregard				Caused Loss	Controlling Person			
			Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus		Abbe	Kalkhoven	Muller	Straus
(Goodwill) Statement No. 10 • JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion. • JDSU's goodwill was "$21.1 [billion]" at September 30, 2000.	11/16 NO				Yes	Yes													
Statement No. 11 "We don't expect lead times to come down in the near-term because our demand is so strong."	[illegible] NO		Yes																
Statement No. 12 "Our backlog . . . is enormous . . ."	[illegible] NO		Yes																
Statement No. 13 "For the year, we expect earnings-per-share to be at 82 cents . . ."	[illegible] NO				Yes														
Statement No. 14 "We anticipate sales in the March quarter to be 7 percent to 10 percent above sales for the quarter ended December 30."	11/27 NO				Yes														
(Inventory) Statement No. 15 JDSU's inventories balance at December 30, 2000, was "[$]493.9 [million]."	11/20 NO																		
(Goodwill) Statement No. 16 • JDSU's intangible assets at June 30, 2000, were $22.3 billion, including goodwill of $21.3 billion. • JDSU's goodwill was "$21.1 [billion]" at September 30, 2000.	11/29 NO				Yes	Yes													
Statement No. 17 "The Company expects sales in the quarter ending March 31 to be at or slightly above $1 billion with earnings per share of $0.17."	11/26 NO																		
(Inventory) Statement No. 18 JDSU's inventories balance was "[$]493.9 [million]" at December 30, 2000.	11/26 NO				Yes														
(Goodwill) Statement No. 19 JDSU's goodwill was $21.2 billion at December 30, 2000.	11/25 NO				Yes														

	Quest. No. 1	Quest. No. 2	Quest. No. 3				Quest. No. 4a				Quest. No. 4b				Quest. No. 5	Quest. No. 6			
	Materially False or Misleading	Lacks Cautionary Language	Person(s) Making Statement				Actual Knowledge				Reckless Disregard				Caused Loss	Controlling Person			
			Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus	Abbe	Kalkhoven	Muller	Straus		Abbe	Kalkhoven	Muller	Straus
(Goodwill) Statement No. 20 JDSU and SDL's combined *pro forma* intangible assets, including goodwill, were $60.2 billion at December 30, 2000.	11/27 NO	[redacted]		[redacted]	Yes			[redacted]				[redacted]					[redacted]		
(Inventory) Statement No. 21 JDSU's inventories balance was $493.9 million at December 30, 2000.	11/26 NO				Yes														
(Inventory) Statement No. 22 • "Our third quarter results were . . . pro forma earnings of 14 cents per share." • "Pro forma gross margin was 48.6 percent of sales for the quarter."	11/26 NO				Yes	Yes													
(Inventory) Statement No. 23 JDSU's gross profits were $425.9 million for the quarter ended March 31, 2001, and $1,251.0 million for the nine months ended March 31, 2001.	11/26 NO																		
(Inventory) Statement No. 24 JDSU's inventories balance was "[$]672.9 [million]" at March 31, 2001.	11/26 NO				Yes														

~~THE JURY FINDS UNANIMOUSLY~~
~~AND HE THAT ALL DEFENDANTS~~
~~IN FAVOR OF THE DEFENSE~~ DEFENDANT.
~~ON ALL COUNTS NO DAMAGES~~
~~FINANCIAL AWARDS.~~ FINANCIAL

The jury find unanimously in favor of the defense on all counts ~~counts~~. No financial damages awarded.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In re PORTLAND GENERAL ELECTRIIC SECURITIES LITIGATION	Case No. 3:20-cv-1583-SI (Lead) Case No. 3:20-cv-1786-SI (Consolidated) **OPINION AND ORDER APPROVING SETTLEMENT, ATTORNEY'S FEES, AND EXPENSES**

Keith S. Dubanevich and Keil M. Mueller, STOLL STOLL BERNE LOKTING & SHLACHTER PC, 209 SW Oak Street. Suite 500, Portland, OR 97204; Daniel L. Berger, Barbara Hart, and Caitlin M. Moyna, GRANT & EISENHOFER PA, 485 Lexington Avenue, 29th Floor, New York, NY 10017. Of Attorneys for Plaintiffs and the Putative Class.

David B. Markowitz, Dallas S. DeLuca, and Stanton R. Gallegos, MARKOWITZ HERBOLD PC, 1455 SW Broadway, Suite 1900, Portland, OR 97201; Susan L. Salzstein, Alexander C. Drylewski, Shaud G. Tavakoli, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, One Manhattan West, New York, NY 10001; and Peter B. Morrison and Virginia Milstead, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, 300 South Grand Avenue, Suite 3400, Los Angeles, CA 90071. Of Attorneys for Defendants.

Michael H. Simon, District Judge.

Lead Plaintiff Public Employees Retirement System of Mississippi brings this securities fraud class action individually and on behalf of others similarly situated against Portland General Electric Company, its President and Chief Executive Officer Maria Pope, and its Chief Financial Officer James F. Lobdell (collectively, Defendants). In Claim One, Lead Plaintiff alleges that

Defendants violated Section 10(b) of the Securities and Exchange Act (Act) and Rule 10b-5 promulgated thereunder. In Claim Two, Lead Plaintiff alleges that Defendants Pope and Lobdell violated Section 20(a) of the Act. Defendants filed a motion to dismiss, and the Lead Plaintiff responded. Before Defendants filed their reply brief, however, the parties reached a Stipulation of Settlement dated July 10, 2021 (Settlement Agreement).[1] ECF 45-1. The Court preliminarily approved the Settlement Agreement and appointed Grant & Eisenhofer, P.A. as Lead Counsel for the Settlement Class. ECF 46. Now before the Court is Lead Plaintiff's unopposed Motion for Final Approval of Class Action Settlement and Lead and Liaison Counsel's (collectively, Class Counsel) Motion for Award of Attorney's Fees and Expenses. ECF 50.

BACKGROUND

This action arises from Defendants' alleged misrepresentations about PGE's energy trading practices. Lead Plaintiff alleges that PGE maintained a risk-averse, conservative profile, that lead investors and analysts to characterize PGE as a low-risk investment. Lead Plaintiff further alleges that this low-risk profile was especially important to PGE given its relationship with Enron before Enron filed for bankruptcy. As with other power companies, PGE allegedly traded within the energy market to hedge against the uncertainty of future energy prices. This price-hedging form of energy trading is known as trading for "retail purposes." Lead Plaintiff also alleges that beginning in early 2020, PGE engaged in energy trading for "non-retail purposes," that is, energy trading for the purpose of generating profit. As a result, Lead Plaintiff contends, PGE's statements in its filings with the Securities and Exchange Commission stating that PGE did not engage in energy trading practices for "non-retail purposes" were false and

[1] Unless otherwise indicated, all capitalized terms used in this Opinion and Order have the same meanings as defined in the Settlement Agreement.

misleading. In August 2020, PGE announced that it suffered a $127 million loss due to these high-risk non-retail trades. After PGE's announcement, its stock price dropped from $41.64 to $37.16. This lawsuit followed. As noted above, the parties have reached a settlement, which is before the Court for final approval.

DISCUSSION

A. Settlement Class Certification

1. Notice to the Class

The Court granted preliminary approval to the parties' proposed notice procedure. ECF 46. The Court is satisfied that the notice procedure was carried out according to the applicable standards. The Court finds that notice of the Stipulation was given to the Settlement Class by the best means practicable under the circumstances, including mailing the Notice to Class Members, posting the Notice, Proof of Claim, Stipulation, and Preliminary Approval Order on a dedicated website, and publishing the Summary Notice in *Investor's Business Daily* and on *PR Newswire*.

The Notice provided Class Members with all required information including, among other things: (1) a summary of the Action and the claims asserted; (2) a clear definition of the Settlement Class; (3) a description of the material terms of the Stipulation; (4) the fact that no affirmative action was needed to receive the benefit of class membership, but notice that Class Members could opt out of the Settlement Class; (5) an explanation of Class Members' opt-out rights, the date by which Class Members must opt out, and information about how to do so; (6) explaining the release of claims should Class Members choose to remain in the Settlement Class; (7) instructions about how to object to the Stipulation and the deadline for Class Members to submit any objections; (8) instructions about how to object to the requested attorney's fees, expenses, and service awards and the deadline for Class Members to submit any objections;

(9) the date, time, and location of the final approval hearing; (10) the internet address for the settlement website and the telephone number from which Class Members could obtain more information on the Stipulation; (11) contact information for the settlement administrator and the Court; and (12) information about how Lead Counsel and the Class Representative would be compensated. The notice is sufficient. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012) (reaffirming that a class notice need only "generally describe[] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard" (alteration in original) (quoting *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009))).

The form and method of notifying the Settlement Class fairly and adequately advised Class Members of all relevant and material information about the Action and the proposed Stipulation. The Court finds that the notice satisfies the requirements of due process and Rule 23 and the Private Securities Litigation Reform Act.

2. Rule 23 Requirements

To certify either a settlement class or a litigation class, the requirements of Rule 23 of the Federal Rules of Civil Procedure must be satisfied. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Rule 23 of the Federal Rules of Civil Procedure affords this Court with "broad discretion over certification of class actions . . . ." *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1021 (9th Cir. 2011). A plaintiff seeking class certification must satisfy each requirement of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and one subsection of Rule 23(b). *See, e.g.*, *Lozano v. AT & T Wireless Servs., Inc.*, 504 F.3d 718, 724 (9th Cir. 2007). Rule 23 sets forth more than a "mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). On the other hand, Rule 23 provides

district courts with broader discretion to certify a class than to deny certification. *See Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 956 (9th Cir. 2013).

"The criteria for class certification are applied differently in litigation classes and settlement classes." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc). In considering a litigation class, the court "must be concerned with manageability at trial," whereas in considering a settlement class, "such manageability is not a concern . . . [because], by definition, there will be no trial." *Id.* at 556-57. "[I]n deciding whether to certify a settlement class, a district court must give heightened attention to the definition of the class or subclasses." *Id.* at 557. This determination "demand[s] undiluted, even heightened, attention in the settlement context" because the court "lack[s] the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *see also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 848-49 (1999) ("When a district court, as here, certifies for class action settlement only, the moment of certification requires heightened attention.").

The Rule 23 analysis is "rigorous" and may "entail some overlap with the merits of the plaintiff's underlying claim." *Wal-Mart*, 564 U.S. at 351 (quotation marks omitted); *Comcast Corp.*, 569 U.S. at 33-34. Nevertheless, Rule 23 "grants courts no license to engage in free-ranging merits inquiries at the certification stage." *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013). "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Id.* A district court, however, "*must* consider the merits if they overlap with the Rule 23(a) requirements." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011) (emphasis in original).

Plaintiffs move without objection to certify the Settlement Class defined as:

> All persons or entities who, directly or through an intermediary, purchased or otherwise acquired common stock of PGE at any time during the period of February 13, 2020 through August 24, 2020, inclusive. Excluded from the Settlement Class are: (i) Defendants; (ii) the present or former executive officers or members of the Board of Directors of PGE and their immediate family members (as defined in 17 C.F.R. § 229.404 (Instructions to Item 404(a)(1)(a)(iii), substituting "PGE" for "the registrant")) of any excluded person; (iii) any entity in which any Defendant has, or had during the Class Period, a controlling interest; and (iv) any affiliate of PGE. Also excluded from the Settlement Class are any persons and entities who exclude themselves by submitting a request for exclusion that is accepted by the Court.

The Court previously agreed that the Class met the requisite factors in conditionally certifying the Class for settlement purposes in the preliminary approval of the Settlement. The Court, however, must now conduct a "rigorous" analysis of the Rule 23 factors.

a. Numerosity

Rule 23(a)(1) requires Plaintiffs to demonstrate that the proposed class "is so numerous that joinder of all members is impracticable." Rule 23(a)(1) provides no bright-line test or minimum number of class members necessary to meet the numerosity requirement. Instead, the court must evaluate the specific facts of each case. *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). In general, classes of 20 members or fewer are too small, classes of 21 to 40 members may or may not be sufficiently numerous depending on the facts of the case, and classes of 41 and higher are sufficiently numerous. *See* 5 James Wm. Moore et al., *Moore's Federal Practice - Civil* § 23.22(1)(b) (3d ed. 2021). In this district, there is a "rough rule of thumb" that more than 40 class members meets the numerosity requirement. *Giles v. St. Charles Health Sys., Inc.*, 294 F.R.D. 585, 590 (D. Or. 2013); *see also Wilcox Dev. Co. v. First Interstate Bank of Or., N.A.*, 97 F.R.D. 440, 443 (D. Or. 1983) (same); 1 *McLaughlin on Class Actions* § 4:5 (17th ed.) ("The rule of thumb adopted by most courts is that proposed classes in excess

of 40 generally satisfy the numerosity requirement."); 5 *Moore's Federal Practice - Civil* § 23.22(1)(b) ("A class of 41 or more is usually sufficiently numerous. Once again, many courts have ruled that classes with more than 40 members satisfy the numerosity requirement."). The claims administrator mailed over 67,000 Notice packets to potential Class Members, which shows there are likely thousands of Class members. The Court therefore finds that the Class meets the numerosity requirement.

b. Commonality

Rule 23(a)(2) states that class certification is appropriate only when the case presents "questions of law or fact common to the class." To satisfy the commonality requirement, Plaintiffs must show that the class members suffered the "same injury" and that their claims depend upon a "common contention." *Wal-Mart*, 564 U.S. at 350. "That common contention, moreover, must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* But class members need not have every issue in common. Commonality requires only "a single significant question of law or fact" in common. *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012); *see also Wal-Mart*, 564 U.S. at 359. "These common questions may center on 'shared legal issues with divergent factual predicates [or] a common core of salient facts coupled with disparate legal remedies.'" *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014) (alteration in original) (quoting *Hanlon*, 150 F.3d at 1019).

Lead Plaintiff alleges that the Class incurred losses due to Defendants' misrepresentations about PGE's high-risk energy trading practices. Specifically, Lead Plaintiff alleges that Defendants repeatedly represented that PGE maintained only low-risk trading practices when in fact, between February and August of 2020, PGE allegedly engaged in risky

energy trading for non-retail purposes. There are common issues of law and fact stemming from these allegations, including whether Defendants materially misrepresented the risk of PGE's trading practices, whether Defendants made any alleged misrepresentations with an intent to deceive, and whether any alleged misrepresentation caused Plaintiffs' harm. The Court finds that the Settlement Class meets the commonality requirement.

c. Typicality

To meet the typicality requirement, Plaintiffs must show that the named parties' claims or defenses are typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). Under the "permissive standards" of Rule 23(a)(3), the "representative's claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. "The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). To determine whether claims and defenses are typical, courts look to "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting *Hanon*, 976 F.3d at 508).

Lead Plaintiff's claims are based on the same conduct as the claims of the Settlement Class and there is nothing to suggest that Lead Plaintiff's claims are not coextensive with the Class. Thus, the Class meets the typicality requirement.

d. Adequacy of Representation

Rule 23(a)(4) states that before a class can be certified, a court must find that "the representative parties will fairly and adequately protect the interests of the class." This requirement turns on two questions: (1) whether "the named plaintiffs and their counsel have any

conflicts of interest with other class members"; and (2) whether "the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class." *Hanlon*, 150 F.3d at 1020; *see also* Fed. R. Civ. P. 23(g) (setting out factors to consider before appointing class counsel). The adequacy requirement is based on principles of constitutional due process. Accordingly, a court cannot bind absent class members if class representation is inadequate. *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940); *Hanlon*, 150 F.3d at 1020.

Lead Plaintiff is an adequate representative of the class because there is no evidence to suggest that Lead Plaintiff has any conflicts of interest with other Class members. Lead Counsel has extensive experience prosecuting securities fraud class actions and has vigorously pursued the interests of the Class by conducting a private investigation, preparing a Consolidated Amended Complaint in anticipation of Defendants' motion to dismiss, opposing Defendants' motion to dismiss, and participating in mediation. Thus, the Court finds that the Lead Plaintiff and Lead Counsel are adequate to represent the Class.

e. Predominance

Rule 23(b)(3) requires a court to find that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." This analysis, in accord with Rule 23's "principal purpose" of "promot[ing] efficiency and economy of litigation," inquires into "the relationship between the common and individual issues in the case, and tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *Abdullah*, 731 F.3d at 963-64 (simplified). The focus of this inquiry, however, is on "*questions* common to the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013) (emphasis in original). Plaintiffs need not, at this threshold, "prove that the predominating question[s] will be answered in their favor." *Id.* at 468.

