UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

SUPPLEMENTAL DECLARATION OF JOHN C. BROWNE IN SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES; AND (III) LEAD PLAINTIFFS' OPPOSITION TO OBJECTOR MARK PETRI'S MOTION TO LIFT STAY FOR LIMITED DISCOVERY

JOHN C. BROWNE declares as follows:

1. I, John C. Browne, am a member of the bars of the State of New York, the U.S. District Court for the Southern District of New York, and the U.S. Courts of Appeals for the First, Second, Third, and Fifth Circuits and am admitted *pro hac vice* in the above-captioned consolidated securities class action (the "Action"). I am a Partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G" or "Lead Counsel"), the Court-appointed Lead Counsel in the Action.[1] BLB&G represents the Court-appointed Lead Plaintiffs, the Public Employees' Retirement System of Mississippi ("MissPERS") and the Arkansas Teacher Retirement System ("ATRS," and together with MissPERS, "Lead Plaintiffs"). I have personal knowledge of the matters stated in this declaration based on my active supervision of and participation in the prosecution and settlement of the Action.

2. I respectfully submit this supplemental declaration in support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation (Dkt. #113) (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (Dkt. #116); and (III) Lead Plaintiffs' Opposition to Mark Petri's Motion to Lift Stay for Limited Discovery (Dkt. #121).

3. With respect to the allocation of attorneys' fees, the law firms of BLB&G, Gadow Tyler PLLC ("Gadow Tyler"), and Klausner, Kaufman, Jensen & Levinson ("KKJ&L") will each be allocated attorneys' fees based on their work performed in the case, with each firm to receive the same lodestar multiplier, if any, to be calculated from the Court's overall fee award. Thus, if the attorneys' fees request is granted in full, the allocation would be approximately as follows:

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[1] Unless otherwise defined in this declaration, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement dated February 14, 2019 (the "Stipulation" or "Settlement Stipulation"), and previously filed with the Court. *See* Dkt. #108-1.

Firm	Lodestar	Multiplier[2]	Fee Allocation
BLB&G	$3,806,615.00	2.81	$10,713,668.44
Gadow Tyler	$153,400.00	2.81	$431,742.31
KKJ&L	$18,070.00	2.81	$50,857.78

4. No firms or attorneys other than BLB&G, Gadow Tyler and KKJ&L will receive any portion of the attorneys' fees awarded in this action.

5. There are no litigation financing agreements that pertain to this case

6. Attached to this declaration are true and correct copies of the following documents cited in Lead Plaintiffs' Reply Memorandum of Law in Further Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and Lead Plaintiffs' Opposition to Objector Mark Petri's Motion to Lift Stay for Limited Discovery:

Ex. No.	Description
1	Supplemental Declaration of Donald L. Kilgore in Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and (III) Lead Plaintiffs' Opposition to Objector Mark Petri's Motion to Lift Stay for Limited Discovery
2	Supplemental Declaration of Rod Graves in Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and (III) Lead Plaintiffs' Opposition to Objector Mark Petri's Motion to Lift Stay for Limited Discovery
3	Supplemental Declaration of Jason M. Kirschberg in Support of (I) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses, and (II) Lead Plaintiffs' Opposition to Objector Mark Petri's Motion to Lift Stay for Limited Discovery

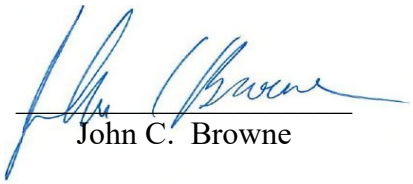
[2] The requested lodestar multiplier is slightly lower than in Lead Counsel's prior papers because here we include the lodestar from KKJ&L and calculate the result based on a 25% attorneys' fee award net of litigation expenses.

4	Declaration of Robert D. Klausner in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed on Behalf of Klausner, Kaufman, Jensen & Levinson
5	Supplemental Declaration of Luiggy Segura Regarding (A) Mailing of Notice and Claim Form and (B) Report on Requests for Exclusion Received
6	Proposed Judgment Approving Class Action Settlement
7	Proposed Order Approving Plan of Allocation of Net Settlement Fund
8	Proposed Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses
9	Redacted Reply Memorandum of Law in Support of (1) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, filed in *In re Petrobras Securities Litigation*, No. 14-cv-9662 (JSR) (S.D.N.Y. May 25, 2018).
10	Civil Minutes Granting Motion for Class Certification, *Middlesex County Ret. Sys., et al. v. Semtech Corp., et al.*, No. 07-cv-7114 (C.D. Cal. Aug. 27, 2010).
11	July 16, 2016 Hearing Transcript, *Boynton Beach Firefighters' Pension Fund, et al. v. HCP, Inc*., et al., No. 16-cv-1106 (N.D. Ohio).
12	Order Appointing Lead Plaintiff, *Dube v. Signet Jewelers Ltd., et al*., No. 16-cv-6728 (S.D.N.Y. July 27, 2017).
13	Special Master's Supplement to His Report and Recommendations and Proposed Partial Resolution of issues for the Court's Consideration, *Arkansas Teacher Retirement System v. State Street Bank & Trust,* No. 11-10240-MLW (D. Mass. Oct. 10, 2018).
14	Order Awarding Attorneys' Fees and Expenses, *Knurr v. Orbital ATK, Inc.*, No. 1:16-cv-01031-TSE-MSN (E.D. Va. June 7, 2019), Dkt. #462.
15	NERA, Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* (2019).
16	Motion for Attorneys' Fees and for Incentive Award, and Memorandum of Law in Support, of Theodore Frank, Attorney for Objector Michael Schulz, *Eubank v. Pella Corp.*, No. 06 C 4481 (N.D. Ill.).
17	Order Granting Final Approval of Class Action Settlement and Motion for Attorneys' Fees and Expenses, *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479 (N.D. Cal. Dec. 18, 2018), Dkt. # 252.
18	Order Awarding Attorneys' Fees and Expenses, *La. Mun. Pol. Empls. Ret. Sys. v. Green Mountain Coffee Roasters, Inc.*, 2:11-cv-00289 (WKS) (D. Vt.), Dkt. #349.
19	Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses, *Bach v. Amedisys, Inc.*, No. 1:10-cv-00395-BAJ-RLB (M.D. La), Dkt. #354.

20	Order Granting Motion Awarding Attorneys' Fees and Expenses, *In re Schering-Plough Corp. Sec. Litig.,* No. 08-397 (DMC) (JAD) (D.N.J.), Dkt. #439.
21	Minute entry denying motion for limited relief from PSLRA discovery stay, *Joshi Living Trust, et al. v. Akorn*, *Inc.*, *et al.*, No. 18-cv-1713 (N.D. Ill.), Dkt. #51.
22	Excerpt of Final Approval Hearing Transcript in *In re Facebook, Inc. IPO Securities and Derivative Litig.*, 12 MD 2389 (RWS) (S.D.N.Y. Sept. 5, 2018).
23	Order Awarding Attorneys' Fees and Expenses, *Public Emps.' Ret. Sys. of Miss. v. Goldman Sachs Group, Inc.*, No. 09-cv-110-HB (S.D.N.Y), Dkt. #150.
24	Declaration of John L. Gadow, *Public Emps.' Ret. Sys. of Miss. v. Goldman Sachs Group, Inc.*, No. 09-cv-110-HB (S.D.N.Y), Excerpt of Dkt. #146-2.

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

Dated: July 15, 2019



John C. Browne

#1309116

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

SUPPLEMENTAL DECLARATION OF DONALD L. KILGORE IN FURTHER SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES, AND (III) LEAD PLAINTIFFS' OPPOSITION TO OBJECTOR MARK PETRI'S MOTION TO LIFT STAY FOR LIMITED DISCOVERY

I, Donald L. Kilgore, declare as follows:

1. I respectfully submit this Supplemental Declaration in further support of (I) Lead Plaintiffs the Public Employees' Retirement System of Mississippi ("MissPERS") and Arkansas Teacher Retirement System's ("ATRS") Motion for Final Approval of Settlement and Plan of Allocation; (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (III) Lead Plaintiffs' Opposition to Objector Mark Petri's Motion to Lift Stay for Limited Discovery.

2. I am an Assistant Attorney General in the Office of the Attorney General for the State of Mississippi ("OAG"). The OAG serves as legal counsel to Court-appointed Co-Lead Plaintiff MissPERS. I am authorized to make this Declaration on behalf of the OAG and MissPERS, and I have personal knowledge about the information in this Declaration.

3. I have reviewed the July 1, 2019 Objection by Mark Petri to Lead Counsel's Motion for the Award of Attorneys' Fees, and Objector Petri's Motion to Lift Stay for Limited Discovery and Memorandum of Law in Support. I have also reviewed the late-filed objection dated June 25, 2019 and titled Declaration in Support of Objection to Proposed Class Action Settlement, filed by Benjamin Brown. I respectfully disagree with both objections and as set forth below I note that Mr. Petri's objection contains numerous inaccuracies.

4. Mr. Petri suggests that MissPERS participates in securities class actions and chooses law firms to represent it in such matters based on campaign contributions to the Mississippi Attorney General. This assertion is false. As outlined below, MissPERS and the OAG employ a systematic and deliberative process when deciding whether to seek appointment as Lead Plaintiff and selecting a law firm to represent it in a particular action. MissPERS and the OAG

have never decided to participate in a case or select a law firm to represent it in a particular action based on political contributions.

5. Specifically, before deciding to pursue any securities class action matter, MissPERS and the OAG undertake a careful process to determine whether doing so is appropriate and in the best interests of MissPERS and its members, and whether MissPERS' and the OAG's involvement could have a positive impact on the ultimate resolution of the particular case. MissPERS and the OAG followed that process in this case. The OAG and MissPERS maintain a panel of eleven nationally recognized reputable law firms specializing in securities and shareholder related matters to monitor MissPERS' investment portfolio.

6. The OAG selected these firms through a vetting process that considered the firms' track records prosecuting securities and shareholder related matters, their resources and ability to handle complex litigation, their reputations for integrity, selectivity, diligence and character, as well as their ability to monitor MissPERS' investment portfolio and apprise MissPERS and the OAG of losses that may have been caused by potential securities-related misconduct. Campaign contributions have no consideration in the selection process.

7. In the event that these law firms alert the OAG and MissPERS to potential instances of securities fraud impacting MissPERS' investment portfolio, the OAG carefully reviews the facts and circumstances of each potential case and determine whether to take an active role in the litigation. At no time is there any requirement that MissPERS or the OAG prosecute a case that is recommended by any firm on the panel. The OAG and MissPERS then select counsel from among the panel firms based solely on which panel member first raised the case with OAG and MissPERS.

8. The OAG instituted this "first-to-approach" policy approximately sixteen years ago specifically to protect against any appearance of political favoritism. The policy has been in place

for the entirety of the administration of this Mississippi Attorney General. It applies to all cases in which the OAG retains outside counsel including securities, consumer, antitrust, and environmental litigation.

9. Following disclosures of Stericycle's alleged automatic price increase misconduct and the company's true financial condition, the OAG received an analysis from only one law firm on the panel concerning MissPERS' losses and potential legal claims against defendants – that law firm was Bernstein Litowitz. As advisor and counsel to MissPERS, the OAG reviewed the analysis and decided that we would recommend to the Attorney General that MissPERS should seek appointment as Lead Plaintiff.

10. That determination was based on an understanding that the *Stericycle* securities class action is an important and complex action which seeks compensation for Stericycle investors that experienced losses, and which implicates serious public policy issues that are of great concern to MissPERS and to the investment community at large. It is for these reasons that MissPERS sought appointment as Lead Plaintiff.

11. The OAG then provided written notice to MissPERS of the OAG's proposed legal action against Stericycle and made a written determination that entering into a contingent fee arrangement with outside counsel is cost-effective, in the public interest, and would yield the best possible result for MissPERS and the class.

12. MissPERS and the OAG understand and appreciate that the Lead Plaintiff's role under the Private Securities Litigation Reform Act of 1995 ("PSLRA") is to select and retain Lead Counsel and to supervise the prosecution of the action. Indeed, MissPERS and the OAG take very seriously their obligation to ensure that the Lead Counsel selected has experience in litigating complex securities class actions efficiently and effectively, and will operate pursuant to the Lead

Plaintiff's direction and authority. One of the factors motivating the decision to seek appointment as Lead Plaintiff in this action was to ensure, through supervision of its chosen counsel, that the action was prosecuted for the benefit of the class in an efficient and cost-effective manner.

13. Once it was determined that MissPERS would seek appointment as Lead Plaintiff in this case, the OAG undertook its standard process to select and retain counsel to represent MissPERS and the class. The OAG selected Bernstein Litowitz—which is one of the eleven panel firms—to represent MissPERS in this action. The OAG's selection was based solely on the fact that Bernstein Litowitz was the first ***and only*** panel firm to apprise the OAG of the matter. Based on MissPERS' and the OAG's prior experience working with Bernstein Litowitz, MissPERS and the OAG were confident that Bernstein Litowitz would vigorously prosecute the action in a cost-effective manner and in the best interests of all members of the proposed class.

14. The State of Mississippi and its agencies often work with local counsel in litigation to assist their retained national firms with discovery and other local matters. This reduces costs to the class by reducing attorney time where the work is likely to involve the collection of documents at MissPERS' or the OAG's offices. In certain cases, significant document collection occurs. In this case, the Mississippi-based firm Gadow Tyler, PLLC, was retained by Bernstein Litowitz to assist in the case's prosecution with particular focus on local Mississippi matters related to the litigation but also more general litigation matters and issues related to settlement negotiations and approval. Among other things, it was understood *ex ante* that Gadow Tyler's work would have included assistance with MissPERS' document collection and review, and deposition preparation, including at the class certification stage, as well as the taking of depositions and other discovery-related work.

15. Campaign contributions to the Mississippi Attorney General by Bernstein Litowitz or Gadow Tyler attorneys did not have any influence whatsoever on any aspect of this litigation, settlement, or request for final approval and request for attorneys' fees. Indeed, I am not personally aware of which law firms do or do not make campaign contributions to the Mississippi Attorney General, and other than reading Mr. Petri's Objection I have no knowledge with respect to which individuals or law firms have made political contributions to the Mississippi Attorney General in the past.

16. The OAG made its determinations using the non-political process outlined herein and based on its independent observation and supervision of the litigation and assessment of the result achieved.

17. Through MissPERS' experience representing investors in prior securities class actions, MissPERS and the OAG have developed the necessary methods and practices to effectively oversee the work of Lead Counsel, and to ensure that each case is prosecuted and resolved vigorously, efficiently, and in a cost-effective manner. It is the policy of the OAG to aggressively pursue meritorious claims, and the OAG has an entire section of attorneys devoted to the effort.

18. For instance, as part of my responsibilities, I supervise the staff that oversees all outside counsel retained by or on behalf of MissPERS in the securities litigation context. I am involved in the prosecution from the outset along with the team of several other attorneys. We review and edit pleadings, attend hearings, provide deposition testimony, and attend mediations, during which we take on an active role. The leading securities class action mediators in the United States have worked with us numerous times and recognize our full engagement in the decision-making process.

19. My colleagues and I have been actively involved in all discussions regarding case strategy, trial strategy, and settlement in the *Stericycle* case. We reviewed the complaints and other submissions that MissPERS filed in this case, have communicated on a regular basis with Bernstein Litowitz and Gadow Tyler with regard to the progress of this litigation, as well as with the Mississippi Attorney General to whom we directly report. I also personally attended and participated in the all-day formal mediation session in this case held by the mediator Gregory P. Lindstrom in Chicago on April 16, 2018. Also in attendance were attorneys from Bernstein Litowitz and Gadow Tyler, and a representative from Co-Lead Plaintiff ATRS.

20. I am also aware of and approved of the inclusion in Plaintiffs' Counsel's fee application of a modest requested fee for the law firm Klausner Kaufman Jensen & Levinson, who (along with Bernstein Litowitz) represented the investors who filed the initial complaint in this action, St. Lucie County Fire District Firefighters Pension Trust Fund and Boynton Beach Firefighters' Pension Fund, before MissPERS moved for appointment as Lead Plaintiff.

21. With respect to the allocation of attorneys' fees, I have approved that the law firms of Bernstein Litowitz, Gadow Tyler, and Klausner Kaufman will each be allocated attorneys' fees based on their work performed in the case, with each firm to receive the same lodestar multiplier, if any, to be calculated from the Court's overall fee award.

22. In each case, MissPERS is committed to devoting the necessary resources, personnel, and attention in order to maximize the recovery for the benefit of MissPERS' beneficiaries and all absent class members. As a result of its hard work and devoted efforts, MissPERS has secured numerous excellent recoveries in its representation of investors in other cases. We have proudly recovered over $3.5 billion for investors in securities class actions in

which MissPERS has served as Lead Plaintiff and believe we have achieved an excellent result for the class in the *Stericycle* case.

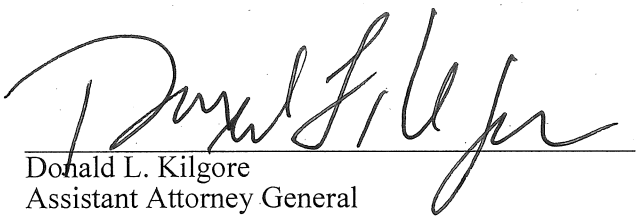
23. Mr. Petri claims that the requested 25% attorneys' fee here is too high. While I understand that the final determination of the fee is in the Court's discretion, I believe that in this case, the requested 25% rate is well supported by the excellent $45 million settlement that Lead Plaintiffs and Lead Counsel achieved. The settlement amount was the result of a mediator's recommendation after a long period of arms' length negotiation. The settlement is also particularly noteworthy in light of what I understand Stericycle's quarterly cash position was at the time of settlement, and the significant risks of non-recovery that investors faced in prosecuting and resolving the case, including the risks of successfully pleading and proving falsity, scienter and loss causation, and overcoming Defendants' statute of limitations defense.

24. Based on my personal observations and participation in the prosecution of the case, including during the mediation, Bernstein Litowitz and all Plaintiffs' Counsel prosecuted the action diligently and efficiently by devoting significant time and resources to it.

25. I would also like to take this opportunity to clarify the parenthetical in paragraph 11 of the opening Declaration dated June 17, 2019 in support of MissPERS' application for a PSLRA expense award. Paragraph 11 stated that the MissPERS' employees' hourly rates for the calculation of its requested reimbursement of expenses were "based on the annual salaries of the respective personnel." The hourly rates of $250-$300/hr. are based on hourly rates for litigation in the Mississippi legal community, are below the median attorney rate for lawyers in Mississippi handling complex litigation, and they (or similar rates) have been accepted by courts throughout the country when MissPERS has requested reimbursement of its attorney time. The annual salaries of each respective MissPERS employee were used to rank-order the personnel with respect to such

customary rates in the legal community, but were not used to mathematically calculate the hourly rates in my Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



Donald L. Kilgore
Assistant Attorney General

On behalf of MissPERS and the OAG

Exhibit 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

SUPPLEMENTAL DECLARATION OF ROD GRAVES IN SUPPORT OF: (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION; (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES; AND (III) LEAD PLAINTIFFS' OPPOSITION TO OBJECTOR MARK PETRI'S MOTION TO LIFT STAY FOR LIMITED DISCOVERY

I, Rod Graves, hereby declare under penalty of perjury as follows:

1. I am the Deputy Director of the Arkansas Teacher Retirement System ("ATRS"), one of the Court-appointed Lead Plaintiffs in this securities class action (the "Action"). I respectfully submit this Supplemental Declaration in further support of (I) Lead Plaintiffs the Public Employees' Retirement System of Mississippi ("MissPERS") and ATRS' Motion for Final Approval of Settlement and Plan of Allocation; (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (III) Lead Plaintiffs' Opposition to Objector Mark Petri's Motion to Lift Stay for Limited Discovery. I have personal knowledge of the matters set forth in this Declaration and, if called upon, I could and would testify competently thereto.

2. I have reviewed Mark Petri's July 1, 2019 Objection to Lead Counsel's Motion for the Award of Attorneys' Fees, and Mr. Petri's Motion to Lift Stay for Limited Discovery and

Memorandum of Law in Support. I have also reviewed the late-filed objection dated June 25, 2019 and titled Declaration in Support of Objection to Proposed Class Action Settlement, filed by Benjamin Brown. I respectfully disagree with both objections.

3. Mr. Petri attempts to liken the present case to the *Arkansas Teacher Retirement System v. State Street Bank & Trust*, No. 11-10230-MLW (D. Mass) matter – a case in which ATRS served as Lead Plaintiff and was represented by a different law firm than here. Mr. Petri relies on a Declaration that ATRS's former Executive Director, Mr. George Hopkins, submitted in the *State Street* case stating that he did not know about the "bare referral" agreement in *State Street*, which provided for a payment of attorneys' fees to an outside lawyer.

4. Mr. Hopkins retired from ATRS at the end of 2018. Unlike the facts of Mr. Hopkins' Declaration in *State Street*, here there are no "bare referral" arrangements of the type that existed in the *State Street* case. I am also already aware of, and Lead Counsel already disclosed to the Court, every single firm that will be receiving a payment from any award of attorneys' fees in the present case.

5. Specifically, I am aware of and approved of the inclusion in Plaintiffs' Counsel's fee application of requested attorneys' fees for the law firms of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), Gadow Tyler, PLLC, and Klausner Kaufman Jensen & Levinson. It is my understanding that Gadow Tyler was primarily responsible for matters related to the Public Employees' Retirement System of Mississippi and the Mississippi Office of the Attorney General, and that the Klausner firm (along with Bernstein Litowitz) represented the investors who filed the initial complaint in this action, St. Lucie County Fire District Firefighters Pension Trust Fund and Boynton Beach Firefighters' Pension Fund. Each Plaintiffs' Counsel – BLB&G, Gadow Tyler and Klausner LLP – will be allocated attorneys' fees based on their respective

lodestars in the case, multiplied by the lodestar multiplier awarded by the Court's overall fee award. There will be no other payments of attorneys' fees to any other person or firm.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of ATRS.

Executed this 15 th day of July, 2019.

Rod Graves
Deputy Director of
Arkansas Teacher Retirement System

#1307768

Exhibit 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

SUPPLEMENTAL DECLARATION OF JASON M. KIRSCHBERG IN FURTHER SUPPORT OF (I) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES, AND (II) LEAD PLAINTIFFS' OPPOSITION TO OBJECTOR MARK PETRI'S MOTION TO LIFT STAY FOR LIMITED DISCOVERY

I, Jason M. Kirschberg, declare as follows:

1. I am a partner of the law firm of Gadow Tyler, PLLC ("Gadow Tyler"), additional Plaintiffs' Counsel in the above-captioned action (the "Action"). I respectfully submit this Supplemental Declaration in further support of (I) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; and (II) Lead Plaintiffs' Opposition to Objector Mark Petri's Motion to Lift Stay for Limited Discovery.

2. I have reviewed Objector Mark Petri's July 1, 2019 Objection to Lead Counsel's Motion for the Award of Attorneys' Fees, and Objector Petri's Motion to Lift Stay for Limited Discovery and Memorandum of Law in Support. I have also reviewed the late-filed objection dated June 25, 2019 and Declaration in Support of Objection to Proposed Class Action Settlement, filed by Benjamin Brown. I respectfully disagree with both objections.

3. Mr. Petri argues that the attorneys' fee application here is somehow deficient because it does not disclose how much Gadow Tyler might receive from the attorneys' fee request. My firm – and all other Plaintiffs' Counsel in this case – will be allocated attorneys' fees based on their respective lodestars, multiplied by the lodestar multiplier awarded by the Court's overall fee award, if any. There will be no other payments of attorneys' fees to any other person or firm.

4. Mr. Petri argues that Gadow Tyler has failed to disclose what work its attorneys performed or when it billed its 306.8 hours in the case. Mr. Petri also insinuates that Lead Counsel allocated Gadow Tyler unnecessary or post-settlement work. This is wrong. My previously-filed Declaration described the work that Gadow Tyler performed. It included legal research in preparation of the third amended complaint, legal research prepared in opposition to Defendants' motion to dismiss, meeting with Bernstein Litowitz attorneys to discuss case staffing and strategy, attending and participating in the mediation session held in Chicago, and participating in ongoing

discussions about litigation strategy, settlement negotiations, and the settlement approval process. Furthermore, Gadow Tyler reviewed and edited certain lead plaintiff submissions, engaged in regular communications with the Office of the Mississippi Attorney General about case developments, and prepared and submitted regular reports to the Mississippi Public Employees' Retirement System.

5. In response to Mr. Petri's baseless claim that Gadow Tyler performed only post-settlement work, Gadow Tyler has been involved and active in this case since its inception. Approximately 98% of the time that Gadow Tyler spent on the case occurred before the Parties signed the term sheet on December 6, 2018, memorializing the Parties' agreement in principle to settle the case. Gadow Tyler performed all of that work on a fully-contingent basis.

6. Mr. Petri also suggests that my firm has little or no experience in securities litigation, arguing that it is instead focused on bankruptcy work. To the contrary, as my firm's biography submitted with Lead Counsel's opening papers in support of the motion for the award of attorneys' fees stated:

> In 2010, Messrs. Gadow and Tyler helped develop and successfully resolve securities class actions against Wells Fargo, Merrill Lynch, Goldman Sachs, and Bear Stearns. In 2017, Gadow Tyler assisted in resolving a shareholder derivative action against the board of Regeneron Pharmaceuticals that resulted in a $44.5 million reduction in director compensation, one of the largest excessive director compensation reduction cases, ever.

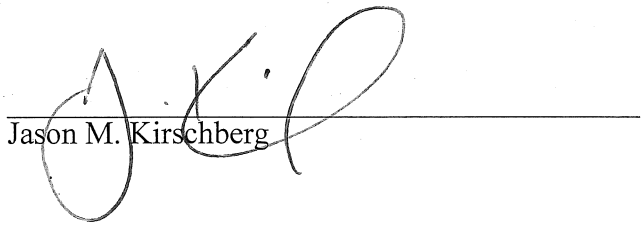
ECF No. 119-7 at p.8.

7. Mr. Petri also notes that Gadow Tyler has a record of supporting the Attorney General of the State of Mississippi. I want to make clear that Gadow Tyler does not direct its partners[1] or employees to donate to political candidates or otherwise volunteer or support them,

[1] Gadow Tyler partner John Gadow passed away in November 2017. The remaining partners are myself and Blake Tyler.

and any decision on whether or not to contribute to or support a political candidate is entirely up to individual partners and employees. As a general matter, Gadow Tyler believes in being an active participant in our community and we support both progressive political and social causes. The firm's partners have supported candidates who favor progressive political positions and issues that we also support. Our partners live in Mississippi and actively support a number of political candidates in our community.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



Jason M. Kirschberg

Exhibit 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

DECLARATION OF ROBERT D. KLAUSNER IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF KLAUSNER, KAUFMAN, JENSEN & LEVINSON

I, Robert D. Klausner, hereby declare under penalty of perjury as follows:

1. I am a partner of the law firm of Klausner, Kaufman, Jensen & Levinson ("KKJ&L"), additional Plaintiffs' Counsel in the above-captioned action (the "Action").[1] I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the Action. I have personal knowledge of the facts stated in this declaration and, if called upon, could and would testify to these facts.

2. My firm, as Plaintiffs' Counsel, represented Boynton Beach Firefighters' Pension Fund ("Boynton Beach") and St. Lucie County Fire District Firefighters' Pension Trust Fund ("St. Lucie"), the named plaintiffs who filed the original complaint in this Action. In my capacity as outside counsel for Boynton Beach and St. Lucie, I acted as a fiduciary to these funds.

3. My firm participated in, among other tasks, assisting Lead Counsel with advising Boynton Beach and St. Lucie regarding the claims asserted in the Action and the benefits to the

[1] Unless otherwise defined in this declaration, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement dated February 14, 2019 (the "Stipulation" or "Settlement Stipulation"), and previously filed with the Court. *See* ECF No. 108-1.

Class of filing the initial complaint, as well as the preparation and filing of the initial complaint in the Action on behalf of Boynton Beach and St. Lucie, which benefitted the Class. Although Boynton Beach and St. Lucie were not appointed Lead Plaintiffs in the action, they remain members of the Class.

4. In total, my firm spent 27.80 hours on this matter resulting in a total lodestar of $18,070.00. The following is a summary of the time I and Bonni S. Jensen (a partner of KKJ&L) spent on this matter and our lodestar calculation based on our current hourly rates.[2]

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Robert D. Klausner	22.00	$650	$14,300.00
Bonni S. Jensen	5.80	$650	$3,770.00
TOTALS	**27.80**		**$18,070.00**

5. Approximately 94% of the time that KKJ&L spent on the case occurred before the Parties signed the term sheet on December 6, 2018, memorializing the Parties' agreement in principle to settle the case. Indeed, all of that time was spent before the Court appointed the Lead Plaintiffs on October 31, 2016.

6. My firm—and all other Plaintiffs' Counsel in this case—will be allocated attorneys' fees based on their respective lodestars, multiplied by the lodestar multiplier awarded by the Court's overall fee award. There will be no other payments of attorneys' fees to any other person or firm.

7. With respect to the standing of my firm, attached hereto as Exhibit 1 is a brief biography of my firm.

[2] This summary was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. No time expended on the application for fees and expenses has been included.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on July 15, 2019.

Robert D. Klausner

EXHIBIT 1

In re Stericycle, Inc. Securities Litigation
Civ. A. No. 1:16-cv-07145

KLAUSNER, KAUFMAN, JENSEN & LEVINSON

FIRM RESUME

Firm Overview

The law firm of **Klausner, Kaufman, Jensen & Levinson** specializes exclusively in the representation of retirement and benefit systems and related labor and employment relations matters. The firm is composed of 7 lawyers in South Florida and Robert E. Tarzca, Of Counsel (New Orleans). In addition, we have four clerical/paraprofessional employees, an administrator, and a deputy administrator/conference director.

As a result of our substantial involvement on a national level in public employee retirement matters, we have developed a unique level of knowledge and experience. By concentrating our practice in the area of public employee retirement and related employment issues, we are able to keep a focus on changing trends in the law that more general practitioners would consider a luxury.

The law firm of Klausner, Kaufman, Jensen & Levinson, among the most highly regarded in the country in the area of pension issues, is frequently called upon as an educational and fiduciary consultant by state and local governments throughout the United States on some of the newest and most sophisticated issues involving public retirement systems. The examples of those areas are:

Plan Design

The firm provides services to dozens of public employee pension plans throughout the United States in the area of plan review, design, and legislative drafting. On both the state and local levels, statutes and ordinances are reviewed for the purposes of maintaining compliance with current and pending Internal Revenue Code Regulations affecting public plans, as well as compliance with provisions of the Americans With Disabilities Act, the Older Workers Protections Act, Veterans' re-employment laws, and the Pension Protection Act. When benefit changes occur we prepare all necessary legislative drafts and appear before the appropriate legislative body to answer questions concerning those drafts. We also offer creative solutions to plan design issues brought about by unexpected economic pressures and balancing those solutions against constitutional or statutory benefit guarantees.

Fiduciary Education

The primary duty of a pension fund lawyer is to ensure that the trustees do the right thing. It is our practice to design and present a variety of educational materials and programs which explain the general principles of fiduciary responsibility, as well as more specific principles regarding

voting conflicts, compliance with open meeting laws, conflict of interest laws, etc. We regularly apprise the boards of trustees and administrators through newsletters, memoranda and updates on our website of changes in the law, both legislatively and judicially, which impact upon their duties. We also conduct training workshops to improve the trustees' skills in conducting disability and other benefit hearings. As a result of our regular participation and educational programs on a monthly basis, all of the materials prepared as speaker materials for those programs are distributed without additional charge to our clients. Our firm provides its clients, as part of the fees charged for legal and consulting services, an annual pension conference in South Florida. This national event draws internationally-known legal and financial experts and has been attended by more than 3500 trustees and administrators from throughout the United States. Only clients of the firm are permitted to attend and fees paid include attendance at the conference.

Plan Policies, Rules, and Procedures

It has been our experience that boards of trustees find themselves in costly and unnecessary litigation because of inconsistency in the administration of the fund. Accordingly, we have worked with our trustee clients in developing policies, rules, and procedures for the administration of the trust fund. The development of these rules ensures uniformity of plan practices and guarantees the due process rights of persons appearing before the board. They also serve to help organize and highlight those situations in which the legislation creating the fund may be in need of revision. By utilizing rule making powers, the board of trustees can help give definition and more practical application to sometimes vague legislative language.

Legal Counseling

In the course of its duties, the board of trustees and administrators will be called upon from time to time to interpret various provisions of the ordinance or statute which governs its conduct. The plan will also be presented with various factual situations which do not lend themselves to easy interpretation. As a result, counsel to the plan is responsible for issuing legal opinions to assist the trustees and staff in performing their function in managing the trust. It is our practice to maintain an orderly system of the issuance of legal opinions so that they can form part of the overall body of law that guides the retirement plan. As changes in the law occur, it is our practice to update those legal opinions to ensure that the subjects which they cover are in conformance with the current state of the law.

Summary Plan Descriptions

Many state laws require that pension plans provide their members with a plain language explanation of their benefits and rights under the plan. Given the complexity of most pension laws, it is also good benefits administration practice. Part of the responsibilities of a fiduciary is to ensure that plan members understand their rights and the benefits which they have earned. We frequently draft plain language summary plan descriptions using a format which is easily updatable as plan provisions change. We are also advising plans on liability issues associated with electronic communication between funds and members as part of our continuing effort at efficient risk management.

Litigation

Despite the best efforts and intentions of the trustees and staff, there will be times when the plan finds itself as either a plaintiff or defendant in a legal action. We have successfully defended retirement plans in claims for benefits, actions regarding under-funding, constitutional questions, discrimination in plan design, and failure of plan fiduciaries to fulfill their responsibilities to the trust. The firm has substantial state and federal court trial experience, including the successful defense of a state retirement system in the Supreme Court of the United States. The firm also has a substantial role in monitoring securities litigation and regularly argues complex appellate matters on both the state and federal levels. We pride ourselves on the vigorous representation of our clients while maintaining close watch on the substantial costs that are often associated with litigation. We are often called upon to provide support in a variety of cases brought by others as expert witnesses or through appearance as an *amicus curiae* (Friend of the Court).

ROBERT D. KLAUSNER:

Born Jacksonville, Florida, December 20, 1952; admitted to Bar 1977, Florida, 1977; U.S. District Court, Southern District of Florida, 1978; U.S. Court of Appeals, Fifth Circuit, 1981; U.S. Court of Appeals, Eleventh Circuit, 1997; U.S. Court of Claims,1998; U.S. Court of Appeals, Eighth Circuit, 2000; U.S. Supreme Court, 2000; U.S. Court of Appeals, Sixth Circuit, 2004; U.S. District Court, Middle District of Florida, 2005; U.S. Court of Appeals, Second Circuit, 2011; U.S. District Court, Northern District of Texas, 2011; U.S. Court of Appeals, Fourth Circuit, 2013.

Education: University of Florida (B.A. with honors, 1974); University of Florida College of Law (J.D., 1977). Adjunct professor, Nova University Law School (1987 - 2005); adjunct professor, New York Institute of Technology, School of Labor Relations(1999-2003); instructor, Florida State University Center for Professional Development and Public Service (1980 - present); instructor, International Foundation of Employee Benefit Plans (1986 - present); instructor, National Conference on Public Employee Retirement Systems (1987 - present); instructor, Public Safety Officers Benefits Conference (1988 - present); instructor, Labor Relations Information Systems (1990 - present); instructor, National Education Association Benefit Conferences (1989 - present); instructor, Florida Division of Retirement Pension Trustees School (1980 - present);

Member: The Florida Bar; American Bar Association; Phi Beta Kappa; Phi Kappa Phi.

Publication: Co-Author, State and Local Government Employment Liability, West Publishing Co.

Author, State and Local Government Retirement Law: A Guide for Lawyers, Trustees, and Plan Administrators, West Publishing Co.

STUART A. KAUFMAN:

Born Queens, New York, March 21, 1965; admitted to Bar 1990; The New York Bar 1990; The Florida Bar 1993; United States District Court, Southern District of Florida 1993; United States Court of Appeals, Eleventh Circuit, 1998.

Education: State University of New York at Binghamton (B.A. 1986); University of Miami School of Law (J.D. 1989).

Member: The Association of the Bar of the City of New York; The Association of the Bar of the State of New York; The Florida Bar; American Bar Association.

BONNI S. JENSEN:

Born Sewickley, Pennsylvania, March 16, 1962; Admitted to the Florida Bar in 1990; United States District Court, Southern District of Florida 1991; United States Court of Appeals, Eleventh Circuit, 1995; United States Supreme Court, 1997.

Education: Stetson University (B.A. 1984); Nova University, School of Law (J.D. 1990 with high honors); Nova University Law Review.

Member: The Florida Bar; American Bar Association; Associate Member, Florida Public Pension Trustees Association; Member, National Association of Public Pension Attorneys.

Personal: Named in the 2005, 2006, 2007, 2008, 2009 and 2010 issues of the South Florida Legal Guide as Top Pension Attorney.

ADAM P. LEVINSON:

Born Brooklyn, New York, July 11, 1970; Admitted to the Bar 1995; Florida, 1995; United States District Court, Southern District of Florida 1996; United States Court of Appeals, Eleventh Circuit, 1999.

Education: University of Michigan (B.A. 1992 with high honors); University of Miami (J.D. 1995 with high honors); University of Miami Law Review, Articles and Comments Editor.

Member: The Florida Bar; The California Bar; The American Bar Association; Order of the Coif.

Exhibit 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

SUPPLEMENTAL DECLARATION OF LUIGGY SEGURA REGARDING (A) MAILING OF NOTICE AND CLAIM FORM AND (B) REPORT ON REQUESTS FOR EXCLUSION RECEIVED

I, Luiggy Segura, hereby declare under penalty of perjury as follows:

1. I am an Assistant Director of Securities Class Actions at JND Legal Administration ("JND"). Pursuant to the Court's March 12, 2019 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 111) (the "Preliminary Approval Order"), Lead Counsel was authorized to retain JND as the Claims Administrator in connection with the Settlement of the above-captioned action (the "Action").[1] I submit this Declaration as a supplement to my earlier declaration, the Declaration of Luiggy Segura Regarding (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, dated June 17, 2019 (ECF No. 119-4) (the "Initial Mailing Declaration"). I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

[1] Unless otherwise defined in this declaration, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement dated February 14, 2019 (ECF No. 108-1) (the "Stipulation").

MAILING OF THE NOTICE AND CLAIM FORM

2. Since the execution of my Initial Mailing Declaration, JND has continued to disseminate copies of the Notice and Claim Form (the "Notice Packet") in response to additional requests from potential members of Settlement Class, brokers, and nominees. Through July 12, 2019, JND mailed a total of 304,813 Notice Packets to potential members of the Settlement Class, brokers and Nominees.

TELEPHONE HELP LINE AND SETTLEMENT WEBSITE

3. JND continues to maintain the toll-free telephone helpline, 1-833-291-1647 and interactive voice response system to accommodate any inquiries from potential members of the Settlement Class. JND also continues to maintain the dedicated website for the Action www.StericycleSecuritiesLitigation.com in order to assist potential members of the Settlement Class. On June 18, 2019, JND posted to the website copies of the motions and papers filed in support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and in support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. JND will continue maintaining and, as appropriate, updating the website and toll-free telephone number until the conclusion of the administration.

REPORT ON REQUESTS FOR EXCLUSION RECEIVED

4. The Notice informed potential members of the Settlement Class that requests for exclusion from the Settlement Class are to be sent to the Claims Administrator, such that they were received no later than July 1, 2019. The Notice also sets forth the information that must be included in each request for exclusion. As of the date of this Declaration, JND has received 8 requests for exclusion, each of which were received by the July 1, 2019 deadline. Exhibit A attached hereto

lists the names of the persons and entities who have requested exclusion from the Settlement Class and their city and state.

NOTICE AND ADMINISTRATION COSTS

5. As of the date of this declaration, JND estimates that total notice and administration costs, including out of pocket broker fees and postage expenses of over $200,000, will be $900,000.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 15, 2019.

Luiggy Segura

List of Persons and Entities Excluded from the Settlement Class Pursuant to Request

1. Rex A. Shipplett and Sue E. Shipplett
West Lafayette, IN

2. Louise S. Soucy
Watertown, MA

3. Ole Steffen
Singapore

4. Joyce E. Cialkowski
South Holland, IL

5. Rei R. Noguchi
Northridge, CA

6. HealthCor Offshore Master Fund, L.P.
HealthCor Sanatate Offshore Master Fund, L.P.

7. The Alger Funds
The Alger Funds II
The Alger Institutional Funds
The Alger Portfolios
Alger SICAV
Alger Collective Trust Capital Appreciation Series
Alger Associates, Inc.
Alger Dynamic Return Fund, LLC
Alger Spectra Fund
Alger Mid Cap Focus Fund
Alger Dynamic Opportunities Fund
Alger Mid Cap Growth Institutional Fund
Alger Focus Equity Fund
Alger Capital Appreciation Institutional Fund
Alger Capital Appreciation Fund
Alger Mid Cap Growth Fund
Alger International Focus Fund
Alger Large Cap Growth Portfolio
Alger Midcap Growth Portfolios
Alger Capital Appreciation Portfolio
Alger Balanced-Equity Portfolio
Alger American Asset Growth Fund
Alger Dynamic Opportunities Fund
AAI Focus Equity SMA Wrap Seed
New York, NY

8. Donna Fantozzi
Chicago, IL

Exhibit 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

[PROPOSED] JUDGMENT APPROVING CLASS ACTION SETTLEMENT

WHEREAS, a consolidated class action is pending in this Court entitled *In re Stericycle, Inc. Securities Litigation*, Civil Action No. 1:16-cv-07145 (the "Action");

WHEREAS, (a) lead plaintiffs the Public Employees' Retirement System of Mississippi and the Arkansas Teacher Retirement System (collectively, "Lead Plaintiffs"), on behalf of themselves and the Settlement Class (defined below); (b) defendant Stericycle, Inc. ("Stericycle" or the "Company"); (c) defendants Charles A. Alutto, Dan Ginnetti, Brent Arnold, Frank ten Brink, and Richard Kogler (collectively, the "Officer Defendants"); (d) defendants Mark C. Miller, Jack W. Schuler, Lynn Dorsey Bleil, Thomas D. Brown, Thomas F. Chen, Rodney F. Dammeyer, William K. Hall, John Patience, and Mike S. Zafirovski (collectively, the "Director Defendants" and, together with Stericycle and the Officer Defendants, the "Stericycle Defendants"); and (e) defendants Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.), J.P. Morgan Securities LLC, HSBC Securities (USA) Inc., MUFG Securities Americas Inc. (f/k/a Mitsubishi UFJ Securities (USA), Inc.), Santander Investment Securities Inc., SMBC Nikko Securities America, Inc., and U.S. Bancorp Investments, Inc. (collectively, the "Underwriter Defendants" and, together with the Stericycle Defendants, the

"Defendants") (Lead Plaintiffs and Defendants, collectively, the "Parties") have entered into a Stipulation and Agreement of Settlement dated February 14, 2019 (the "Stipulation"), that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the "Settlement");

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

WHEREAS, by Order dated March 12, 2019 (the "Preliminary Approval Order"), this Court: (a) found, pursuant to Rule 23(e)(1)(B) of the Federal Rules of Civil Procedure, that it (i) would likely be able to approve the Settlement as fair, reasonable, and accurate under Rule 23(e)(2) and (ii) would likely be able to certify the Settlement Class for purposes of the Settlement; (b) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (c) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (d) 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 July 22, 2019 (the "Settlement Hearing") to consider, among other things, (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against 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;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all 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 February 25, 2019; and (b) the Notice and the Summary Notice, both of which were filed with the Court on June 17, 2019.

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 (b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all persons or entities who purchased or otherwise acquired publicly-traded Stericycle common stock or publicly-traded Stericycle depositary shares in the open market during the period from February 7, 2013 through February 21, 2018, inclusive (the "Class Period"), including Stericycle depositary shares purchased in or traceable to the public offering of Stericycle depositary shares conducted on or around September 15, 2015, and were damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) members of the Immediate Family of any Individual Defendant; (iii) any person who was an Officer or director of Stericycle during the Class Period and any members of their Immediate Family; (iv) any parent, subsidiary, or affiliate of Stericycle; (v) any firm, trust, corporation, or other entity in which any Defendant or any other excluded person or entity has, or had during the Class Period, a controlling interest, *provided*, *however*, that any Investment Vehicle

shall not be excluded from the Settlement Class; and (vi) the legal representatives, agents, heirs, successors-in-interest, or assigns of any such excluded persons or entities. Also excluded from the Settlement Class are the persons and entities listed on Exhibit 1 hereto who or which 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 certifies Lead Plaintiffs as Class Representatives for the Settlement Class and appoints Lead Counsel as Class Counsel for the Settlement Class. Lead Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution

(including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules.

6. Defendants have complied with the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1715, et seq. Defendants timely mailed notice of the Settlement pursuant to 28 U.S.C. §1715(b), including notices to the Attorney General of the United States of America, and the Attorneys General of each State. The CAFA notice contains the documents and information required by 28 U.S.C. §1715(b)(1)-(8). The Court finds that Defendants have complied in all respects with the requirements of 28 U.S.C. §1715.

7. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23(e)(2) 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. Specifically, the Court finds that: (a) Lead Plaintiffs 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 under the Settlement is adequate taking into account the costs, risks, and delay of trial and appeal; the proposed means of distributing the Settlement Fund to the Settlement Class; and the proposed attorneys' fee award; and (d) the Settlement treats members of the Settlement Class equitably relative to each other. There was one objection to the Settlement, filed by Benjamin Brown. The Court has considered the objection filed by Mr. Brown and it is denied. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

8. The Action and all of the claims asserted against Defendants in the Action by Lead 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.

9. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Lead 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.

10. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 11 below, upon the Effective Date of the Settlement, Lead Plaintiffs 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, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (including, without limitation, Unknown Claims) against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims (including, without limitation, Unknown Claims) against any of the Defendants'

Releasees. This Release shall not apply to the Excluded Plaintiffs' Claims (as that term is defined in paragraph 1(oo) of the Stipulation).

(b) Without further action by anyone, and subject to paragraph 11 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, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (including, without limitation, Unknown Claims) against Lead Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims (including, without limitation, Unknown Claims) against any of the Plaintiffs' Releasees. This Release shall not apply to the Excluded Defendants' Claims (as that term is defined in paragraph 1(nn) of the Stipulation).

11. Notwithstanding paragraphs 10(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.

12. **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.

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

connection with the Term Sheet, the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants' Releasees, in any 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 any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any 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;

(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 which could be or would have been recovered after trial; or

(d) shall be deemed to be, and shall not be argued to be or offered or received as evidence of, or construed as evidence of any presumption, concession, or admission that class certification is appropriate in this Action, except for purposes of this Settlement, *provided, however*, that the Parties and the Releasees and their respective counsel may refer to this Judgment and the Stipulation to effectuate the protections from liability granted hereunder and thereunder or otherwise to enforce the terms of the Settlement.

14. **Finality of Judgment** – Notwithstanding the provisions of the preceding paragraph, the Defendants' Releasees and their respective counsel may refer to or file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim 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 disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Action.

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

17. **Modification of the Agreement of Settlement** – Without further approval from the Court, Lead 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, Lead Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

18. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Lead Plaintiffs, the other Settlement Class Members, and Defendants, and the Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Term Sheet on December 6, 2018, as provided in the Stipulation.

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

20. **Satisfaction of Judgment** – The Court finds that Defendants have satisfied their financial obligations under the Stipulation by paying or causing to be paid $45,000,000.00 in cash to the Settlement Fund.

SO ORDERED this _____ day of _____, 2019.

_____

The Honorable Andrea R. Wood
United States District Judge

Exhibit 1

List of Persons and Entities Excluded from the Settlement Class Pursuant to Request

1. Rex A. Sipplett and Sue E. Shipplett
   West Lafayette, IN

2. Louise S. Soucy
   Watertown, MA

3. Ole Steffen
   Singapore

4. Joyce E. Cialkowski
   South Holland, IL

5. Rei R. Noguchi
   Northridge, CA

6. HealthCor Offshore Master Fund, L.P.
   HealthCor Sanatate Offshore Master Fund, L.P.

7. The Alger Funds
   The Alger Funds II
   The Alger Institutional Funds
   The Alger Portfolios
   Alger SICAV
   Alger Collective Trust Capital Appreciation Series
   Alger Associates, Inc.
   Alger Dynamic Return Fund, LLC
   Alger Spectra Fund
   Alger Mid Cap Focus Fund
   Alger Dynamic Opportunities Fund
   Alger Mid Cap Growth Institutional Fund
   Alger Focus Equity Fund
   Alger Capital Appreciation Institutional Fund
   Alger Capital Appreciation Fund
   Alger Mid Cap Growth Fund
   Alger International Focus Fund
   Alger Large Cap Growth Portfolio
   Alger Midcap Growth Portfolios
   Alger Capital Appreciation Portfolio
   Alger Balanced-Equity Portfolio
   Alger American Asset Growth Fund
   Alger Dynamic Opportunities Fund
   AAI Focus Equity SMA Wrap Seed
   New York, NY

8. Donna Fantozzi
   Chicago, IL

Exhibit 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

[PROPOSED] ORDER APPROVING PLAN OF ALLOCATION OF NET SETTLEMENT FUND

WHEREAS, this matter came on for hearing on July 22, 2019 (the "Settlement Hearing") on Lead Plaintiffs' motion to determine whether the proposed plan of allocation of the Net Settlement Fund ("Plan of Allocation") created by the Settlement achieved in the above-captioned class action (the "Action") should be approved. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the proposed Plan of Allocation; and

WHEREAS, this Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated February 14, 2019 (ECF No. 108-1) (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Jurisdiction** – The Court has jurisdiction to enter this Order and over the subject matter of the Action, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members, for purposes of this Settlement.

2. **Notice** – Notice of Lead Plaintiffs' motion for approval of the proposed Plan of Allocation was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for approval of the proposed Plan of Allocation 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. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

3. More than 304,800 copies of the Notice, which included the Plan of Allocation, were mailed to potential Settlement Class Members and nominees. There were no objections to the proposed Plan of Allocation.

4. **Approval of Plan of Allocation** – The Court hereby finds and concludes that the formula for the calculation of the claims of Claimants as set forth in the Plan of Allocation mailed to Settlement Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Settlement Class Members with due consideration having been given to administrative convenience and necessity.

5. The Court hereby finds and concludes that the Plan of Allocation is, in all respects, fair and reasonable to the Settlement Class. Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead Plaintiffs.

6. **No Impact on Judgment** – Any appeal or any challenge affecting this Court's approval regarding any plan of allocation of the Net Settlement Fund shall in no way disturb or affect the finality of the Judgment.

7. **Retention of Jurisdiction** – 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.

8. **Entry of Order** – There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____, 2019.

_____

The Honorable Andrea R. Wood
United States District Judge

Exhibit 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

WHEREAS, this matter came on for hearing on July 22, 2019 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested; and

WHEREAS, this Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated February 14, 2019 (ECF No. 108-1) (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Jurisdiction** – The Court has jurisdiction to enter this Order and over the subject matter of the Action, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members, for purposes of the Settlement.

2. **Notice** – Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and reimbursement of Litigation Expenses 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. §§ 77z-1, 78u-4, as amended (the "PSLRA"), and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

3. **Fee and Expense Award** – Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of _____% of the Settlement Fund, net of total Court-awarded Litigation Expenses, which sum the Court finds to be fair and reasonable. Plaintiffs' Counsel are also hereby awarded $_____ in reimbursement of Plaintiffs' Counsel's Litigation Expenses to be paid from the Settlement Fund, which sum the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in the manner described in paragraph 3 of The Supplemental Declaration of John C. Browne In Support Of (I) Lead Plaintiffs' Motion For Final Approval Of Settlement And Plan Of Allocation; (II) Lead Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses; And (III) Lead Plaintiffs' Opposition To Objector Mark Petri's Motion To Lift Stay For Limited Discovery, such

that each of the three Plaintiffs' Counsel firms will receive the same lodestar multiplier on their time as submitted to the Court. There will be no payments out of the award of attorneys' fees to any other firms or entities.

4. **Factual Findings** – In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $45,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by Lead Plaintiffs, institutional investors that oversaw the prosecution and resolution of the Action;

(c) More than 304,800 copies of the Notice were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for (i) an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund, and (ii) reimbursement of Plaintiffs' Counsel's Litigation Expenses in an amount not to exceed $350,000, which may include reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class;

(d) Lead Counsel has conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Settlement Class may have

recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel have submitted information to the Court showing that they devoted more than 7,880 hours, with a lodestar value of approximately $3,978,085, to achieve the Settlement;

(h) The amount of attorneys' fees awarded and Litigation Expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases; and

(i) There was one objection to the requested attorneys' fees, filed by Mark Petri. The Court has considered the objection filed by Mr. Petri and it is denied.

5. **PSLRA Awards** – Lead Plaintiff the Public Employees' Retirement System of Mississippi is hereby awarded $_____ from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

6. Lead Plaintiff the Arkansas Teacher Retirement System is hereby awarded $_____ from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

7. **No Impact on Judgment** – Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

8. **Retention of Jurisdiction** – Exclusive jurisdiction is hereby retained over the Parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order.

9. **Termination of Settlement** – 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.

10. **Entry of Order** – There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____, 2019.

_____
The Honorable Andrea R. Wood
United States District Judge

Exhibit 9

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETROBRAS SECURITIES LITIGATION	Case No. 14-cv-9662 (JSR) **CLASS ACTION**

REDACTED REPLY MEMORANDUM OF LAW IN SUPPORT OF (1) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Court-appointed Class Counsel, having achieved a $3 billion Settlement in cash for the benefit of the Class in this action, respectfully submit this reply memorandum of law in further support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Reimbursement of Litigation Expenses.[1]

PRELIMINARY STATEMENT

In their opening papers, Class Representatives demonstrated that the factors set forth by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), together with other pertinent considerations, weighed heavily in favor of approving the Settlement. Now, the Class's overwhelmingly positive reaction to the Settlement demonstrates that the Settlement is fair and reasonable and should be approved. As discussed in the Lieberman Declaration, as of April 13, 2018, more than 1,053,850 copies of the Notice were mailed to potential Class Members, and a Summary Notice was published in major publications spanning several dozens of countries. (ECF. No. 789 ¶¶ 333, 340). The Notice advised class members that Class Counsel would seek a fee in an amount not to exceed $285 million and for reimbursement of expenses of no more than $18 million and contained the plan of allocation. *Id.* ¶ 334.[2] And although Petrobras' securities at issue were held by literally thousands of institutions during the Class Period, *no institutional investor has objected* to the Settlement. In fact, the Class Representatives, as institutional investors, strongly support the Settlement. Moreover, after reviewing the excellent results obtained by the Settlement, all but one of the remaining institutional plaintiffs in the Individual Actions—sophisticated institutional investors represented by sophisticated counsel—have

[1] A Proposed Order Awarding Attorneys' Fees and Expenses to Class Representatives is attached hereto as Exhibit 1.

[2] The requested fee of $284.5 million has been reduced to $284.4 million pursuant to a call with the Court on April 30, 2018.

indicated their intention to remain Settlement Class Members and forego their individual claims. *See* ECF. No. 789 ¶ 11 n.5. One brave institution, Washington State Investment Board, represented by Robbins Geller Rudman and Dowd LLP ("RGRD"), has decided to continue its action, despite the fact that the other four opt-outs represented by RGRD have now opted to remain in the Settlement Class.

Significantly, there have been only six objections—including two professional objectors and another who has been found to have been engaged in "conduct that is prejudicial to the administration of justice" and who "committed a criminal act that reflects adversely on his honesty and trustworthiness"— to the Settlement and 490 timely requests for exclusion.[3] This result is a testament to the extraordinary achievement here. "[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the] Grinnell inquiry." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005). Where, as here, only a tiny proportion of the class has objected or sought to exclude themselves from the Class, the most important *Grinnell* factor is satisfied. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86-87 (2d Cir. 2001) ("The District Court properly concluded that this small number of objections [18 objections to settlement with 27,883 class notices sent] weighted in favor of the settlement."); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 457, 458 (S.D.N.Y. 2004) (six objections out of a class of approximately one million was "vanishingly small" and "constitutes a ringing endorsement of the settlement by class members"); *Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.*, No. 08-cv-42, 2013 WL 4525323, at *7 (E.D.N.Y.

[3] On May 9, 2018, two days before the deadline to object, John Jacob Pentz, a Massachusetts attorney purporting to represent a Class member named Anne Cochran, applied to the Court for admission *pro hac vice*. (ECF. No. 794). The Court granted Pentz's application (ECF. No. 802), but Pentz and/or Cochran have not filed any other documents, nor have they given notice that they object to the Settlement.

Aug. 27, 2013) (approving settlement where 183 members out of "hundreds of thousands" opted out, and two objected). Particularly where, as here, sophisticated institutions constitute a significant portion of the class, the absence of any institutional objections further demonstrates the adequacy of the Settlement. *See, e.g.*, *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, Nos. MDL 1500, 02-cv-5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, No. 14-cv-8925 (KMW), 2017 WL 3579892, at *2-3 (S.D.N.Y. Aug. 18, 2017). In cases such as this, involving a large class and an extensive notice campaign, it is extremely unusual to receive such a limited number of objections. To the contrary, a certain number of objections are to be expected. *See*, *e.g.*, *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 24 (2d Cir. 1987) (affirming settlement approval despite opposition by 36% of the class, as "[w]e perceive no reason why a settlement cannot be considered fair despite opposition from . . . significantly less than half of the class; *In re AOL Time Warner*, 2006 WL 903236, at *10 (approving settlement with 10,082 opt-outs from a putative class of 4.7 million).[4]

As explained below, the few objections are meritless and should be rejected.

I. TWO OF THE OBJECTORS LACK STANDING TO OPPOSE THE SETTLEMENT

"[A]s a general rule, only class members have standing to object to a proposed settlement." *See* 4 *Newberg on Class Actions* § 11:55 (4th ed. 2002); *see also Feder v. Elec. Data Sys. Corp.*, 248 F. App'x 579, 581 (5th Cir. 2007) (an objector who "produced no evidence substantiating his membership in the class" had no standing to object); *In re Initial Public Offering Sec. Litig.*, No. 21 MC 92 (SAS), 2011 WL 3792825, at *1 (S.D.N.Y. Aug. 25, 2011) ("to be a class member Hayes must… [have been] damaged thereby.")

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[4] *See also In re Cendant Corp. Litig.*, 264 F.3d 201, 234 (3d Cir. 2001) (receipt of only four objections by class members "cut strongly in favor of the Settlement, as the number of objectors was quite small in light of the number of notices sent and claims filed.").

A. Renewable Carbon Corp. Has No Standing to Object

The trading records produced by Renewable Carbon Corp. make clear that this objector lacks standing to challenge the Settlement. Renewable Carbon represents and provides corresponding documentary evidence that it "acquired shares of Petroleo Brasileiro Petrobras SA ADR (PBR) on 02/02/2010, 17,500 ADS at $41.9545; on 3/29/2010, 9,600 ADS at $43.8597 and on 02/01/2013, 63,100 ADS at $18.6159. Adding up to total of 90,200.00 shares. *All shares were sold on 7/31/2013 . . . .*" (emphasis added) (ECF. No. 812, including transaction records reflecting the sale of all PBR ADRs on 7/31/2013). The first corrective disclosures occurred on October 16, 2014, so Renewable Carbon Corp's damages are zero.

B. The Bishops Have No Standing To Object

The Bishops, who purport to have purchased 445 Petrobras ADSs, failed to present any documentary evidence such as bank records of their transactions in Petrobras securities. Exhibit A to the Bishops' objection is a claim form filled out by the Bishops themselves without any appropriate corresponding brokerage or similar reliable records (ECF. No. 811). Such an incomplete submission is insufficient to demonstrate standing and would be rejected by the Claims Administrator.