"[T]here is substantial overlap between" the test for commonality under Rule 23(a)(2) and the predominance test under 23(b)(3). *Wolin*, 617 F.3d at 1172. The predominance test, however, "is 'far more demanding,' and asks 'whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Id.* (citation omitted) (quoting *Amchem*, 521 U.S. at 623-24). To determine whether common questions predominate, the Court begins with "the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011).

The common questions relevant to Plaintiffs' claims predominate over any issues relevant to any individual Plaintiff. Plaintiffs' claims share essential factual issues including whether Defendants misrepresented PGE's trading practices, whether Defendants made any misrepresentations with an intent to deceive, and whether any misrepresentations caused Plaintiffs' losses. *See Amchem*, 521 U.S. at 625 ("Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws."). Thus, the Class meets the predominance requirement.

f. Superiority

Rule 23(b)(3)'s superiority requirement tests whether "classwide litigation of common issues will reduce litigation costs and promote greater efficiency." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). To make this determination, a court looks to "whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. In turn, this inquiry "necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Id.* The Ninth Circuit recognizes that "[d]istrict courts are in the best position to consider the most fair and efficient procedure for conducting any given litigation, and so must be given wide discretion to evaluate superiority." *Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 712 (9th Cir. 2010) (quotation marks and citation

omitted). Relating to superiority, the purpose of Rule 23(b)(3) is "to allow integration of numerous small individual claims into a single powerful unit." *Id.* at 722. This allows plaintiffs that otherwise likely would be "unable to proceed as individuals because of the disparity between their litigation costs and what they hope to recover. . . . 'to pool claims which would be uneconomical to litigate individually.'" *Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985)).

Rule 23(b)(3) provides four non-exhaustive factors for courts to consider. These factors are:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

As to the first factor, "[w]here recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." *Wolin*, 617 F.3d at 1175. The cost of litigating individual securities fraud claims is high when compared to the amount of damages at stake for putative class members. *See In re Synchrony Fin. Sec. Litig.*, 988 F.3d 157, 161 (2d Cir. 2021) ("Securities fraud cases are often complex and costly . . . ."). Accordingly, "[b]ecause individual damages pale in comparison to the costs of litigation, this factor points toward certification." *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 316 (N.D. Cal. 2018).

As to the second factor, all outstanding related cases, apart from the derivative suit, have been consolidated into this action. The second factor therefore favors certification. As to the third

factor, concentrating this litigation in the District of Oregon is appropriate because the challenged conduct occurred in Oregon and potential Class Members are not centralized in any one geographic location.

The Court need not consider the fourth factor because the parties only seek certification of a settlement class, not a litigation class. *Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial."). The Court finds that he Class meets the superiority requirement.

3. Conclusion

The Class meets the requirements for class certification. The Court finally certifies for settlement purposes the following class: all persons or entities who, directly or through an intermediary, purchased or otherwise acquired common stock of PGE at any time during the period of February 13, 2020, through August 24, 2020, inclusive. Excluded from the Settlement Class are: (i) Defendants; (ii) the present or former executive officers or members of the Board of Directors of PGE and their immediate family members (as defined in 17 C.F.R. § 229.404 (Instructions to Item 404(a) (1)(a)(iii), substituting "PGE" for "the registrant")) of any excluded person; (iii) any entity in which any Defendant has, or had during the Class Period, a controlling interest; and (iv) any affiliate of PGE. Also excluded from the Settlement Class are any persons and entities who exclude themselves by submitting a request for exclusion that is accepted by the Court.

B. Settlement Approval

1. General Standards

Under Rule 23(e) of the Federal Rules of Civil Procedure, "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." "The purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Thus, to approve a class action settlement, a court must find that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012).

The settlement must be considered as a whole, and although there are "strict procedural requirements on the approval of a class settlement, a district court's only role in reviewing the substance of that settlement is to ensure it is 'fair, adequate, and free from collusion.'" *Lane*, 696 F.3d at 818-19 (quoting *Hanlon*, 150 F.3d at 1027). A court must consider whether: "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate; and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). The Ninth Circuit has articulated a number of factors guiding this review, including: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Lane*, 696 F.3d at 819. Courts within the Ninth Circuit "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009).

Class action settlements involve "'unique due process concerns for absent class members' who are bound by the court's judgments." *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1168 (9th Cir. 2013) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). When the settlement agreement is negotiated before formal class certification, as in this case, the court should engage in "an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e)." *Id*. (quoting *In re Bluetooth*, 654 F.3d at 946). This more "exacting review" is warranted "to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent." *Lane*, 696 F.3d at 819.

The Ninth Circuit has recognized, however, that "[j]udicial review also takes place in the shadow of the reality that rejection of a settlement creates not only delay but also a state of uncertainty on all sides, with whatever gains were potentially achieved for the putative class put at risk." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Thus, there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Hyundai*, 926 F.3d at 556 (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015)).

2. Strength of Plaintiffs' Case; Risk, Expense, Complexity, and Likely Duration of Future Litigation; and Risk of Maintaining Class Action Status Throughout Trial

Lead Plaintiff contends that although it believes it has meritorious claims, proceeding with this litigation would be risky. Lead Plaintiff notes that it faced challenges opposing Defendant's motion to dismiss, which the Court had not resolved before the parties reached a settlement. Lead Plaintiff also notes that even if its claims had survived a motion to dismiss, it would continue to face additional hurdles at the summary judgment stage and lengthy litigation beyond that, including a trial and likely appeals. Besides the risk of dismissal before trial or loss

at trial, continued litigation would be expensive and time-consuming. Further, class certification had not begun at the time the parties reached a settlement, and both sides bore the risk that a class would or would not be certified. Thus, given the parties' uncertainty of the outcome and the complexity of this case, these factors favor approval of the Settlement Agreement.

3. Amount Offered in Settlement

The Settlement amount is $6.75 million. The Plan of Allocation awards each claimant a pro rata share of the Settlement Fund based on the claimant's losses. Lead Plaintiff's damages expert calculated the total possible damages to be from $46.1 million to $51.3 million. The Settlement amount therefore provides a recovery of 13.2 percent to 14.6 percent of the total estimated damages. This factor favors approval. *See Vataj v. Johnson*, 2021 WL 5161927, at *6 (N.D. Cal. Nov. 5, 2021) ("This 2% aggregate recovery is consistent with the 2–3% average recovery that the parties identified in other securities class action settlements."); *Ontiveros v. Zamora*, 303 F.R.D. 356, 370 (E.D. Cal. 2014) ("[I]t is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial." (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004)).

4. Extent of Discovery Completed

Formal discovery is not required before a class action settlement. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239-40 (9th Cir. 1998). Rather, "[a]pproval of a class action settlement is proper as long as discovery allowed the parties to form a clear view of the strengths and weaknesses of their cases." *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D. Cal. 2013). The parties assert that although this case settled before resolution of Defendants' motion to dismiss, they nevertheless exchanged sufficient information to adequately determine the strengths and weaknesses of their positions. The parties exchanged information during

negotiations, during mediation sessions, in mediation statements, and in briefing Defendants' motion to dismiss. Thus, this factor does not weigh against approval. *See Zepeda v. PayPal, Inc.*, 2017 WL 1113293, at *14 (N.D. Cal. Mar. 24, 2017) (concluding that although the parties had not engaged in formal discovery, "the parties informally exchanged information and documents in connection with the three prior mediations conducted in this action," which favored approval of the settlement).

5. Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). While counsel's views are instructive, they do not entitle the settlement to a presumption of fairness. *See Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019). The Court is satisfied that Lead Counsel has extensive experience litigating securities fraud class actions. Thus, Lead Counsel's recommendation that the Settlement is fair, reasonable, and adequate favors approval.

6. Presence of a Government Participant

The Class Action Fairness Act (CAFA) provides in relevant part:

> Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant . . . shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement[.]
>
> * * *
>
> An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

28 U.S.C. § 1715(b), (d). Defendants mailed notices of the proposed settlement to the U.S. Attorney General and state Attorneys General of all 50 states, the District of Columbia, and the United States Territories by the required deadline under CAFA. Defendants also sent notices to officials at the Oregon Public Utility Commission and the Securities and Exchange Commission. No state or federal official has objected to the Settlement or otherwise become involved in the case. This factor therefore favors approval.

7. Reaction of the Class Members to the Settlement

No Class members objected to the Settlement and only two members opted out. The low rate of opt-outs and the lack of objections show that Class members favor the Settlement. This factor favors approval.

8. Evidence of Collusion

When the settlement agreement is negotiated before formal class certification, as in this case, the court should engage in "an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e)." *In re Bluetooth*, 654 F.3d at 946. The Ninth Circuit has identified three signs of collusion: (1) class counsel receives a disproportionate distribution of the settlement, or when the class receives no monetary distribution but counsel is amply awarded; (2) the parties negotiate a "clear sailing" arrangement providing for the payment of attorneys' fees separate and apart from class funds without objection by a defendant; or (3) the parties arrange for payments not awarded to revert to a defendant rather than to be added to the class fund. *Id.* at 947.

Class Counsel seeks 25 percent of the Settlement amount, which is not a disproportionate share. Further, the Settlement contains no "clear sailing" or reversion provisions. The Court identifies no evidence of collusion or other conflicts of interest, which favors approval.

9. Conclusion

The above factors support approval of the Settlement Agreement. The Court therefore finds that the Settlement and Plan of Allocation are fair, reasonable, and adequate.

C. Attorney's Fees and Expenses

Requests for attorney's fees must be made by a motion pursuant to Rule 54(d)(2) and Rule 23(h) of the Federal Rules of Civil Procedure. In addition, notice of the motion must be served on all parties and class members. Fed. R. Civ. P. 23(h). When settlement is proposed along with a motion for class certification, notice to class members of the fee motion ordinarily accompanies the notice of the settlement proposal itself. Fed. R. Civ. P. 23(h) advisory committee's notes to 2003 amendment. The deadline for class members to object to requested fees must be set after the motion for the fees and documents supporting the motion have been filed. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993 (9th Cir. 2010). "Allowing class members an opportunity thoroughly to examine counsel's fee motion, inquire into the bases for various charges and ensure that they are adequately documented and supported is essential for the protection of the rights of class members." *Id*. at 994. Here, Class Counsel filed its motion for attorney's fees and supporting documents four weeks before the deadline to file objections, thereby complying with *In re Mercury*.

In considering the amount of attorney's fees for class counsel where there is a common fund, "courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth*, 654 F.3d at 942. Under either method, the court must exercise its discretion to achieve a "reasonable" result. *Id*. Because reasonableness is the goal, "mechanical or formulaic application of either method, where it yields and unreasonable result, can be an abuse of discretion." *Fischel v. Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002). When using the percentage method, 25 percent is the "benchmark" fee award,

but this amount may be adjusted upward or downward when "special circumstances" warrant a departure. *In re Bluetooth*, 654 F.3d at 942. Courts must place in the record the relevant special circumstances. *Id.* As the Ninth Circuit has explained,

> In *Vizcaino*, we identified several factors courts may consider when assessing requests for attorneys' fees calculated pursuant to the percentage-of-recovery method: (1) the extent to which class counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel; (3) whether counsel's performance generated benefits beyond the cash settlement fund; (4) the market rate for the particular field of law; (5) the burdens class counsel experienced while litigating the case; (6) and whether the case was handled on a contingency basis.
>
> *Vizcaino* did not establish an exhaustive list of factors for assessing fee requests calculated using the percentage-of-recovery method, but district courts have frequently referred to the factors it identified when considering fee awards for class counsel. Ultimately, district courts must ensure their fee awards are "supported by findings that take into account all of the circumstances of the case."

In re Optical Disk Drive Prods. Antitrust Litig., 959 F.3d 922, 930 (9th Cir. 2020) (citations omitted) (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002)); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (noting that the *Vizcaino* factors "include the extent to which class counsel achieved exceptional results for the class, whether the case was risky for class counsel, whether counsel's performance generated benefits beyond the cash settlement fund, the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis" and that in addition, "a court may cross-check its percentage-of-recovery figure against a lodestar calculation" (quotation marks omitted)).

The Court exercises its discretion to use the percentage-of-recovery method in this case. As described above, this case presents complex legal issues and litigation risks, and Class

Counsel secured a favorable Settlement amount in comparison to the Class's estimated damages. These factors favor the 25 percent benchmark fee. Further, a lodestar cross check confirms that a 25 percent fee is appropriate. Lead Counsel expended 924.6 hours at hourly rates ranging from $220 to $1,000. Liaison Counsel expended 60.95 hours at hourly rates of $470 and $635. Liaison Counsel represents that these rates are standard rates in Oregon. Lead Plaintiff also notes that Lead and Liaison Counsel made an effort to staff the case leanly in order to avoid duplicative work. The total lodestar amount is $624,015.25. The requested 25 percent fee is $1,687,500, which represents a 2.7 multiplier of the lodestar cross check. A 2.7 multiplier is reasonable, given the complexity of this case and Class Counsel's efforts to curb repetitive work. *See Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) ("Multipliers in the 3–4 range are common in lodestar awards for lengthy and complex class action litigation."). The Court therefore finds that a 25 percent fee is reasonable.

Class Counsel also seeks recovery of $86,382.59 in expenses. These costs include expenses for an energy trading expert, an economics expert, an investigative firm to develop the facts of the case, an experienced mediator, as well as travel, filing fees, and legal research. The Court finds that these expenses have been reasonably and necessarily incurred in this case and are recoverable from the Settlement Fund. *See, e.g.*, *Wininger v. SI Mgmt., L.P.*, 301 F.3d 1115, 1120-21 (9th Cir. 2002) ("[J]urisdiction over a fund allows for the district court to spread the costs of the litigation among the recipients of the common benefit."); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement.").

CONCLUSION

The Court GRANTS Lead Plaintiff's unopposed Motion for Final Approval of Class Action Settlement and Class Counsel's unopposed Motion for Award of Attorney's Fees and Expenses (ECF 50). The Court awards Class Counsel $1,687,500 in attorney's fees and $86,382.59 in costs, to be paid from the Settlement Fund. This case is dismissed, but the Court retains jurisdiction over the parties and all matters relating to the Lawsuit and Settlement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the Settlement and this Opinion and Order.

IT IS SO ORDERED.

DATED this 22nd day of March, 2022.

/s/ *Michael H. Simon*
Michael H. Simon
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

In re Silver Wheaton Corp. Securities Litigation	Master File No: 2:15-cv-05146-CAS-PJWx c/w: 2:15-cv-05173-CAS(PJWx) **[~~PROPOSED~~] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE PROCEDURES** Hon. Christina A. Snyder

WHEREAS (i) Plaintiffs/Class Representatives ("Plaintiffs"), on behalf of themselves and the Settlement Class, and (ii) Defendants Silver Wheaton Corp. ("Silver Wheaton"), Randy V. J. Smallwood, Peter Barnes, and Gary Brown (collectively, the "Silver Wheaton Defendants"), and Deloitte LLP (Canada) ("Deloitte") (together, "Defendants") have jointly entered, by and through their respective counsel, into a Settlement of the claims asserted in the Litigation, the terms of which are set forth in a Stipulation of Settlement, dated February 10, 2020 (the "Stipulation");

WHEREAS, the Stipulation, which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed Settlement of the claims alleged in

the Consolidated Second Amended Complaint for Violations of the Securities Laws (the "Complaint") filed in the Litigation; and the Court having read and considered the Stipulation, the proposed Internet Notice of Pendency and Proposed Settlement of Class Action (the "Internet Notice"), the proposed Summary Notice of Pendency and Proposed Settlement of Class Action (the "Summary Notice"), the proposed Postcard Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing, and Motion for Attorneys' Fees and Reimbursement of Expenses (the "Postcard Notice"), the proposed Plan of Allocation of the Net Settlement Fund Among Settlement Class Members (the "Plan of Allocation"), the proposed Proof of Claim and Release Form (the "Proof of Claim"), the proposed Order and Final Judgment, and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and

WHEREAS, the Court has read and considered: (a) Plaintiffs' Motion for Preliminary Approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Stipulation and the exhibits thereto:

NOW, THEREFORE, IT IS HEREBY ORDERED, this ninth day of March 2020, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.

2. **The Settlement Class:** On May 11, 2017, the Court certified a class as to the Silver Wheaton Defendants (the "Silver Wheaton Class") consisting of all persons and entities who purchased the publicly traded securities of Silver Wheaton (i) on a United States exchange, or (ii) in a transaction in the United States, during the period from March 30, 2011 to July 6, 2015, inclusive, and did not sell such securities prior to July 6, 2015. Excluded from the Silver Wheaton Class are Defendants, all present and former officers and directors of Silver Wheaton and any subsidiary thereof, Deloitte and all of its present and former partners, members of such excluded persons' families and their legal representatives, heirs, successors or

assigns and any entity which such excluded persons controlled or in which they have or had a controlling interest.