II. A NUMBER OF OBJECTORS HAVE IMPROPER MOTIVES

In analyzing the merits of the arguments raised by the Objectors, this Court should consider their ideological and monetary motivations. *See In re Initial Pub. Offering Sec. Litig.*, 721 F. Supp. 2d 210, 215 (S.D.N.Y. 2010) ("I concur with the numerous courts that have recognized that professional objectors undermine the administration of justice by disrupting settlement in the hopes of extorting a greater share of the settlement for themselves and their clients."); *Dennis v. Kellogg Co.*, No. 09-cv-1786-L (WMc), 2013 WL 6055326, at *4 n.2 (S.D. Cal. Nov. 14, 2013) ("[W]hen assessing the merits of an objection to a class action settlement, courts consider the

background and intent of objectors and their counsel, particularly when indicative of a motive other than putting the interest of the class members first.") (quoting *In re Law Office of Jonathan E. Fortman, LLC*, No. 13-mc-00042 AGF, 2013 WL 414476, at *5 (E.D. Mo. Feb. 1, 2013)); *Dewey v. Volkswagen of Am.*, 909 F. Supp. 2d 373, 396 n.24 (D.N.J. 2012) ("[C]ertain objectors are represented by attorneys who are in the profession of objecting to class action settlements, whether motivated by views of the law, ideology, or otherwise."), *aff'd, Dewey v. Volkswagen Aktiengesellschaft,* 558 F. App'x 91 (3d Cir. 2014); *see similarly Barnes v. FleetBoston Fin. Corp.*, No. 01-cv-10395, 2006 WL 6916834, at *1 (D. Mass. Aug. 22, 2006). Indeed, the objectors' bad motives are grounds for the imposition of sanctions under Fed. R. Civ. P. 11, which the Court may impose *sua sponte*. Rule 11 mandates that any paper presented to the Court not be made "for any improper purpose," such as "to extract fees from class counsel in exchange for the withdrawal of a meritless objection to the proposed class settlement." *Garber v. Office of Comm'r of Baseball*, No. 12-cv-03704 (VEC), 2017 WL 752183, at *4 (S.D.N.Y. Feb 27, 2017). Filing an objection to advance anti-class action agenda is similarly an "improper purpose," as it has nothing to do with the best interests of class members, or the objectors' financial interest in a settlement.

A. CCAF Is A Serial Objector With An Anti-Class Action Agenda

CCAF professes pure motives in bringing its objections to protect the class, but in reality it is nothing but a wolf in sheep's clothing, advancing the corporate interests of its donors at the expense of Class members. CCAF's sole purpose is to object to class action settlements. *See* https://cei.org/issues/class-action-fairness. Here, its Objection is submitted on behalf of Thomas Haynes and is accompanied by the Declaration of Theodore H. Frank. Haynes serves as the Chairman of CEI's board and is a member of CCAF's litigation advisory committee. Haynes served as the CEO of the Coca-Cola Bottlers' Association, Inc., where he built a $100 million health-care benefits business. *See* CEI Board of Directors, W. Thomas Haynes (Chairman),

available at https://cei.org/cei-board-directors. As a wealthy former corporate executive, the fact that Haynes is seeking to scuttle a historic $3 billion settlement for shareholders when the Trust held a meager 55 shares, ***suffering recognizable losses of $66.00***, speaks volumes about his motivation. Anna St. John, Haynes's attorney, works for CCAF and has on numerous occasions either represented objectors who were employees of CCAF or served herself as an objector. *See* St. John Decl. ¶ 4 (ECF. No. 800) and Frank Decl. ¶ 11 (ECF No. 799).

Frank founded CCAF.[5] He has described his outlet as a "guerilla operation" dedicated to challenging class actions. Kate Moser, *Class Action Avenger Discusses Coupon Crusades*, Legal Pad, Sept. 23, 2009, *available at* http://legalpad.typepad.com/my_weblog/2009/09/class-action-avenger-discusses-coupon-crusades.html. He has described plaintiffs' class action attorneys as "parasites," who have formed an "unholy" alliance with "collaborationist" judges. *See* Brendan Kearney, *The Deal Breakers: A look at professional class action objectors in MD*, The Daily Record, May 23, 2010; Karen Lee Torre, *Challenging Cy Pres Scams*, Conn. L. Tribune, Nov. 22, 2010 ("CCAF is a non-profit, public interest law firm dedicated to bringing to light and challenging in court the misdoings of an unholy trinity—the class action bar, special interest groups, and collaborationist jurists"). He has admitted that his objections are laser-focused on making class action litigation financially unattractive for attorneys to pursue: "the problem of destructive securities litigation will only be solved when Congress takes contingent-fee trial lawyers and their perverse incentives out of the equation." Theodore Frank, *Enron: Extortion, Interrupted*, N.Y. Sun, Jan. 23, 2008. In his Twitter account, Frank bemoans this Court's approval of class action notice plans generally: "I can guarantee that J. Rakoff has discretionarily approved numerous class

[5] In 2015, CCAF merged into the Competitive Enterprise Institute ("CEI") and became a division within their law and litigation unit. (Frank Decl. at 4, ECF No. 799).

action notice plans with similar waivers and worse notice." Ted Frank (@tedfrank), Twitter (March 6, 2018, 4:22 PM).

Advancing this ideological agenda has not been without its rewards for CCAF. The organization functions through the receipt of millions of dollars in contributions used to advance its ultra-conservative, corporate-friendly, anti-class action litigation agenda. Past contributors include the Koch family foundations, Exxon-Mobil Corporation, Marathon Petroleum, *The American Conservative*, Monsanto, Google, Facebook, Pepsico, MasterCard, and the American Bankers Association.[6] These entities do not represent the interests of the Class. Rather, as courts have recognized, the goal of CCAF is to eliminate class action litigation. *See*, *e.g.*, *City of Livonia Emps.' Ret. Sys. v. Wyeth*, No. 07-cv-10329, 2013 WL 4399015, at *5 (S.D.N.Y. Aug. 7, 2013) ("Petri's objection on this count does not seem grounded in the facts of this case, but in her and her attorney's [Ted Frank] objection to class actions generally."); *Dennis v. Kellogg Co.*, No. 09-cv-1786-IEG (WMC), 2013 U.S. Dist. LEXIS 129205, at **11, 13 n.2, 3 (S.D. Cal. Sept. 10, 2013) ("the Court notes that present objectors' counsel, Darrell Palmer and Theodore Frank of the Center for Class Action Fairness, have both been widely and repeatedly criticized as serial, professional, or otherwise vexatious objectors," observing that Frank "works for and represents an ostensibly 'activist' organization"), *opinion replaced by Dennis v. Kellogg* Co., 2013 U.S. Dist. LEXIS 163118, at *1 (S.D. Cal. Nov. 14, 2013) (same in all substantive respects except strikes language critical of Frank, *supra,* after granting Joint Motion to Strike, which Frank stipulated to not appeal); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 785 (N.D. Ohio 2010) (criticizing CEI's

[6] Eilperin Juliet, "Anatomy of a Washington dinner: Who funds the Competitive Enterprise Institute?", The Washington Post (June 20, 2013); *see also* Competitive Enterprise Institute, Conservative Transparency database, *available at* http://conservativetransparency.org/recipient/competitive-enterprise-institute/ (collecting IRS Form 990 donor data).

objections as "long on ideology and short on law," and noting that CCAF was objecting despite admitting that "this Settlement could be approved under current Sixth Circuit law."); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 575 (D.N.J. 2010) (describing Frank as a "professional objector" of which "federal courts are increasingly weary").[7]

In furtherance of the goal of stifling class action litigation, CCAF (or CEI) has filed objections in over 85 class action settlements over the past nine years. In a phone call with the Court on May 15, 2018, Ms. St. John proudly proclaimed that CCAF would file even more objections to class action settlements but for a dearth of resources. In an ironic twist, CCAF's crusade against class action litigation is largely fueled by its own employees regularly "pitching in" and serving as objectors, with Ms. St. John and Mr. Frank repeatedly acting as objectors. *See* St. John Decl. ¶4 (Dkt. No. 800) and Frank Decl. ¶11 (Dkt. No. 799) (showing that St. John objected or represented objectors to 9 settlements, and Frank objected or represented objectors to 90 settlements). The Frank Decl. reveals that CCAF has represented their own employees—or relatives—on ***at least 44 separate occasions***. This includes objections from CCAF attorneys Ted Frank (23 objections), Anna St. John (4 objections), Melissa Holyoak (4 objections), Adam Schulman (3 objections), Daniel Greenberg (3 objections), and Frank Bednarz (2 objections), as well as CEI employees Sam Kazman (3 objections), John Berlau (1 objection), Ryan Radia (1 objection), Fred Smith (1 objection), and Frances Smith (1 objection). *Id.* It also includes relatives, such as Joshua Holyoak (an apparent relative of Melissa Holyoak, who objected twice) and Merideth Halsey (the wife of CCAF employee Frank Bednarz, who objected once). Apparently,

[7] *See also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 n.5 (9th Cir. 2015) ("we reject [CCAF's] arguments that the attorneys' fees in this case are unreasonable or over-inflated"). *See similarly Blessing v. Sirius XM Radio Inc.*, 507 F. App'x 1, 5 (2d Cir. 2012); *Trombley v. Nat'l City Bank*, 826 F. Supp. 2d 179, 205 (D.D.C. 2011).

attorney-driven litigation is acceptable to CCAF as long as it is used to deprive class members of their rightful recovery.

Further testing the bounds of irony, CCAF has been less than candid regarding its receipt of attorneys' fees relating to its serial objections. Ms. St. John sanctimoniously professes that CCAF is representing Haynes on a *pro bono* basis in this action. (ECF. No. 797 at 2). Yet, paragraph 3 of CCAF's retainer agreement with Haynes specifically allows CCAF to seek attorneys' fees with respect to its representation. Similarly, in at least twelve other federal cases CCAF purported to be working on a *pro bono* basis, but actually sought and received attorneys' fees in those cases.[8] The term "*pro bono*" is not subject to ambiguity: it means "without compensation."[9]

The suspect nature of CCAF's modus operandi is highlighted by the language of the retainer agreement with Mr. Haynes ("Retainer Agreement"), which appears to be a form letter that CCAF commonly uses. *See Gilmore Decl. Ex. B* (footer stating "Revised 7/8/2015" in Haynes' retainer letter executed May 10, 2018). As explained in Plaintiffs' letter to the Court dated May 24, 2018, the Retainer Agreement subordinates the objectors' own interests to those of CCAF (as mentioned above, sometimes CCAF uses its own lawyers to serve as objectors) and violates basic standards of professional responsibility. Among other things, its provisions clearly conflict with the "client's" absolute right to make decisions whether to settle and appeal the matter; moreover, the "client" is forced to acknowledge that by filing the objection (and possibly appeal), he/she might be acting adverse to its interests as a class member by delaying the settlement. *See*

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[8] *See* Declaration of Emma Gilmore in support hereof ("Gilmore Decl.") Exh. A.
[9] *Black's Law Dictionary* (10th ed. 2014) (defining "pro bono" as "Uncompensated, esp. regarding free legal services performed for the indigent or for a public cause").

D.C. Rules of Prof. Resp., Rule 1.2(a); N.Y. Rules of Prof. Conduct, Rule 1.2(a); New York County (N.Y.) Ethics Op. 699 (1994).

In his Supplemental Declaration (Dkt. No. 819), Haynes admits that his companies are long-standing donors to CEI and that he has earned substantial consulting fees from the organization. Haynes claims that the catalyst for his objection is the "keen[] interest in the financial affairs of [his] children's trusts and in assuring that any losses those trusts may have suffered . . . is [sic] fully redressed," but those ***losses only amount to $66 in damages***—a pittance that pales in comparison to what Haynes has made in consulting fees from CEI. Haynes obviously has a significant motive in objecting to this settlement to assist in his "fundraising" efforts for CEI, and potentially receive additional lucrative consulting fees.

Moreover, CCAF's attack on class counsel's fees is not made in good faith. CCAF has in the past sought outrageous hourly rates of $2,865 and a 5.97 multiplier of its lodestar in attorneys' fees. Plaintiffs' Opposition to Objector Amy Yang's Motion for Attorneys' Fees at 2, *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 07-cv-05634-CRB (N.D. Cal. July 13, 2015), ECF No. 1033. These bloated requests pale in comparison to the highest hourly rate of $1,000 (ECF No. 789-23) and the mere 1.78 multiplier requested here by Class Counsel. The scores of objections made by CCAF to class action settlements on behalf of its ready stable of paid employees, masquerading under the bait of *pro bono* representation that is promptly switched to requests for attorneys' fees at inflated billing rates and even more inflated multipliers, smacks of an unprecedented abuse of the judicial process and violates Rule 11.

B. Joseph Gielata Has A Colorful Past And Has Opposed Other Mega-Settlements To Extract Payments

Joseph Gielata is the son of Objectors Richard and Emelina Gielata, who purchased 500 shares during the Class Period and have losses of approximately $660. Joseph Gielata, a "retired"

attorney, disclosed that he is the drafter of his parents' objection. Joseph Gielata has a colorful past which includes an arrest in Delaware and charges on July 25, 2005, for multiple counts of theft, including felony theft, and conspiracy in the second degree, a felony; a guilty plea on May 9, 2006, to misdemeanor theft in exchange for dismissal of the remaining charges; and a public reprimand by the Supreme Court of Delaware in 2007. *In re Gielata*, 933 A.2d 1249 (Del. 2007) (reprimanding Gielata for his role in a scheme in which he tried to take advantage of PayPal's money-back guarantee by using sham transactions). In connection with the public reprimand, the Panel of the Board on Professional Responsibility found that Joseph Gielata violated the following Delaware Lawyers' Rules of Professional Conduct: Rule 8.4(b) – Gielata "committed a criminal act that reflects adversely on his honesty and trustworthiness"; Rule 8.4(c) – Gielata "engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation"; and Rule 8.4(d) – Gielata "engaged in conduct that is prejudicial to the administration of justice." *Id.*

On August 3, 2010, Joseph Gielata, on behalf of his father, Richard Gielata, filed a federal class action for breach of fiduciary duty, breach of contract, as well as other claims against Grant & Eisenhofer P.A. ("G&E"), a securities litigation firm, and Jay Eisenhofer, G&E's Managing Director. The claims arose from the attorneys' fees awarded by the court to G&E in *In re Tyco, Int'l, Ltd. Multidistrict Litigation* (D.N.H. Aug. 23, 2002), in which G&E represented two public pension funds as co-lead plaintiffs in a securities class action that settled for $3.2 billion in 2007. *See Gielata v. Eisenhofer*, No. 10-cv-00648-GMS (D. Del. Aug. 3, 2010). The case was eventually transferred to the District of New Hampshire, and on November 30, 2012, Richard Gielata filed a notice of voluntary dismissal with prejudice. *Gielata v. Eisenhofer*, No. 11-cv-442-PB (D.N.H. Nov. 30, 2012), ECF No. 92. [redacted]

[redacted]. *See* Gilmore Decl. Ex. C. Apparently, [redacted] than to commit petty theft against Paypal.

C. Joshua Furman Is A Serial Objector

Mr. Furman appears to be a part of a "cabal" of objector attorneys who represent each other as objectors in class action settlements in order to earn fees for one another. In one case, Mr. Furman represented Mr. Jon Zimmerman, another attorney who represents objectors, in connection with his objection and appeal in the *Google Buzz Privacy Litigation*. *See In re Google Buzz Privacy Litig.*, No. 11-16642 (9th Cir. July 7, 2011). Mr. Furman and Mr. Zimmerman also worked together as counsel for an objector in *Pappas v. Naked Juice Co. of Glendora*, No. 14-55023 (9th Cir. Jan. 7, 2014). Appeals in these actions were voluntarily dismissed with no benefit to Class members. Mr. Furman also represented another objector, Barbara Cochran, a relative of another well-known attorney for objectors, Mr. Edward F. Cochran, in *TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827, 2013 U.S. Dist. LEXIS 9904, at *36 (N.D. Cal. Jan. 23, 2013). Edward Cochran has been described by courts as a "remora[]' who "contributed nothing" of value with his "laughable" objections and whose only "goal was, and is, to hijack as many dollars for [himself] as [h]e can wrest from a negotiated settlement." *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1107, 1108-09 (D. Minn. 2009) (Edward Cochran represented the objector as co-counsel with John Pentz, described below). Furman has appeared for objectors in other cases that failed to yield a successful result for class members. *See, e.g., In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, No. 05-md-1720 (E.D.N.Y Oct. 20, 2005) (attorneys' fees denied); *Rodriguez v. W. Publ'g Corp.*, No. 05-cv-3222 (C.D. Cal. Apr. 29, 2005) (objections overrruled, and subsequent motion for attorneys' fees denied by district court); *Zhang v. E*Trade Fin. Corp.*, No. B221098 (Cal. Ct. App. 2d Dec. 21, 2009) (appeal apparently abandoned); *Schlesinger v. Ticketmaster*, No. BC304565 (L.A. Super. Ct.) (objectors' fees denied); *In re Online*

DVD Rental Antitrust Litig., No. 09-md-2029 (N.D. Cal.) (appeal denied); *In re Animation Workers Antitrust Litig.*, No. 14-cv-04062 (N.D. Cal.) (objections voluntarily dismissed).

Mr. Furman also works with another well-known serial objector attorney, Mr. John Pentz, who filed a *pro hac vice* motion in this case on behalf of Anne Cochran (wife of Edward Cochran), but ultimately opted not to file an objection on her behalf upon advance receipt of subpoenas from class counsel. Pentz also represented Barbara Cochran along with Furman in the *TFT-LCD* case discussed above. Judge Scheindlin found that Mr. Pentz, a "serial objector," engaged in "bad faith and vexatious conduct" and granted plaintiffs' motion to require him to post an appeal bond in *In re Initial Public Offering Sec. Litig.*, 721 F. Supp. 2d 210, 212, 215 (S.D.N.Y. 2010). Pentz is recognized outside this District as a "professional and generally unsuccessful objector." *See In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 386 (D. Md. 2006).

Pursuant to a Court order, Furman [redacted]. *See* Gilmore Decl. Exhs. D, E.

Moreover, Furman's arguments are largely incomprehensible and/or baseless. For example, he contends that the plan of allocation was not provided on the settlement notice website, but this is simply not true. The plan of allocation is part of the Notice of Settlement, which has been and continues to be available at http://www.petrobrassecuritieslitigation.com/docs/LFN.pdf, starting with page 11 and includes multiple exhibits and tables, spanning over 15 pages. Furman also improperly accuses Class Plaintiffs of trying to mislead the Court and investors by supposedly

concealing the blow provision because it would have showed lower damages. Not true. The $830 million represents 5% of $16 billion, which is the damages estimate provided by Dr. Nye and is set forth in Class Counsel's Motion for an Award of Attorneys' Fee and Reimbursement of Litigation Expenses, Dkt. No. 792 at 15. Furman also incomprehensibly argues that a "fund-sharing scheme" is illegal, but there is nothing illegal about creating a settlement fund for distribution. Rule 11 requires that all papers submitted to the Court be made "after an inquiry reasonable under the circumstances" and not be made "for any improper purpose." Furman's papers were either indiscriminately cut and pasted or were drafted without an iota of thought. Either scenario would violate Rule 11.

III. The Objections Are Meritless

Haynes argues that the Class cannot be certified because (1) there exists an "intraclass conflict" between purchasers of Petrobras securities in domestic transactions and those who purchased Petrobras securities in foreign transactions; and (2) determining whether a transaction is domestic involves "individualized locational evidence" failing to satisfy Rule 23(b)(3)'s predominance requirement. The Gielatas contend that the Settlement should not have included any dismissed claims. (Dkt. No. 813 at 1-9). These arguments should be rejected.

A. The *Morrison* Objection Should Be Rejected

Haynes and the Gielatas take issue with the "inclusion of meritless claims" in the Settlement, *i.e.*, of transactions that settled or cleared at DTC. (ECF No. 797 at 6; ECF No. 813 at 1-4, 7). This Court dismissed claims on *Morrison* grounds based on the allegation that the purchase or sale was cleared through the DTC, so it is possible that certain transactions encompassed in the definition of the released claims include claims that may not have satisfied *Morrison.* But as explained in Plaintiffs' opening brief for Final Approval of Settlement, the merits of the claims involving DTC transactions are irrelevant for settlement purposes, and courts regularly approve

settlements that allocate funds to claims that were dismissed from the action. *See* Opening Br. at 23-24, citing, *inter alia*, *In re Am. Int'l Grp. Sec. Litig.*, 689 F.3d 229, 242-44 (2d Cir. 2012) (holding that a settlement may include claims "even if a court believes that those claims may be meritless, provided that the class is properly certified under Rules 23(a) and (b) and the settlement is fair under Rule 23(e)"); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 310-11 (3d Cir. 2011) (holding that assessing the merits of settled claims "would effectively rule out the ability of a defendant to achieve 'global peace' by obtaining releases from all those who might wish to assert claims, meritorious or not"). Indeed, claims can be released by class settlements if they "share the same integral facts" or "a realistic identity of issues," even if those claims were not and "could not have been" pleaded in the settled class action. *See Wal-Mart Stores, Inc.*, 896 F.3d at 106-07 (quoting *TBK Partners, Ltd. v. W. Union Corp.*, 675 F.2d 456, 461 (2d Cir. 1982), in which federal court approved settlement releasing previously-dismissed state court claims arising from same facts). What matters is the nature and extent of the factual overlap. Here, the Settlement releases claims arising from the "identical factual predicate" of the Action. At a minimum, that factual predicate includes Defendants' rampant money-laundering and kickback scheme and centers upon the dizzying number of false and misleading statements made by Defendants during the Class Period, as well as the purchase of securities pursuant to Covered Transactions during the Class Period.

Plaintiffs also explained that the recent Second Circuit decision in *Choi v. Tower Research Capital LLC*, No. 17-cv-648 (2d Cir. Mar. 29, 2018), appears inconsistent with the Second Circuit's *Morrison* application in *In re Petrobras Securities Litigation*, 862 F.3d 250 (2d Cir. 2017), raising the specter of a meritorious motion for reconsideration or appeal. (ECF. No. 790 at 23-24). *Choi* held that the fact that transactions placed on a Korean exchange were afterwards electronically matched with counterparties on a platform in the United States was sufficient to

trigger domesticity under *Absolute Activist Value Master Fund Ltd. v. Ficeto,* 677 F.3d 60 (2d Cir. 2012). A similar matching process occurs in every DTC transaction in New York[10] but this Court held that such "mechanics" are "actions needed to carry out transactions involv[ing] neither the substantive indicia of a contractual commitment necessary to satisfy *Absolute Activist*'s first prong nor the formal weight of a transfer of title necessary for its second." (ECF. No. 374 at 10).

Defendants in class action litigation invariably seek a global release that eliminates their risk of future exposure under all potential claims arising from a common nucleus of operative facts and transactions. *See* Joseph M. McLaughlin, *McLaughlin on Class Actions: Law and Practice* 141 § 6:28 (5th ed. 2009) (observing that "a settlement is ordinarily impractical unless it covers all claims, actual and potential, state and federal, arising out of the transaction [] at issue."). Here, Class Counsel negotiated the largest securities class action settlement in a decade and the fifth-largest class action settlement ever achieved in the United States. It is unlikely that such a blockbuster settlement would have been reached if the DTC-settled claims were not released. Indeed, a settlement might not have been reached at all.

While the law is clear that the Settlement can release dismissed claims, the crux of Haynes's argument is that the plan of allocation is improper. But the Court can approve the Settlement without approving the plan of allocation. (ECF No. 767-1, ¶23). In any event, there simply is no good reason to reject the plan of allocation. Haynes acknowledges that "[t]he release of claims arising from foreign transactions might command some settlement value," but contends that these claims should be assigned less value than the claims based on domestic transactions. (ECF 797 at 7-8). Haynes asserts that "the proper valuation" of the foreign transactions claims

[10] *See* B. Morris and Stuart Z. Goldstein, *Guide to Clearance and Settlement, An Introduction to DTCC*, at 2 ("DTCC uses a sophisticated infrastructure of physical equipment, software programs, and risk management systems to deliver essential services, including trade matching…").

"should have been tested through arms-length negotiation by separate representatives." *Id.* at 7. But Lead Plaintiff USS, who purchased Petrobras ADSs, had its claims based on Note purchases that settled at DTC dismissed (ECF No. 374 at 9-12), so Class Counsel had every incentive to maximize the value of the Settlement. "The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between *named parties* and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (emphasis added) (assessing conflict based on divergence of interests of "the named plaintiffs" from class members with different claims).

Additionally, while this Court held that clearance or settlement at DTC is insufficient on its own to satisfy *Morrison*'s domestic transaction prong, it is highly likely that most of the transactions in the Notes were domestic. Objectors Haynes and the Gielatas never even attempt to quantify the purported dilution to their recovery. *See Cobell v. Salazar*, 679 F.3d 909, 437-38 (D.C. Cir. 2012) (rejecting similar arguments made by attorney Frank, who represents objector Haynes here, that an intra-class conflict exists and that the Settlement allocates more to dismissed claims). In fact, a sampling of the Notes reveals that approximately 70% of the top Petrobras bondholders during Q4 2014 are U.S.-based institutional investors. *See* Gilmore Decl. Ex. F.[11] According to the classical axioms of probability formulated by A. N. Kolmogorov, as well as Bayes' Theorem (*see* 1 Alan Stuart and J. Keith Ord, *Probability and Statistical Inference*, *Kendall's Advanced Theory of Statistics* 288-90, (6th ed.1994), if U.S. investors held 70% of the Petrobras bonds during the Class Period, the conditional probability of any given trade involving a U.S. investor (on at least one side of the trade) increases to approximately 91%.[12]

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[11] Chart showing range of quarterly holdings of Petrobras bonds with CUSIP numbers 71645WAN, 71647NAM, and 71645WAP (source: Bloomberg Terminal).

[12] The Second Circuit defines irrevocable liability in the alternative, meaning a plaintiff may "allege facts leading to the plausible inference that . . . ***the purchaser incurred irrevocable liability***

Moreover where, as here, U.S. brokers facilitated the transactions in the Notes, either on behalf of the seller or the purchaser, *Morrison* is satisfied. *See U.S. v. Georgiou*, 777 F.3d 125, 135 (3d Cir. 2015) ("some of the relevant transactions required the involvement of a purchaser ***or*** seller working with a [U.S.] market maker," satisfying *Morrison*) (emphasis added).[13] DTC, through its affiliate, the National Securities Clearing Corporation, is the "leading provider of U.S. clearance, netting, risk management and settlement for *virtually all U.S. broker-to-broker trades involving* equities, *corporate*, and municipal *debts*[.]" *See* Consolidated Annual Financial Statements for 2013 and 2014 of DTCC, at 38. The DTC is credited with attracting the flow of investment capital to the U.S., indicating that most DTC-related trading activity actually occurs in the U.S. *See Guide to Clearance & Settlement, an Introduction to DTCC*, *supra* n.8, ECF. No. 353-2, at 1, 18. As DTC itself recognizes, institutions deposit securities at DTC in New York. ECF. No. 293-02, at 9-10. Thus, by using DTC, the brokers involved in the Notes transactions had an account set up at DTC, where money changed hands. Courts have held that the exchange of money in the U.S. supports domesticity. *See, e.g.*, *Absolute Activist,* 677 F.3d at 70 (facts concerning the "exchange of money" relevant to domesticity); *City of Pontiac Policemen's & Firemen's Ret. Sys. v. UBS AG*, 752 F.3d 173, 181 n.33 (2d Cir. 2014) (same); *U.S. v. Vilar*, 729 F.3d 62, 78 (2d Cir. 2013) ("[F]acts concerning the formation of the contracts and the exchange of money . . . are precisely the sort that we indicated may suffice to prove that irrevocable liability was incurred in the United States."); *see similarly Georgiou*, 777 F.3d at 136; *SEC v.*

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within the United States to take and pay for a security, ***or that the seller incurred irrevocable liability within the United States*** to deliver a security." *Absolute Activist,* 677 F.3d at 68 (emphasis added).

[13] In the context of over-the-counter transactions, a market maker, which "facilitates trading in a stock," is the equivalent of a broker-dealer. *Id.* at 131 n.7 (citing 15 U.S.C. §78c(a)(38)); 78c(a)(4), (5)).

Ahmed, No. 15-cv-675, 2018 WL 1585691, at *22 (D. Conn. Mar. 29, 2018).

These and other realities demonstrate that the plan of allocation is fair and reasonable. *See, e.g.*, *Sullivan,* 667 F.3d at 236-27 (rejecting objectors' arguments that differences in state laws (some of which may have precluded recovery) mandated a differential allocation in the percentage of recovery of class members, and noting with approval the District Court's reasoning that "there were no intra-class conflicts since all putative members experienced injury caused by [defendant], all sought recovery for overpayment caused by allegedly anticompetitive behavior, and all shared common interests in establishing damages . . . "); *In re Cendant*, 264 F.3d at 250 ("we are chary of holding that the respective legal strengths of the § 10(b) and § 11 claims involved here should have been factored into the fairness of the settlement determination. This would be a speculative enterprise at best, and the differences in strength of these claims" do not warrant a differential plan of allocation); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 961 n.6 (9th Cir. 2009) (rejecting objectors' argument that "an intra-class conflict exist[ed] based on speculation that the statute of limitations and tolling principles would allow only a subclass to pursue the section 7 [of the Clayton Act] claim.").[14] Here, weighing distribution for the relevant Petrobras Notes would have

[14] See similarly *In re VeriFone Holdings, Inc. Sec. Litig.*, No. C-07-6140 EMC, 2014 U.S. Dist. LEXIS 20044, at *13-15 (N.D. Cal. Feb. 18, 2014) (granting final approval of the settlement agreement, "which contains a release of claims of all investors, foreign or domestic, irrespective of whether *Morrison* applies," where plan of allocation did not treat domestic and foreign purchases differently); *In re APA Assessment Fee Litig.*, 311 F.R.D. 8, 20-21 (D.D.C. 2015) (reasoning that Rule 23 requires a settlement to be "fair, reasonable, and adequate—not ideal," and concluding that, while "there will also be some dilution with respect to the stronger claims and over-recovery on the weaker ones . . . the Court does not think any dilution here is great enough to impugn the overall fairness of the settlement."); *All Indirect Purchaser Actions v. Infineon Techs. AG* (*In re Dynamic Random Access Memory Antitrust Litig.*), No. M-02-1486-PJH, 2013 U.S. Dist. LEXIS 188116, at *320-23 (N.D. Cal. Jan. 7, 2013) (observing that "not every difference in position between settlement class members requires the creation of a formal subclass," and holding that "any weighted distribution plan would unduly complicate and prolong the settlement approval process and invite appeals in this litigation [and] … may ultimately turn on subjective

been entirely subjective, unreliable, and imprecise at best. It would also have had the effect of unnecessarily complicating the claims process to a high degree, requiring the claims administrator to undertake a painstaking analysis of each Note transaction to weigh whether or not said transaction meets the criteria set forth in *Absolute Activist.* The Court-appointed Claims Administrator, the Garden City Group, has confirmed that such a process, while feasible, would be both timely and costly, detracting from the recovery to Settlement Class Members and delaying the distribution of the Settlement.[15]

Additionally, Defendants here waived any *Morrison* challenge for settlement purposes, placing domestic and foreign purchasers on equal footing. "It is well-settled that non-jurisdictional arguments and defenses may be waived." *Young v. Conway*, 715 F.3d 79, 85 (2d Cir. 2013). The U.S. Supreme Court specifically addressed whether a potential extraterritorial application of Section 10(b) creates a jurisdictional problem and held that it does not. *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010). Here, the settlement agreement defined the settlement class to include people who purchased bonds listed on the NYSE or settled on DTC. By signing it, Defendants waived any *Morrison* defense for settlement purposes. In fact, they acted affirmatively to include those investors in the Class. Once Defendants waived their *Morrison* argument for settlement purposes, it was appropriate to treat all investors the same. *See Sullivan*, 667 F.3d at 302-03, 307 (rejecting intra-class conflict of interest objections as "beside the point," because even though they raised questions about some class members' standing to recover at all, the issue "is

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views as to the relative merits … of the totality of a class member's released claims, and spawn an ancillary round of litigation among class member objectors about who should get how much and on what basis.").