Because a class has not been certified in the Action against Deloitte, the Settling Parties have stipulated, for purposes of the Settlement only, to a settlement class as to Deloitte (the "Deloitte Settlement Class") consisting of all persons and entities who purchased the publicly traded securities of Silver Wheaton (i) on a United States exchange, or (ii) in a transaction in the United States, during the period from March 30, 2011 to July 6, 2015, inclusive (the "Class Period"), and did not sell such securities prior to July 6, 2015. Excluded from the Deloitte Settlement Class are Defendants, all present and former officers and directors of Silver Wheaton and any subsidiary thereof, Deloitte and all of its present and former partners, members of all such excluded persons' families and their legal representatives, heirs, successors or assigns and any entity which such excluded persons controlled or in which they have or had a controlling interest.

Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies, preliminarily and for purposes of the Settlement only, the Deloitte Settlement Class. The Court finds, preliminarily and for purposes of the Settlement only, that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Deloitte Settlement Class Members is so numerous that joinder of all members of the Deloitte Settlement Class is impracticable; (b) there are questions of law and fact common to the Deloitte Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Deloitte Settlement Class they seek to represent; (d) the Plaintiffs will fairly and adequately represent the interests of the Deloitte Settlement Class; (e) the questions of law and fact common to the Deloitte Settlement Class predominate over any questions affecting only individual members of the Deloitte Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of this Litigation.

For purposes of the Settlement only, the "Settlement Class" shall consist of both the Silver Wheaton Class and the Deloitte Settlement Class.

3. **Preliminary Approval of the Settlement:** The Court finds the Settlement is sufficiently fair, reasonable, and adequate to the Settlement Class Members to warrant providing notice of the Settlement to Settlement Class Members and holding a Settlement Hearing. Specifically, the Court finds that:

(a) Plaintiffs and Plaintiffs' Counsel have adequately represented the Settlement Class: Plaintiffs have been actively involved in this Litigation, including regularly communicating with counsel and sitting for depositions. Plaintiffs' Counsel have vigorously litigated this action.

(b) The Settlement was negotiated at arm's length: Plaintiffs and the Silver Wheaton Defendants, represented by experienced counsel, held two mediations before the Hon. Layn Phillips, U.S.D.J. (ret.). Deloitte, also represented by experienced counsel, participated in the second mediation as well. The Settlement was only reached after extensive litigation.

(c) The relief provided for the Settlement Class is adequate: The Settlement recovers $41.5 million for Settlement Class Members. Plaintiffs briefed three motions to dismiss, one motion for class certification, a motion for leave to amend after the deadline to file amended pleadings, three motions to compel and one appeal therefrom and two additional discovery motions filed in Canada, and filed a motion for judgment on the pleadings as to one of Defendants' affirmative defenses. Plaintiffs took or defended a total of fourteen depositions and obtained and reviewed more than 800,000 pages of documents. Through these efforts, Plaintiffs understood the Litigation's strengths, weaknesses, and settlement value, and negotiated a fair, reasonable, and adequate Settlement.

(d) The Settlement treats Settlement Class Members equitably relative to each other: the Plan of Allocation calculates each Settlement Class Member's recognized claim through a formula. The formula is based on the

Settlement Class Members' purchases and sales of publicly traded Silver Wheaton securities on a United States exchange or in domestic U.S. transactions during the Class Period. Plaintiffs will receive a distribution from the Net Settlement Fund based on the same formula that governs the recovery of every member of the Settlement Class. There is no preferential treatment of Plaintiffs or any other Settlement Class Member.

(e) Concurrent with Plaintiffs' motion for final approval of this Settlement, Plaintiffs' Counsel will make an application for attorneys' fees and reimbursement of reasonable litigation expenses. The Notice, Postcard Notice, and Summary Notice indicate that Plaintiffs' Counsel will request a fee not to exceed one-third of the Settlement Amount and reimbursement of litigation expenses not to exceed $1,600,000.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of the Settlement only, Plaintiffs are certified as the class representatives on behalf of the Settlement Class and Plaintiffs' Counsel previously selected by Plaintiffs and appointed by the Court, is hereby appointed as Counsel for the Settlement Class.

5. **Settlement Hearing:** A hearing (the "Final Settlement Hearing") pursuant to Federal Rule of Civil Procedure 23(e) is hereby scheduled to be held before the Court on August 3, 2020 at 10:00 a.m. for the following purposes:

(a) to finally determine whether the Litigation satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b);

(b) to finally determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to finally determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered;

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(d) to finally determine whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

(e) to determine whether the application of Plaintiffs' Counsel for an award of attorneys' fees and expenses and an award to Plaintiffs should be approved; and

(f) to rule upon such other matters as the Court may deem appropriate.

6. The Court may adjourn the Final Settlement Hearing to a later date and to approve the Settlement with or without modification and with or without further notice of any kind. The Court may enter its Final Judgment approving the Settlement and dismissing the Complaint, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses or awards to Plaintiffs.

7. The Court reserves the right to approve the Settlement with such modifications as may be agreed upon or consented to by the Settling Parties and without further notice to the Settlement Class where doing so would not impair Settlement Class Members' rights in a manner inconsistent with Rule 23 and due process of law.

8. **Retention of Claims Administrator and Manner of Giving Notice:** Plaintiffs' Counsel is hereby authorized to retain Strategic Claims Services ("Claims Administrator") to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as more fully set forth below. Notice of the Settlement and the Final Settlement Hearing shall be given by Plaintiffs' Counsel as follows:

(a) within fourteen (14) calendar days of the date of entry of this Order, Silver Wheaton shall provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Fund, Lead

Counsel or the Claims Administrator) its reasonably available security lists (consisting of names and addresses) of the holders of Silver Wheaton securities during the Class Period;

(b) not later than twenty-one (21) calendar days after the date of entry of this Order ("Notice Date"), the Claims Administrator shall cause a copy of the Postcard Notice, substantially in the forms attached hereto as Exhibit 4, to be mailed by first-class mail to potential Settlement Class Members at the addresses set forth in the records provided by Silver Wheaton or in the records which Silver Wheaton caused to be provided, or who otherwise may be identified through further reasonable effort;

(c) contemporaneously with the mailing of the Notice Packet, the Claims Administrator shall cause copies of the Notice and the Claim Form, substantially in the forms attached hereto as Exhibits 1 and 2, to be posted on a website to be developed for the Settlement, from which copies of the Notice and Claim Form can be downloaded;

(d) not later than seven (7) calendar days after the Notice Date, the Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit 3, to be published once in Investor's Business Daily and to be transmitted once over the PR Newswire; and

(e) not later than seven (7) calendar days prior to the Final Settlement Hearing, Lead Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

9. Plaintiffs' Counsel is authorized to disburse up to $2,000,000 for Administrative Costs (as defined in the Stipulation), to be used for reasonable out-of-pocket costs in connection with providing notice of the Settlement to the Settlement Class and for other reasonable out-of-pocket administrative expenses.

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After the Effective Date, additional amounts may be disbursed for Administrative Costs, if any, with Court approval.

10. **Approval of Form and Content of Notice:** The Court (a) approves the form, substance and requirements of the Internet Notice, the Summary Notice, the Postcard Notice, and the Proof of Claim, all of which are exhibits to the Stipulation, and (b) finds that the mailing and distribution of the Postcard Notice and the publication of the Summary Notice in the manner and form set forth in paragraph 9 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, of their right to object to the Settlement, the Plan of Allocation and/or Plaintiffs' Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules. The date and time of the Final Settlement Hearing shall be included in the Notice, the Summary Notice, and the Postcard Notice before they are published or mailed.

11. **Nominee Procedures:** Plaintiffs' Counsel, through the Claims Administrator, shall make all reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who purchased Silver Wheaton securities during the Class Period for the benefit of another person or entity. Such nominee purchasers are directed to forward copies of the Postcard Notice to their

beneficial owners by email to all persons for whom an email address is available, and by mail otherwise, or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners and the Claims Administrator is ordered to send the Postcard Notice promptly to such beneficial owners. Additional copies of the Postcard Notice shall be made available to any record holder requesting same for the purpose of distribution to beneficial owners. Record holders shall be reimbursed $0.05 per Postcard Notice emailed or mailed (plus postage) from the Settlement Fund, upon receipt by the Claims Administrator of such request and proper documentation, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

12. **Participation in the Settlement:** To be entitled to participate in recovery from the Net Settlement Fund after the Effective Date, each Settlement Class Member shall take the following actions and be subject to the following conditions:

(a) The Settlement Class Member must complete, execute, and submit a Proof of Claim electronically on the website set up by the Claims Administrator no later than 11:59 PM ninety-six (96) calendar days from the date of this Order. The Settlement Class Member may instead elect to manually mail a completed Proof of Claim to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than ninety-six (96) calendar days from the date of this Order, in which case the Settlement Class Member's recognized loss will be reduced by $5 or 1%, whichever is greater. Such deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first-class mail) provided such Proof of Claim is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed

to have been submitted when it was actually received by the Administrator at the address designated in the Notice.

(b) The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions: (i) it must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator or Plaintiffs' Counsel; (iii) if the Person(s) executing the Proof of Claim is acting in a representative capacity, such person must provide a certification of his or her current authority to act on behalf of the Settlement Class Member, electronically or otherwise; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) Once the Claims Administrator has considered a timely-submitted Proof of Claim, it shall determine whether such claim is valid, deficient or rejected. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim was so determined. Persons who timely submit a Proof of Claim that is deficient or otherwise rejected shall be afforded a reasonable time (not more than ten (10) calendar days) to cure such deficiency if it shall appear that such deficiency may be cured.

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(d) For the filing of and all determinations concerning their Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court.

13. **Exclusion From the Settlement Class:** Any member of the Settlement Class who wishes to exclude himself, herself or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide that: (a) any such request for exclusion from the Settlement Class must be mailed or delivered such that it is received no later than ninety-six (96) calendar days from the date of this Order, to the following recipients: (i) *In re Silver Wheaton Corp. Sec. Litig.*, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St., Ste. 3, Media, PA 19063, and (ii) both Plaintiffs' Counsel and Defendants' Counsel, at the addresses set forth in paragraph 17 below; and (b) each request for exclusion must (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 that such person or entity "requests exclusion from the Settlement Class in *In re Silver Wheaton Corp. Sec. Litig.* Case No. 15-CV-5146-CAS-PJWx"; (iii) state the number of shares of Silver Wheaton securities that the person or entity requesting exclusion purchased, acquired, and/or sold on a United States exchange or in domestic U.S. transactions during the Class Period, as well as the dates and prices of each such purchase, acquisition, and/or sale; (iv) provide adequate supporting documentation for the transactions for which the Settlement Class Member seeks exclusion in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional and holding information found in a broker confirmation slip or account statement, or such other documentation as is deemed adequate by Lead Counsel and Defendants' Counsel; and (v) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless

it provides all the required information and documentation and is received within the time stated above, or is otherwise accepted by the Court.

14. Any person or entity who or which timely and validly requests exclusion in compliance with the terms stated in this Order and is excluded from the Settlement Class shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or judgments in the Action and shall not receive any payment out of the Net Settlement Fund.

15. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation and Settlement and all proceedings, determinations, orders and judgments in the Action, including, but not limited to, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) shall be barred from commencing, maintaining or prosecuting any of the Released Claims against any of the Released Persons, as more fully described in the Stipulation and Notice.

16. **Appearance and Objections at Final Settlement Hearing:** Any Settlement Class Member who or which does not request exclusion from the Settlement Class may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to both Plaintiffs' and Defendants' Counsel, at the addresses set forth in paragraph 17 below, such that it is received no later than fourteen (14) calendar days prior to the Final Settlement Hearing, or as the Court may otherwise direct. Any Settlement Class Member who or which does not enter an appearance will be represented by Plaintiffs' Counsel.

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17. Any Settlement Class Member who or which does not request exclusion from the Settlement Class may file a written objection to the proposed Settlement, the proposed Plan of Allocation, and/or Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and appear and show cause, if he, she or it has any cause, why the proposed Settlement, the proposed Plan of Allocation and/or Plaintiffs' Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses should not be approved; *provided, however*, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the proposed Plan of Allocation and/or Plaintiffs' Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses unless that person or entity has filed a written objection with the Court and served copies of such objection on Plaintiffs' Counsel and Defendants' Counsel at the addresses set forth below such that they are received no later than fourteen (14) calendar days prior to the Final Settlement Hearing.

PLAINTIFFS' COUNSEL:
Jonathan Horne
THE ROSEN LAW FIRM, P.A.
275 Madison Avenue, 40th Floor
New York, NY 10016

COUNSEL FOR THE SILVER WHEATON DEFENDANTS:
Gregory L. Watts
WILSON SONSINI GOODRICH & ROSATI, P.C.
701 Fifth Avenue, Suite 5100
Seattle, WA 98104

COUNSEL FOR DEFENDANT DELOITTE:
Lee G. Dunst
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166

18. Any objections, filings and other submissions by the objecting Settlement Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection(s), and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Silver Wheaton securities that the objecting Settlement Class Member purchased, acquired, and/or sold on the New York Stock Exchange or in domestic U.S. transactions during the Class Period, as well as the dates and prices of each such purchase, acquisition, and/or sale; (d) must state the name, address, and telephone number of all counsel who represent the Settlement Class Member, including former or current counsel who may be entitled to compensation in connection with the objection; (e) must contain a statement confirming whether the Settlement Class Member or their counsel plan to appear at the Final Settlement Hearing; and (g) must state the number of times the Settlement Class Member filed an objection in the previous five years and the nature of each objection to each case in which the Settlement Class Member filed an objection in the previous five years. Objectors who enter an appearance and desire to present evidence at the Final Settlement Hearing in support of their objection(s) must include in their written objection(s) or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

19. Any Settlement Class Member who or which does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and shall be forever barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, the Plan of Allocation or the requested attorneys' fees and reimbursement of Litigation Expenses, or from otherwise being heard concerning the Settlement, the Plan of

Allocation or the requested attorneys' fees and reimbursement of Litigation Expenses in this or any other proceeding.

20. **Supporting Papers:** Lead Counsel shall file and serve the opening papers in support of the proposed Settlement, the Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses no later than twenty-eight (28) calendar days prior to the Final Settlement Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Final Settlement Hearing.

21. **Stay and Temporary Injunction:** Unless and until otherwise ordered by the Court, all proceedings in the Action shall be stayed other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against each and all of the Released Persons.

22. **Settlement Fund:** The contents of the Settlement Fund held by The Huntington National Bank (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

23. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or is not approved, or the Effective Date of the Settlement otherwise fails to occur, this Order shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members and Defendants, and the Parties shall revert to their respective positions in the Action as of December 4, 2020, as provided in the Stipulation.

24. **Use of this Order:** None of this Order, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained

therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith): (a) shall be offered against any of the Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Persons with respect to the truth of any of Plaintiffs' allegations or the validity of any Claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Persons or in any way referred to for any other reason as against any of the Released Persons, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; (b) shall be offered against any of the Releasing Parties, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Releasing Parties that any of their claims are without merit, that any of the Released Persons had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Releasing Parties, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or (c) shall be construed against any of the Released Persons or Releasing Parties as an admission, concession, or presumption that the consideration to be given under the Settlement represents the amount which could be or would have been recovered after trial; *provided, however*, that if the Stipulation is approved by the Court, the Settling Parties, the Released Persons, the Releasing Parties and their respective

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counsel may refer to it to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement.

25. Neither Defendants nor their counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted by Lead Counsel or Class Representatives, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

26. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

Dated: March 9, 2020

Christina A. Snyder

HON. CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE STELLANTIS N.V. SECURITIES LITIGATION	:	19-CV-6770 (EK) (MMH)

ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT

WHEREAS, a putative securities class action is currently pending before this Court styled *In re Stellantis N.V. Securities Litigation*, No. 1:19-cv-6770-EK-MMH (the "Action");

WHEREAS, Lead Plaintiff Nicholas S. Panitza ("Lead Plaintiff"), on behalf of himself and the other members of the Settlement Class, and Defendants Stellantis N.V. f/k/a Fiat Chrysler Automobiles N.V. ("FCA"), Roland Iseli and Alessandro Baldi, as Co-Executors for the Estate of Sergio Marchionne, Michael Manley, and Richard K. Palmer (collectively, "Defendants" and, together with Lead Plaintiff, on behalf of himself and the other members of the Settlement Class, the "Parties") have entered into the Stipulation and Agreement of Settlement, dated May 14, 2021 (the "Stipulation"), that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to approval of this Court (the "Settlement");

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

WHEREAS, by Order dated October 15, 2021 (the "Preliminary Approval Order"), the Court: (i) preliminarily approved the Settlement; (ii) for the purposes of the Settlement, certified the Action as a class action, certified Lead Plaintiff as Class Representative for the Settlement Class, and appointed Lead Counsel as Class Counsel for the Settlement Class; (iii) directed that notice of the proposed Settlement be provided to Settlement Class Members; (iv) provided

Settlement Class Members with the opportunity either to exclude themselves from or to object to the Settlement; and (v) scheduled a hearing regarding final approval of the Settlement;

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

WHEREAS, the Court conducted a hearing on February 17, 2022 (the "Settlement Fairness Hearing") to consider, among other things, (i) whether the terms and conditions of the Settlement are fair, reasonable and adequate to the Settlement Class, and should therefore be approved; and (ii) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants; and

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

NOW, THEREFORE, IT IS HEREBY ORDERED:

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

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (i) the Stipulation filed with the Court on May 14, 2021; and (ii) the Postcard Notice, the Internet Notice and the Summary Notice, all of which were filed with the Court on May 14, 2021 and August 5, 2021 (revised).

3. **Class Certification for Settlement Purposes** – The Court hereby certifies, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class (the "Settlement Class") consisting of the putative class of all persons or entities who or which purchased or otherwise

acquired, on a U.S. Exchange or in a transaction in the United States, FCA and/or STLA common stock between February 26, 2016 and January 27, 2021, both dates inclusive (the "Class Period"). Excluded from the Settlement Class are: (i) Defendants; (ii) current and former officers and directors of the Company and members of their immediate families; (iii) the legal representatives, heirs, successors or assigns of such excluded Person or entity; and (iv) any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class are those Persons listed on Exhibit 1 hereto, who are found by the Court to have timely and validly requested exclusion from the Settlement.

4. **Settlement Class Findings** – For purposes of the Settlement only, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiff in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiff and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the claims of the Settlement Class in the Action.

5. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby appoints Lead Plaintiff as Class Representative for the Settlement Class and appoints Lead Counsel as Class Counsel for the Settlement Class. Lead Plaintiff and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and

implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

6. **Notice** – The Court finds that the dissemination of the Postcard Notice, the posting of the Internet Notice, and the publication of the Summary Notice: (i) were implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (a) the pendency of the Action; (b) the effect of the proposed Settlement (including the Releases to be provided thereunder); (c) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses; (d) their right to object to any aspect of the Settlement, the Plan of Allocation and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses; (e) their right to exclude themselves from the Settlement; and (f) their right to appear at the Settlement Fairness Hearing; (iv) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules. No Settlement Class Member is relieved from the terms of the Settlement, including the Releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive notice.

7. **CAFA** – The Court finds that the notice requirements set forth in the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable to the Action, have been satisfied.

8. **Objections** – The Court finds that a full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon.

9. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the Releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class under Federal Rule of Civil Procedure 23(e)(2), having considered and found that:

a. Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class;

b. the Settlement was negotiated by the Parties at arm's length;

c. the relief provided for the Settlement Class is adequate, having taken into account:

(1) the costs, risks and delay of motion practice, trial and appeal;

(2) the effectiveness of any proposed method of distributing relief to the Settlement Class, including the method of processing Settlement Class Member claims; and

(3) the terms of any proposed award of attorney's fees, including timing of payment; and

d. the Settlement treats members of the Settlement Class equitably relative to each other.

10. Accordingly, the Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

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

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

13. **Releases and Bars** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

a. Without further action by anyone, and subject to paragraph 14 below, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors and assigns in their capacities as such, and on behalf of any other person or entity legally entitled to bring Released Plaintiffs' Claims on behalf of any Settlement Class Member, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs' Claim against the Defendants' Releasees, and shall forever be

barred and enjoined from commencing, instituting, maintaining, prosecuting or continuing to prosecute any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees, in the Action or in any other proceeding. This Release shall not apply to any Excluded Plaintiffs' Claims.

b. Without further action by anyone, and subject to paragraph 14 below, upon the Effective Date of the Settlement, Defendants, on behalf of themselves and their respective heirs, executors, administrators, predecessors, successors and assigns in their capacities as such, and on behalf of any other person or entity legally entitled to bring Released Defendants' Claims on behalf of Defendants, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim against the Plaintiffs' Releasees, and shall forever be barred and enjoined from commencing, instituting, maintaining, prosecuting or continuing to prosecute any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees, in the Action or in any other proceeding. This Release shall not apply to any Excluded Defendants' Claims.

14. Notwithstanding paragraphs 13(a) – (b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

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

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

17. **Modification of the Agreement of Settlement** – Without further approval from the Court, Lead Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Lead Plaintiff and Defendants may agree to reasonable extensions of time to carry out any of the provisions of the Settlement.

18. **Plan of Allocation** – The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members, and Lead Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

19. **Attorneys' Fees and Litigation Expenses** – Lead Plaintiff's Counsel is awarded attorneys' fees in the amount of $ 1,665,000, and expenses in the amount of $ 85,318.18. Lead Plaintiff is awarded $ 3,437.50 in costs related to his representation of the Class. The foregoing amounts shall be paid out of the Settlement Fund within five days of entry of this Order. In the event that this Judgment does not become Final and any

portion of the fee and expense award has already been paid from the Settlement Fund, Lead Counsel and Lead Plaintiff shall, within thirty (30) calendar days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated, refund the Settlement Fund the fee and expense award paid to Lead Plaintiff's Counsel and the cost award paid to Lead Plaintiff, respectively.

20. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, including as a result of any appeals, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Lead Plaintiff, Settlement Class Members and Defendants, and the Parties shall be deemed to have reverted *nunc pro tunc* to their respective positions in the Action as of the date immediately prior to the execution of the Stipulation. Except as otherwise provided in the Stipulation, in the event the Settlement is terminated in its entirety or if the Effective Date fails to occur for any reason, the balance of the Settlement Fund, including interest accrued therein less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes and Tax Expenses paid, due or owing, shall be returned to FCA (or such other persons or entities as FCA may direct) in accordance with the Stipulation.

21. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 23 day of February, 2022.

/s/Eric Komitee
ERIC R. KOMITEE
U.S. DISTRICT JUDGE

EXHIBIT 1

Persons Excluded From the Settlement Class

Joshua A. Mowbray

IN THE UNITED STATES DISRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

GABBY KLEIN, *et al.*,
Plaintiffs,

v. Civil No. 3:20cv75 (DJN)

ALTRIA GROUP, INC. *et al.*,
Defendants.

ORDER AND JUDGMENT APPROVING CLASS ACTION SETTLEMENT

This matter comes before the Court on Lead Plaintiffs' Motion for Final Approval of Class Action and Approval of Plan of Allocation of the Net Proceeds of the Settlement (ECF No. 307) and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Awards to Lead Plaintiffs (ECF No. 309). For the reasons stated herein, the Court hereby GRANTS both Motions (ECF Nos. 307, 309.)

WHEREAS, a securities class action is pending in this Court entitled *Klein v. Altria Group, Inc., et al.*, No. 3:20-cv-00075-DJN (the "Action");

WHEREAS, Lead Plaintiffs Donald and Sarah Sherbondy and Construction Laborers Pension Trust of Greater St. Louis ("Plaintiffs"), on behalf of themselves and the other members of the Settlement Class (as defined below), and Defendants Altria Group, Inc. ("Altria"), JUUL Labs, Inc. ("JLI"), Howard A. Willard III, William F. Gifford, Jr., Adam Bowen, James Monsees, Kevin Burns, and K.C. Crosthwaite (collectively, the "Defendants," and, together with Plaintiffs, on behalf of themselves and the other members of the Settlement Class, the "Parties") have entered into the Stipulation and Agreement of Settlement dated December 9, 2021 (the "Stipulation"), that provides for a complete dismissal with prejudice of the claims asserted

against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the "Settlement");

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

WHEREAS, by Order dated December 16, 2021 (the "Preliminary Approval Order"), this Court: (a) preliminarily approved the Settlement; (b) preliminarily certified the Settlement Class for purposes of this Settlement only; (c) directed that notice of the proposed Settlement be provided to Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

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

WHEREAS, the Court conducted a hearing on March 31, 2022 (the "Settlement Fairness Hearing") to consider, among other things, (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants; and

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

NOW, THEREFORE, IT IS HEREBY ORDERED:

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

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on December 9, 2021; and (b) the Postcard Notice, Notice and Summary Notice, each of which were filed with the Court on December 9, 2021.

3. **Class Certification for Settlement Purposes** – The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all persons and entities who purchased or otherwise acquired Altria securities between October 25, 2018 and April 1, 2020, both dates inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are (i) Defendants, (ii) current and former officers and directors of Altria and JLI; (iii) members of the Immediate Family of each of the Individual Defendants; (iv) all subsidiaries and affiliates of Altria and JLI and the directors and officers of Altria, JLI, and their respective subsidiaries or affiliates; (v) all persons, firms, trusts, corporations, officers, directors, and any other individual or entity in which any Defendant has a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of all such excluded parties. Also excluded from the Settlement Class are the persons listed on Exhibit 1 hereto, who are excluded from the Settlement Class pursuant to request.

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

5. **Notice** – The Court finds that the dissemination of the Postcard Notice, Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel's motion for an award of attorneys' fees, Litigation Expenses and awards to Plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(4); (iv) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and Litigation Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to appear at the Settlement Fairness Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable laws and rules.

6. **CAFA** – The Court finds that the notice requirements set forth in the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable to the Action, have been satisfied.

7. **Objections** – The Court has considered each of the objections to the Settlement submitted pursuant to Rule 23(e)(5) of the Federal Rules of Civil Procedure. The Court finds and concludes that each of the objections is without merit, and they are hereby overruled.

8. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the Releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class under Federal Rule of Civil Procedure 23(e)(2), having considered and found that:

a. Plaintiffs and Lead Counsel have adequately represented the Class;

b. the proposal was negotiated at arm's length between experienced counsel;

c. the relief provided for the Settlement Class is adequate, having taken into account:

(1) the costs, risks, and delay of motion practice, trial and appeal;

(2) the effectiveness of any proposed method of distributing relief to the Settlement Class, including the method of processing Settlement Class Member claims; and

(3) the terms of any proposed award of attorney's fees, including timing of payment; and

d. the proposed Plan of Allocation treats Settlement Class Members equitably relative to each other.

9. Accordingly, the Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

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

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

12. **Releases and Bars** – The Releases set forth in paragraphs 4 through 8 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 13 below, upon the Effective Date of the Settlement, Plaintiffs' Releasees and each of the other Settlement Class Members (whether or not such person submitted a Claim Form), on behalf of themselves,

and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, and on behalf of any other person or entity legally entitled to bring Released Plaintiffs' Claims on behalf of any Settlement Class Member, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, and dismissed with prejudice each and every one of the Released Plaintiffs' Claims (including, without limitation, any Unknown Claims) against any and all of Defendants' Releasees, and shall forever be barred and enjoined, to the fullest extent permitted by law, from commencing, instituting, maintaining, prosecuting or continuing to prosecute any or all of the Released Plaintiffs' Claims against any of Defendants' Releasees, in this Action or in any other proceeding. This Release shall not apply to any Excluded Plaintiffs' Claims.

(b) Without further action by anyone, and subject to paragraph 13 below, upon the Effective Date of the Settlement, Defendants' Releasees, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors and assigns in their capacities as such, and on behalf of any other person or entity legally entitled to bring Released Defendants' Claims on behalf of Defendants, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim (including, without limitation, any Unknown Claims) against Plaintiffs' Releasees, and shall forever be barred and enjoined from commencing, instituting, maintaining, prosecuting or continuing to prosecute any or all of the Released Defendants' Claims against any of Plaintiffs' Releasees, in this Action or in any other proceeding. This Release shall not apply to any Excluded Defendants' Claims.

13. Notwithstanding paragraphs 12(a) – (b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

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

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

(a) shall be offered or received against or to the prejudice of any of the Defendants or Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants or Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs and the Settlement Class, or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants or the Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants or the Defendants' Releasees, in any arbitration proceeding or other civil, criminal,

or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

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

(c) shall be offered or received against or to the prejudice of any of the Defendants' Releasees, Plaintiffs, any other member of the Settlement Class, or their respective counsel, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or other wrongdoing of any kind, or in any way referred to for any other reason against or to the prejudice of any of the Defendants' Releasees, Plaintiffs, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or

(d) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; ***provided, however, that if the Stipulation is approved by the Court, the Parties and the Releasees and their respective***

counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

16. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion to approve the Settlement Class Distribution Order; and (d) the Settlement Class Members for all matters relating to the Action.

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

18. **Plan of Allocation** – The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members, and Lead Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

19. **Attorneys' Fees and Litigation Expenses** – Lead Counsel is awarded attorneys' fees in the amount of $27,000,000, and expenses in the amount of $1,544,748.17, such amounts to be paid out of the Settlement Fund immediately upon entry of this Order. Lead Counsel shall thereafter be solely responsible for allocating the attorneys' fees and expenses among The Schall Law Firm and Cohen Milstein Sellers & Toll PLLC in the manner in which

Lead Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action. In the event that this Judgment does not become Final, and any portion of the fee and expense award has already been paid from the Settlement Fund, Lead Counsel and all other counsel to whom Lead Counsel has distributed payments shall within thirty (30) calendar days of (i) entry of the order rendering the Settlement and Judgment non-Final, (ii) notice of the Settlement being terminated, or (iii) the occurrence of any other event that precludes the Effective Date from occurring, refund the Settlement Fund the fee and expense award paid to Lead Counsel and, if applicable, distributed to other counsel.

20. **Awards to Plaintiffs** – Plaintiffs Donald Sherbondy, Sarah Sherbondy and Construction Laborers Pension Trust of Greater St. Louis are awarded $20,000, $20,000 and $28,775, respectively for their reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. § 78u-4(a)(4), with such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement.

21. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, including as a result of any appeals, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, Class Members, and Defendants, and the Parties shall be deemed to have reverted *nunc pro tunc* to their respective positions in the Action as of the date immediately prior to the execution of the MOU on October 28, 2021. Except as otherwise provided in the Stipulation, in the event the Settlement is terminated in its entirety or if the Effective Date fails to occur for any reason, the balance of the Settlement Fund including interest accrued therein, less any Notice and Administration Costs actually incurred, paid, or payable and

less any Taxes and Tax Expenses paid, due, or owing, shall be returned to Altria (or such other persons or entities as Altria may direct), in accordance with the Stipulation.

22. **Additional Notice Required Following Disbursement** — Not later than thirty (30) days following the completion of the disbursement of the Settlement Fund, Plaintiffs shall file a notice to the Court listing the exact disbursement of funds for each recipient. Specifically, the notice shall state the exact amount disbursed to (1) the Settlement Class Members collectively (not by individual Class Member); (2) Lead Counsel, distinguishing between fees and expenses; (3) Lead Plaintiffs as awards; (3) the Claims Administrator; and (4) any other individual or entity receiving funds. If any portion of the Settlement Fund remains after disbursement to the Settlement Class Members, Lead Counsel, Lead Plaintiffs and the Claims Administrator, Plaintiffs shall indicate the total funds remaining and whether those funds have been or will be disbursed to a *cy pres* beneficiary, including identification of the *cy pres* beneficiary.

23. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment.

Let the Clerk file a copy of this Order and Judgment electronically and notify all counsel of record.

It is so ORDERED.