[15] *See* Supplemental Declaration of Niki L. Mendoza Regarding Class Notice, Exclusion Requests, Objections, and Claims Received to Date ("Mendoza Decl.") ¶¶17-20, Gilmore Decl. Ex. G.

not jurisdictional" and "is simply another element of proof for an antitrust claim, rather than a predicate for asserting a claim in the first place," and observing that the fact that defendant agreed to settle those state law claims "*marginalizes the objectors' concern* that state law variations undermine a finding of predominance.") (emphasis added); *In re Aetna UCR Litig.*, No. 07-cv-3541, 2013 WL 4697994, at *8 (D.N.J. Aug. 30, 2013) (rejecting argument that the proposed class representative was inadequate because "he did not exhaust his administrative remedies" as "*of no moment here*, where a majority of the absent class members have likely not sought the appropriate administrative remedies *and because Aetna has waived certain defenses, including exhaustion*, in the spirit of settlement." (emphasis added).

The plan of allocation was prepared by Class Counsel with input from Class Representatives' damages expert, an economist who specializes in plans of distribution in class settlements. In assessing a proposed plan of allocation, courts give great weight to the opinion of informed counsel. *See, e.g., In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400, 2010 WL 4537550, at *21 (S.D.N.Y. Nov. 8, 2010) (the conclusion of "experienced and competent counsel . . . that the Plan of Allocation is fair and reasonable is . . . entitled to great weight"); *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05-cv-10240, 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) ("In determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel.") Courts also consider the Class's reaction to a proposed plan of allocation. Here, the fact that the *only two* objections to the plan of allocation were made by objectors whose motives are to advance their own interests rather than to protect the hundreds of thousands of Petrobras shareholders, demonstrates the Settlement Class's overwhelming approval of the plan. *See, e.g., In re EVCI*, 2007 WL 2230177, at *11 (courts should "consider the reaction of a class to a plan of allocation"); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367

(S.D.N.Y. 2002) ("the favorable reaction of the Class supports approval of the proposed Plan of Allocation"). In grating preliminary approval, the Court approved the plan of allocation set forth in the Notice. (ECF No. 770). There is no reason to do a one-eighty.

The cases on which Haynes relies for the proposition that subclasses with different representation were required for those who purchased Notes in domestic versus foreign transactions (ECF. No. 797 at 7-8) are easily distinguishable. In *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, 827 F.3d 223, 233-34 (2d Cir. 2016), the same class counsel sought to represent two settlement classes with starkly distinct interests: one class sought *damages* under Fed. R. Civ. P. 23(b)(3) for past harm, while the other sought *injunctive relief* under Rule 23(b)(2) for future harm ("[t]he former would want to maximize cash compensation for past harm, and the latter would want to maximize restraints on network rules to prevent harm in the future"); *see also id.* at 232 ("'[I]t is obvious after *Amchem* that a class divided between holders of present and future claims . . . requires division into homogen[e]ous subclasses . . . with separate representation.'") (quoting *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 856 (1999)). In stark contrast, the Settlement Class here seeks damages for past harms, and there is no need whatsoever to separate the Class. *See* John C. Coffee, Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty in Representative Litigation*, 100 Colum. L. Rev. 370, 398 (2000) ("If subclassing is required for each material legal or economic difference that distinguishes class members, the Balkanization of the class action is threatened. Such a fragmented class might be unmanageable, certainly would reduce the economic incentives for legal entrepreneurs to act as private attorneys general, and could be extremely difficult to settle if each subclass (and its attorney) had an incentive to hold out for more."). Moreover, in *Interchange* and *Ortiz*, class members had no ability to opt out. *See Interchange*, 827 F.3d at 234 ("The trouble with unitary

representation here is exacerbated because the members of the worse-off [Rule] (b)(2) class could not opt out."); *Ortiz*, 527 U.S. at 846-47 (members of Rule 23(b)(1) class have no opportunity to opt out). This factor creates no impediment here, where class members are free to (and have) opted out, and all Settlement Class Members have purchased and sold the same set of securities during the Class Period.

B. Haynes's Objection That The Settlement Class Cannot Satisfy Rule 23(b)(3)'s Predominance Requirement Is Meritless

Haynes argues that determining domesticity involves individual questions, hence a Settlement Class is impossible to certify for lack of predominance. (ECF No. 797 at 9-11). But in fact, the inclusion of transactions that settled or cleared at DTC eviscerates any obstacles to predominance as well as any individualized issues with respect to those Notes. Moreover, as explained in Plaintiffs' briefs supporting preliminary and final approval of the Settlement (ECF No. 766 at 19-24; ECF No. 790 at 13-14), Plaintiffs have demonstrated that the issues subject to generalized proof (*i.e.*, where liability turns primarily on whether Defendants made false and misleading statements and omissions) outweigh those issues that are subject to individualized proof. *See In re Petrobras*, 862 F.3d at 274 n.27 (recognizing that even if the *Morrison* determination may involve individualized issues, common issues can *still* predominate); *Green v. Wolf Corp.*, 406 F.2d 291, 299-301 (2d Cir. 1968) (individual issues predominate where certain misrepresentations and omissions "are common to all . . . prospectuses," the fraudulent background is common to all those who might have been injured, and proof of intent by a defendant to manipulate is an element of the claim); *see also* ECF No. 790 at 22 n.8) (collecting cases); *see similarly Sullivan*, 667 F.3d at 299-302 (predominance met due to the extent of common questions: "the answers to questions about De Beers's alleged misconduct and the harm it caused would be common as to all of the class members, and would thus inform the resolution of the litigation if it

were not being settled"; variations in state law did not defeat predominance because they "likely fall into a handful of clearly discernible statutory schemes," still allowing the class action to proceed efficiently under a variety of precedents). Critically, the Second Circuit recognized that Plaintiffs "may assert class claims in connection with foreign-issued securities that do not trade on a domestic exchange" under a "wide range of conceivable circumstances." *Petrobras*, 862 F.3d at 275 n.27. For example, "Class plaintiffs may propose a mechanism for assembling a representative sample of the manner in which a given security will trade, with an emphasis on the domesticity factors highlighted in *Absolute Activist*." *Id.* Accordingly, it was possible—but unnecessary—for the Plaintiffs to propose, and for the Court to certify, subclasses.[16]

IV. The Objectors' Remaining Arguments Are Meritless

1. The Fee Request

Haynes, the Gielatas, and Bueno claim that the fee requested by Class Counsel is excessive. Some or all of them complain that Class Counsel's lodestar is overstated because it improperly includes Brazilian attorneys and that the contract attorney rates are "exorbitant." (Dkt. No. 797 at 18; Dkt. No. 813 at 17-18). As Class Counsel explained in detail in their letter to the Court on May 18, 2018, and in the Lieberman Decl. Dkt. No. 789 ¶361, the lodestar is reasonable and justified. *See* ECF. No. 814, incorporated herein by reference. Haynes and the Gielatas also attack the 1.78 multiplier and argue that the percentage of the recovery should be much less than the 9.5% of the settlement fund negotiated by Lead Plaintiff before the litigation began. (Dkt. No. 797 at

[16] Such subclasses could have included, for example, the following permutations based on common indicia of domesticity: (i) transactions where a purchaser/its agent/investment manager/anyone else acting on its behalf contracted in the U.S. to purchase the Notes; (ii) transactions where a seller/its agent/investment manager/anyone else acting on its behalf contracted in the U.S. to sell the Notes; (iii) purchases in the IPO from U.S. underwriters; (iv) transactions where the counterparty or its representative was located in the U.S. when it agreed to sell the class member (or its broker or intermediary) the security, and the transaction was made in U.S. dollars; and (v) transactions that cleared or settled at DTC.

19-23; Dkt. No. 813 at 8). But, as demonstrated at length in Class Counsel's opening papers, the fee percentage falls roughly in the middle of the range of percentages awarded in class actions where recovery exceeds $1 billion (with fee awards in the range of 1.7% to 31.3%) and, assuming the fee request in the *Foreign Exchange* Action is granted, it would represent the fourteenth largest percentage award out of twenty-nine $1-billion-plus recoveries. Dkt. No. 792 at 4.

2. ***Cy Pres***

Haynes attacks Plaintiffs' *cy pres* selection, but the "trigger point" for considering *cy pres* has not been reached. *See Rodriguez,* 563 F.3d at 966 (stating that *cy pres* "becomes ripe only if the entire settlement fund is not distributed to class members."). At this stage of the settlement, disbursement from the settlement fund is not imminent and the amount potentially remaining in the settlement fund is unknown. Moreover, any *cy pres* award recipients are subject to court approval. Dkt. 767-10 ¶34.

3. **Breakdown of Lodestar**

Haynes demands that Class Counsel submit a breakdown of the lodestar (ECF No. 797 at 17-18), despite the fact that such a breakdown is not required by *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 48-50 (2d Cir. 2000), which states that where, as here, the lodestar is "used as a mere cross-check" to a percentage calculation, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *See also In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 281 (3d Cir. 2009). Here, Class Counsel did provide the Court with each time entry and a 38-page rebuttal letter to the issues raised by Defense Counsel, as well as a line-by-line rebuttal to over 17,000 entries questioned by Defense Counsel. (ECF. No. 814).

V. Additional Responses Concerning Fees

Class Plaintiffs respectfully submit this response to the Motions of Wolf Popper LLP ("Wolf Popper") and their Brazilian Counsel, Almeida Advogados ("Almeida"), Kahn Swick &

Foti LLC ("KSF") and Bernstein Litowitz Berger & Grossman LLP ("BLBG's") for an award of attorneys' fees and reimbursement of expenses.

1. **Wolf Popper & Almeida's Motion**

Wolf Popper & Almeida collectively request $307,629 in attorneys' fees and reimbursement of $1,219.66 in expenses. Mem. in Supp. of Mot. for an Award of Attorneys' Fees & Reimbursement of Expenses to Counsel Filing the Initial Kaltman Action, at 1 (Apr. 20, 2018), ECF No. 778. With respect to attorneys' fees Wolf Popper submits a lodestar of $107,629 primarily, for its work in filing the first filed complaint in this Action, *Kaltman v. Petroleo Brasileiro S.A. – Petrobras, et. al.,* and its filing of the first publication notice pursuant to § 21D(a)(3)(A)(i) of the PSLRA ("PSLRA Notice"), which triggered the deadline for putative class members to file motions for appointment as lead plaintiff. Decl. of Chet B. Waldman, at ¶¶3-6, 11 (Apr. 20, 2018), ECF No. 779. Almeida submits a lodestar of $220,199.98 in support of its Motion, which it states reflects the firm's assistance in working with Wolf Popper to draft the *Kaltman* complaint, including investigating the news reports and publicly available information regarding the Lavo Jato investigation. Decl. of Andre de Almeida Rodrigues, at ¶¶2-4 (Apr. 20, 2018), ECF No. 780.

With respect to their request for reimbursement of expenses, Wolf Popper and Almeida seek reimbursement of $1219.66 in costs for their filing fee, press release the PSLRA Notice and online research. Class Plaintiffs believe that this Motion is reasonable, and that the requested fees and expenses are an appropriately modest amount for the obvious benefit to the Class of commencing the first action and publishing the PSLRA notice. Moreover, movants note that "prior to, and at the time of the filing of the *Kaltman* Complaint, no law firm had issued a press release announcing an investigation into the Company" and that the potential action "had managed to slip past other law firms." ECF No. 778, at 3. Class Plaintiffs observe that there is some truth

to this assertion, in light of the foreign nexus of the allegations in this Action. As such, Class Plaintiffs recommend that the Wolf Popper & Almeida application be granted in its entirety. With respect to the attorneys' fees portion of this Motion, Class Counsel agrees to pay the requested amount out of its attorney fee award.

2. **KSF's Motion**

KSF requests $589,915.50 in attorneys' fees and reimbursement of $2,650 in expenses. Mem. in Supp. of Kahn Swick & Foti, LLC's App. for Award of Attorneys' Fees and Expenses, at 1 (Apr. 20, 2018), ECF No. 782. KSF's request is based on the lodestar it incurred in this case from March 1, 2015 through the present. Significantly, KSF seeks to recover its lodestar only for work performed at the direction of Class Counsel, pursuant to its participation on the Plaintiffs' Steering Committee for the Individual Actions, which coordinated certain discovery and work which was common to both the Individual Actions and the Class Actions pursuant to this Court's Case Management Order. Decl. of Kim E. Miller, at 1 (Apr. 20, 2018), ECF No. 783. KSF is not seeking attorneys' fees for work which was done solely on behalf of its client, Aura Capital, Ltd. ("Aura Capital"), which has opted to abandon its Individual Action and participate in the Settlement. *Id.* at 2. With respect to its request for reimbursement of expenses, KSF's $2,650.50 request consists primarily of court reporter/transcript costs, photocopies, and legal research.

Class Counsel acknowledges that KSF performed the work for which it seeks compensation at Class Counsel's request. Class Counsel further believes that these assignments were performed with proper diligence and care. Significantly, Class Plaintiffs believe that there is an additional value to having a sophisticated institutional investor such as Aura Capital confirm the excellent result achieved by the Settlement by opting to discontinue its Individual Action, for which it has committed significant time and resources in litigating and remain in the Settlement Class. In light of the work performed and benefit for the Class described above, Class Plaintiffs

recommend that KSF's Motion be granted in its entirety. With respect to KSF's attorneys' fees, Class Counsel agrees to pay the requested amount from its fee award.

3. **BLBG's Motion**

BLBG seeks payment of attorneys' fees based upon a lodestar of $2,114,085, to be allocated at Lead Counsel's discretion, and reimbursement expenses of $1,146,873, for work performed and expenses incurred directly in relation to the prosecution of its claims on behalf of Individual Action Plaintiffs in the *Prudential Ins.*, *Hartford Mutual, MassMutual* and *Pacific Funds* Actions ("BLBG Individual Action Plaintiffs"). Application of Bernstein Litowitz Berger & Grossmann LLP for Reimbursement of Attorneys' Fees and Litigation Expenses, at 1 (Apr. 20, 2018), ECF No. 785. Similar to KSF's application, Class Plaintiffs recognize that there is a benefit to the Class by having sophisticated institutional investors such as the BLBG Individual Action Plaintiffs, which likely assumed that they would extract a premium compared to the Settlement Class, provide independent confirmation of the excellent result achieved by Class Plaintiffs by opting to discontinue their action and participate in the Settlement.

Significantly, unlike KSF's fee application, BLBG's application includes time spent directly prosecuting the claims on behalf of the BLBG Individual Action Plaintiffs and is not limited to work performed at the direction of Class Counsel. As such, further scrutiny of its application is appropriate. Indeed, as set forth in the Lieberman Declaration, the existence of over 500 individual plaintiffs was hardly a benefit to the Class Action. First, coordination of the prosecution with the Individual Action Plaintiffs, represented by multiple counsel with varying opinions on how to litigate the common claims, was a cumbersome and distracting task. Lieberman Decl., at 146 ¶ 365 (Apr. 23, 2018), ECF No. 789. Moreover, the existence of more than 500 opt-out plaintiffs diluted the potency of this Class Action and was referenced by Defendants as a reason to deny Class Plaintiffs' Motion for Class Certification. *See* Dkt. No. 295

at 2-4, 11. Perhaps most significantly, the various Individual Plaintiffs (including those represented by BLBG) retained no less than three damages experts, each of whom alleged a significantly lower inflation per share than did Class Plaintiffs' expert. The specter of four experts (including Defendants') each testifying at trial that damages were significantly lower than those alleged by Class Plaintiffs' expert was a serious threat to Class Plaintiffs' damages expert's opinion, potentially resulting in a successful motion *in limine* by Defendants, and at the very least hopelessly confusing a jury about an already arcane subject.

As such, while BLBG's work done at the direction of Class Counsel should certainly be compensable, Class Plaintiffs question whether hours billed towards representing Individual Action plaintiffs for the ostensible purpose of securing a larger recovery than Settlement Class members is truly beneficial to the Class. Nevertheless, to BLBG's credit, it does not seek compensation of the entirety of its $2,114,085 lodestar, but rather wishes that lodestar to be recognized by the Court and allocated at Class Counsel's discretion. ECF No. 785 at 19. With that caveat, Class Plaintiffs endorse BLBG's application with respect to attorneys' fees, with the understanding that Class Counsel will apply a significant discount to the lodestar in light of the mixed benefit to the Class resulting from the Individual Actions. As the Settlement Fund, rather than Class Counsel, will be paying for reimbursement of expenses, BLBG's Motion for reimbursement of $1,146,873 in expenses warrants additional scrutiny. Class Plaintiffs observe that $256,867.35 of the requested expenses is attributable to the retention of the Direct Action Plaintiffs' loss causation/damages expert. Class Plaintiffs assume that this expert is Dr. Vinita Juneja, who submitted an expert report on behalf of several Individual Action Plaintiffs. Liberman Decl., ECF No. 789, at 77 ¶ 189. While Dr. Juneja is known to be a well-qualified damages expert, Class Plaintiffs do not believe that her report was beneficial to the Settlement Class. Specifically,

Dr. Juneja opined on a significantly lower damages per share estimate than Class Plaintiffs, a fact that was not lost upon Defendants throughout the course of the litigation as well as mediation discussions. As such, Class Plaintiffs believe that her report in this case was detrimental to Class members, and reimbursement of expenses towards her report should be denied.

The remaining items for which BLBG seeks reimbursement do not appear to be for expenses that were facially adverse to the Settlement Class' interests. As such, Class Plaintiffs suggest that the Court consider the following factors in weighing BLBG's expense reimbursement request: 1) the benefit of the Settlement Class to having sophisticated institutional investors represented by well qualified counsel independently verify the merits of the Settlement, ultimately concluding that they were unlikely to achieve a better recovery on their own; 2) BLBG did perform certain litigation tasks at the direction of Class Counsel; 3) Class Plaintiffs' observation that while there was some benefit to BLBG defending the depositions and participating in discovery of investment managers employed by their clients, said depositions were unlikely to have been noticed had these Individual Plaintiffs not filed their own lawsuits; 4) BLBG's clients were litigating this case not for the purposes of improving the Class's recovery, but rather their own, potentially at the cost of the Class; and 5) while BLBG's Individual Action Plaintiffs' recoverable damages accounted for less than .002% of those of the Settlement Class, it is requesting reimbursement of nearly 7% of the total expenses requested by Class Counsel.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant final approval of the Settlement and award the requested attorneys' fees and expenses, and grant the requested awards to Lead and Named Plaintiffs.

Dated: May 25, 2018

Respectfully submitted,

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Exhibit 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 07-7114 CAS (FMOx)	Date	August 27, 2010
Title	MIDDLESEX COUNTY RETIREMENT SYSTEM ET AL v. SEMTECH CORP. ET AL		

Present: The Honorable	CHRISTINA A. SNYDER	
VALENCIA VALLERY	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **(IN CHAMBERS) DEFENDANT SEMTECH'S MOTION FOR CLASS CERTIFICATION** (filed 04/19/2010)

I. INTRODUCTION AND BACKGROUND

On March 31, 2008, this Court consolidated related actions and appointed the Mississippi Public Employees' Retirement System ("MPERS") as lead plaintiff for a class of purchasers of the securities of defendant Semtech Corp. ("Semtech"). On May 30, 2008, plaintiff filed a consolidated amended class action complaint ("CAC") against defendants Semtech, John D. Poe, Jason L. Carlson, Mohan R. Maheswaran, David G. Franz, Jr., and John M. Baumann. Plaintiff alleges that Semtech's senior officers engaged in a scheme to backdate Semtech's stock options, the disclosure of which negatively impacted the price of Semtech's stock. CAC ¶¶ 3-10.

Specifically, plaintiff alleges claims for (1) violation of § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) ("Exchange Act") and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, against all defendants; and (2) violation of § 20(a) of the Exchange Act against the individual defendants. Plaintiff alleges that the defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of Semtech's securities in an effort to maintain artificially high market prices for Semtech's securities. CAC ¶ 203.

On May 12, 2010, MPERS filed a Motion for Class Certification. On June 14, 2010, defendant Semtech filed an Opposition to Lead Plaintiff's Motion for Class Certification. On the same day, defendant John M. Baumann filed a motion joining

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Semtech's opposition. Defendant John D. Poe did so the following day, and defendant David G. Franz did so on June 17, 2010. On July 19, 2010, MPERS filed a Reply in Support of Lead Plaintiff's Motion for Class Certification. On August 2, 2010, defendants filed a Sur-Reply in Opposition to Lead Plaintiff's Motion for Class Certification, along with Objections and Motion to Strike Reply Declaration of Scott D. Hakala. On August 10, 2010, Semtech filed an Opposition to Defendants' Objections and Motion to Strike Reply Declaration of Scott D. Hakala. On August 17, 2010, defendants filed a Reply in Support of Defendant's Objections and Motion to Strike Reply Declaration of Scott D. Hakala. After carefully considering the arguments set forth by both parties, the Court finds and concludes as follows.

II. LEGAL STANDARD

"Class actions have two primary purposes: (1) to accomplish judicial economy by avoiding multiple suits, and (2) to protect rights of persons who might not be able to present claims on an individual basis." Haley v. Medtronic, Inc., 169 F.R.D. 643, 647 (C.D. Cal. 1996) (citing Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983)). Fed. R. Civ. Proc. 23 governs class actions. A class action "may be certified if the trial court is satisfied after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." Gen. Tel. Co. of the Sw. v. Falcon, 457 U.S. 147, 161 (1982).

To certify a class action, plaintiffs must set forth facts that provide prima facie support for the four requirements of Rule 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Dunleavy v. Nadler (In re Mego Fir. Corp. Sec. Litig.), 213 F.3d 454, 462 (9th Cir. 2000) (internal quotations omitted). These requirements effectively "limit the class claims to those fairly encompassed by the named plaintiff's claims." Falcon, 457 U.S. at 155 (quoting Califano v. Yamasaki, 442, U.S. 682, 701 (1979)). Before certifying a class, a district court must determine that the requirements of Rule 23 "are actually met, not simply presumed from the pleadings." Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 582 (9th Cir. 2010) (en banc).

If the district court finds that the action meets the prerequisites of Rule 23(a), the court must then consider whether the class is maintainable under one or more of the three alternatives set forth in Rule 23(b). Plaintiffs seek certification under Rule 23(b)(3). A class is maintainable under Rule 23(b)(3) where "questions of law or fact common to the

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members of the class *predominate* over any questions affecting only individual members," and where "a class action is *superior* to other available methods for fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3) (emphasis added). "The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998) *(citing* Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997)). The predominance inquiry measures the relative weight of the common to individualized claims. Id. "Implicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy." Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1189 (9th Cir. 2001) *(*citing Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996)). In determining superiority, the court must consider the four factors of Rule 23(b)(3): (1) the interests members in the class have in individually controlling the prosecution or defense of the separate actions; (2) the extent and nature of any litigations concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely encountered in the management of a class action. Id. at 1190-1993. "If the main issues in a case require the separate adjudication of each class member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate." Id. (citing 7A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, Federal Practice and Procedure § 1778 at 535-39 (2d. ed. 1986) (hereinafter "Wright, Miller & Kane")).

III. DISCUSSION

A. Rule 23(a) requirements

1. Numerosity

Rule 23(a)(1) requires the members of a proposed class to be so numerous that joinder of all of the class members would be impracticable. Fed. R. Civ. Proc. 23(a). However, "[i]mpracticability does not mean 'impossibility,' but only the difficulty or inconvenience in joining all members of the class." Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913-14 (9th Cir. 1964) (quoting Advertising Specialty Nat. Ass'n v. FTC, 238 F.2d 108, 119 (1st Cir. 1956)).

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Plaintiffs seek to certify a class of all persons and entities who purchased Semtech's common stock during the class period, and assert that "no fewer than 65 million shares of Semtech common stock [were] outstanding and actively traded on the NASDAQ" during the Class Period. Mot. At 12. Defendants do not appear to dispute that plaintiffs satisfy the numerosity requirement in this case. Accordingly, the Court concludes that plaintiffs have satisfied the numerosity requirement.

2. **Commonality**

Commonality requires "questions of law or fact common to the class." Fed. R. Civ. Proc. 23(a)(2). The commonality requirement is generally construed liberally; the existence of only one common legal and factual issue may satisfy the requirement. Jordan v. County of Los Angeles, 669 F.2d 1311, 1320 (9th Cir. 1982). The commonality test is "qualitative rather than quantitative" and even "one significant issue common to the class may be sufficient to warrant certification." Dukes v. Wal-Mart Inc., 509 F. 3d 1168, 1177 (9th Cir. 2007). Plaintiffs argue that the instant litigation involves a number of common questions including: "whether the Defendants violated federal securities laws; whether the Defendants misrepresented material facts about the Company's financial condition; whether the SEC filings, press releases and other public statements made to the investing public during the Class Period contained material misstatements or omitted to state material information; whether and to what extent the market prices of Semtech's common stock were artificially inflated during the Class Period because of alleged material representations and/or omissions; whether reliance may be presumed pursuant to fraud-on-the-market doctrine; whether the Defendants acted with scienter; and whether the members of the Class have sustained damages as a result of Defendant's conduct and, if so, the proper measure of damages." Mot. at 14. Defendants do not appear to dispute that plaintiffs satisfy the commonality requirement in this case. The Court therefore concludes that plaintiffs have satisfied the commonality requirement.

3. **Typicality**

Typicality requires a determination of whether the named plaintiff's claims are typical of those of the proposed class they seek to represent. Fed. R. Civ. Proc. 23(a)(3). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of

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absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020; Schwartz v. Harp, 108 F.R.D. 279, 282 (C.D. Cal. 1985) ("A plaintiff's claim meets this requirement if it arises from the same event or course of conduct that gives rise to claims of other class members and the claims are based on the same legal theory."). A plaintiff may be found to be atypical if it would be subject to unique defenses such that absent class members will suffer because that plaintiff will be preoccupied with defenses unique to it. Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (1992).

Plaintiffs argue that "[t]he claims and injuries alleged by MPERS are typical of and co-extensive with the claims and injuries of other Class members. The claims of each Class member arise from the same uniform course of conduct, namely, Defendants' alleged material misstatements . . . . Like all Class members, Lead Plaintiff purchased Semtech stock during the Class Period subject to the same alleged material misstatements and was damaged when the truth about those misstatements was revealed to the market and Semtech's stock price plummeted as a result." Mot. at 16.

Semtech does not appear to challenge this characterization of the lead plaintiff's claims, but argues in opposition that MPERS is not a typical class representative because it is subject to unique defenses. Opp. At 6. Defendant argues that the availability of these defenses vis-a-vis MPERS makes MPERS an atypical class member, citing Landry v. PriceWaterhouse Chartered Accountants, 123 F.R.D. 474, 476 (S.D.N.Y. 1989) ("[W]hether these defenses will be successful is of no matter. The fact that plaintiffs will be subject to [unique] defenses renders their claims atypical."). Specifically, defendant alleges that "MPERS continued to execute substantial and profitable purchases of Semtech stock after the alleged 'corrective disclosures' which subjects it to an individualized defense for its lack of reliance on the integrity of the market," and cites cases supporting this proposition. Opp. at 6. See Berwecky v. Bear, Sterns & Co., 197 F.R.D. 65, 69 (S.D.N.Y. 2000) ("[A] person that increases its holdings in a security after revelation of an alleged fraud involving that security is subject to the unique defenses that preclude him from serving as a class representative"). Semtech further argues that testimony by MPERS' portfolio manager, who explained that "he continued to purchase Semtech stock likely because 'the bad news was priced into the stock' and the belief that Semtech 'would perform well relative the market,'" indicates that MPERS engaged in trading behavior of "precisely the type which courts have expressly rejected as atypical and incapable of supporting class certification," citing Rocco v. Nam Tai Electronics,

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Inc., 245 F.R.D. 131, 135-36 (S.D.N.Y. 2007). Opp. At 9-10.

MPERS replies that defendants' argument and the cases they cite run counter to the weight of authority among courts in the Ninth Circuit, which hold that post-disclosure purchase of stock does not render a plaintiff atypical. See, e.g., In re Providian Financial Corp. Securities Litigation, No. 01-3592, 2004 WL 5684494 (N.D. Cal. Jan. 15, 2004); In re Connectics Sec. Litig., 257 F.R.D. 572, 576 (N.D. Cal. 2009); In re Pilgrim Sec. Litig., 1996 WL 742448, at *5 (C.D. Cal. Jan. 23, 1996). Plaintiff contends that these purchases should not sever the presumption of reliance to which it would otherwise be entitled because they were made based on continued reliance on the integrity of the market and a belief that, following the corrective disclosures, accurate information was priced into the stock and that it might perform well moving forward.

The Court is persuaded by plaintiff's reasoning and the line of cases to which it refers and finds that MPERS' post-disclosure purchases do not defeat typicality. See, e.g., In re Providian Financial Corp.Sec. Litig., 2004 WL 5684494 at *4 (collecting "cases holding that a proposed class representative's purchases after full and partial disclosures do not destroy typicality," and holding that typicality was met where "plaintiff's claims arose from the same sets of events and course of conduct that gave rise to the claims of other class members," and "[d]efendants . . . failed to offer sufficient evidence to establish that [lead plaintiff] would be subject to unique defenses such that absent class members will suffer because [lead plaintiff] will be preoccupied with defenses unique to it"). See also In re Novatel Wireless Securities Litigation, No. 08-1689, 2010 U.S. Dist. LEXIS 49543 at *22 (S.D. Cal. May 12, 2010) (compiling cases holding that "post-disclosure purchases do not rebut the presumption of reliance on the market price with regard to the initial purchase of stock," including Feder v. Electronic Data Sys. Corp., 429 F. 3d 125, 137 (5th Cir. 2005) ("Reliance on the integrity of the market prior to the disclosure of alleged fraud . . . is unlikely to be defeated by post-disclosure reliance on the integrity of the market") and finding plaintiff "sufficiently typical because its claims are co-extensive with the class' claims, and they are not subject to a unique defense that would threaten to become the focus of the litigation," despite post-disclosure purchase of stock). As in In re Providian Financial Corp. Sec. Litig., at least some of the post-disclosure purchases in question here occurred after the class period, and the Court agrees with the court in In re Providian that the fact of these purchases do not give rise to a unique defense that would preoccupy lead plaintiff or its

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counsel.