/s/
David J. Novak
United States District Judge

Richmond, Virginia
Dated: March 31, 2022

EXHIBIT 1

#	NAME/ACCOUNT	CITY	STATE/COUNTRY
1	GERALD A JOHNSON & JODY A GRAMS TR UA 07/17/2014 JOHNSON TRUST	OAKDALE	MN
2	CHUNGHO CHIAO	N/A	N/A
3	RICHARD ENTERLINE JR	PINELLAS PARK	FL
4	WILLARD J SPARKS	ARLINGTON	TX
5	PHYLLIS A SPARKS	ARLINGTON	TX
6	KEVIN J O CONNER	BELLINGHAM	WA
7	MARY ANN E HILDEBRAND	LANSDALE	PA
8	KENNETH C GOTSCH & LYNNE M GOTSCH JT WROS	HIGHLAND PARK	IL
9	JAMES MISTRO & KAREN MISTRO	CRETE	IL
10	SHARON ALCALA	GAHANNA	OH
11	ROSEMARY MCDANIEL	TRENTON	FL
12	PATRICIA A WOMACK	MECHANICSVILLE	VA
13	DEBORAH J KNOWLES	KITCHENER	CAN
14	DAVID BRIAN HOLLAND	SAN ANTONIO	TX
15	JANET V BENSON	GLEN MILLS	PA
16	JAMES W JAPPE	CENTEREACH	NY
17	FOREST A BENSON	GLEN MILLS	PA
18	GEORGE DANIEL ROBBINS	RICHMOND	TX
19	BENJAMIN E & KATHLEEN M RAMP LIVING TRUST U/A 12/17/15	GENESEO	IL
20	RENEE MCCOWN	PORTLAND	OR
21	KATHLEEN F WELLS	PATCHOGUE	NY
22	STEPHANIE CLARK	TELFORD	PA
23	STEPHEN L KRUER & RUTH L KRUER	FLOYDS KNOBS	IN
24	MICHAEL LOCASCIO	FLANDERS	NJ
25	EDNA R SHUEY	LAS VEGAS	NV
26	SANDRA CRUM	LEHIGHTON	PA
27	CLARENCE GREER	SMITHS STATION	AL
28	TERRY A PAGE & CAROLE R PAGE	HILLSBORO	IL
29	MARGARET M SIMPSON	CLARENDON	AR
30	EUGENE KLIMENT	LINCOLN	NE
31	GLENNA CATTERMOLE	SCOTTS VALLEY	CA
32	ELIANA CROOKS	LEOPOLD	AUS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 18-23786-CV-MARTINEZ-OTAZO-REYES

CHARLES STEINBERG, individually and on behalf of all others similarly situated,
Plaintiff,

v.

OPKO HEALTH, INC., PHILLIP FROST, ADAM LOGAL, and JUAN RODRIGUEZ,
Defendants.
_____/

ORDER ON MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

THIS CAUSE is before the Court upon Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, and Incorporated Memorandum of Law, [ECF No. 119]. The Court has considered the Motion, the pertinent portions of the record, and is otherwise duly advised in the premises.

On September 4, 2020, the Court granted preliminary approval of the proposed class action settlement set forth in the Settlement Agreement and Release (the "Settlement Agreement") between Plaintiff Charles Steinberg ("Plaintiff"), on behalf of himself and all members of the Settlement Class, and Defendants OPKO Health, Inc., Phillip Frost, Adam Logal, and Juan Rodriguez ("Defendants") (collectively, the "Parties"), [ECF No. 115]. The Court also provisionally certified the Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on December 15, 2020 at 1:30 p.m.

About two weeks later, on September 17, 2020, the Eleventh Circuit Court of Appeals entered a decision in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020). The Eleventh Circuit explicitly held that incentive awards for class representatives are prohibited by Supreme Court precedent. *Id.*

The Plaintiffs then submitted their Motion for Final Approval of Settlement and Plan of Allocation, [ECF No. 118], as well as their Motion for Attorneys' Fees, [ECF No. 119]. *See also Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020) (finding error where Court ordered objections to be due before counsel's motion for fees and costs). The Court has received ***no*** objections from any of the potential class members, after over 271,000 Notice Packets had been sent. [*See* ECF No. 123 at 2].

Lead Counsel Bernstein Litowitz Berger & Grossman LLP move, on behalf of Plaintiffs' Counsel, for an award of attorneys' fees in the amount of 20% of the Settlement Fund, or $3,300,000 plus interest earned at the same rate as earned by the Settlement Fund. [ECF No. 119]. Lead Counsel also requests $143,841.54 for litigation expenses paid or incurred, as well as payment of $17,500.00 for costs incurred by Lead Plaintiff Amitim Funds directly related to its representation of the Settlement Class, as authorized by the Private Securities Litigation Act of 1995 ("PSLRA").

On December 15, 2020, the Court held a duly noticed Final Approval Hearing to consider, among other things, whether and in what amount Lead Counsel should be awarded attorneys' fees and expenses, and whether Lead Plaintiff is entitled to reimbursement of certain fees and costs. The Court specifically required the parties to address the appropriateness of the Lead Plaintiff's request for reimbursement of costs in connection with its representation of the Settlement Class in light of the Eleventh Circuit's decision in *Johnson*. Accordingly, the Court has also considered

Lead Plaintiff's Memorandum of Law in Further Support of Reimbursement of Costs Pursuant to 15 U.S.C. § 78u-4(a)(4), [ECF No. 129].

The Court has reviewed and considered the Settlement, Stipulation, all pertinent portions of the record, and the proceedings held before the Court otherwise relating to settlement approval.

I. Approval of Attorneys' Fees and Costs

Pursuant to Federal Rule of Civil Procedure 23(h)(3), the Court has held a hearing on the matter and makes the following findings of fact and conclusions of law.

The Settlement confers substantial benefits on Settlement Class Members. The Settlement has created a fund of $16,500,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation. Because of the efforts of Plaintiffs' Counsel, numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement. This case involved complex federal securities litigation and success at trial would have proved difficult. Specifically, Plaintiffs faced numerous substantial challenges in establishing liability, loss causation, damages, and scienter. Had Plaintiffs' Counsel not achieved the Settlement, there would remain a significant risk that Lead Plaintiff and the other members of the Settlement Class may have recovered less or nothing from Defendants.

This Settlement was reached following an extensive effort from Plaintiffs' Counsel, including conducting a comprehensive investigation into the claims asserted, consultation with numerous experts, and engaging in extensive settlement negotiations, including a full-day mediation session. Plaintiffs' Counsel vigorously and effectively pursued the Settlement Class Members' claims, and this Settlement was negotiated in good faith and in the absence of collusion. Indeed, the requested fee has been reviewed and approved as reasonable by Lead Plaintiff, a

sophisticated institutional investor that actively supervised the action. Plaintiffs' Counsel devoted nearly 2,900 hours, with a lodestar value of over $1,876,000, to achieve the Settlement.

Furthermore, copies of the Notice were mailed to over 271,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 20% of the Settlement Fund and for litigation expenses in an amount not to exceed $300,000. No objections to the requested attorneys' fees and litigation expenses were received by this Court.

Attorneys who recover a common benefit for persons other than themselves or their clients are entitled to a reasonable attorneys' fee from the Settlement Fund as a whole. *See, e.g., Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980) (citations omitted). The requested fee award is consistent with other fee awards in this Circuit and District. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295–96 (11th Cir. 1999) (affirming class attorneys' award of 33.3%); *see also Fought v. Am. Home Shield Corp.*, 668 F.3d 1233, 1243 (11th Cir. 2012) ("25% is generally recognized as a reasonable award in common fund cases."); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774–75 (11th Cir. 1991) ("[t]he majority of common fund fee awards fall between 20% to 30% of the fund," and district courts consider 25% as a "benchmark" that "may be adjusted in accordance with the individual circumstances of each case"). Because the Court is convinced that 20% of the total Settlement Fund is a fair and reasonable award in this action, the Court finds it unnecessary to engage in a full-scale lodestar analysis. Nonetheless, the Court also notes that the requested fee represents a multiplier of 1.76 on Plaintiffs' Counsel's lodestar, which is within or below the range of multipliers typically deemed acceptable in class action settlements. *See, e.g., Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1343 (S.D. Fla. 2007) ("not[ing] that lodestar multiples in large and complicated class actions range from 2.26 to 4.5").

Additionally, Plaintiffs' Counsel is entitled to be reimbursed from the class fund for the reasonable expenses incurred in this action, including costs for experts, court fees, as well as the use of online researching services and mediation. The Court finds Counsel's request reasonable and necessary.

Accordingly, Plaintiffs' Counsel are hereby **AWARDED** attorneys' fees in the amount of 20% of the Settlement Fund, and $143,841.54 in payment of Lead Counsel's litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it in good faith believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the action.

II. Approval of Lead Plaintiff's Request for Reimbursement

As for Lead Plaintiff Amitim Funds' request for reimbursement of costs and expenses, the Court gives pause. As set forth at the Final Fairness Hearing, the Court is wary to run afoul of the Eleventh Circuit's recent decision in *Johnson*, 975 F.3d at 1257. As such, the Court permitted Lead Plaintiff to submit a supplemental memorandum regarding *Johnson*'s effect on Plaintiff's fee request. [ECF No. 129].

At the outset of litigation under the PSLRA, a lead plaintiff is required to certify that he "will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff's pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4)." 15 U.S.C. § 78u-4(a)(2)(A)(vi). The referenced section, 15 U.S.C. § 78u-4(a)(4), implies that a representative of a class in a class action brought under the Securities and Exchange Act of 1934 may be awarded "its reasonable costs and expenses (including lost wages) directly relating to the representation of the class…." *Id*. As set forth in the Committee Report on

the Private Securities Litigation Act of 1995, Congress enacted this provision of the PSLRA to "remove the financial incentive for becoming a lead plaintiff." H.R. Conf. Rep. No. 104-369 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 730, 734. Accordingly, the PSLRA has been read to prohibit general incentive or service awards to class representatives. *See, e.g.*, *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 960 n.4 (9th Cir. 2009) (noting that the PSLRA "prohibits granting incentive awards to class representatives in securities class actions"); *Azar v. Blount Int'l, Inc.*, No. 3:16-cv-0483-SI, 2019 WL 7372658, at *13 (D. Or. Dec. 31, 2019) (same); *In re Schering-Plough Corp. Enhance Sec. Litig.*, Nos. 08-397, 08-2177, 2013 WL 5505744, at *37 (D.N.J. Oct. 1, 2013) (same). The Conference Committee recognized, however, "that lead plaintiffs should be reimbursed for reasonable costs and expenses associated with service as lead plaintiff, including lost wages," and granted courts "discretion to award fees accordingly." H.R. Conf. Rep. No. 104-369 (1995).

Thus, the Court must determine whether Lead Plaintiff seeks "reasonable costs and expenses (including lost wages) directly relating to the representation of the class" as permitted under the PSLRA, or an incentive award prohibited by both the PSLRA and *Johnson*.

As set forth in Mr. Ronen Hirsch's Declaration, as Amitim Funds' Chief Legal Officer, Mr. Hirsch and other employees of the Amitim Funds have devoted at least 100 hours to the prosecution of this action, which was time they contend could have been devoted to other work. [ECF No. 120-2 at ¶ 10]. Because the PSLRA specifically authorizes the reimbursement of reasonable costs and expenses—including lost wages—directly relating representation of the class, Lead Plaintiff contends that *Johnson*'s prohibition against incentive awards should not affect the Court's determination. The Court agrees. Indeed, *Johnson* and the PSLRA both reflect the proposition that representative plaintiffs to a class action are not entitled to an incentive award.

Where the two may diverge, however, is how to define an impermissible incentive award versus an expense or cost of litigation. Namely, how should a court differentiate between "lost wages" under the PSLRA and a "salary" prohibited by *Johnson*?

In *Johnson*, the Eleventh Circuit held that "[a] plaintiff suing on behalf of a class can be reimbursed for attorneys' fees and expenses incurred in carrying on the litigation, but he cannot be paid a salary or be reimbursed for his personal expenses." 975 F.3d at 1257. Here, the amount sought by Lead Plaintiff represents the value of time dedicated by its employees in supervising and participating in the action, including, among other things, reviewing significant pleadings and briefs, communicating regularly with Lead Counsel, and evaluating and approving the Settlement. [ECF No. 120-2 at ¶¶ 5, 10]. In this regard, the amount seems more akin to a salary—and thus, a prohibited incentive award—than expenses incurred in carrying on the litigation. For example, in *Johnson*, the plaintiff claimed to be entitled to an incentive payment because he "took critical steps to protect the interests of the class, and spent considerable time pursuing their claims…by frequently communicating with his counsel, keeping himself apprised of the matter, approving drafts before filing, and responding to [defendant's] discovery requests." *Johnson*, 975 F.3d at 1258 (cleaned up). "In other words, [plaintiff] wanted to be compensated for the time he spent litigating the case…." *Id.* (cleaned up). The Circuit likened plaintiff's request to a salary—an award the Supreme Court has deemed "decidedly objectionable." *Id.* (quoting *Trustees v. Greenough*, 105 U.S. 527, 537 (1882)). In so holding, the Eleventh Circuit has seemingly deemed the type of reimbursement sought by Lead Plaintiff, not as an expense of litigation, but as prohibited salary compensation.

On the other hand, the PSLRA specifically contemplates that a class representative could be awarded reasonable lost wages in pursuing litigation. *See In re ESS Tech., Inc. Sec. Litig.*, No.

C-02-04497 RMW, 2007 WL 3231729, at *2 (N.D. Cal. Oct. 30, 2007); 15 U.S.C. § 78u-4(a)(4). "Numerous courts reviewing lead plaintiff fee requests under the PSLRA have concluded that in order to recover under § 78u-4(a)(4), the lead plaintiff must provide meaningful evidence demonstrating that the requested amounts represent actual costs and expenses incurred directly as a result of the litigation." *In re ESS Tech.*, 2007 WL 3231729, at *2. Evidence of time spent away from work may suffice. *See, e.g.*, *In re AMF Bowling Sec. Litig.*, 334 F. Supp. 2d 462, 470 (S.D.N.Y. 2004) ("Nothing presented to me places the time devoted to this case by the two class representatives into the category of recoverable expense. Neither claims any out-of-pocket expense. There is no assertion that either lost time at work or gave up employer-granted vacation time."); *Abrams v. Van Kampen Funds, Inc.*, No. 01-C-7538, 2006 WL 163023, at *4 (N.D. Ill. Jan. 18, 2006) ("Lead plaintiffs do not contend that any portion of the requested amount represents any actual expenses that either has incurred. They do not claim that they missed any work or other earning opportunity in order to participate in the litigation. Under the PSLRA, lead plaintiffs cannot be awarded additional compensation."); *In re KeySpan Corp. Sec. Litig.*, No. 01-CV-5852, 2005 WL 3093399, at *21 (E.D.N.Y. Sept. 30, 2005) ("Counsel have not shown how the time expended by the Class Representative and Lead Plaintiffs resulted in actual losses, whether in the form of diminishment in wages, lost sales commissions, missed business opportunities, use of leave or vacation time or actual expenses incurred."); *see also* S. Rep. No. 104-98 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 679, 689 ("Recognizing that service as the lead plaintiff may require court appearances or other duties involving time away from work, the Committee grants courts discretion to award the lead plaintiff reimbursement for 'reasonable costs and expenses' (including lost wages) directly relating to representation of the class.").

This case is a close call. Lead Plaintiff has provided support for its $17,500.00 reimbursement request in the form of Mr. Hirsch's Declaration, [ECF No. 120-2]. Mr. Hirsch specified that the time Lead Plaintiff's employees "devoted to the representation of the Settlement Class in this Action was time that [it] would otherwise have spent on other work for the Amitim Funds and, thus, represented a cost to the Amitim Funds." [*Id*. at ¶ 10]. In this regard, Lead Plaintiff's request could reflect "lost wages" or costs sufficient under the PSLRA as interpreted by numerous courts. While somewhat conclusory,[1] the Declaration and record as a whole support a reimbursement award based on the Amitim Funds' time expended in litigating this action. The Court also finds that the Amitim Funds' request and oversight of this case falls in line with the congressional intent of the PSLRA. As such, in its discretion, the Court finds reimbursement appropriate pursuant to 15 U.S.C. § 78u-4(a)(4).

Accordingly, after careful consideration, it is hereby:

ORDERED AND ADJUDGED that

1. 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.
2. Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, and Incorporated Memorandum of Law, [ECF No. 119], is **GRANTED**.
3. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of **20% of the Settlement Fund, and $143,841.54 in payment of Lead Counsel's litigation expenses** (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith,

[1] For example, the Declaration does not indicate how oversight of this litigation would not fall within Mr. Hirsch's job description as Chief Legal Officer of the Amitim Funds.

believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

4. Lead Plaintiff Amitim Funds is hereby awarded **$17,500.00** from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.
5. 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.
6. 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.
7. In the event that the Settlement is terminated, or the Effective Date of the Settlement otherwise fails to occur, this award shall be rendered null and void to the extent provided by the Stipulation.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of April 2021.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
All Counsel of Record
Magistrate Judge Otazo-Reyes

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

STEPHEN AND JUNE VITIELLO, Individually and on Behalf of All Others Similarly Situated, **Plaintiffs,** **v.** **BED BATH & BEYOND INC., *et al.*,** **Defendants.**	**No. 2:20-cv-04240-MCA-MAH**

ORDER APPROVING
CLASS-ACTION SETTLEMENT

WHEREAS Lead Plaintiff Kavin Bakhda, on behalf of himself and the Class (as defined below), additional named plaintiff Richard Lipka (collectively with Lead Plaintiff, "Plaintiffs"), and Defendants Bed Bath & Beyond Inc., Mark J. Tritton, Mary A. Winston, and Robyn M. D'Elia have entered into a Settlement Agreement[1] to settle the claims asserted in the Action; and

WHEREAS Lead Plaintiff and Defendants have applied to the Court pursuant to Fed. R. Civ. P. 23(e) and the Private Securities Litigation Reform Act of 1995 (the "PSLRA") for an Order granting final approval of the proposed settlement in accordance with the Stipulation of Settlement (including its exhibits) (the "Settlement Agreement"), which sets forth the terms and conditions of the proposed settlement (the "Settlement"); and

WHEREAS, on February 4, 2022, the Court entered an Order preliminarily approving the proposed Settlement, preliminarily certifying the Class for settlement purposes, directing notice

[1] To the extent capitalized terms are not defined in this Order, this Court adopts and incorporates the definitions set out in the Settlement Agreement. Selected definitions from the Settlement Agreement are reprinted in the Appendix to this Order.

to be sent and published to potential Class Members, and scheduling a hearing (the "Fairness Hearing") to consider whether to approve the proposed Settlement, the proposed Plan of Allocation, Lead Counsel's application for an Attorneys' Fees and Expenses Award, and Lead Plaintiff's application for a PSLRA Award; and

WHEREAS the Court held the Fairness Hearing on June 2, 2022 to determine, among other things, (*i*) whether the terms and conditions of the proposed Settlement are fair, reasonable, and adequate and should therefore be approved; (*ii*) whether the Class should be finally certified for settlement purposes; (*iii*) whether notice to the Class was implemented pursuant to the Preliminary Approval Order and constituted due and adequate notice to potential Class Members in accordance with the Federal Rules of Civil Procedure, the PSLRA, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law; (*iv*) whether to approve the proposed Plan of Allocation; (*v*) whether to enter an order and judgment dismissing the Action on the merits and with prejudice as to Defendants and against all Class Members, and releasing all the Released Class Claims and Released Releasees' Claims as provided in the Settlement Agreement; (*vi*) whether to enter the requested permanent injunction and bar orders as provided in the Settlement Agreement; (*vii*) whether and in what amount to grant an Attorneys' Fees and Expenses Award to Lead Counsel; and (*viii*) whether and in what amount to grant a PSLRA Award to Lead Plaintiff; and

WHEREAS the Court received submissions and heard argument at the Fairness Hearing;

NOW, THEREFORE, based on the written submissions received before the Fairness Hearing, the arguments at the Fairness Hearing, and **for the reasons set forth on the record during the Final Fairness Hearing, held on the record on June 2, 2022**, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. **Incorporation of Settlement Documents.** This Order incorporates and makes a part hereof the Settlement Agreement dated as of October 25, 2021, including its defined terms.

2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action, the Plaintiffs, and all other Class Members (as defined below) and has jurisdiction to enter this Order and the Judgment.

3. **Final Class Certification.** The Court grants certification of the Class solely for purposes of the Settlement pursuant to Fed. R. Civ. P. 23(b)(3). The Class is defined to consist of all persons and entities who purchased or otherwise acquired BBBY Common Stock during the period from September 4, 2019 through February 11, 2020, inclusive. Excluded from the Class are:

a. such persons or entities who submitted valid and timely requests for exclusion from the Class;

b. such persons or entities who, while represented by counsel, settled an actual or threatened lawsuit or other proceeding against one or more of the Releasees arising out of or related to the Released Class Claims; and

c. BBBY and (*i*) all officers and directors of BBBY during the Class Period (including Mark J. Tritton, Mary A. Winston, and Robyn M. D'Elia), (*ii*) BBBY's Affiliates, subsidiaries, successors, and predecessors, (*iii*) any entity in which BBBY or any individual identified in subpart (*i*) has or had during the Class Period a Controlling Interest, and (*iv*) for the individuals identified in subparts (*i*), (*ii*), and/or (*iii*), their Family Members, legal representatives, heirs, successors, and assigns.

4. This certification of the Class is made for the sole purpose of consummating the Settlement of the Action in accordance with the Settlement Agreement. If the Court's approval

of the Settlement does not become Final for any reason whatsoever, or if it is modified in any material respect deemed unacceptable by a Settling Party, this class certification shall be deemed void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever, including in any later attempt by or on behalf of Plaintiffs or anyone else to seek class certification in this or any other matter.

5. For purposes of the settlement of the Action, and only for those purposes, the Court finds that the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), and any other applicable laws (including the PSLRA), have been satisfied, in that:

a. The Class is ascertainable from business records and/or from objective criteria;

b. The Class is so numerous that joinder of all members would be impractical;

c. One or more questions of fact and law are common to all Class Members;

d. Lead Plaintiff's claims are typical of those of the other members of the Class;

e. Lead Plaintiff has been and is capable of fairly and adequately protecting the interests of the members of the Class, in that (*i*) Lead Plaintiff's interests have been and are consistent with those of the other Class Members; (*ii*) Lead Counsel has been and is able and qualified to represent the Class, and (*iii*) Lead Plaintiff and Lead Counsel have fairly and adequately represented the Class Members in prosecuting this Action and in negotiating and entering into the proposed Settlement; and

f. For settlement purposes, questions of law and/or fact common to members of the Class predominate over any such questions affecting only individual Class Members, and

a class action is superior to all other available methods for the fair and efficient resolution of the Action. In making these findings for settlement purposes, the Court has considered, among other things, (*i*) the questions of law and fact pled in the Complaint, (*ii*) the Class Members' interest in the fairness, reasonableness, and adequacy of the proposed Settlement, (*iii*) the Class Members' interests in individually controlling the prosecution of separate actions, (*iv*) the impracticability or inefficiency of prosecuting separate actions, (*v*) the extent and nature of any litigation concerning these claims already commenced, and (*vi*) the desirability of concentrating the litigation of the claims in a particular forum.

6. **Final Certification of Lead Plaintiff and Appointment of Lead Counsel for Settlement Purposes.** Solely for purposes of the proposed Settlement, the Court hereby confirms its (*i*) certification of Lead Plaintiff as representative of the Class and (*ii*) appointment of Bernstein Liebhard LLP as Lead Counsel for the Class pursuant to Fed. R. Civ. P. 23(g).

7. **Notice.** The Court finds that the distribution of the Individual Notice and Claim Form, the publication of the Summary Notice, and the notice methodology as set forth in the Preliminary Approval Order all were implemented in accordance with the terms of that Order. The Court further finds that the Individual Notice, the Claim Form, the Summary Notice, and the notice methodology (*i*) constituted the best practicable notice to potential Class Members, (*ii*) constituted notice that was reasonably calculated, under the circumstances, to apprise potential Class Members of the pendency of the Action, the nature and terms of the proposed Settlement, the effect of the Settlement Agreement (including the release of claims), their right to object to the proposed Settlement, their right to exclude themselves from the Class, and their right to appear at the Fairness Hearing, (*iii*) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice (including any State and/or

federal authorities entitled to receive notice under the Class Action Fairness Act of 2005), and (*iv*) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the PSLRA, the Rules of the Court, and any other applicable law.

8. **Final Settlement Approval.** The Court finds that the proposed Settlement resulted from serious, informed, non-collusive negotiations conducted at arm's length by the Settling Parties and their experienced counsel – under the auspices of an experienced mediator – and was entered into in good faith. The terms of the Settlement Agreement do not have any material deficiencies, do not improperly grant preferential treatment to any individual Class Member, and treat Class Members equitably relative to each other. Accordingly, the proposed Settlement as set forth in the Settlement Agreement is hereby fully and finally approved as fair, reasonable, and adequate, consistent and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the PSLRA, and the Rules of the Court, and in the best interests of the Class Members.

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

10. In making these findings and in concluding that the relief provided to the Class is fair, reasonable, and adequate, the Court considered, among other factors, the considerations outlined in Federal Rule of Civil Procedure 23(e)(2) and in *In re National Football League Players Concussion Injury Litigation*, 821 F.3d 410, 437 (3d Cir. 2016), including (*i*) the complexity, expense, and likely duration of the litigation if it were to continue, including the costs, risks, and delay of trial and appeal; (*ii*) the reaction of the potential Class Members to the proposed Settlement, including the number of exclusion requests and the number of objections;

(*iii*) the stage of the proceedings and the amount of discovery and other materials available to Lead Counsel, including the Due-Diligence Discovery provided to Lead Counsel; (*iv*) the risks of establishing liability and damages, including the nature of the claims asserted and the strength of Plaintiffs' claims and Defendants' defenses as to liability and damages; (*v*) Lead Plaintiff's risks of obtaining certification of a litigation class and of maintaining certification through trial; (*vi*) the ability of Defendants to withstand a greater judgment; (*vii*) the range of reasonableness of the Settlement Amount in light of the best possible recovery; (*viii*) the range of reasonableness of the Settlement Amount to a possible recovery in light of all the attendant risks of litigation; (*ix*) the availability of opt-out rights for potential Class Members who do not wish to participate in the Settlement; (*x*) the effectiveness of the procedures for processing Class Members' claims for relief from the Settlement Fund and distributing such relief to eligible Class Members; (*xi*) the terms of the proposed award of attorneys' fees, including the timing of the payment; (*xii*) the terms of the Supplemental Agreement; (*xiii*) the treatment of Class Members relative to each other; (*xiv*) the adequacy of Lead Plaintiff's and Lead Counsel's representation of the Class; (*xv*) the arm's-length nature of the negotiation of the proposed Settlement; (*xvi*) the involvement of a respected and experienced mediator (Jed Melnick, Esq.); (*xvii*) the experience and views of the Settling Parties' counsel; (*xviii*) the submissions and arguments made throughout the proceedings by the Settling Parties; and (*xix*) the submissions and arguments made at and in connection with the Fairness Hearing.

11. The Settling Parties are directed to implement and consummate the Settlement Agreement in accordance with its terms and provisions. The Court approves the documents submitted to the Court in connection with the implementation of the Settlement Agreement.

12. **Releases.** Pursuant to this Approval Order and the Judgment, without further action by anyone, and subject to paragraph 15 below, on and after the Final Settlement Date, Plaintiffs and all other Class Members (whether or not a Claim Form has been executed and/or delivered by or on behalf of any such Class Member), on behalf of themselves and the other Releasors, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of this Order and the Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged:

a. all Released Class Claims against each and every one of the Releasees;

b. all Claims, damages, and liabilities as to each and every one of the Releasees to the extent that any such Claims, damages, or liabilities relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or oral or written statements or representations in connection with, or directly or indirectly relating to, (*i*) the prosecution, defense, or settlement of the Action, (*ii*) the Settlement Agreement or its implementation, (*iii*) the Settlement terms and their implementation, (*iv*) the provision of notice in connection with the proposed Settlement, and/or (*v*) the resolution of any Claim Forms submitted in connection with the Settlement; and

c. all Claims against any of the Releasees for attorneys' fees, costs, or disbursements incurred by Plaintiffs' Counsel or any other counsel representing Plaintiffs or any other Class Member in connection with or related in any manner to the Action, the settlement of the Action, or the administration of the Action and/or its Settlement, except to the extent otherwise specified in the Settlement Agreement.

13. Pursuant to this Order and the Judgment, without further action by anyone, and subject to paragraph 15 below, on and after the Final Settlement Date, each and every Releasee,

including Defendants' Counsel, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of this Order and the Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged each and all Releasors, including Lead Counsel, from any and all Released Releasees' Claims, except to the extent otherwise specified in the Settlement Agreement.

14. Pursuant to this Order and the Judgment, without further action by anyone, and subject to paragraph 15 below, on and after the Final Settlement Date, Plaintiffs' Counsel and any other counsel representing Lead Plaintiff or any other Class Member in connection with or related in any manner to the Action, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, Affiliates, and assigns, and any person or entity claiming by, through, or on behalf of any of them, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and of this Order and the Judgment shall have, fully, finally, and forever released, relinquished, settled, and discharged Defendants, Defendants' Counsel, and all other Releasees from any and all Claims that relate in any way to any or all acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or oral or written statements or representations in connection with, or directly or indirectly relating to, (*i*) the prosecution, defense, or settlement of the Action, (*ii*) the Settlement Agreement or its implementation, or (*iii*) the Settlement terms and their implementation.

15. Notwithstanding paragraphs 12 through 14 above, nothing in this Order or in the Judgment shall bar any action or Claim by the Settling Parties or their counsel to enforce the terms of the Settlement Agreement, this Order, or the Judgment.

16. **Permanent Injunction.** The Court orders as follows:

a. Plaintiffs and all other Class Members (and their attorneys, accountants, agents, heirs, executors, administrators, trustees, predecessors, successors, Affiliates, representatives, and assigns) who have not validly and timely requested exclusion from the Class – and anyone else purporting to act on behalf of, for the benefit of, or derivatively for any of such persons or entities – are permanently enjoined from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefit or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding (as well as a motion or complaint in intervention in the Action if the person or entity filing such motion or complaint in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of the above persons or entities) or order, in any jurisdiction or forum, as to the Releasees based on or relating to the Released Class Claims;

b. All persons and entities are permanently enjoined from filing, commencing, or prosecuting any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) or other proceeding on behalf of any Class Members as to the Releasees, if such other lawsuit is based on or related to the Released Class Claims; and

c. All Releasees, and anyone purporting to act on behalf of, for the benefit of, or derivatively for any such persons or entities, are permanently enjoined from commencing, prosecuting, intervening in, or participating in any claims or causes of action relating to Released Releasees' Claims.

17. Notwithstanding paragraph 16 above, nothing in this Order or in the Judgment shall bar any action or Claim by the Settling Parties or their counsel to enforce the terms of the Settlement Agreement, this Order, or the Judgment.

18. **Contribution Bar Order.** In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all Claims for contribution arising out of any Released Class Claim (*i*) by any person or entity against any of the Releasees and (*ii*) by any of the Releasees against any person or entity other than as set out in 15 U.S.C. § 78u-4(f)(7)(A)(ii) are hereby permanently barred, extinguished, discharged, satisfied, and unenforceable. Accordingly, without limitation to any of the above, (*i*) any person or entity is hereby permanently enjoined from commencing, prosecuting, or asserting against any of the Releasees any such Claim for contribution, and (*ii*) the Releasees are hereby permanently enjoined from commencing, prosecuting, or asserting against any person or entity any such Claim for contribution. In accordance with 15 U.S.C. § 78u-4(f)(7)(B), any Final verdict or judgment that might be obtained by or on behalf of the Class or a Class Member against any person or entity for loss for which such person or entity and any Releasee are found to be jointly liable shall be reduced by the greater of (*i*) an amount that corresponds to such Releasee's or Releasees' percentage of responsibility for the loss to the Class or Class Member or (*ii*) the amount paid by or on behalf of Defendants to the Class or Class Member for common damages, unless the court entering such judgment orders otherwise.