Additionally, defendant alleges that MPERS will be subject to a unique defense based on the fact that "MPERS had unique access to information through its financial advisers' numerous meetings with Semtech management that typical class members did not have." Opp. at 6. According to defendant, this makes MPERS an atypical plaintiff based on its "unique access to information concerning Semtech's operations during the period at issue, as well as the significance of the SEC investigation." Opp. at 11. MPERS replies that meetings between the management of publicly traded companies and institutional investors are commonplace, and that there is no evidence that MPERS' investment advisor was given any non-public information at these meetings or that he "based its investment in Semtech securities on anything gleaned from meeting with Semtech management." Reply at 7. The Court is not convinced that the fact that there were meetings between MPERS' investment advisors and officers of Semtech subjects MPERS to a "unique defense that would threaten to become the focus of the litigation." In re Novatel Wireless Sec. Litig., 2010 U.S. Dist. LEXIS 49543 at *22. As noted by plaintiff, these types of meetings are commonplace among representatives of institutional investors and publicly traded companies. The goal of "[t]he PSLRA [is] to increase the likelihood that institutional investors will serve as lead plaintiffs." In re Providian Financial Corp. Sec. Litig., 2004 WL 5684494 at *3, citing In re Worldcom, Inc. Sec. Litig., 2003 WL 22420467 at *9. "Such investors are likely to use advisors, to invest conservatively in securities they consider undervalued by the market, and on occasion even to communicate directly with the company in which they are investing to verify or better evaluate its public disclosures. Making careful investment decisions does not disqualify an investor from representing a class of defrauded investors or from relying on the presumption of reliance that is ordinarily available . . . in securities fraud actions." In re Providian Financial Corp. Sec. Litig., 2004 WL 5684494 at *3, citing In re Worldcom, Inc. Sec. Litig., 2003 WL 22420467 at *9.

Because defendants have not shown "not merely that plaintiff will be subject to a unique defense . . . [but] that the distraction due to this unique defense will harm the rest of the class," and MPERS has otherwise shown that its claims are reasonably co-extensive with those of absent class members, the Court finds that MPERS satisfies the typicality requirement. In re Providian Financial Corp. Sec. Litig., 2004 WL 5684494 at 4.

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4. **Adequacy**

The adequacy of representation requirement of Rule 23(a)(4) involves a two-part inquiry: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020.

MPERS asserts that it "is not aware of any conflicts of interest it has with the rest of the proposed Class, . . . [and] is fully prepared to prosecute the action vigorously on behalf of the Class." Mot. At 17. It further argues that "[a]s an institutional investor, [it] has the resources and the commitment to litigate these claims effectively," and has retained counsel with significant expertise in securities class actions." Id.

Semtech argues in opposition that MPERS is inadequate as a class representative because: (1) an appearance of a conflict of interest is created by political contributions made by individuals associated with counsel retained by MPERS to the Attorney General of Mississippi,[1] (2) a failure of MPERS to properly "oversee the litigation" and supervise counsel, and (3) MPERS is a "professional plaintiff" as defined under PLSRA. Opp. 2-3, 8-12.

The Court does not believe that the political contributions brought to its attention create a conflict of interest between MPERS and other class members. The Court agrees with the reasoning of the court in Countrywide, 2:07-cv-05295-MRP-MAN, slip op. at

[1]Semtech requests that the Court take judicial notice of candidate's reports of receipts and disbursements in support of this argument based on their status as public records. The Court grants this request. As to the articles at Exhibits C, D, and F regarding this issue, the Court can judicially notice their publication but not the truth of the matters asserted therein. As to the other matters for which Semtech has requested judicial notice, the Court will take notice of the docket at exhibit J and the complaint at exhibit G. The Court will take judicial notice of the publication/release of the letter at exhibit E, the press release at exhibit H, and the article regarding Semtech's restatements at exhibits H & I, but cannot take judicial notice of these documents for the truth of the matters asserted therein. Fed. R. Evid. 201.

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35-36, as cited by plaintiff: "attorneys are free to exercise their right to donate to politicians who support their views. Defendants do not allege that the donations violated any law. Plaintiffs' counsel note that their policy preferences align with the [elected official's] policy stance on securities litigation. . . . The most pertinent facts are: [counsel] was retained for this matter after career staff recommended [counsel]. . . . based on [counsel]'s independent investigation of this case, [and] [counsel]'s written proposal for handling this case." In Countrywide, the court went on to note that "[c]ourts have long been less enamored of securities litigation pay-to-play arguments than litigants and the press, who might consider such conduct quite distasteful," citing In re Cendant Corp. Litig., 182 F.R.D. 144, 148-49 (D. N.J. 1998) (dismissing, in the PSLRA lead plaintiff selection context, finding such conduct to be legal and the requested inference "speculative"), disapproved on other grounds, 264 F. 3d 201 (3d Cir. 2001).[2]

The Court is also satisfied that MPERS is effectively managing the litigation. Plaintiff notes deposition testimony by Mr. Neville, the staff member of MPERS in charge of the litigation, that shows that MPERS is actively monitoring the work of counsel. Moreover, it appears that plaintiff's counsel has extensive experience and resources and its briefing suggests that it is competent to handle this matter effectively on behalf of the class. This Court is satisfied that lead plaintiff and its counsel will prosecute the action vigorously on behalf of the class.

The Court also rejects defendants' argument that class certification should be denied because MPERS has served as lead plaintiff in more than five securities class actions in a three-year period. Defendants cite no authority where class certification has been denied as to an institutional investor on these grounds in a securities class action, and the Court has found none. When considering this issue in determining the lead plaintiff in the preliminary stages of a securities class action, courts have noted that the 5-

[2]Defendants' counsel argued at oral argument that Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset Servicing and Securitization, LLC, 616 F.Supp. 2d 461, 467 n.3 (S.D.N.Y. 2009) should apply in this case, rather than the reasoning found in Countrywide. In addition to the fact that Ironworkers is not binding, it appears that the language relied on is dicta, and does not necessarily inform the result argued for by defendants herein: namely the conclusion that MPERS is an inadequate plaintiff.

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in-3 rule is discretionary and legislative history suggests that it was not intended to apply to institutional plaintiffs. See, e.g., In re Critical Path, Inc. Sec. Litig., 156 F. Supp. 2d 1102, (2001), In re SiRF Tech. Holdings, Inc. Sec. Litig., 08-0856, 2008 WL 2220601 at *3. See also, In re DaimlerChrylser AG Sec. Litig., 216 F.R.D. 291, 299 (D. Del. 2003) ("The plain language of this section expressly recognizes that courts have discretion to depart from the prohibition in certain circumstances. These circumstances are illuminated by the relevant legislative history which express a clear Congressional intent to exempt institutional investors from the professional plaintiff restrictions"). While "there may be instances in which an institutional investor could, in light of financial or other pressures, be unable to manage multiple lawsuits," defendants have not presented evidence to demonstrate that is the case here. In re SiRF Tech. Holdings, Inc. Sec. Litig., No. 08-0856, 2008 WL 2220601 at *3. In light of the foregoing, the Court finds it appropriate to exercise its discretion to permit plaintiff to serve as class representative notwithstanding the fact that it has served as lead plaintiff in more than five actions in the past three years. The Court finds MPERS is adequate as a class representative.

B. Rule 23(b)(3) Requirements

Certification under Rule 23(b)(3) is proper "whenever the actual interests of the parties can be served best by settling their differences in a single action." Hanlon, 150 F.3d at 1022 (internal quotations omitted). As noted above, Rule 23(b)(3) calls for two separate inquiries: (1) do issues common to the class "predominate" over issues unique to individual class members, and (2) is the proposed class action "superior" to other methods available for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). The latter requirement requires consideration of the difficulties likely to be encountered in the management of this litigation as a class action, including, especially, whether and how the case may be tried. In making these determinations, the Court does not decide the merits of any claims or defenses, or whether the plaintiffs are likely to prevail on their claims. Rather, the Court determines whether plaintiffs have shown that there are plausible class-wide methods of proof available to prove their claims. This analysis should be rigorous and "will often . . . require looking behind the pleadings to issues overlapping with the merits of the underlying claims." Dukes, 603 F. 3d at 594.

1. Predominance and Commonality

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"Predominance is a similar inquiry to commonality, but requires a heightened showing that facts and issues common to the class predominate over any individual issues that might be present." Fed. R. Civ. P. 23(b)(3). The 'predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" In re Cooper Companies Inc. Sec. Litig., 154 F.R.D. 628, (C.D. Cal. 2009), citing Amchem Products, Inc. V. Windsor, 521 U.S. 591 (1997). MPERS argues that the "common questions outweigh any individual issues. The allegations focus on the Defendants' course of conduct common to all members of the Class, whether this conduct violated the securities laws, and what effect any such violations had on the price of Semtech's stock." MPERS additionally argues that with respect to the calculation of damages, "the method of calculating damages will be formulaic and mechanical (the same for all class members), and only the actual amount of each individual's damages will be different." Motion at 21. MPERS further argues that "courts have consistently recognized that common liability issues predominate over individual damages calculations in a securities case." Id. The Court agrees with the reasoning of the cases cited by plaintiff, and defendant does not challenge the argument that the common issues will predominate in the calculation of damages.

Moreover, MPERS argues that "individualized proof of reliance is not necessary" because it is entitled to a presumption of reliance pursuant to the fraud-on-the-market doctrine. "Before an investor can be presumed to have relied upon the integrity of the market price, however, the market must be 'efficient' . . . . In an efficient market, the defendant's misrepresentations are said to have been absorbed into, and are therefore reflected in, the stock price. Conversely, when a market lacks efficiency, there is no assurance that the market price was affected by the defendant's alleged misstatement at all." Bowe v. PolyMedica Corp., 432 F. 3d 1, 7-8 (1st Cir. 2005). Defendants argue that plaintiff has not demonstrated that it is entitled to this presumption because it has not established that the securities at issue traded in an "efficient market" during the class period.

To determine whether there is an efficient market for a particular stock, Ninth Circuit courts have used the factors set out in Cammer v. Bloom, 711 F. Supp. 1264 (D. N.J. 1989). "The Cammer factors are designed to help make the central determination of efficiency in a particular market. They address five characteristics of the company and its stock: first, whether the stock trades at a high weekly volume; second, whether securities

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analysts follow and report on the stock; third, whether the stock has market makers and arbitrageurs; fourth, whether the company is eligible to file SEC registration form S-3, as opposed to form S-1 or S-2; and fifth, whether there are 'empirical facts showing a cause and effect relationship between unexpected corporate events or financial releases and an immediate response in the stock price." Binder v. Gillespie, 184 F. 3d 1059, 1095 (9th Cir. 1999). Defendants appear to challenge only whether plaintiff has demonstrated the fifth Cammer factor. Thus, while MPERS has proffered a declaration by Dr. Scott Hakala addressing all five factors, defendants argue that his methodology is fatally flawed and therefore cannot carry plaintiff's burden on the question of the cause and effect relationship between the disclosure of corporate events and an immediate response in the stock price. Defendants do not submit any contrary expert testimony.

The Court agrees with plaintiff that, although not determinative, "whether or not a security is traded on a sophisticated system such as the NASDAQ is 'relevant in an efficiency analysis.'" Reply at 19, citing In re PolyMedica Corp. Sec. Litig., 453 F. Supp. 2d 260, 266 (D. Mass. 2006). The Court finds that the fact that Semtech stock is traded on NASDAQ, in combination with the expert opinion of Dr. Hakala on the Cammer factors, establish that Semtech stock traded in an efficient market and that plaintiff is entitled to the presumption of reliance based on the fraud-on-the-market theory. See, e.g., Huberman v. Tag-it Pacific Inc., No. 07-55648, 314 Fed. Appx. 59, 63 (9th Cir. 2009) (unpub.) ("Here, where [defendant's stock] was traded on a national exchange and the stock prices reflected public information an efficient market is present. Therefore, the fraud-on-the-market presumption applies, eliminating the need for individual reliance by each class member."); Cf. In re Countrywide Fin. Corp. Sec. Litig., 588 F. Supp. 2d 1132, 1199 n. 80 (noting that "the fraud on the market presumption usually makes a plaintiff's job–even with the particularity requirement–quite straightforward. Plaintiffs can frequently point to an archetypal efficient market (e.g., the market for an actively traded stock on the New York Stock Exchange)").

The Court believes Dr. Hakala's declaration and study sufficiently establish that "Semtech's share price movements were reasonably rapid and reflected public

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information in a manner consistent with market efficiency."[3] Reply at 21-22, Hakala Decl. at ¶ 6. See, e.g. Hakala Decl. ¶¶ 20-23 and accompanying exhibits (showing statistically significant declines in stock prices in the days immediately surrounding corporate announcements), ¶ 10 (listing financial analysts "covering Semtech during the Class Period"), ¶ 7(listing 1,208,653 shares as the "average daily trading volume during the class period"). Hakala's expert report supports similar allegations of decreased prices for Semtech stock following disclosures made about the alleged backdating made by plaintiff in their Consolidated Amended Class Complaint. Comp. ¶¶ 8-10. Defendants correctly point out that Dr. Hakala appears to have made multiple errors. However, as to the relevant question of market efficiency, his analysis that there were statistically significant movements in stock price after disclosure is still supported by the evidence. While Dr. Hakala's opinion may be subject to debate, the Court is not convinced by defendants' objections to Dr. Hakala's methodology for purposes of this motion.

Therefore, having undertaken the "rigorous" analysis required by Dukes, the Court is satisfied that plaintiff has established that there was an efficient market so as to be entitled to the fraud on the market presumption of reliance, and that, in their totality, facts and issues common to the class predominate over any individual issues that might be present.

2. Superiority

Rule 23(b)(3) provides the following non-exhaustive list of four factors to consider in this assessment:

> (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
> (B) the extent and nature of any litigation concerning the controversy already commenced by or against any members of the class;
> (C) the desirability or undesirability of concentrating the litigation of the claims in

[3]The Court finds Dr. Hakala's Declaration in Support of Plaintiff's Motion for Class Certification sufficient to establish market efficiency for purposes of class certification. It is not relying on Dr. Hakala's Reply Declaration and therefore denies defendants' motion to strike the reply declaration as moot.

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the particular forum;
(D) the difficulties likely to be encountered in the management of a class action.

Fed. R. Civ. Proc. 23(b)(3)

MPERS argues that a class action is superior to other methods of resolving these claims, pointing to cases that have found that, in general, "securities fraud cases 'easily satisfy the superiority requirement [as][m]ost violations of the federal securities laws . . . inflict economic injury on large numbers of geographically dispersed persons such that the cost of pursuing individual litigation to seek recovery is often not feasible." In re Monster Worldwide, Inc. Sec. Litig., 251 F.R.D. 132, 139 (S.D.N.Y. 2008). Moreover, MPERS argues that the interest of individual class members in controlling separate actions is minimal because the amounts at stake for individuals is likely small, and to use myriad separate actions would be a "staggering waste of judicial resources." Motion at 22-23. Finally, addressing the final two 23(b)(3) factors, MPERS argues that this forum is desirable as Semtech is headquartered in this district, and that "managing this litigation as a class action will not present any undue difficulties [as] [c]ourts have a long track record of managing securities fraud cases fairly and efficiently." Id. at 23. Defendants do not appear to challenge the element of superiority. The Court is satisfied that plaintiff has met the superiority requirement.

IV. CONCLUSION

In accordance with the foregoing, the Court GRANTS Lead Plaintiff's Motion for Class Certification, certifying the class defined as:

> All persons or entities who purchased or otherwise acquired the securities of Semtech Corporation ("Semtech" or "the Company") during the period from August 27, 2002 and July 19, 2006 inclusive (the "Class Period") and who were damaged thereby. Excluded from the Class are Defendants, the officers and directors of Semtech during all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any Semtech employee who acquired Semtech securities through exercise of stock options.

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IT IS SO ORDERED.

00 : 00

Initials of Preparer VRV

Exhibit 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Boynton Beach Firefighters' Pension Fund, et al.,	-	Case No. 3:16-cv-1106
Plaintiffs,	-	Toledo, Ohio
v.	-	September 13, 2016
HCP, Inc., et al.,	-	Oral Argument
Defendants.	-	

TRANSCRIPT OF ORAL ARGUMENT
BEFORE THE HONORABLE JEFFREY J. HELMICK
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For Mississippi PERS:	Gerald H. Silk Scott D. Simpkins Jeffrey W. Golan
For City of Birmingham:	Darren J. Robbins Jack Landskroner Richard Kerger
For SGGS:	William H. Narwold Katja Wulfert
For HCP ManorCare:	Michael Meuti
Court Reporter:	Tracy L. McGurk, RMR, CRR 1716 Spielbusch Avenue Toledo, Ohio 43604 (419) 213-5520

Proceedings recorded by mechanical stenography, transcript produced by notereading.

00:24:17 Soc. Gen. entity, a different entity than SGSS, but an
00:24:21 investment advisor was -- in the paradigm case was
00:24:25 rejected as a lead plaintiff because there are so many
00:24:28 questions about authority, control, and whether they, in
00:24:33 fact, had the claim. And so we may not get the right
00:24:37 answer here without a full discovery record. But
00:24:40 clearly if you ascribe to the concerns of, let's say,
00:24:44 Judge Pauley in Baydale or Judge Breyer in Brocade. And
00:24:49 there are other cases we've cited to Your Honor. The
00:24:52 fact that we are having these discussions and this is
00:24:54 creating a sideshow at this point really undermines the
00:24:59 adequacy and typicality prongs of Rule 23, and so we
00:25:06 think that is enough reason, given the comparison and
00:25:10 proximity of the losses, to appoint Mississippi PERS in
00:25:14 this case.
00:25:17 Your Honor, there were a couple other
00:25:18 points -- and I think I'll turn the floor over to Soc.
00:25:23 Gen., but there are a few other points they raised in
00:25:26 their reply brief, one about my firm, one about
00:25:29 Mississippi. I'm not sure if Your Honor saw that. We
00:25:32 addressed that in our surreply which you granted
00:25:35 permission for us to file. If you'd like to hear on
00:25:38 that, I'm prepared to speak on that.
00:25:39 THE COURT: I frankly, based on what I know
00:25:41 right now, and I'm happy to hear from SGSS further, I

00:25:45 1 think that's pretty much a non-issue with me with regard
00:25:48 2 to what were mere, as I understand, allegations of
00:25:50 3 impropriety that were not substantiated by any court.
00:25:54 4 In fact, they were withdrawn in terms of the suggestion
00:25:57 5 or allegation. I don't think you need to go there.
00:26:01 6 I do want to say this, counsel. And this
00:26:03 7 will not be your last opportunity to be heard. So
00:26:06 8 relax. I'll keep my promise I made to you at the
00:26:08 9 outset. However, look, I don't doubt that any of the
00:26:11 10 firms that are here that are proposing to take over
00:26:14 11 representation in this case have the chops to do the
00:26:17 12 job. You are -- your firms are specialized; they are
00:26:22 13 highly experienced; they are highly skilled. They are
00:26:25 14 successful or have been successful on behalf of
00:26:29 15 plaintiff's classes to an exceptional degree. So I
00:26:32 16 don't really question that. But you have raised a
00:26:35 17 potential conflict in ethics issue with regard to at
00:26:39 18 least one of the firms for SGSS and Birmingham. Do you
00:26:44 19 wish to be heard further on that issue? They've tried
00:26:47 20 to address it straight on.
00:26:48 21 MR. SILK: I would, Your Honor. Thank you.
00:26:50 22 And I appreciate those comments.
00:26:52 23 What we have said, and we've presented it
00:26:57 24 both as an Ohio ethics rule issue as well as an adequacy
00:27:04 25 issue under Rule 23. I want to make that clear. But

Exhibit 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SUSAN DUBE, Plaintiff, -v- SIGNET JEWELERS LIMITED, et al., Defendants.	16-CV-6728 (JMF) ORDER

JESSE M. FURMAN, United States District Judge:

On October 24, 2016, the Court entered an order, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3)(B), as amended by the PSLRA ("Section 78u-4(a)(3)(B)"), appointing Lyubomir Spasov and Susan Dube (the "Original Lead Plaintiffs") lead plaintiffs and Glancy Prongay & Murray LLP and Pomerantz LLP (the "Original Co-Lead Counsels") co-lead counsel pursuant to the Private Securities Litigation Reform Act ("PSLRA"). (Docket No. 23). Thereafter, the Original Lead Plaintiffs filed an Amended Complaint and a Second Amended Complaint. (Docket Nos. 28, 33).

In a Memorandum Opinion and Order entered on April 14, 2017, the Court concluded that the claims and class period in the Second Amended Complaint were sufficiently different from those asserted in the original Complaint and the First Amended Complaint that the Original Lead Plaintiffs were required to republish notice under the PSLRA, after which the Court would revisit the question of who should be appointed as lead plaintiff and lead counsel under the PSLRA. (Docket No. 46).

On July 5, 2017, following republication of the notice, the Court received three motions

for appointment as lead plaintiff: from Heather Salway (Docket No. 63), from the Public Employees Retirement System of Mississippi ("MissPERS") (Docket No. 65), and from the Norfolk County Council as Administering Authority of the Norfolk Pension Fund (the "Norfolk Pension Fund") (Docket No. 66). On July 18, 2017, Salway withdrew her application (Docket No. 71), leaving only the applications of MissPERS and the Norfolk Pension Fund.

Upon review of the parties' submissions in support of, and opposition to, the two remaining motions, and consideration of the factors set forth in Section 78u-4(a)(3)(B) of the PSLRA, the motion of MissPERS is GRANTED, and MissPERS is appointed Lead Plaintiff in this matter. There is no dispute that MissPERS has "the largest financial interest in the relief sought by the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). And substantially for the reasons set forth in MissPERS reply memorandum of law (Docket No. 79), the Court is unpersuaded by the Norfolk Pension Fund's arguments that MissPERS is not adequate to serve as lead plaintiff and is barred by Section 78u-4(a)(3)(B)(vi) from serving as lead plaintiff. (Docket No. 79). Among other things, the Court finds that there is no evidentiary basis to conclude that MissPERS is not adequate to serve as lead plaintiff. *See Schaffer v. Horizon Pharma Plc*, No. 16-CV-1763 (JMF), 2016 WL 3566238, at *3 (S.D.N.Y. June 27, 2016) ("[T]o rebut the presumption in favor of the movant with the greatest financial loss, there must be 'proof' of a non-speculative risk that the movant will not be adequate."). And the weight of authority provides that the "professional plaintiff" prohibition does not apply — or, at a minimum, does not apply as strongly — "in the case of qualified institutional investors." *Iron Workers Local No. 25 Pension Fund v. Credit-Based Asset Servicing & Securitization, LLC*, 616 F. Supp. 2d 461, 467 & n.2 (S.D.N.Y. 2009) (citing cases).

Accordingly, the Court hereby ORDERS that:

1. The Court's order of October 24, 2016 (Docket No. 23), is vacated. Accordingly, the Original Lead Plaintiffs and the Original Co-Lead Counsels are no longer lead plaintiff and lead counsel in this matter.
2. MissPERS is appointed as Lead Plaintiff. The Court finds that its satisfies the requirements for Lead Plaintiff set forth in Section 78u-4(a)(3)(B).
3. MissPERS selection of Lead Counsel is approved, and Bernstein Litowitz Berger & Grossmann LLP is appointed as Lead Counsel for the Class.
4. Lead Counsel shall have the following responsibilities and duties, to be carried out either personally or through counsel whom Lead Counsel shall designate:
    a. to coordinate the briefing and argument of motions;
    b. to coordinate the conduct of discovery proceedings;
    c. to coordinate the examination of witnesses in depositions;
    d. to coordinate the selection of counsel to act as a spokesperson at pretrial conferences;
    e. to call meetings of the plaintiffs' counsel as they deem necessary and appropriate from time to time;
    f. to coordinate all settlements negotiations with counsel for defendants;
    g. to coordinate and direct the pretrial discovery proceedings and the preparation for trial and the trial of this matter and to delegate work responsibilities to selected counsel as may be required; and
    h. to supervise any other matters concerning the prosecution, resolution or settlement of the action.

5. No motion, request for discovery, or other pretrial proceedings shall be initiated or filed by any plaintiff without the approval of Lead Counsel, so as to prevent duplicative pleadings or discovery by plaintiffs. No settlement negotiations shall be conducted without the approval of Lead Counsel.
6. Counsel in any related action that is consolidated with this action shall be bound by this organization of plaintiffs' counsel.
7. Lead Counsel shall have the responsibility of receiving and disseminating Court orders and notices.
8. Lead Counsel shall be the contact among plaintiffs' counsels, and shall direct and coordinate the activities of plaintiffs' counsel.
9. Defendants shall affect service of papers on plaintiffs by serving a copy of same on Lead Counsel by overnight mail service, electronic, or hand delivery. Plaintiffs shall affect service of papers on defendants by serving a copy of same on Defendants' counsel by overnight mail service, electronic, or hand delivery.
10. Lead Plaintiff shall confer with counsel for Defendants and, no later than **August 3, 2017**, agree to a stipulation, subject to Court approval, putting in place a schedule setting forth Lead Plaintiff's time to file a third amended complaint or designate the existing complaint as the operative complaint and Defendants' time to answer or otherwise respond to the existing complaint in this action. (Docket No. 33).
11. In light of the foregoing, the hearing scheduled for August 1, 2017, is CANCELLED.
12. The Clerk of Court is directed to change the caption in this action to "In re Signet Jewelers Limited Securities Litigation." The file shall be maintained under Master File No. 1:16-CV-06728 (JMF).

13. The Clerk of Court is directed to terminate Docket Nos. 63, 65, and 66.

SO ORDERED.

Dated: July 27, 2017
New York, New York

JESSE M. FURMAN
United States District Judge

Exhibit 13

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT SYSTEM, on behalf of itself and all others similarly situated,

Plaintiff,

No. 11-cv-10230-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

ARNOLD HENRIQUEZ, MICHAEL T. COHN, WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND, and those similarly situated,

Plaintiffs,

No. 11-cv-12049-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

THE ANDOVER COMPANIES EMPLOYEE SAVINGS AND PROFIT SHARING PLAN, on behalf of itself, and JAMES PEHOUSHEK-STANGELAND and all others similarly situated,

Plaintiffs,

No. 12-cv-11698-MLW

vs.

STATE STREET BANK AND TRUST COMPANY,

Defendant.
_____/

SPECIAL MASTER'S SUPPLEMENT TO HIS REPORT AND RECOMMENDATIONS AND PROPOSED PARTIAL RESOLUTION OF ISSUES FOR THE COURT'S CONSIDERATION

On September 18, 2018, the Special Master advised the Court that he had reached tentative agreement with Labaton Sucharow ("Labaton") regarding its objections to 1) the Special Master's Report and Recommendations dated June 28, 2018 (Dkt. # 357) and 2) the exceptions to Labaton's objections filed by Keller Rohrback L.L.P., McTigue Law LLP, and Zuckerman Spaeder LLP (individually and collectively, "ERISA Firms") (Dkt. # 387; Dkt. # 398; Dkt. # 392 ("Exceptions")).[1] The Special Master requested an additional two weeks, or until October 2, 2018, for the parties to memorialize their agreements and submit the proposed resolution to the Court for its consideration. On October 2, 2018, the Special Master requested an additional week, or until October 9, 2018, to file a further report to the Court on the status of the agreements, and the Court granted the request.

The Special Master's agreement with Labaton concerning Labaton's Objections to the Report and Recommendations, except as concerns the ERISA Firms, is set forth in Section I below. The Special Master's agreement with Labaton and the ERISA Firms concerning Labaton's Objections to the Report and Recommendations concerning the ERISA firms and concerning the ERISA Firms' Exceptions to Labaton's Objections is set forth in Section II below.

I. Agreement Between Special Master and Labaton Concerning Proposed Resolution of Labaton's Objections, Except as Concerns ERISA Firms

On March 8, 2017, the Court appointed the Special Master to investigate and prepare a Report and Recommendations "concerning all issues relating to the attorneys' fees, expenses, and service awards previously made in this case." (Dkt. # 173, p. 2). On May 14, 2018, after a

[1] Also, on September 18, 2018, the Special Master informed the Court that he was unable to reach a proposed resolution with Lieff Cabraser or the Thornton Law Firm ("Non-Settling Parties") consistent with how the Special Master views his responsibilities to the Court under the Court's March 8, 2017 Order and his Report and Recommendations. (Dkt. # 468).

fourteen-month investigation, the Special Master submitted to the Court his Report and Recommendations ("Report"). The Report, in great detail, identified several significant legal issues—the appropriate rules and policies governing attorney fee petitions, the appropriate method for calculating a reasonable request for attorneys' fees from the Court, fee-sharing, and the scope of obligations owed by lead counsel to act with candor and transparency to their clients, co-counsel, the court, and most importantly, the class—and recommended various remedies to address conduct by Law Firms, other than the ERISA Firms, whose conduct the Master concluded fell short of emerging best practices in late 2016, when the Court considered and awarded a $75 million fee award. *See* Report (Dkt. # 357, *in passim*, and pp. 362-377). Upon the Court unsealing the Report, certain Law Firms, including Labaton, filed a series of objections. *See* Dkt. # 359; Dkt. # 361; Dkt. # 367.

After receiving, but before responding in writing to, the written objections to the Report, the Special Master conferred at great length with Labaton to narrow, and ultimately to resolve, the legal and factual issues raised in Labaton's objections. Throughout the discussions, the Special Master has been conscious of the Court's mandate (as the Court highlighted in its August 28, 2018 Order) to provide his "candid views on the facts and the law," as presented in the Report. *See* Dkt. # 460, pg. 6. He has balanced that important duty with his duty to consider "reasonable suggestions that would, if adopted, reduce the length and expense of proceedings in this matter," which has been ongoing since March 2017. *Id*. The Special Master believes that, in light of the laudable results achieved for the Class, and based upon what was known to the Court at the time of the award, the $75 million attorneys' fee award to all counsel was reasonable.

While Labaton has concerns with certain of the Special Master's recommended conclusions concerning its conduct, Labaton and the Special Master believe that the following steps and acknowledgements by Labaton addressing those areas of dispute are reasonable, confer a significant benefit upon the class, recognize the importance of the Court's role in presiding over class actions and the fundamental obligations of candor to the Court by class counsel, and are consistent with the Master's view of his obligations under the Court's March 8, 2018 Order and the Report. This includes, most importantly, Labaton's recognition of the great need for transparency and candor in the approval of Court-ordered fee awards, which lies in the sole discretion of the Court, and its failure to meet those needs in this case. The Special Master herein presents for the Court's consideration the following terms of resolution resolving remaining issues in dispute between himself and Labaton as described in Labaton's submission to the Court ("Exhibit A").

Return of benefit earned from double-counted hours on the Fee Petition

This investigation was triggered by the Customer Class Counsel's disclosure, following media inquiries, of an inadvertent double-counting error that accounted for an overstatement of 9,322.9 hours, or $4,058,654.50 in lodestar fees. Ex. 178 to Report (Dkt. # 357). As one of three firms responsible for this significant monetary error, Labaton agrees to reimburse the class 33.33% of the monetary value of the double-counting, up to $1,352,666.67. As the Special Master indicated in his Report, the double-counting was not the result of intentional misconduct on the part of Labaton.

Labaton has now discontinued its practice of allowing another firm to pay for the costs of Labaton's staff attorneys working at Labaton's office, and of allowing its staff attorneys to be included on another Firm's lodestar petition.

Recognition of failure to follow emerging best practices

Labaton acknowledges that its conduct in this case did not meet emerging best practices of transparency, candor, and reliability in its submission of the Fee Petition in this case. As a result, the Court could not fully discharge its fiduciary obligations to the class members. Labaton has accepted responsibility for its conduct in this case and expresses regret.

Specifically, Labaton acknowledges that its $4.1 million payment to Damon Chargois did not constitute a case-specific referral fee, as those are commonly understood across the legal industry. Labaton further acknowledges that Chargois did not commit to work on, nor accept responsibility for, the representation of ATRS in the prosecution of the State Street case, and that these factors should have led to a more robust discussion with its client, and the Court, prior to awarding attorneys' fees. Furthermore, failure to disclose these factors did not comport with emerging best practices at the time of the fee submission, which was to disclose in detail the terms of the Chargois Arrangement to the client, interested parties, the class, and to the Court. The Special Master finds, however, that the payment itself to Chargois did not violate the rules of professional misconduct or constitute intentional misconduct.

Nonetheless, Labaton recognizes that had the Court received full disclosure of the Chargois Arrangement, the Court may have awarded a lesser fee to Labaton, resulting in additional funds earmarked for the class.

Continuation of Labaton's role as lead counsel for the class

Given Labaton's efforts to address past shortcomings, including its recent efforts to enhance transparency with its current and future clients as to the nature of its representations, the Special Master recommends that Labaton continue in the role of Lead Counsel for the Settlement Class and ATRS as Class Representative. For the avoidance of any doubt that the class is

adequately represented moving forward, the Special Master will recommend to the Court that the ERISA Firms be appointed to serve alongside Labaton as additional Lead Counsel for the Settlement Class. The seven current Class Representatives will remain. (ECF# 110, p. 4.)

Money returned to the class

Labaton agrees to return $700,000 of the funds attributable to the Chargois payment to the class, as previously recommended.[2]

Labaton will continue to work closely with its settlement claims administrator in the case, AB Data, to identify class members and promptly distribute class funds.

Entry of Bar Order

The Special Master requests that the Court enter an order consistent with Mass. Gen. Laws ch. 231B, § 4 (West 2018), barring any Non-Settling party from bringing an action against Labaton or the ERISA plaintiffs for contribution or indemnification regardless of how it is styled or denominated.

Remedial and preventative measures taken by Labaton

As discussed above, Labaton recognizes the importance of having all individuals involved in a case participate in the preparation and filing of a fee petition requesting attorneys' fees for the firm, and recognizes that this did not occur in this case and that the "compartmentalization" or "siloing" of the firm detailed in the Special Master's Report contributed significantly to the problems in this case. To remedy this shortcoming in the process, the firm has created the new position of Head of Litigation, to whom it has appointed former

[2] The Special Master recommended in his Report and Recommendations that, of the $4.1 million payment to Chargois, Labaton pay $700,000 back to the Class and that the remaining $3.4 million be paid to the ERISA Firms. In addition to the $700,000 payment to the Class (set forth above), Labaton agrees to pay $2.75 million (of the original $3.4 million recommended) to the ERISA Firms. See Section 2, below. The Special Master agrees that this is an appropriate resolution of his recommendation as to the Chargois Arrangement.

General Counsel Jonathan Gardner. Labaton has also adopted a new practice of assembling a "settlement team" upon reaching a settlement in principle in a matter. The settlement team will routinely consist of Nicole Zeiss, Labaton's head of the settlement department, a client relationship attorney familiar with the client, and a member of the litigation team. In addition, the settlement team will circulate the full fee submission package, including information collected from all firms, to co-counsel for final review prior to submission to the Court.

To further insure the firm's compliance with ethical and legal standards moving forward, Labaton has formally appointed Michael Canty, Esq. as General Counsel, and Carol Villegas, Esq., as Chief Compliance Officer, to provide ethics advice arising at the firm. Under this structure, all engagement letters will be signed by General Counsel Canty and are required before litigation may commence.

With regard to division of attorneys' fees, Labaton has taken efforts to be in compliance with emerging best practices in order to achieve greater transparency vis-a-vis its clients and the Court. By way of example, Labaton has implemented a mandatory policy for executing retainer agreements, a Case Transition and Complaint Drafting Policy, and training for all partners, including senior level partners, explaining client disclosure and consent requirements. Each of these policies will incorporate New York's ethical rules as well as reflect emerging best practices in the field.

Labaton has already engaged an outside ethics expert to work with the firm to bring its existing fee arrangements with co-counsel into compliance. To this effect, Labaton has proactively created firm-wide templates addressing various types of retention agreements, including securities class actions, antitrust retentions, liaison counsel agreements, whistleblower

retentions, and fee allocation agreements with counsel, all of which reflect appropriate ethical standards and current emerging best practices.

To insure transparency with the Court in future cases, Labaton has also formally adopted a policy prohibiting "bare referral" arrangements with other attorneys. It has further agreed to adopt an internal policy requiring the firm to disclose to the court, regardless of the jurisdiction, any fee sharing arrangement between or among counsel, commensurate with the obligations set forth in the Local Rules of the Eastern and Southern Districts of New York.

Finally, within 60 days of signing this agreement, Labaton will retain James Holderman, former Chief Judge of the United States District Court, Northern District of Illinois, for one year to ensure that Labaton's retention, fee sharing agreements and other policies concerning fee applications are in compliance with applicable rules and emerging best practices. Judge Holderman will provide Labaton a report within 60 days of his retention. During the retention period, Labaton will fully cooperate with Judge Holderman's review. Labaton shall provide a copy, upon request, to the Special Master and the Court. Additionally, Judge Holderman will provide a letter to Labaton on or about one year from the date of the Court's approval of the Special Master's Proposed Partial Resolution, regarding the status of its compliance. Labaton will voluntarily provide a copy of the letter to the Special Master upon request.

II. Agreement Between the Special Master, Labaton and the ERISA Firms Concerning Labaton's Objection Regarding the ERISA Firms and The ERISA Firms' Exceptions to Labaton's Objections

The ERISA Firms on behalf of themselves and their clients did not participate in the negotiations referenced in Section I and are not parties to the terms referenced in Section I above, except for the terms referring to additional Lead Counsel for the Settlement Class.[3]

The ERISA Firms on behalf of themselves engaged in separate negotiations with Labaton and the Special Master regarding the ERISA Firms' Exceptions, which generally stated that if the Chargois Arrangement had been disclosed to the ERISA Firms they would have filed their own fee petition instead of making a joint petition with Labaton and the other Non-Settling Firms, and they would not have agreed to the Claw Back Letter Agreement in November of 2016. Through the Special Master, Labaton, the Special Master and the ERISA Firms reached an agreement to resolve the Exceptions as provided in this Section II:

Labaton agrees to pay, within forty-five (45) days after the District Court's entry of an Order adopting the Special Master's recommendations as to the entire submission, the amount of $2.75 million to the ERISA Firms (in resolution of the Special Master's recommended $3.4 million payment; see footnote 2 above), based upon the Special Master's recommendation, and the ERISA Firms agree to accept this amount, and agree not to seek additional amounts from Labaton. As reflected in footnote 2, the Special Master agrees that this is an appropriate resolution of his recommendation as to the Chargois Arrangement.

Labaton additionally agrees that it will not enforce the Claw Back Letter Agreement against the ERISA Firms; and, as to Labaton, the Claw Back Letter Agreement is null and void

[3] For the avoidance of any doubt, Exhibit A is not part of the agreement with the ERISA Firms; nothing in Exhibit A can cause ambiguity as to the meaning of Section II, and to the extent Exhibit A is inconsistent with Section II, Section II is the agreement with the ERISA Firms and it controls.

as to the ERISA Firms. Further, as part of this agreement, Labaton will not challenge any fees already paid and awarded to the ERISA Firms; nor will it support or cooperate with any such challenge by any Non-Settling Firm or others.

The ERISA Firms agree, individually and jointly, that they shall be deemed to have mutually, fully, finally and forever waived, released, discharged and dismissed any and all claims against Labaton and its partners for any attorneys' fees or expenses to date arising from *Arkansas Teachers Retirement System et al. v. State Street Corporation*, No. 11-cv-10230-MLW (D. Mass.) and related cases, as well as any attorneys' fees or expenses arising from the investigation to date by the Special Master. Labaton agrees that it shall be deemed to have mutually, fully, finally and forever waived, released, discharged and dismissed any and all claims against the ERISA Firms and their partners for any attorneys' fees or expenses arising from *Arkansas Teachers Retirement System et al. v. State Street Corporation*, No. 11-cv-10230-MLW (D. Mass.) and related cases, as well as any attorneys' fees or expenses arising from the investigation to date by the Special Master.

As to the ERISA Firms, as previously set forth in Section 1, the Special Master requests that the Court enter an order consistent with Mass. Gen. Laws ch. 231B, § 4 (West 2018), barring any Non-Settling party from bringing an action against Labaton or the ERISA plaintiffs for contribution or indemnification regardless of how it is styled or denominated. By entering into this proposed agreement with the Special Master and Labaton, the ERISA Firms take no position on the proposed changes to the Special Master's Report and Recommendations (Dkt. # 357) other than the Special Master's recommendation as to the $3.4 million payment (now a recommended $2.75 million), Labaton's agreement not to enforce the Claw Back Letter Agreement against the ERISA Firms, and those other matters referenced in this Section II.

III. Conclusion

If the Court accepts the above-described terms, Labaton agrees to withdraw all pending motions, including its written objections to the Report, and waive its right to notice an appeal in any forum concerning these matters. Labaton also agrees to pay its proportionate share of the remaining amounts due to the Special Master and his team for their unpaid work. Labaton will also continue to cooperate in this investigation, and in any federal, state, administrative, or judicial inquiries initiated.

The parties point out that they each retain the right to revisit their objections, in whole or in part, should the Court not accept the Special Master's recommendations to resolve the matters as described herein. In the event the Court does not accept the terms as proposed, or issues an order that Labaton or the ERISA Firms wish to contest, all parties, including the Special Master, shall be deemed reinstated, without prejudice, to the position held prior to reaching the terms presented herein, including the right of Labaton to have its objections to the Report heard and considered, the right of ERISA Firms to have their exceptions to Labaton's objections heard and considered, and the right of the Special Master to file and have heard and considered his responses to those objections and exceptions.

The Special Master believes that, on balance, the acknowledgments summarized above, along with the remedial actions described, and Labaton's sincere acceptance of responsibility and expression of regret, appropriately address the findings and recommendations made by the Special Master in his Report while promoting judicial efficiency and avoiding unnecessary cost. In sum, these terms comport with the spirit of the findings and recommendations of the Report.

Therefore, the Special Master respectfully presents it to the Court for the Court's consideration and approval.

Dated: October 9, 2018

Respectfully submitted,

SPECIAL MASTER HONORABLE GERALD E. ROSEN (RETIRED),

By his attorneys,

/s/ William F. Sinnott

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ACKNOWLEDGEMENTS

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Dated: October 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that this foregoing document was filed electronically on October 9, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF"). Paper copies were sent to any person identified in the NEF as a non-registered participant.

/s/ William F. Sinnott
William F. Sinnott

Exhibit 14

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

STEVEN KNURR, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ORBITAL ATK, INC., et al., Defendants.	Civil Action No. 1:16-cv-01031-TSE-MSN CLASS ACTION

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

This matter having come before the Court on June 7, 2019, on the motion of Lead Counsel for an award of attorneys' fees and expenses (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Action to be fair, reasonable, and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Settlement Agreement dated January 30, 2019 (the "Stipulation"), and all capitalized terms used herein, but not defined, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and 15 U.S.C. §78u-4(a)(7), the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees of 28% of the Settlement Amount, plus expenses in the amount of $1,119,680.08, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair and reasonable.

5. The awarded attorneys' fees and expenses and interest earned thereon shall be paid to Lead Counsel immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation and, in particular, ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) through the efforts of Lead Counsel, the Settlement has created a fund of $108 million in cash, and numerous Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Lead Counsel;

(b) more than 117,000 copies of the Notice were disseminated to potential Class Members indicating that Lead Counsel would move for attorneys' fees in an amount up to 28% of the Settlement Amount and for expenses in an amount not to exceed $1.3 million, plus interest on both amounts;

(c) Lead Counsel has pursued the Action and achieved the Settlement with skill, perseverance, and diligent advocacy;

(d) Lead Counsel has expended substantial time and effort pursuing the Action on behalf of the Class;

(e) Lead Counsel pursued the Action on a contingent basis, having received no compensation during the Action, and any fee amount has been contingent on the result achieved;

(f) the Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) had Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from Defendants;

(h) Lead Counsel has devoted over 29,000 hours, with a lodestar value of approximately $16.7 million to achieve the Settlement;

(i) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation;

(j) the requested attorneys' fees and litigation expenses have been reviewed and approved by Lead Plaintiff and Named Plaintiff, sophisticated institutional investors who were involved with and oversaw the Action; and

(k) the attorneys' fees and expenses awarded are fair and reasonable and consistent with awards in similar cases within the Eastern District of Virginia and the Fourth Circuit.

7. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards $4,351.00 and $9,397.26 to Lead Plaintiff Construction Laborers Pension Trust of Greater St. Louis and Named Plaintiff Wayne

County Employees' Retirement System, respectively, for reasonable costs and expenses directly relating to their representation of the class.

9. The Court has considered the objection to the fee award filed by Class Member New York State Common Retirement Fund and finds it to be procedurally invalid and substantively without merit. The objection is overruled in its entirety.

DATED: 6/7/19

/s/
T.S. Ellis, III
THE HONORABLE T.S. ELLIS, III
UNITED STATES DISTRICT JUDGE
United States District Judge

Exhibit 15

NERA
ECONOMIC CONSULTING

29 January 2019

Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth
Average Case Size Surges to Record High
Settlement Values Rebound from Near-Record Lows

By Stefan Boettrich and Svetlana Starykh

Insight in Economics™

Foreword

I am excited to share NERA's *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* with you. This year's edition builds on work carried out over numerous years by many members of NERA's Securities and Finance Practice. In this year's report, we continue our analyses of trends in filings and settlements and present new analyses, such as how post-class-period stock price movements relate to voluntary dismissals. While space does not permit us to present all the analyses the authors have undertaken while working on this year's edition, or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our work related to securities litigation. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director

Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth
Average Case Size Surges to Record High
Settlement Values Rebound from Near-Record Lows

By Stefan Boettrich and Svetlana Starykh[1]

29 January 2019

Introduction and Summary[2]

In 2018, the pace of securities class action filings was the highest since the aftermath of the 2000 dot-com crash, with 441 new cases. While merger objections constituted about half the total, filing growth of such cases slowed versus 2017, indicating that the explosion in filings sparked by the *Trulia* decision may have run its course.[3] Filings alleging violations of Rule 10b-5, Section 11, and/or Section 12 of the Securities Act of 1933 ("Securities Act") were roughly unchanged compared to 2017, but accelerated over the second half of the year, with the fourth quarter being one of the busiest on record.

The steady pace of new securities class actions masked fundamental changes in filing characteristics. Aggregate NERA-defined Investor Losses, a measure of total case size, came to a record $939 billion, nearly four times the preceding five-year average. Even excluding substantial litigation against General Electric (GE), aggregate Investor Losses doubled versus 2017. Most growth in Investor Losses stemmed from cases alleging issues with accounting, earnings, or firm performance, contrasting with prior years when most growth was tied to regulatory allegations. Filings against technology firms jumped nearly 70% from 2017, primarily due to cases alleging accounting issues or missed earnings guidance.

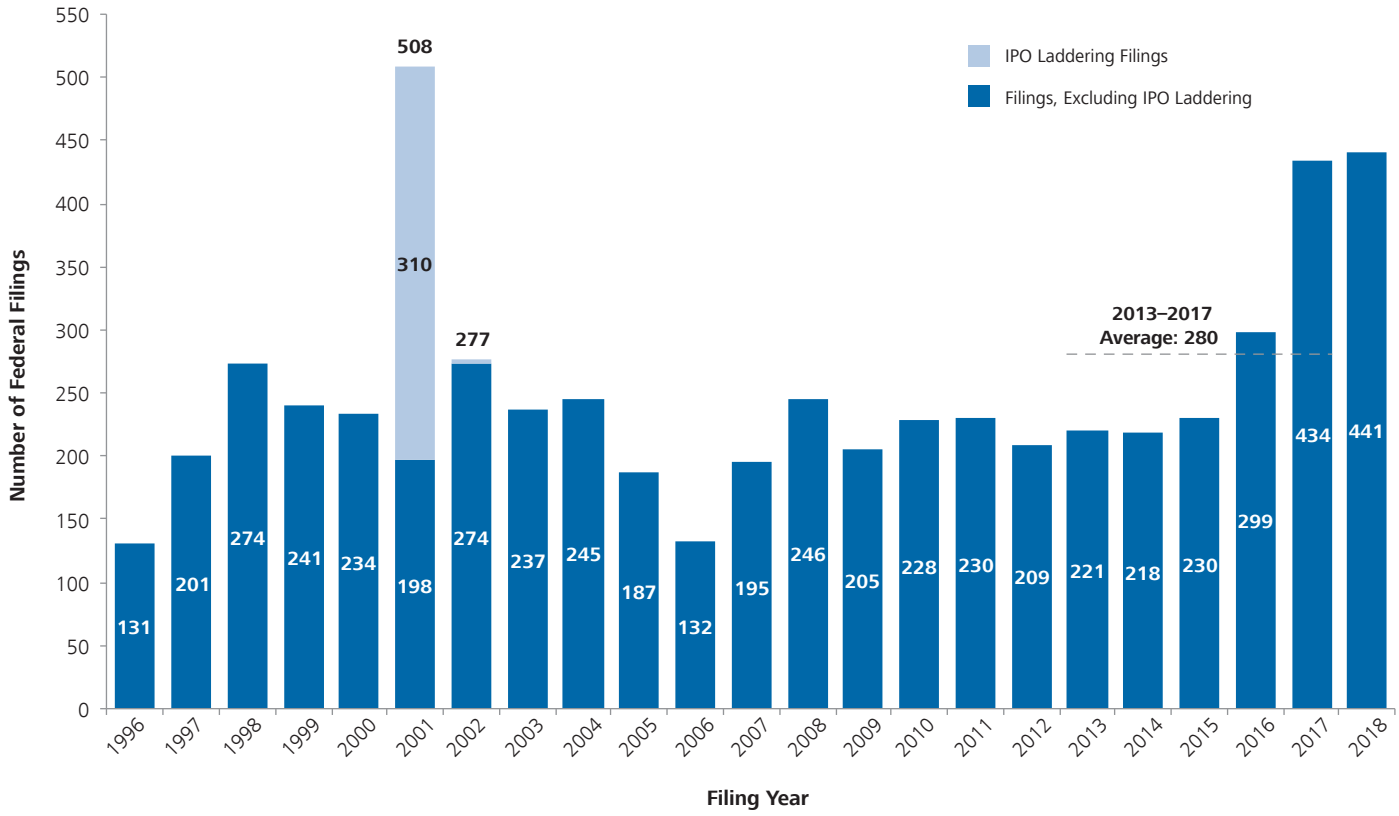
The average settlement value rebounded from the 2017 near-record low, mostly due to the $3 billion settlement against Petróleo Brasileiro S.A.—Petrobras. The median settlement nearly doubled, primarily due to higher settlements of many moderately sized cases. Despite a rebound in settlement values in 2018, the number of settlements remained low, with dismissals outnumbering settlements more than two-to-one. An adverse number of cases were voluntarily dismissed, which can partially be explained by positive returns of targeted securities during the PSLRA bounce-back periods. The robust rate of case resolutions has not kept up with the record filing rate, driving pending litigation up more than 6%.

Trends in Filings

Number of Cases Filed

There were 441 federal securities class actions filed in 2018, the fourth consecutive year of growth (see Figure 1). The filing rate was the highest since passage of the PSLRA, with the exception of 2001 when new IPO laddering cases dominated federal dockets. The dramatic year-over-year growth seen in each of the past few years resulted in a near doubling of filings since 2015, but growth moderated considerably in 2018 to 1.6%. The 2018 filing rate is well above the post-PSLRA average of approximately 253 cases per year, and solidifies a departure from the generally stable filing rate in the years following the 2008 financial crisis.

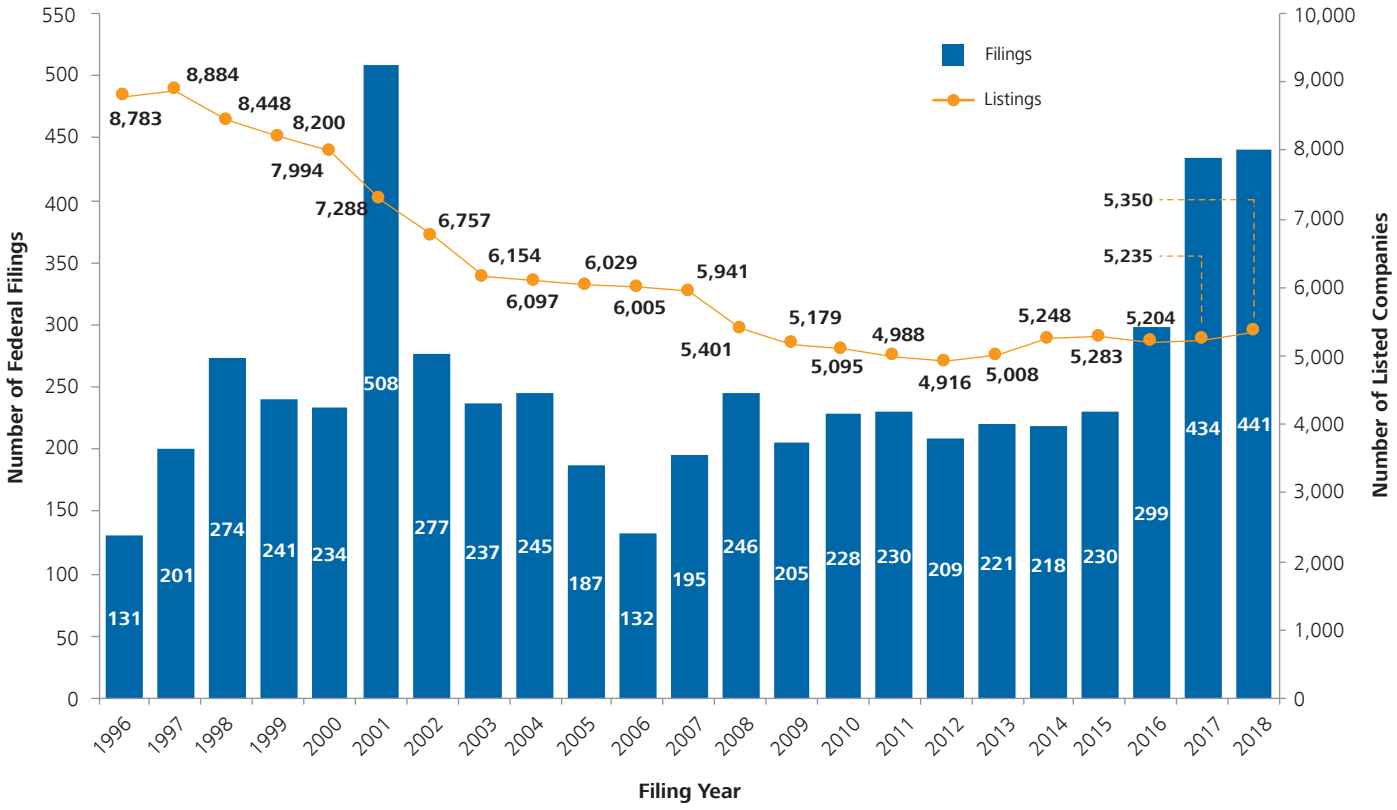
Figure 1. **Federal Filings**
January 1996–December 2018



As of November 2018, there were 5,350 companies listed on the major US securities exchanges (see Figure 2). The 441 federal securities class action suits filed in 2018 involved approximately 8.2% of publicly listed companies. The overall risk of litigation to listed firms has increased substantially since early in the decade, when only about 4.0% of public companies listed on US exchanges were subject to a securities class action.

Broadly, the chance of a publicly listed company being subject to securities litigation depends on the number of filings relative to the number of listed companies. While the number of listed companies has increased by 7% over the last five years, the longer-term trend is toward fewer listings. Since the passage of the PSLRA in 1995, the number of listings on major US exchanges has steadily declined by about 3,000, or nearly 40%. Recent research attributed this decline to fewer new listings and an increase in delistings, mostly through mergers and acquisitions.[4]

Figure 2. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2018



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data from 2016 through 2018 were obtained from World Federation of Exchanges (WFE). The 2018 listings data is as of November 2018. Data for prior years was obtained from Meridian Securities Markets and WFE.

Despite the long-term drop in the number of listed companies, the average number of securities class action filings has *increased* from 216 per year over the first five years after the PSLRA to about 324 per year over the past five years. The long-term trend toward fewer listed companies coupled with more class actions implies that the average probability of a listed firm being subject to such litigation has increased from about 2.6% after passage of the PSLRA to 3.7% over the past five years, and 8.0% over the past two years.

Recently, the rising average risk of class action litigation was driven by dramatic growth in merger-objection cases that, prior to 2016, were mostly filed in various state courts. Since then, state court rulings have driven such litigation onto federal dockets. Hence the increase in the typical firm's litigation risk might be less than indicated above, since 1) the risk of merger-objection litigation is specific to firms planning or engaged in M&A activity and 2) many merger-objection cases would otherwise have been filed in state courts.

The average probability of a firm being targeted by what is often regarded as a "Standard" securities class action—one that alleges violations of Rule 10b-5, Section 11, and/or Section 12—was only 4.0% in 2018, albeit higher than the average probability of about 2.6% following the PSLRA and 3.5% between 2013 and 2017.

Filings by Type

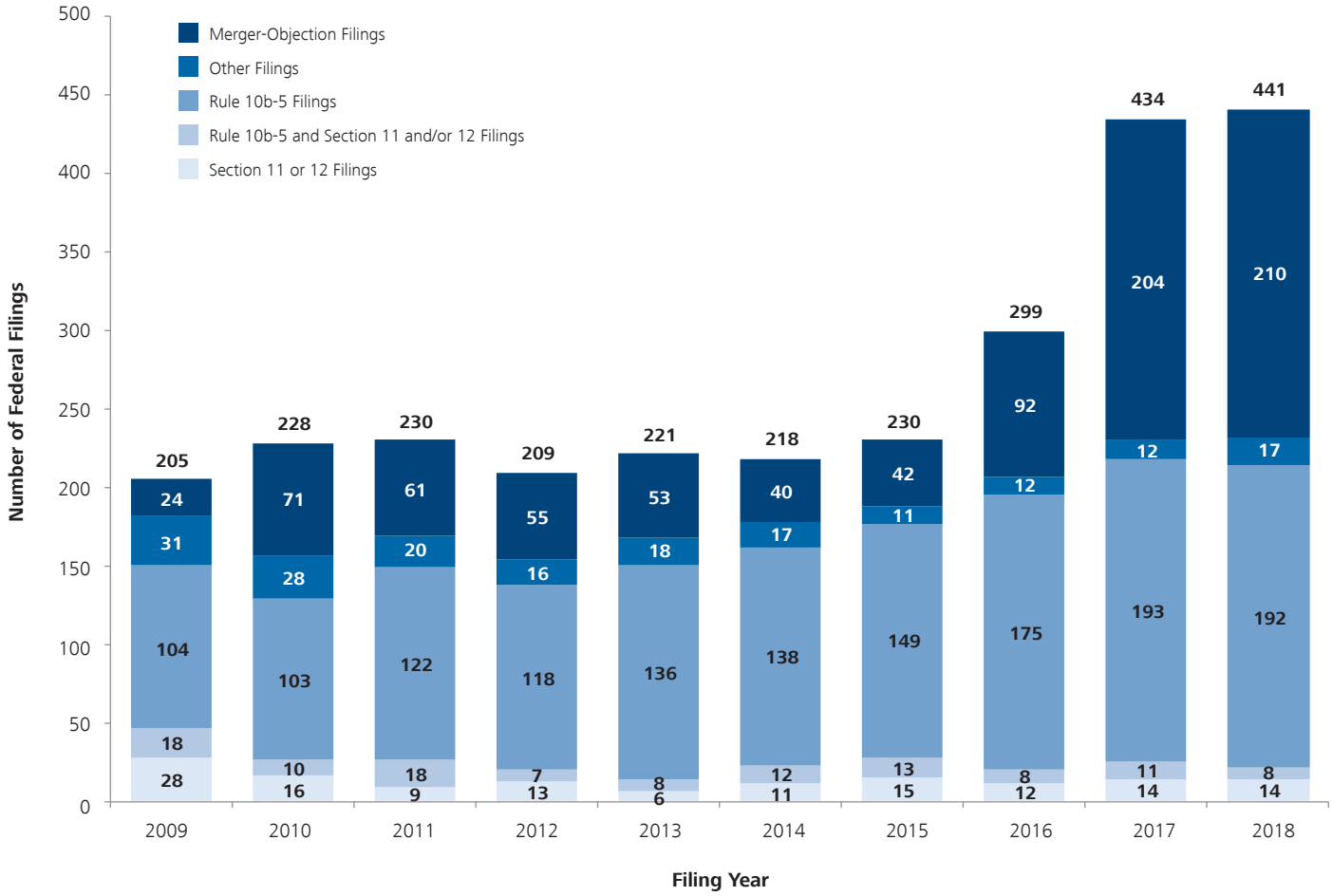
In 2018, the 441 securities class action filings were about evenly split between Standard securities class actions and merger objections, roughly matching the number seen in 2017 (see Figure 3). There were 214 Standard securities cases filed, down slightly from 2017. Prior to 2018, Standard filings grew for five consecutive years, the longest expansion on record, and by over 50% since 2013. Despite the slowdown in 2018, monthly filing growth over the second half of the year was robust, and capped by 64 filings in the fourth quarter, one of the busiest quarters on record.

Despite the 210 merger-objection filings in 2018 making up about half of all filings, yearly filing growth of such cases slowed to almost zero, as the number of filings roughly matched the level seen in 2017. The tepid filing growth implies that the rapid growth following various state-level decisions limiting "disclosure-only" settlements (including the *Trulia* decision) has likely run its course.[5] Rather, the stagnant growth in federal merger-objection filings was likely driven by relatively stagnant M&A activity.[6]

Although aggregate merger-objection filings (including those at the state level) may correspond with the rate of mergers and acquisitions, such deal activity does not appear to have historically been the primary driver of federal merger-objection filings over multiple years. The number of federal merger-objection filings generally fell between 2010 and 2015, despite increased M&A activity. The higher filing counts in 2016 and 2017 likely stemmed from trends in the choice of jurisdiction rather than trends in deal volume.[5]

Besides Standard and merger-objection cases, a variety of other filings rounded out 2018. Several filings alleged fraudulent initial coin and cryptocurrency offerings, manipulation of derivatives (e.g., VIX products and metals futures), and breaches of fiduciary duty (including client-broker disputes involving churning and improper asset allocation).

Figure 3. **Federal Filings by Type**
January 2009–December 2018



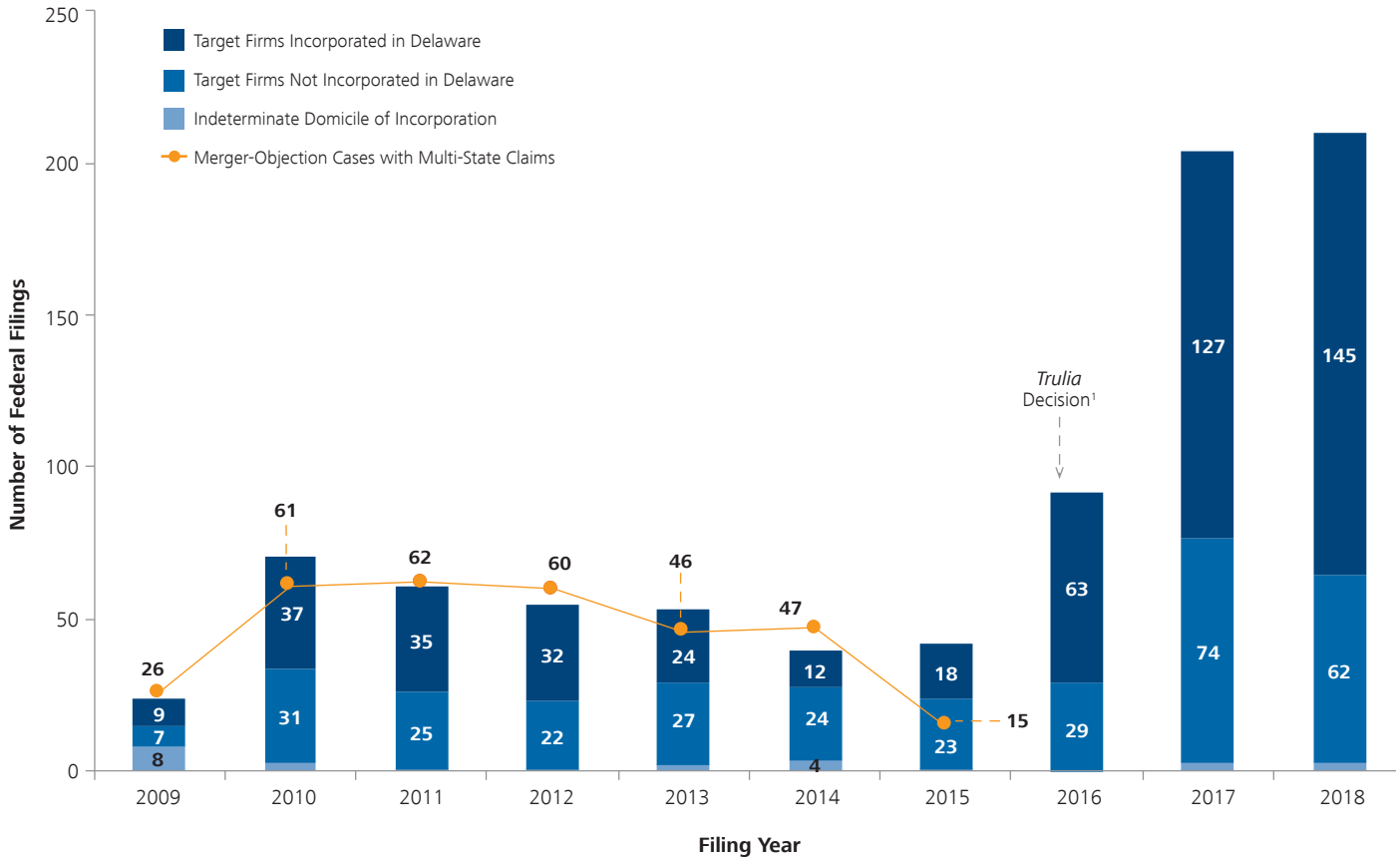
Merger-Objection Filings

In 2018, federal merger-objection filings were relatively unchanged versus 2017 (see Figure 4). Growth in federal merger-objection filings in 2016 and 2017 largely followed various state court rulings barring disclosure-only settlements, the most notable being the 22 January 2016 *Trulia* decision in the Delaware Court of Chancery.[7] Research suggested that such state court decisions would simply drive merger objections to alternative jurisdictions, such as federal courts.[8] This has largely been borne out thus far.

The dramatic slowdown in merger-objection filings growth implies that plaintiff forum selection is less of a growth factor; in 2018 and going forward, merger and acquisition activity will likely be the primary driver of federal merger-objection litigation. This assumes, however, that corporations don't increasingly adopt forum selection bylaws, and that federal courts don't increasingly follow the Delaware Court of Chancery's lead on rejecting disclosure-only settlements.[9] For instance, after the Seventh Circuit ruled strongly against a disclosure-only settlement in *In re: Walgreen Co. Stockholder Litigation*, the proportion of merger objections filed in that circuit fell by more than 60% the following year.[10]

Federal merger-objection filings typically allege a violation of Section 14(a), 14(d), and/or 14(e) of the Securities Exchange Act of 1934, and/or a breach of fiduciary duty by managers of a firm being acquired. Such filings are frequently voluntarily dismissed.

Figure 4. **Federal Merger-Objection Cases and Merger-Objection Cases with Multi-State Claims**
January 2009–December 2018



Notes: Counts of merger-objection cases with multi-state claims based on data obtained from Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016. Data on multi-state claims unavailable for 2016–2018. State of incorporation obtained from the Securities and Exchange Commission.
[1] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

Filings Targeting Foreign Companies

Foreign companies with securities listed on US exchanges have been disproportionately targeted in Standard securities class actions since 2010 (see Figure 5).[11] In 2018, foreign companies were targeted in about 25% fewer cases than in 2017, and in only about 20% of complaints, just above the share of listings. This contrasts with persistent growth in foreign firm exposure to securities litigation over the preceding four years.

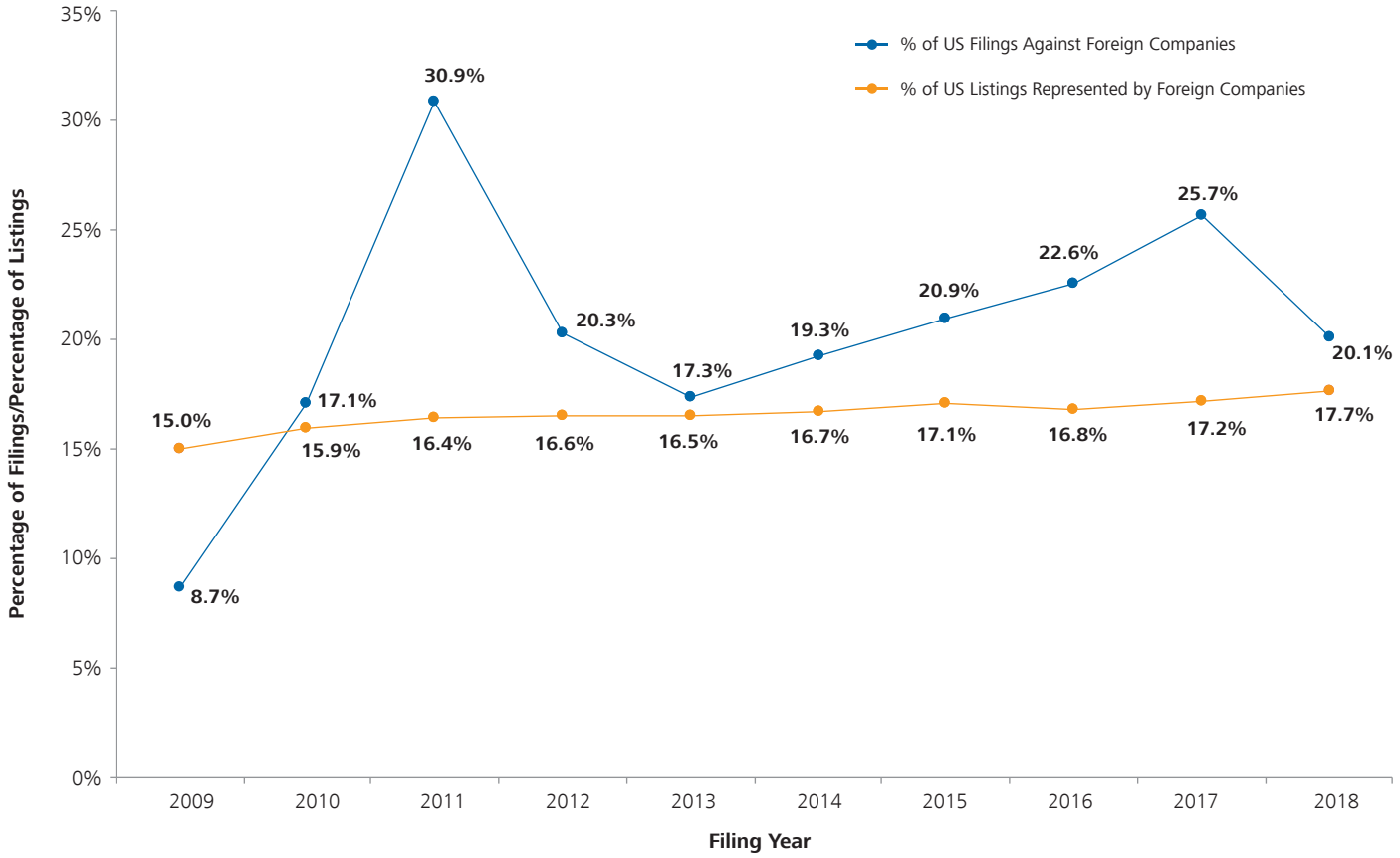
The reversion in claims against foreign firms mirrors a wider slowdown in filings with regulatory allegations. Over the last few years, growth in regulatory filings explained much of the growth in foreign filings, with 50% to 80% of new foreign cases including such allegations. That trend has reversed; in 2018, 75% of the drop in foreign filings stemmed from fewer claims related to regulation.

The slowdown in foreign regulatory filings can also be tied to fewer complaints in 2018 alleging similar regulatory violations, which adversely targeted foreign firms and particularly those domiciled in Europe. For instance, in 2017 there were multiple filings related to pharmaceutical price fixing, emissions defeat devices, and financing schemes by Kalani Investments Limited.

Filings against foreign companies spanned several economic sectors, led by a considerable jump against firms in the Electronic Technology and Technology Services sector (accounting issues were most common). Filings against foreign companies in the Health Technology and Services sector dropped by half. In past years, such filings usually claimed regulatory violations; none did in 2018.

In 2011, a record 31% of filings targeted foreign companies, mostly due to a surge in litigation against Chinese companies, which was mainly related to a proliferation in so-called "reverse mergers" years earlier. A reverse merger is a merger in which a private company merges with a publicly traded company listed in the US, thereby enabling access to US capital markets without going through the process of obtaining a new listing.

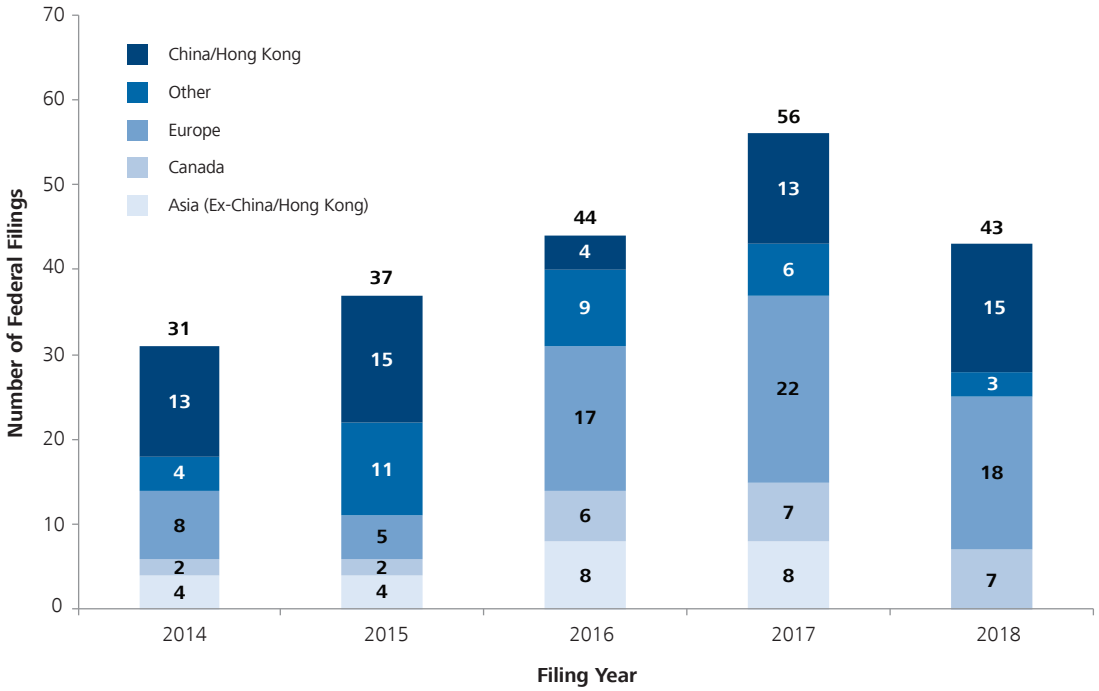
Figure 5. **Foreign Companies: Share of Filings and Share of Companies Listed on US Exchanges**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2009–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

Internationally, only Chinese firms listed on US exchanges were subject to more securities class actions in 2018 than in 2017 (see Figure 6). Filings against European firms slowed, partially due to fewer regulatory filings. There were zero filings against Israeli companies, despite an increase in listings and litigation against such companies in previous years.

Figure 6. **Filings Against Foreign Companies**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12 by Region
January 2014–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

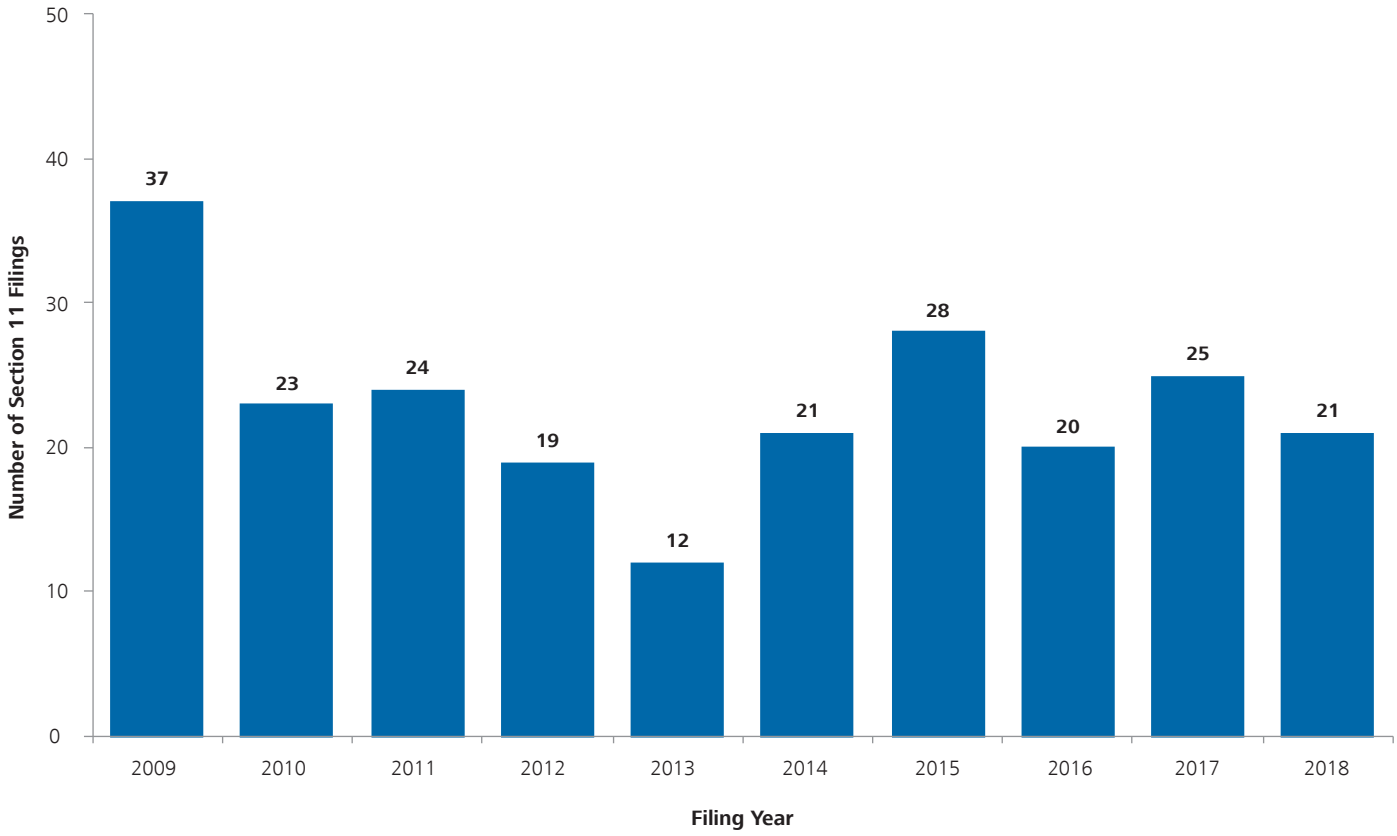
Section 11 Filings

There were 21 federal filings alleging violations of Section 11 in 2018, which approximates the five-year average (see Figure 7).

On 20 March 2018, the US Supreme Court ruled in *Cyan, Inc. v. Beaver County Employees Retirement Fund* that state courts have jurisdiction over class actions with claims brought under the Securities Act.[12] The ruling allows plaintiffs to litigate Section 11 claims in state courts, including plaintiff-friendly California state courts.

The full effect of the *Cyan* decision on federal filing trends remains to be seen, but of the 21 Section 11 filings in 2018, 14% involved firms headquartered in California, down from a quarter in 2016 (prior to the US Supreme Court granting certiorari). Of the three California firms, at least two have stated in filings with the SEC that claims under the Securities Act must only be brought in federal courts.[12]

Figure 7. **Section 11 Filings**
January 2009–December 2018



Aggregate NERA-Defined Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label "NERA-defined Investor Losses."

NERA's Investor Losses variable is a proxy for the aggregate amount that investors lost from buying the defendant's stock, rather than investing in the broader market during the alleged class period. Note that the Investor Losses variable is not a measure of damages because any stock that underperforms the S&P 500 would have Investor Losses over the period of underperformance; rather, it is a rough proxy for the relative size of investors' potential claims. Historically, Investor Losses have been a powerful predictor of settlement size. Investor Losses can explain more than half of the variance in the settlement values in our database.

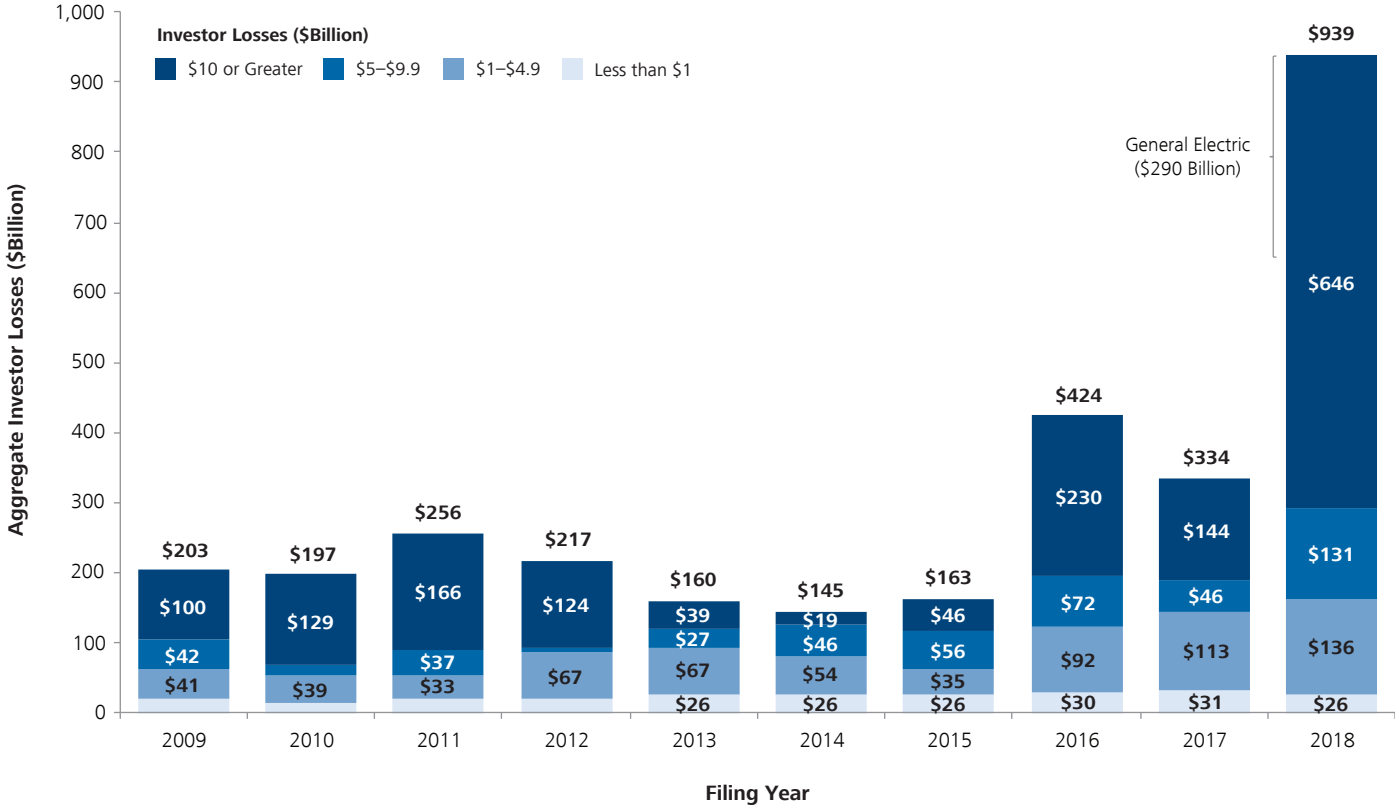
We do not compute NERA-defined Investor Losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are IPO laddering cases and merger-objection cases.

Despite a relatively constant rate of Standard filings in 2018, the size of those filings (as measured by NERA-defined Investor Losses) surged to nearly $1 trillion (see Figure 8). Total Investor Losses were dominated by litigation against GE, equal to about 45% of Investor Losses from all other cases combined, an especially impressive metric given the record aggregate case size.

NERA-defined Investor losses in 2018 totaled $939 billion, more than double that of any prior year and nearly four times the preceding five-year average of $245 billion. The total size of filings in all but the smallest strata grew, led by cases with more than $10 billion in Investor Losses. Coupled with the relatively stable overall filing rate, this suggests a systematic shift toward larger filings. In 2018, there were a record number of filings in each of the three largest strata, while only 88 cases had Investor Losses less than $1 billion, a record low.

Once again, there were several very large filings alleging regulatory violations, including a stock drop case against Johnson & Johnson related to claims of allegedly carcinogenic talcum powder, and a data privacy case against Facebook. Besides cases alleging regulatory violations, other very large cases included a filing against NVIDIA regarding excess inventory of GPUs (used for cryptocurrency mining) and large drug development cases against Bristol-Myers Squibb and Celgene.

Figure 8. **Aggregate NERA-Defined Investor Losses**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2009–December 2018



Over the past couple of years, growth in aggregate Investor Losses was concentrated in filings alleging regulatory violations, a substantial number of which were also *event-driven* securities cases (i.e., stock drop cases stemming from a specific event or occurrence). Between 2015 and 2017, growth in the total size of regulatory cases was due to an increased filing rate (from 31 to 57 cases) and higher median Investor Losses (from $308 million to $811 million).

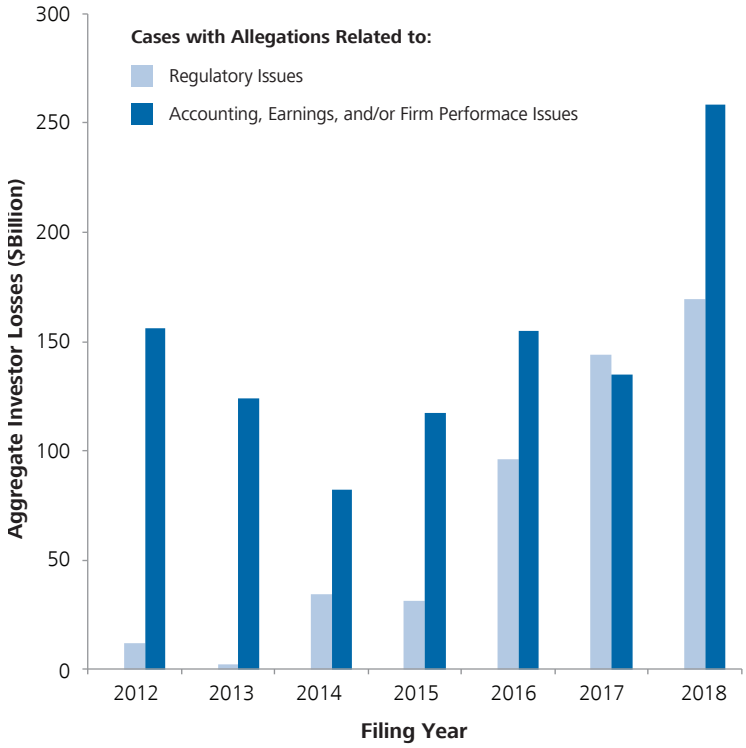
In 2018, regulatory cases were again large (half had Investor Losses greater than $4 billion), but the vast majority of total Investor Losses stemmed from what have historically been more typical securities cases, namely those that allege accounting issues, misleading earnings guidance, and/or firm performance issues.[14] This was led by litigation related to accounting issues at GE. Excluding GE, aggregate Investor Losses of such cases nearly doubled to a record $258 billion (see Figure 9).

Growth in the total size of cases alleging accounting, earnings, and/or performance issues primarily stems from growth in individual case size, as opposed to more filings. The median case with such allegations had more than $650 million in Investor Losses, about twice the average of $322 million over the preceding five years.

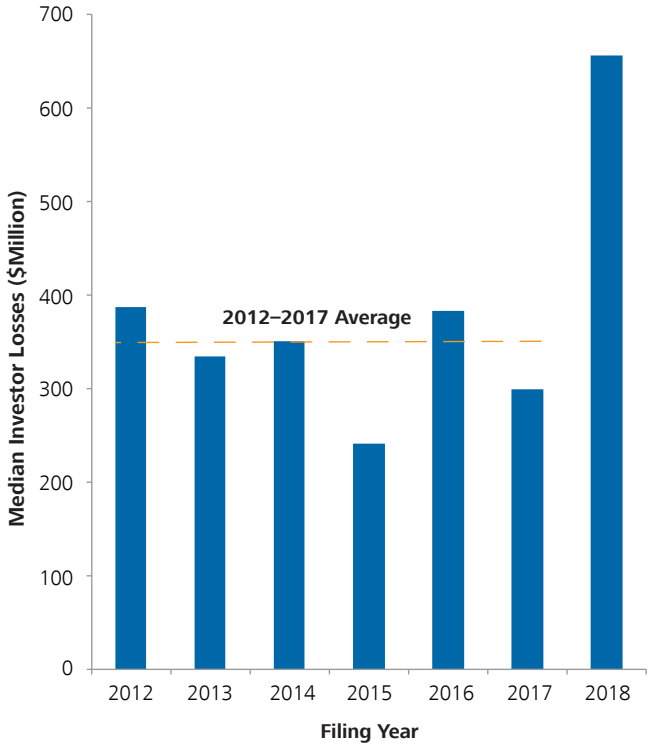
Details of the size of cases with specific types of allegations are discussed in the *Allegations* section below.

Figure 9. **NERA-Defined Investor Losses**
Filings Alleging Accounting Issues, Missed Earnings Guidance, and/or Misleading Future Performance
Excludes 2018 GE Filings

Aggregate NERA-Defined Investor Losses
January 2012–December 2018



Median NERA-Defined Investor Losses
January 2012–December 2018



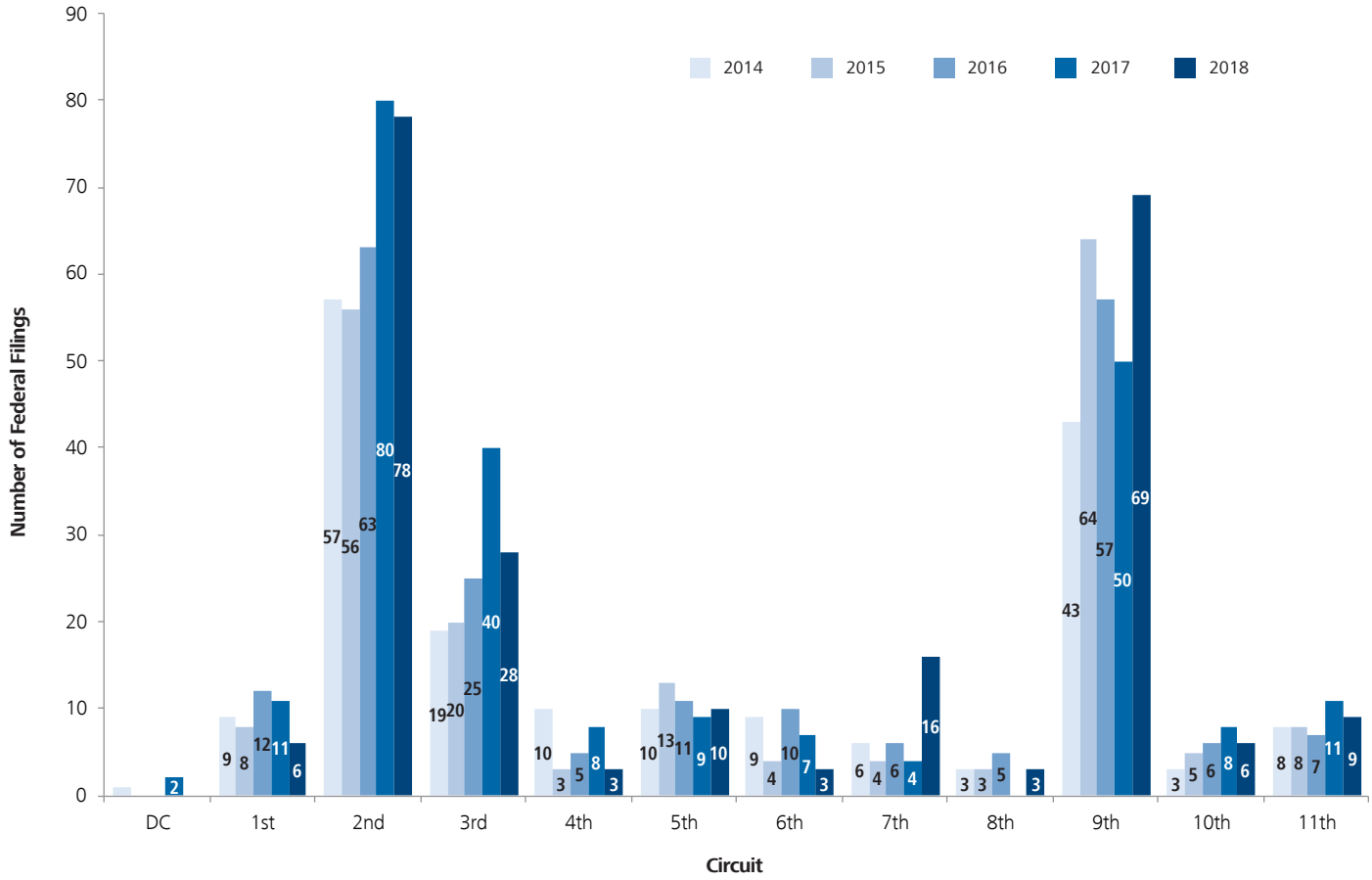
Note: Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.

Filings by Circuit

Filings in 2018 (excluding merger objections) were again concentrated in the Second and Ninth Circuits. The concentration of filings in these circuits has increased in 2018, during which they received 64% of filings, up from an average of 57% over the prior two years (see Figure 10). While the Second Circuit received the most filings, the most growth was in the Ninth Circuit, which includes Silicon Valley, mostly due to more litigation against firms in the Electronic Technology and Technology Services sector.

Merger-objection filings, not included in Figure 10, have become increasingly active in the Third Circuit, which includes Delaware. The Third Circuit received 82 merger-objection cases in 2018, double the number in 2017 and more than an eightfold increase over 2016. Nearly four-in-ten merger-objection cases were filed in the Third Circuit, twice the concentration of 2017 and coming amidst only a slight increase in the percentage of target firms incorporated in Delaware (see Figure 4). This corresponds with a decline in filings in every other circuit except the Second Circuit, where filings increased from 15 to 26.

Figure 10. **Federal Filings by Circuit and Year**
Excludes Merger Objections
January 2014–December 2018

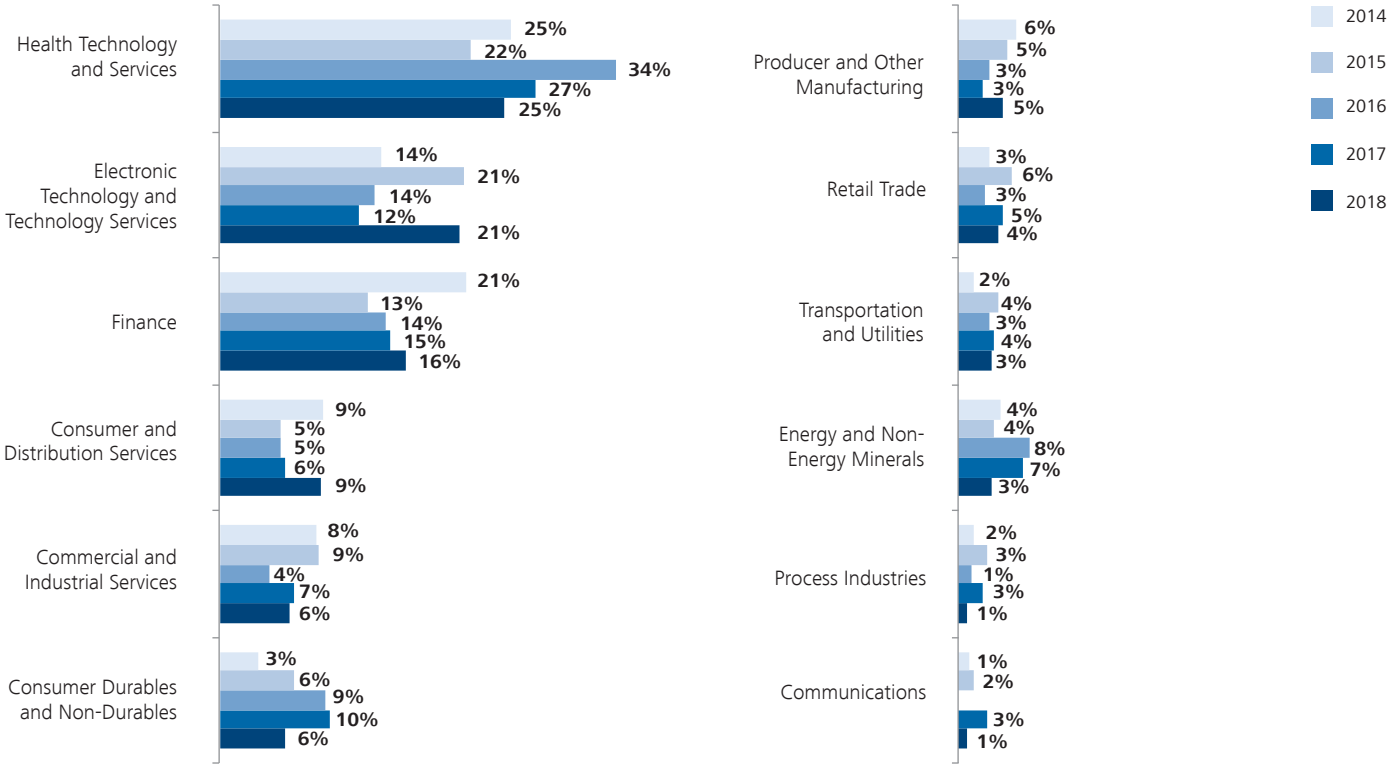


Filings by Sector

In 2018, filing counts were highest in the three historically dominant sectors, which include firms involved in health care, technology, and financial services (see Figure 11). The share of filings in these sectors increased to 62% in 2018 from about 54% in 2017, primarily due to a surge in filings against firms in the technology sector. Despite the drop in the percentage of health care companies targeted, the percentage of targeted firms in the Drugs industry (SIC 283) was nearly unchanged from 2017.

Firms in technological industries were especially at risk of securities class actions alleging accounting issues, misleading earnings guidance, or firm performance issues.[15] The industry with the highest percentage of constituent companies targeted with such allegations was the Computer and Office Equipment industry (SIC 357), with more than 9% of listed companies subject to litigation. This was followed by the Electronic Components and Accessories industry (SIC 367), with 6% of firms targeted. In the Drugs industry (SIC 283), 5% of firms were targeted with a filing with such claims (mostly related to misleading announcements regarding future performance).

Figure 11. **Percentage of Filings by Sector and Year**
Excludes Merger Objections
January 2014–December 2018



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Allegations

In contrast with growth observed in recent years, filings with regulatory claims (i.e., those alleging a failure to disclose a regulatory issue) slowed to 41 in 2018 from 57 in 2017, a drop from 26% of Standard cases to 19% (see Figure 12). While fewer regulatory cases were filed, the median case size grew fourfold to over $4 billion (as measured by NERA-defined Investor Losses). The slowdown in regulatory filings was partially offset by more allegations of accounting issues and missed earnings guidance, which grew 8% and 13%, respectively.

While the size of filed cases (as measured by NERA-defined Investor Losses) grew in each allegation category, those alleging accounting issues and missed earnings guidance were especially large and more frequently targeted technology firms. The median size of accounting claims exceeded $600 million in 2018 (a level not seen since 2008), with filings over the second half of the year being especially large. Firms in the technology sector had the most accounting claims, making up 29% of the total (up from 21% in 2017). Moreover, more than one-in-three filings against firms in the technology sector alleged accounting issues.

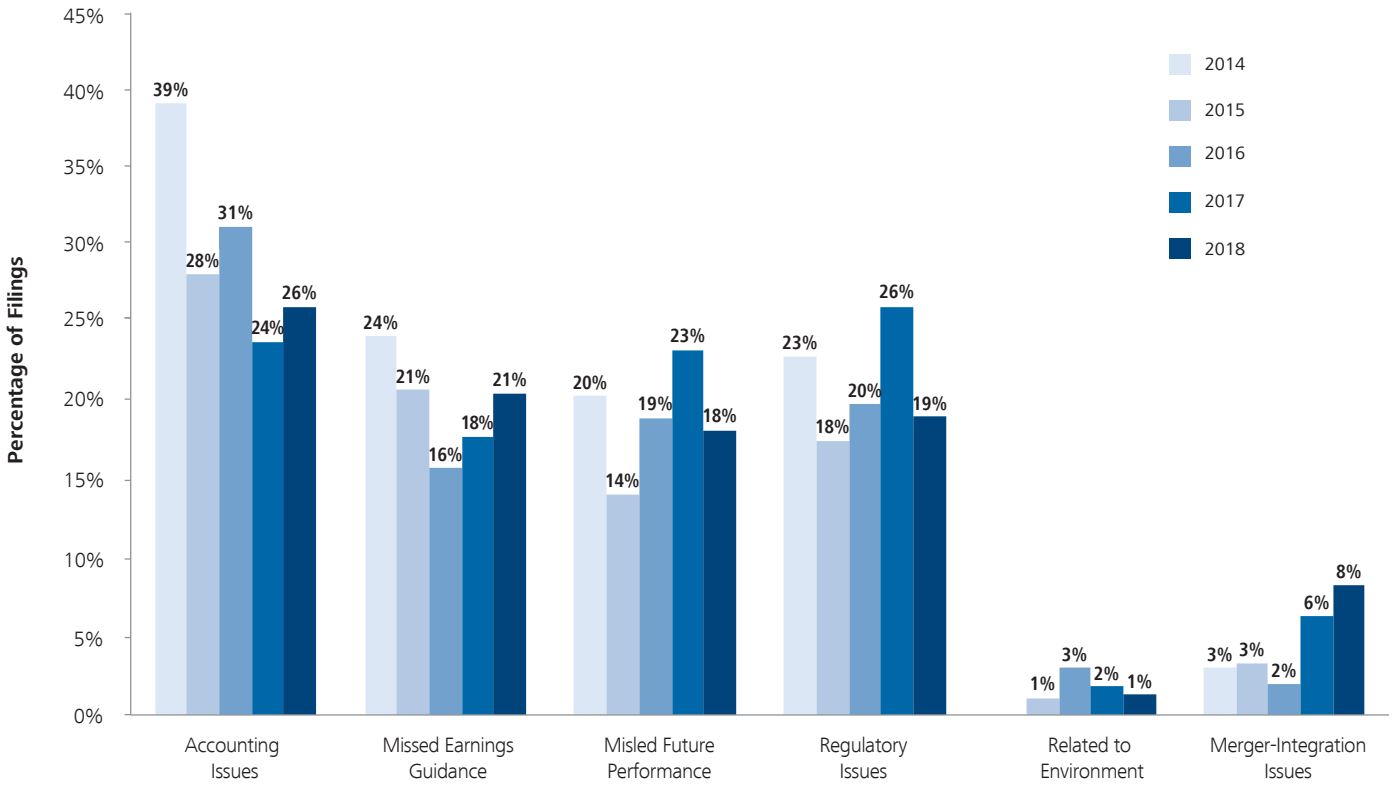
Filings claiming missed earnings guidance grew for the second straight year. Although the percentage of filings alleging missed guidance roughly matched that of 2015, the median case size (as measured by Investor Losses) was three times larger in 2018 than in 2015. Filings against firms in the technology sector with missed earnings guidance claims grew 70% since 2017 and constituted the largest share of such claims (at 27%).

In 2018, 8% of filings included merger integration allegations (i.e., claims of misrepresentations by a firm involved in a merger or acquisition). The substantial increase in litigation in 2017 corresponded with a 14% increase in announced M&A deals with US targets.[16] However, in 2018, despite a 12% slowdown in announced deal activity over the first three quarters, the number of federal merger integration filings rose.[17] The largest merger integration filing related to the failed Tribune Media/ Sinclair merger, making up 20% of total Investor Losses.

As in prior years, most allegations related to misleading firm performance in 2018 were against firms in the health care sector. Within health care, firms in the Drugs industry (SIC 283) were subject to two-in-three filings.

Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in multiple categories.

Figure 12. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2014–December 2018

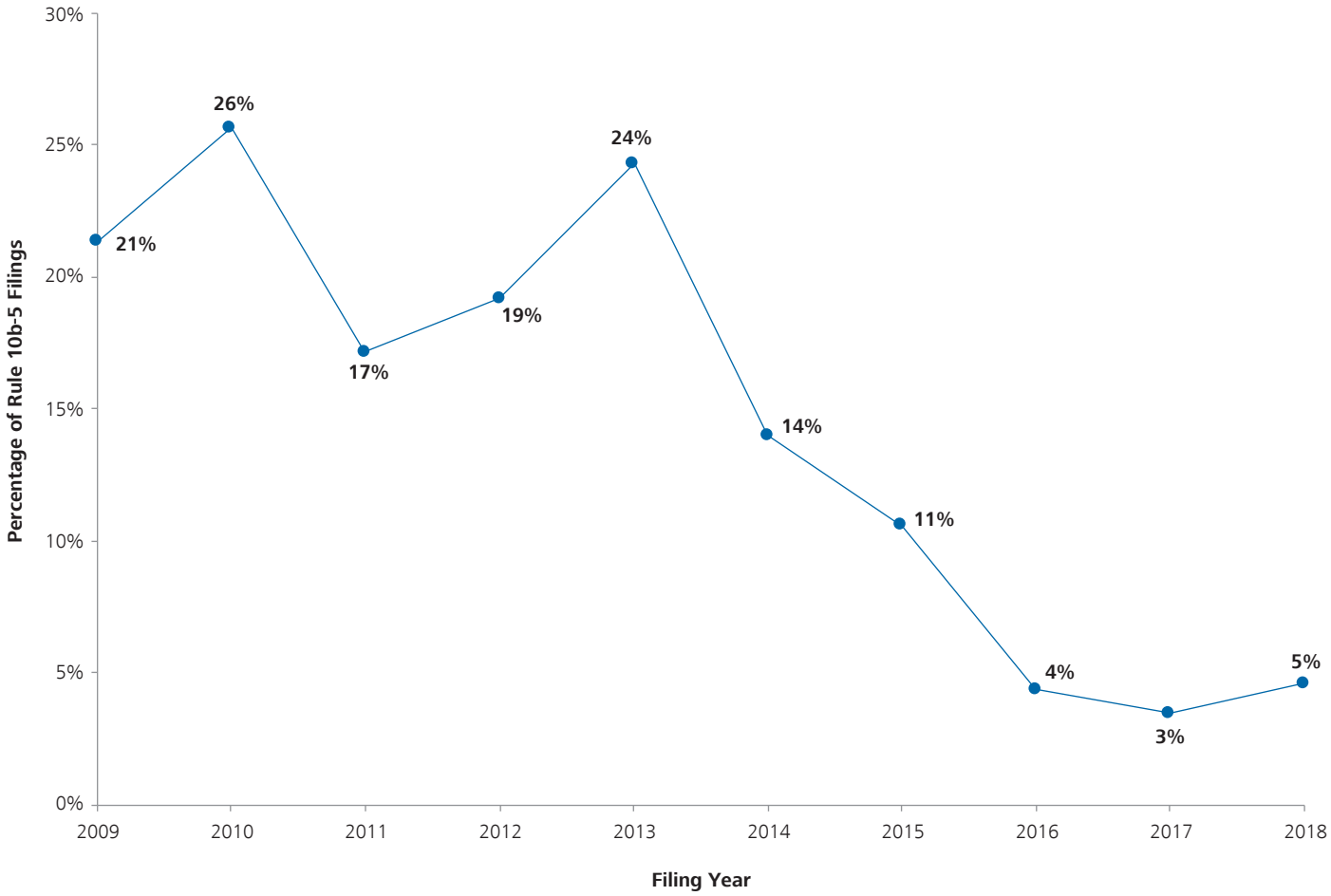


Alleged Insider Sales

Historically, Rule 10b-5 class action complaints have frequently alleged insider sales by directors and officers, usually as part of a scienter argument. Since 2013, in the wake of a multiyear crackdown on insider trading by prosecutors, the percentage of 10b-5 class actions that alleged insider sales has decreased nearly every year (see Figure 13).[18] This trend also corresponds with increased corporate adoption of 10b5-1 trading plans, allowing insiders to plan share sales while purportedly not in possession of material non-public information.[19]

Cases alleging insider sales were more common in the aftermath of the financial crisis, when a quarter of filings included insider trading claims. In 2005, half of class actions filed included such claims.

Figure 13. **Percentage of Rule 10b-5 Filings Alleging Insider Sales by Filing Year**
January 2009–December 2018



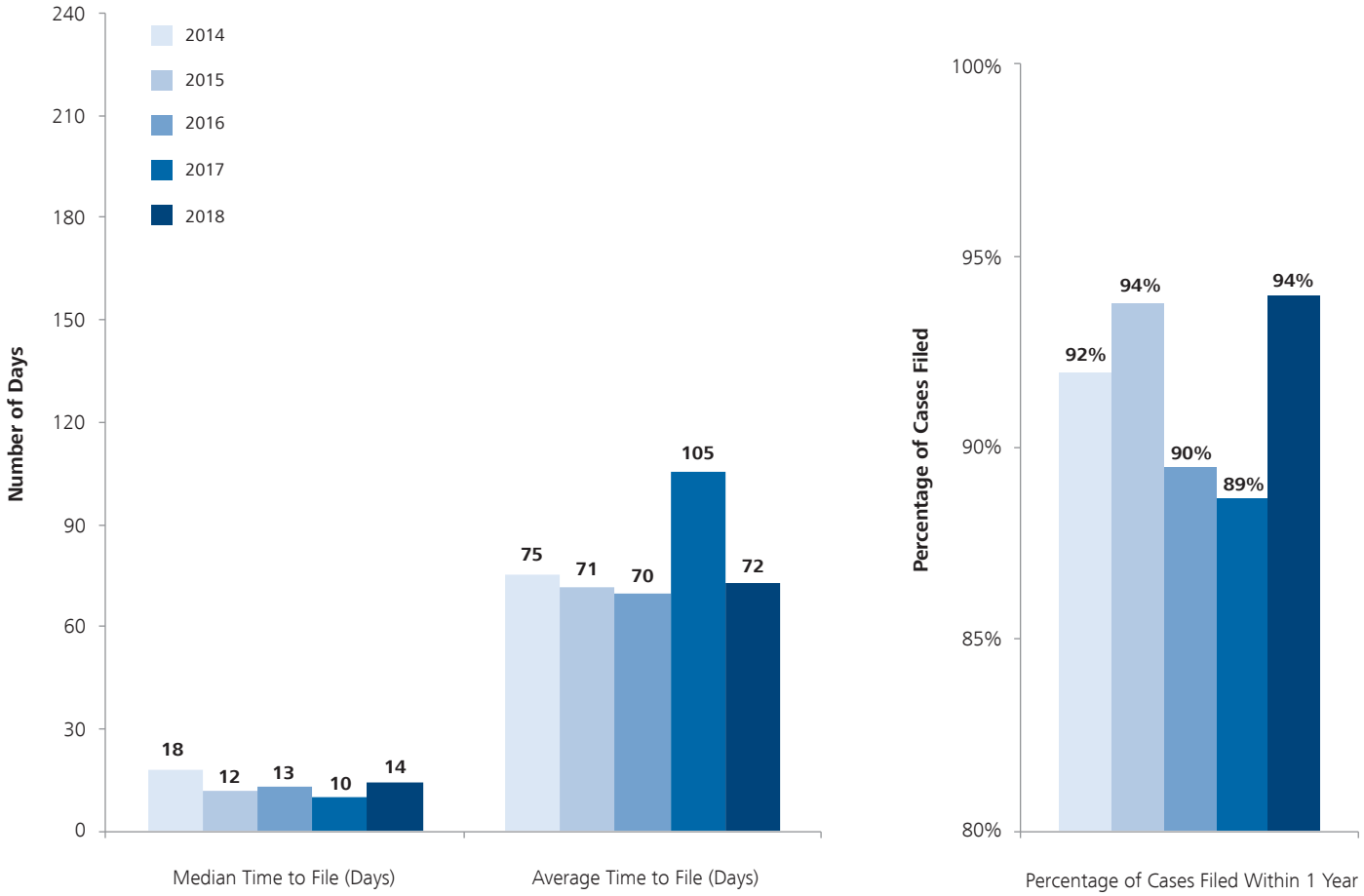
Time to File

The term "time to file" denotes the time that has elapsed between the end of the alleged class period and the filing date of the first complaint. Figure 14 illustrates how the median time and average time to file Rule 10b-5 cases (in days) have changed over the past five years.

The median time to file fell by about half over the last decade, to 14 days in 2018, indicating that it took 14 days or less to file a complaint in 50% of cases. Since the beginning of the decade, there has been a lower frequency of cases with long periods between the point when an alleged fraud was revealed and the filing of a related claim. The average time to file has followed a similar trajectory, but in 2017 was affected by 10 cases with very long filing delays. In 2017, one case against Rio Tinto, regarding the valuation of mining assets in Mozambique, took more than 4.5 years to file and boosted the average time to file by nearly 9%.[20]

Despite the small minority of cases with very long times to file, the data generally point toward a lower incidence of cases with long periods between revelations of alleged fraud and the date a related claim is filed.

Figure 14. **Time to File Rule 10b-5 Cases from End of Alleged Class Period to File Date**
January 2014–December 2018



Note: This analysis excludes cases where the alleged class period could not be unambiguously determined.

Analysis of Motions

NERA's statistical analysis has found robust relationships between settlement amounts and the stage of the litigation at which settlements occur. We track filings and decisions on three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we include securities class actions in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged (i.e., Standard cases).

As shown in the figures below, we record the status of any motion as of the resolution of the case. For example, a motion to dismiss that had been granted but was later denied on appeal is recorded as denied.

Motions for summary judgment were filed by defendants in 7.1%, and by plaintiffs in only 1.9%, of the securities class actions filed and resolved over the 2000–2018 period, among those we tracked.[21]

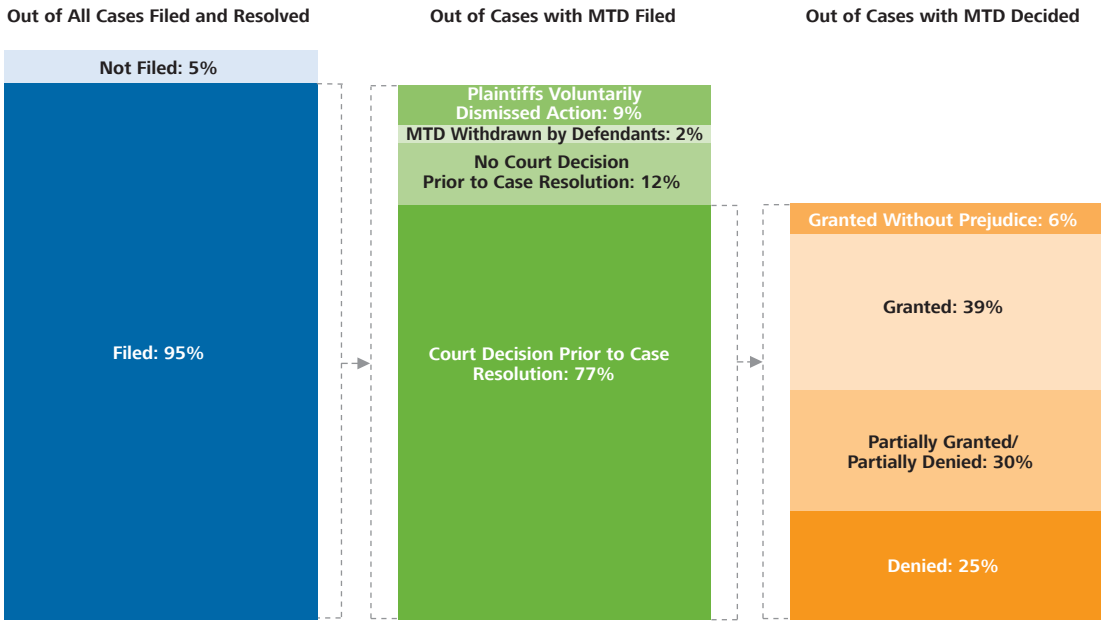
Outcomes of motions to dismiss and motions for class certification are discussed below.

Motion to Dismiss

A motion to dismiss was filed in 95% of the securities class actions tracked. However, the court reached a decision on only 77% of the motions filed. In the remaining 23% of cases, either the case resolved before a decision was reached, plaintiffs voluntarily dismissed the action, or the motion to dismiss was withdrawn by defendants (see Figure 15).

Out of the motions to dismiss for which a court decision was reached, the following three outcomes classify all of the decisions: granted with or without prejudice (45%), granted in part and denied in part (30%), and denied (25%).

Figure 15. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2000–December 2018



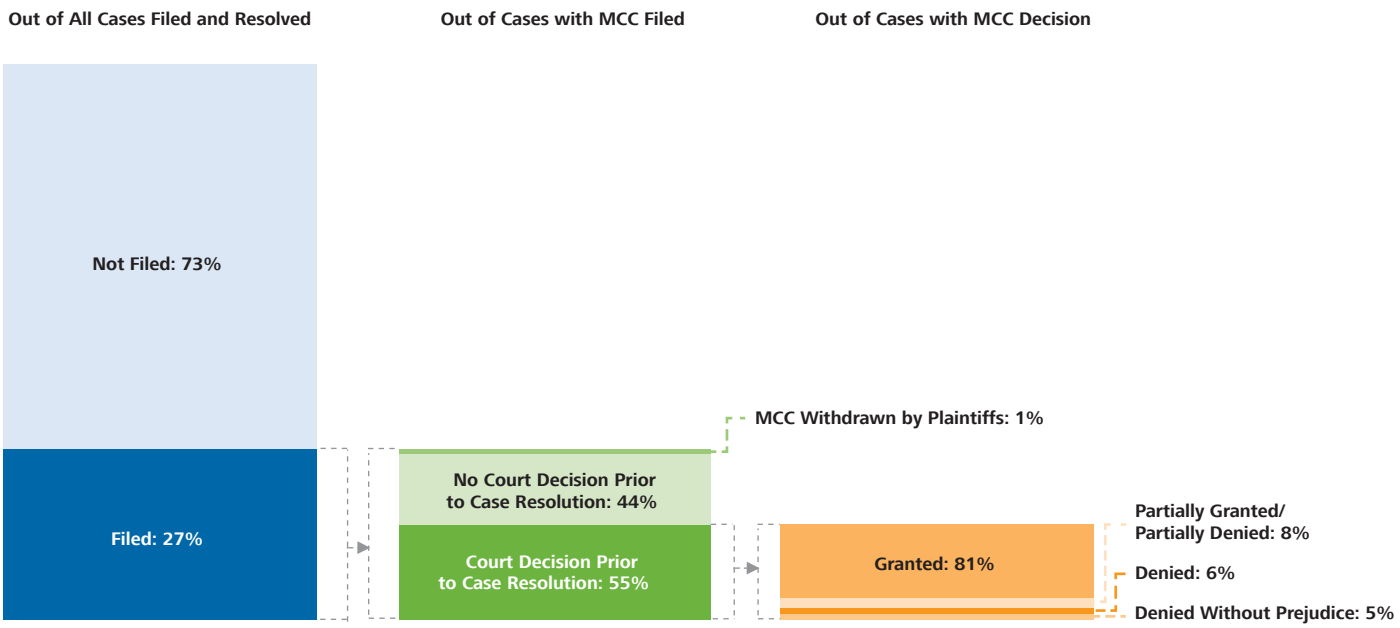
Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Motion for Class Certification

Most cases were settled or dismissed before a motion for class certification was filed: 73% of cases fell into this category. Of the remaining 27% (in which a motion for class certification was filed), the court reached a decision in only 55% of cases. Overall, only 15% of the securities class actions filed (or 55% of the 27%) reached a decision on the motion for class certification (see Figure 16).

According to our data, 89% of the motions for class certification that were decided were granted partially or in full.