19. **Complete Bar Order.** To effectuate the Settlement, the Court hereby enters the following Complete Bar:

a. Any and all persons and entities are permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any Claim against any Releasee arising under any federal, state, or foreign statutory or common-law rule, however styled, whether for

indemnification or contribution or otherwise denominated, including Claims for breach of contract or for misrepresentation, where the Claim is or arises from a Released Class Claim and the alleged injury to such person or entity arises from that person's or entity's alleged liability to the Class or any Class Member, including any Claim in which a person or entity seeks to recover from any of the Releasees (*i*) any amounts that such person or entity has or might become liable to pay to the Class or any Class Member and/or (*ii*) any costs, expenses, or attorneys' fees from defending any Claim by the Class or any Class Member. All such Claims are hereby extinguished, discharged, satisfied, and unenforceable, subject to a hearing to be held by the Court, if necessary. The provisions of this subparagraph are intended to preclude any liability of any of the Releasees to any person or entity for indemnification, contribution, or otherwise on any Claim that is or arises from a Released Class Claim and where the alleged injury to such person or entity arises from that person's or entity's alleged liability to the Class or any Class Member; *provided, however*, that, if the Class or any Class Member obtains any judgment against any such person or entity based upon, arising out of, or relating to any Released Class Claim for which such person or entity and any of the Releasees are found to be jointly liable, that person or entity shall be entitled to a judgment credit equal to an amount that is the greater of (*i*) an amount that corresponds to such Releasee's or Releasees' percentage of responsibility for the loss to the Class or Class Member and (*ii*) the amount paid by or on behalf of Defendants to the Class or Class Member for common damages, unless the court entering such judgment orders otherwise.

b. Each and every Releasee is permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any Claim against any other person or entity (including any other Releasee) arising under any federal, state, or foreign statutory or common-

law rule, however styled, whether for indemnification or contribution or otherwise denominated, including Claims for breach of contract and for misrepresentation, where the Claim is or arises from a Released Class Claim and the alleged injury to such Releasee arises from that Releasee's alleged liability to the Class or any Class Member, including any Claim in which any Releasee seeks to recover from any person or entity (including another Releasee) (*i*) any amounts that any such Releasee has or might become liable to pay to the Class or any Class Member and/or (*ii*) any costs, expenses, or attorneys' fees from defending any Claim by the Class or any Class Member. All such Claims are hereby extinguished, discharged, satisfied, and unenforceable.

c. Notwithstanding anything stated in the Complete Bar Order, if any person or entity (for purposes of this subparagraph, a "petitioner") commences against any of the Releasees any action either (*i*) asserting a Claim that is or arises from a Released Class Claim and where the alleged injury to such petitioner arises from that petitioner's alleged liability to the Class or any Class Member or (*ii*) seeking contribution or indemnity for any liability or expenses incurred in connection with any such Claim, and if such action or Claim is not barred by a court pursuant to this paragraph 19 or is otherwise not barred by the Complete Bar Order, neither the Complete Bar Order nor the Settlement Agreement shall bar Claims by that Releasee against (*i*) such petitioner, (*ii*) any person or entity who is or was controlled by, controlling, or under common control with the petitioner, whose assets or estate are or were controlled, represented, or administered by the petitioner, or as to whose Claims the petitioner has succeeded, and (*iii*) any person or entity that participated with any of the preceding persons or entities described in items (*i*) and/or (*ii*) of this subparagraph in connection with the assertion of the Claim brought against the Releasee(s).

d. If any term of the Complete Bar Order entered by the Court is held to be unenforceable after the date of entry, such provision shall be substituted with such other provision as may be necessary to afford all of the Releasees the fullest protection permitted by law from any Claim that is based upon, arises out of, or relates to any Released Class Claim.

e. Nothing in the Contribution Bar Order or Complete Bar Order shall (*i*) expand the release provided by Class Members and other Releasors to the Releasees under paragraph 12 above or (*ii*) bar any persons who are excluded from the Class by definition or by request from asserting any Released Class Claim against any of the Releasees. Notwithstanding the Complete Bar Order or anything else in the Settlement Agreement, (*i*) nothing shall prevent the Settling Parties from taking such steps as are necessary to enforce the terms of the Settlement Agreement, and (*ii*) nothing shall release, interfere with, limit, or bar the assertion by any Releasee of any Claim for insurance coverage under any insurance, reinsurance, or indemnity policy that provides coverage respecting the conduct and Claims at issue in the Action.

20. **No Admissions.** This Order and the Judgment, the Settlement Agreement, the offer of the Settlement Agreement, and compliance with the Judgment or the Settlement Agreement shall not constitute or be construed as an admission by any of the Releasees of any wrongdoing or liability, or by any of the Releasors of any infirmity in Plaintiffs' Claims. This Order, the Judgment, and the Settlement Agreement are to be construed solely as a reflection of the Settling Parties' desire to facilitate a resolution of the Claims in the Complaint and of the Released Class Claims. In no event shall this Order, the Judgment, the Settlement Agreement, any of their provisions, or any negotiations, statements, or court proceedings relating to their provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or any judicial, administrative, regulatory, or other

proceeding, except a proceeding to enforce the Settlement Agreement. Without limiting the foregoing, this Order, the Judgment, the Settlement Agreement, and any related negotiations, statements, or court proceedings shall not be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession (*i*) of any kind against the Settling Parties or the other Releasees and Releasors in the Action, any other action, or any judicial, administrative, regulatory, or other proceeding or (*ii*) of any liability or wrongdoing whatsoever on the part of any person or entity, including Defendants, or as a waiver by Defendants of any applicable defense, or (*iii*) by Plaintiffs or the Class of the infirmities of any claims, causes of action, or remedies.

21. Notwithstanding anything in paragraph 20 above, this Order, the Judgment, and/or the Settlement Agreement may be filed in any action against or by any Releasee to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, injunction, full faith and credit, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

22. **Attorneys' Fees and Expenses Award.** Lead Counsel is hereby awarded attorneys' fees in the amount of 33 1/3% (*i.e.*, $2,331,000) of the Settlement Fund, which is the $7,000,000 Settlement Amount plus any interest that has accrued on the Settlement Amount on deposit in the Escrow Account, and expenses in the amount of $58,508.86. Those amounts shall be paid out of the Settlement Fund (as that term is defined in the Settlement Agreement) pursuant to the terms set out in Section X of the Settlement Agreement. The Court finds that the Attorneys' Fees and Expenses Award is fair, reasonable, and appropriate.

23. In making this award of attorneys' fees and reimbursement of expenses, the Court has considered and found that: (a) the Settlement has created a fund of $7 million that has been

paid into escrow pursuant to the terms of the Settlement and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement; (b) the fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by Lead Plaintiff; (c) copies of the Individual Notice, which were mailed to all potential Class Members who could be identified with reasonable effort, stated that Lead Counsel would apply for attorneys' fees in an amount not to exceed 33 1/3% of the Settlement Fund and reimbursement of litigation expenses in an amount not to exceed $100,000; (d) Lead Counsel adequately conducted the litigation and achieved the Settlement; (e) the Action raised complex issues; (f) the Action presented significant risks to establishing liability and damages; and (g) the amount of attorneys' fees and expenses is fair and reasonable and consistent with awards in similar cases.

24. **PSLRA Award.** The Court finds that a PSLRA Award of $5,000 to Lead Plaintiff is reasonable in the circumstances. This amount shall be paid out of the Settlement Fund pursuant to the terms set out in Section XI of the Settlement Agreement.

25. **Modification of Settlement Agreement.** Without further approval from the Court, the Settling Parties are hereby authorized to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement (including its exhibits) that (*i*) are not materially inconsistent with this Order and the Judgment and (*ii*) do not materially limit the rights of Class Members under the Settlement Agreement.

26. **Dismissal of Action.** The Action, including all Claims that have been asserted, is hereby dismissed on the merits and with prejudice, without fees or costs to any Settling Party except as otherwise provided in the Settlement Agreement.

27. **Retention of Jurisdiction.** Without in any way affecting the finality of this Order and the Judgment, and subject to the Mediator's ability to make final, binding, and

nonappealable rulings as prescribed in the Settlement Agreement, the Court expressly retains continuing and exclusive jurisdiction over the Settlement and all Settling Parties, the Class Members, and anyone else who appeared before this Court for all matters relating to the Action, including the administration, consummation, interpretation, implementation, or enforcement of the Settlement Agreement or of this Order and the Judgment, and for any other reasonably necessary purposes, including:

a. enforcing the terms and conditions of the Settlement Agreement, this Order, and the Judgment (including the Complete Bar Order, the PSLRA Contribution Bar Order, and the permanent injunction);

b. resolving any disputes, claims, or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement, this Order, or the Judgment (including whether a person or entity is or is not a Class Member and whether Claims or causes of action allegedly related to the Released Class Claims are or are not barred by this Order and the Judgment or the Release);

c. entering such additional orders as may be necessary or appropriate to protect or effectuate this Order and the Judgment, including whether to impose a bond on any parties who appeal from this Order or the Judgment; and

d. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

28. **Rule 11 Findings.** The Court finds that all complaints filed in the Action were filed on a good-faith basis in accordance with the PSLRA and with Rule 11 of the Federal Rules of Civil Procedure based upon all publicly available information. The Court finds that all

Settling Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

29. **Termination.** If the Settlement does not become Final in accordance with the terms of the Settlement Agreement, or is terminated pursuant to the Settlement Agreement (including pursuant to Section XIV), this Order and the Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement; *provided, however,* that paragraph 40 of the Preliminary Approval Order (concerning the Confidentiality Agreement) shall remain in effect even if this Order and the Judgment are rendered null and void.

30. **Entry of Judgment.** There is no just reason to delay the entry of this Order and the Judgment, and immediate entry by the Clerk of Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Any appeal from this Order or other proceeding seeking subsequent judicial review of this Order pertaining solely to (*i*) the attorneys' fees or expenses awarded to Lead Counsel or the PSLRA Award to Lead Plaintiff and/or (*ii*) the Plan of Allocation shall not in any way delay or preclude this Order from becoming Final under the terms of the Settlement Agreement.

SO ORDERED this **2nd** day of **June**, 2022

/s Michael A. Hammer

Honorable Michael A. Hammer, U.S.M.J.

APPENDIX OF SELECTED SETTLEMENT DEFINITIONS

"Action" means the securities class action now pending in this Court and captioned *Vitiello v. Bed Bath & Beyond Inc.*, No. 2:20-cv-04240-MCA-MAH (D.N.J.), including any other cases that have been or might be consolidated into that action as of the Final Settlement Date, including *Kirkland v. Bed Bath & Beyond Inc.*, No. 2:20-cv-05339-MCA-MAH (D.N.J.), which was consolidated into this Action pursuant to the Court's August 14, 2020 order.

"BBBY Affiliate" means any Affiliate, holding company, or subsidiary of BBBY, and any other person or entity affiliated with BBBY through direct or indirect ownership of BBBY shares.

"BBBY Common Stock" means publicly traded common stock issued by BBBY.

"Operative Facts" means those facts and circumstances that provide the factual predicate for the claims asserted in the Action and shall include, among other things:

a. BBBY's management of inventory, including its use of promotions and markdowns to reduce its inventory during the Class Period;

b. BBBY's use of inventory, sales, and pricing programs, including Revionics and JDA, in connection with its inventory-reduction program, and any reports, analyses, or documents generated by such programs;

c. BBBY's communications with, demands received from, or negotiations with shareholders, including Legion Partners Asset Management, Macellum Advisors, and Ancora Advisors, relating to BBBY's management structure and personnel, its use

of promotions, coupons, or other marketing methods, or its inventory management, including any actions taken by BBBY in response to such communications, demands, or negotiations;

d. any alleged meetings, communications, or discussions between or among BBBY employees regarding BBBY's inventory-reduction program, data, reports, or analyses provided by BBBY's inventory, pricing or management software (including but not limited to Revionics and JDA), or other attempts at reducing company inventory;

e. any review, analysis, synthesis, presentation, or alleged concealment or attempted concealment of any alleged data, reports, or analyses provided by BBBY's inventory, pricing, or management software (including but not limited to Revionics and JDA);

f. BBBY's merchandising or promotional strategies or operations, including its use (or lack of use) of coupon marketing, markdowns, and promotions;

g. BBBY's changes to its management positions and structure, including (*i*) its replacement of Mary A. Winston as interim CEO with Mark Tritton, (*ii*) the termination or resignation of, and resulting search for replacements for, the Chief Merchandising Officer, Chief Marketing Officer, Chief Digital Officer, General Counsel, Chief Administrative Officer, and Chief Brand Officer, and (*iii*) the resignation of Robyn D'Elia;

h. BBBY's financial guidance, projections, and earnings expectations, including revisions to or withdrawals of previously announced guidance;

i. any salaries, bonuses, stock awards, or other compensation paid by BBBY to Mark J. Tritton, Mary A. Winston, or Robyn M. D'Elia;

j. any alleged communications (whether internal to BBBY or external, and whether oral or written) relating to or evidencing any of the alleged conduct described in Sections I.A.45.a-i;

k. any Claims related to transactions in BBBY Common Stock by any Releasees during the Class Period, including any Claims under Exchange Act §§ 10(b), 20(a), or 20A or SEC Rule 10b-5 relating to such transactions, to the extent that such Claims are related in any way to the alleged conduct and/or topics described in Sections I.A.45.a-j;

l. any allegedly false or misleading statements or omissions in any SEC filings (including Forms 10-Q and 10-K and proxy statements), Exchange Act or Sarbanes-Oxley certifications, or press releases filed or issued during the Class Period relating to the matters described in Sections I.A.45.a-k, including, without limitation, those addressing (*i*) BBBY's inventory during the Class Period, (*ii*) BBBY's inventory-management practices, policies, and programs, (*iii*) BBBY's use of inventory, pricing, and sales software, including Revionics and JDA, (*iv*) BBBY's hiring, termination, or recruitment of employees or executives, (*v*) BBBY's financial performance, results, estimates, projections, or guidance, (*vi*) BBBY's internal controls and policies, and (*vii*) the retail industry in general;

m. any alleged misstatements or omissions at industry or investor conferences, or in analyst meetings, earnings calls, or other public statements, during the Class Period relating to the matters described in Sections I.A.45.a-l;

n. any alleged inflation or decline in the price of BBBY Common Stock during the Class Period that is related to or arises out of the alleged conduct and/or topics described in Sections I.A.45.a-m; and

o. any Claims under Exchange Action §§ 10(b) and/or 20(a) and/or SEC Rule 10b-5 arising out of the alleged conduct and/or topics described in Sections I.A.45.a-n.

"Released Class Claims" means each and every Claim that existed as of, on, or before the Execution Date and that Plaintiffs or any other Class Member (*i*) asserted against any of the Releasees in the Action (including all Claims alleged in the Complaint) or (*ii*) could have asserted or could assert against any of the Releasees in connection with or relating directly or indirectly to any of the Operative Facts or any alleged statements about, mischaracterizations of, or omissions concerning them, whether arising under any federal, state, or other statutory or common-law rule or under any foreign law, in any court, tribunal, agency, or other forum, if such Claim also arises out of or relates to the purchase or other acquisition of BBBY Common Stock, or to any other Investment Decision, during the Class Period; *provided, however*, that the term "Released Class Claims" does not include (and will not release or impair) (*i*) any claims asserted in any action under the Employee Retirement Income Security Act of 1974; (*ii*) any claims asserted in any shareholder derivative action on behalf of BBBY, including without limitation the claims asserted in the Derivative Actions; or (*iii*) any claims to enforce this Settlement Agreement.

"Released Releasees' Claims" means each and every Claim that has been, could have been, or could be asserted in the Action or in any other proceeding by any Releasee (including Defendants and their successors and assigns), or his, her, or its respective estates, heirs, executors, agents, attorneys (including in-house counsel, outside counsel, and Defendants' Counsel), beneficiaries, accountants, professional advisors, trusts, trustees, administrators, and

assigns, against Plaintiffs, any other Class Members, or any of their respective attorneys (including, without limitation, Plaintiffs' Counsel), and that arises out of or relates in any way to the initiation, prosecution, or settlement of the Action or the implementation of this Settlement Agreement; *provided, however*, that Released Releasees' Claim shall not include any Claim to enforce the Settlement Agreement.

"Releasee" means each and every one of, and "Releasees" means all of, (*i*) BBBY, (*ii*) BBBY Affiliates, (*iii*) each of BBBY's and BBBY's Affiliates' current and former officers (including Mark J. Tritton, Mary A. Winston, and Robyn M. D'Elia), directors, employees, agents, representatives, any and all in-house counsel and outside counsel (including Defendants' Counsel), advisors, administrators, accountants, accounting advisors, auditors, consultants, assigns, assignees, beneficiaries, representatives, partners, successors-in-interest, insurance carriers, reinsurers, parents, affiliates, subsidiaries, successors, predecessors, fiduciaries, service providers, and investment bankers and any entities in which BBBY or any BBBY Affiliate has or had a Controlling Interest or that has or had a Controlling Interest in BBBY or any BBBY Affiliate, and (*iv*) for each of the foregoing Releasees, (*y*) to the extent the Releasee is an entity, each of its current and former officers, directors, employees, agents, representatives, any and all in-house counsel and outside counsel (including Defendants' Counsel), advisors, administrators, accountants, accounting advisors, auditors, consultants, assigns, assignees, beneficiaries, representatives, partners, successors-in-interest, insurance carriers, reinsurers, parents, affiliates, subsidiaries, successors, predecessors, fiduciaries, service providers, and investment bankers, and any entities in which any Releasee has or had a Controlling Interest or that has or had a Controlling Interest in the Releasee and (*z*) to the extent the Releasee is an individual, each of his

or her Family Members, estates, heirs, executors, beneficiaries, trusts, trustees, agents, representatives, attorneys, advisors, administrators, accountants, consultants, assigns, assignees, representatives, partners, successors-in-interest, insurance carriers, and reinsurers.

"Releasor" means each and every one of, and "Releasors" means all of, (*i*) Plaintiffs, (*ii*) all other Class Members, and (*iii*) for each of the foregoing Releasors, their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, or any person purporting to assert a Released Class Claim on behalf of, for the benefit of, or derivatively for any such Releasors, *provided* that Releasors shall not include any BBBY shareholder to the extent that such person or entity seeks to assert a derivative claim on behalf of BBBY.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ZWICK PARTNERS, LP and APARNA RAO, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**No. 3:16-cv-02475**
v.	)	
QUORUM HEALTH CORPORATION, COMMUNITY HEALTH SYSTEMS, INC., WAYNE T. SMITH, W. LARRY CASH, THOMAS D. MILLER and MICHAEL J. CULOTTA,	)	
Defendants.	)	

FINAL JUDGMENT APPROVING CLASS ACTION SETTLEMENT

This matter comes before the Court on Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds (Doc. No. 347) and Plaintiff's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Compensatory Award to Class Representative (Doc. No. 349), which are not opposed by Defendants.

Class Representative Zwick Partners, LP ("Plaintiff"), on behalf of itself and the Class (see Doc. No. 342 at 11), and Defendants Community Health Systems, Inc. ("CHSI"), Wayne T. Smith, W. Larry Cash, Michael J. Culotta, Quorum Health Corporation ("Quorum"), and Thomas D. Miller (collectively, the "Defendants," and, together with Plaintiff, on behalf of itself and the other members of the Class, the "Parties")[1] have agreed—subject to Court approval following notice to the Class and a settlement fairness hearing—to settle the above-captioned matter (the "Action")

[1] Smith and Cash, together, the "Individual CHSI Defendants," and Miller and Culotta, together, the "Individual Quorum Defendants."

upon the terms set forth in July 16, 2020 Stipulation and Agreement of Settlement ("Stipulation") (Doc. No. 342), and the Amendment to the Stipulation and Agreement of Settlement dated November 10, 2020. (Doc. No. 357-3)("Amendment")(Collectively referred to as "Stipulation").

On July 27, 2020, the Court preliminarily approved the Settlement, directed that notice of the proposed Settlement be provided to Class Members, provided Class Members with the opportunity either to exclude themselves from the Class or to object to the Settlement, and scheduled a hearing regarding final approval of the Settlement. (Doc. No. 345). The Court conducted a Settlement Fairness Hearing on November 30, 2020 to consider, among other things, whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Class, and should therefore be approved, whether a judgment should be entered dismissing the Action with prejudice against the Defendants, and whether the requested fees and costs are reasonable.

Having reviewed and considered the Parties' Stipulation, the record in this case, Plaintiffs' Memoranda of Law in support of the pending motions (Doc. Nos. 348, 350, 356) and supporting exhibits and declarations (see Doc. Nos. 351, 357), and the arguments of counsel, the Court finds and concludes as follows:

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

2. **Incorporation of Settlement Documents**. All defined terms contained herein, unless otherwise defined, shall have the same meanings as set forth in the Stipulation. This Judgment also incorporates and makes a part hereof: (a) the Stipulation (Doc. No. 342 and 357-3); (b) the Notice (Doc. No. 342-2); and (c) the Summary Notice (Doc. No. 342-4), all of which were filed with the Court.

3. **Notice**. Dissemination of the Notice and the publication of Summary Notice was accomplished as set forth in the Stipulation and in the Court's July 21, 2020 Order directing notice to the Class. Notice constituted the best notice practical under the circumstances, constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement, and met the requirements of Rule 23(c)(2) and (e)(1), due process, the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, to the extent applicable to the Action, and all other applicable law and rules. Notice was also reasonably calculated, under the circumstances, to apprise Class Members of (a) the pendency of the Action; (b) the effect of the proposed Settlement (including the Releases to be provided thereunder); (c) Class Counsel's motion for an award of attorneys' fees, reimbursement of Litigation Expenses, and a compensatory award to Plaintiff; (d) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Class Counsel's motion for attorneys' fees, reimbursement of Litigation Expenses, and a compensatory award to Plaintiff; (e) their right to exclude themselves from the Class; and (f) their right to appear at the Settlement Fairness Hearing.

4. **Objections**. No objections were made to the Settlement either before or during the Settlement Fairness Hearing.

5. **Final Settlement Approval and Dismissal of Claims**. Under Federal Rule of Civil Procedure 23(e)(2), after a hearing, the Court finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the Releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects fair, reasonable, and adequate to the Class. Specifically, the Court finds as follows:

a. Plaintiff and Class Counsel have vigorously represented the interests of the Class, having prosecuted this action on behalf of the Class for more than four years. Specifically, over 35 fact and expert depositions were taken by the Parties, including three depositions of Plaintiff and its managing partners, and over 550,000 pages of documents were reviewed. Plaintiff and Class Counsel successfully defended against Defendants' motions to dismiss, achieved class certification, successfully defended against Defendants' motion for summary judgment and were completing their trial preparation when the Settlement was reached. Counsel demonstrated knowledge about the case and expertise in the field of securities litigation.

b. The Settlement arises out of arm's-length, informed, and non-collusive negotiations between counsel for Plaintiffs and the Defendants. Specifically, during contentious, hard-fought litigation, the parties engaged a neutral, The Honorable Gary Feess (ret.), to conduct mediation. The parties met in person on two separate days and engaged in hours of additional conversations with the mediator by telephone.

c. The Settlement creates a settlement fund of $18 million, which represents between 12.7% and 42.9% of estimated recoverable damages. The Court finds this is a more than adequate, indeed extraordinary result, considering: (i) the costs, risks, and delay of trial and appeal, particularly in light of the complex nature of Plaintiffs' case and the multiple potential defenses available at trial; (ii) the effectiveness and straightforwardness of the proposed claims process; (iii) the reasonableness of the request for an award of attorneys' fees and costs and service awards for the class representatives; and (iv) that the only agreement identified under Rule 23(e)(3) consists of the Amendment that sets forth certain conditions under which the Settlement may be withdrawn or terminated at Defendants' sole discretion if Class Members who meet certain criteria exclude themselves from the Class.

d. The Court finds that Plaintiffs' proposed plan of allocation is fair, reasonable, and adequate. Under the Plan of Allocation set out in the Notice, Class Members are treated equitably relative to each other, based on the timing of their purchase or acquisition of Quorum common stock during the Class Period, and any subsequent sales of those shares, by providing that each Authorized Claimant shall receive his, her, or its pro rata share of the Net Settlement Fund based on the amount of their Recognized Losses.

6. The Settlement is also fair, reasonable, and adequate considering the factors enumerated by the Sixth Circuit: (1) the risk of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

a. The Settlement was reached after years of contested litigation, including certification of the Class, and multiple mediation efforts that concluded only shortly before trial. There is no risk of fraud or collusion.

b. This case was extraordinarily complex and expensive, and further litigation would only be more so. Securities class actions are complex, and Plaintiffs' claims in this case involved complicated facts and complex accounting, valuation, legal issues, and economic analysis.

c. The parties engaged in full discovery, with the case ready for trial when the Settlement was reached.

d. The Class faced significant risk, on both liability and damages, at trial and on appeal.

e. Plaintiff and Class Counsel unreservedly support the Settlement.

f. The reaction of absent class members weighs in favor of approval, as no Class Members objected.

g. The public interest favors settlement of complex litigation and class actions, particularly where settlement ensures effective enforcement of securities laws.

7. Accordingly, the Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation. The Action and all of the claims asserted against Defendants in the Action by Plaintiff and the other Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect**. The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Plaintiff, and all other Class Members (regardless of whether or not any individual Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns.

9. **Releases and Bars**. The Releases set forth in paragraphs 4 through 7 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, the Court orders that:

a. Without further action by anyone, and subject to paragraph 12 below, upon the Effective Date of the Settlement, Plaintiff and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, and on behalf of any other person or entity legally entitled to bring Released Plaintiffs' Claims on behalf of any Class Member, shall be deemed to have, and by operation of law and of this Judgment shall have compromised, settled, released, resolved,

relinquished, remised, waived, and discharged, fully, finally, and forever, each and every Released Plaintiffs' Claim against the Defendants' Releasees, and shall forever be barred and enjoined from commencing, instituting, maintaining, prosecuting, or continuing to prosecute any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees, in this Action or in any other proceeding. This Release shall not apply to any Excluded Plaintiffs' Claims.

b. Without further action by anyone, and subject to paragraph 12 below, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, and on behalf of any other person or entity legally entitled to bring Released Defendants' Claims on behalf of Defendants, shall be deemed to have, and by operation of law and of this Judgment shall have compromised, settled, released, resolved, relinquished, waived, and discharged, fully, finally, and forever, each and every Released Defendants' Claim against the Plaintiff's Releasees, and shall forever be barred and enjoined from commencing, instituting, maintaining, prosecuting, or continuing to prosecute any or all of the Released Defendants' Claims against any of the Plaintiff's Releasees, in this Action or in any other proceeding. This Release shall not apply to any Excluded Defendants' Claims.

10. In accordance with 15 U.S.C. § 78u-4(f)(7)(A) and pursuant to federal common law, any and all claims that are brought by any person against Defendants (a) for contribution or indemnification arising out of any Released Plaintiffs' Claim, or (b) where the damage to the claimant is measured by reference to the claimant's liability to Plaintiff or the Class, are hereby permanently barred and discharged. Any such claims brought by Defendants against any person (other than non-Defendant persons whose liability to Plaintiff or the Class is extinguished by this Judgment) are likewise permanently barred and discharged. Provided, however, that nothing in

this paragraph or Stipulation shall apply to bar or otherwise affect any claim of right to indemnification between: (1) CHSI and any present or former officer or director of CHSI, except, to the extent applicable, any of the Individual Quorum Defendants; (2) Quorum and any present or former officer or director of Quorum, except, to the extent applicable, any of the Individual CHSI Defendants; or (3) any claim for insurance coverage by any Defendant.

11. Defendants shall have no responsibility for, interest in, or liability whatsoever with respect to: (a) any act, omission, or determination of Plaintiff's Counsel, the Class Escrow Agent, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (b) the management, investment, or distribution of the Settlement Fund; (c) the Plan of Allocation; (d) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (e) any losses suffered by, or fluctuations in the value of, the Settlement Fund; and (f) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

12. Notwithstanding paragraphs 9a – 11 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

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

14. **No Admissions**. Neither this Judgment, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the

execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

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

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

c. shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount that could be

or would have been recovered after trial; *provided, however, that if the Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.*

15. **Retention of Jurisdiction**. Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the administration and distribution of the Settlement Fund; and (c) the Class Members for all matters relating to the Action.

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

17. **Plan of Allocation**. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Class Members, and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

18. **Attorneys' Fees, Litigation Expenses, and Compensatory Award**. The Court will grant Plaintiff's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Compensatory Award to Class Representative (Doc. No. 349) and award Class Counsel attorneys' fees in the amount of $5,400,000, plus interest, reimbursement of $1,898,839.09 in expenses, plus

interest, and a compensatory award in the amounts of $35,000 to Plaintiff to be paid from the Settlement Fund. In awarding these amounts, the Court finds as follows:

a. The resolution of this case has created a common benefit fund for the class, so it is appropriate to assess attorney's fees against the fund. Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980).

b. Class Counsel's requested fee award is fair and reasonable under the percentage-of-the-fund approach. This is the preferred method where, as here, "a substantial common fund has been established for the benefit of class members through the efforts of class counsel." In re Se. Milk Antitrust Litig., No. 07-208, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013). While the requested fee of thirty percent of the fund is very significant, it "is certainly within the range often awarded in common fund cases, both nationwide and in the Sixth Circuit," and is appropriate given the exceptional result Class Counsel achieved notwithstanding substantial risk. Id. at *3.

c. The requested fee meets all of the factors the Sixth Circuit articulated in Ramey v. Cincinnati Enquirer, Inc., 508 F.2d 1188, 1196 (6th Cir. 1974), specifically:

1) the recovery of $18 million, which represents between 12.7% and 42.9% of Plaintiffs' estimated Class-wide damages, is an excellent outcome for the Class, especially relative to historical range of securities class action settlements, see, e.g., Cornerstone Research, Securities Class Action Settlements: 2019 Review and Analysis at 6, (2020)[2] (observing that between 2010 and 2018 the median settlement as a percentage of damages between $75 million and $149 million was 4.9%); NERA Economic Consulting, Recent Trends in Securities

[2] https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis

Class Action Litigation: 2018 Full Year Review, at 35 (2019)[3] (observing that in 2018 the median of settlement value as a percentage of damages was 4.7% for losses between $50 million and $99 million, and 3.1% for losses between $100 million and $199 million);

2) society has a strong interest in compensating Class Counsel for the risks and complex issues posed by this case, thereby encouraging others to bring similar litigation in the future;

3) fees and reimbursement of costs in this case were entirely contingent upon success, creating a risk of under-compensation in the absence of settlement or victory at trial, see Lonardo v. Travelers Indem. Co., 706 F. Supp. 2d 766, 795 (N.D. Ohio 2010);

4) Class Counsel devoted over nine thousand hours to this case and the time value of their services was substantial;

5) this class action involved complicated facts and complex accounting, valuation, legal issues, and economic analysis, requiring Class Counsel to overcome substantial hurdles to prove their claims; and

6) Class Counsel, who are experienced class action and securities law practitioners, displayed skill and commitment throughout the litigation.

d. The Court has confirmed the reasonableness of Class Counsel's fee request by conducting a lodestar cross-check. This involves multiplying reasonable rates by reasonable hours. Gascho v. Global Fitness Holdings, LLC, 822 F.3d 269, 279 (6th Cir. 2016). The "sum may then be increased by a 'multiplier' to account for the costs and risks involved in the litigation, as well as the complexities of the case and the size of the recovery." In re Sulzer Hip Prosthesis &

[3] https://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf

Knee Prosthesis Liab. Litig., 268 F. Supp. 2d 907, 922 (N.D. Ohio 2003). The Court finds that Class Counsel's reasonable lodestar was $5,724,495.00 based on Counsel's hourly billing rates for the period from the inception of the case until November 9, 2020, see Doc. No. 351 at ¶¶ 103–04, and that an award of $5,400,000.00 yields a multiplier on a thirty percent fee of 0.94. This multiplier falls well below an acceptable range. See, e.g., In re Cardinal Health Inc. Sec. Litigs., 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (awarding a multiplier of 6.0 and noting that typical multipliers range from 1.3 to 4.5). The use of current (2020) rates is appropriate to "compensate for the delay in payment during the pendency of the litigation." In re UnumProvident Corp. Deriv. Litig., No. 02- 386, 2010 WL 289179, at *9 (E.D. Tenn. Jan. 20, 2010).

e. Class Counsel reasonably incurred a total of $1,898,839.09 in litigation expenses for which Class Counsel seek reimbursement in this case. Class Counsel "is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses." In re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 535 (E.D. Mich. 2003). Moreover, this amount is less than the $2 million limit disclosed in the Notice.

f. The requested class representative award of $35,000 to Plaintiff is justified by the time and resources both invested into supervising and prosecuting this case. The awards is also justified as an economic incentive to others to bring securities litigation even though their claims may not be sizable.

g. No objections were made to Class Counsel's application for an award of attorneys' fees and reimbursement of costs and expenses, or to Class Representative's request for reimbursement of its reasonable costs and expenses.

19. **Termination of Settlement**. If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, including as a result of any appeals, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiff, Class Members, and Defendants, and the Parties shall be deemed to have reverted *nunc pro tunc* to their respective positions in the Action as of the date immediately prior to the execution of the Stipulation. Except as otherwise provided in the Stipulation, in the event the Settlement is terminated in its entirety or if the Effective Date fails to occur for any reason, the balance of the Settlement Fund including interest accrued therein, less any Notice and Administration Costs actually incurred, paid, or payable and less any Taxes and Tax Expenses paid, due, or owing, shall be returned to Defendants, in accordance with the Stipulation.

For the foregoing reasons, Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds (Doc. No. 347) and Plaintiff's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Compensatory Award to Class Representative (Doc. No. 349) are **GRANTED**. Class Counsel are awarded attorneys' fees in the amount of $5,400,000, plus interest, and reimbursement of $1,898,839.09 in expenses, and Plaintiff is awarded $35,000 as compensation for being the Class Representative. These awards shall be paid from the Settlement Fund.

The Court finds under Federal Rule of Civil Procedure 54(b) that there is no just reason to delay the entry of this Judgment, and the Clerk shall enter Judgment under Rule 58.

IT IS SO ORDERED.

WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE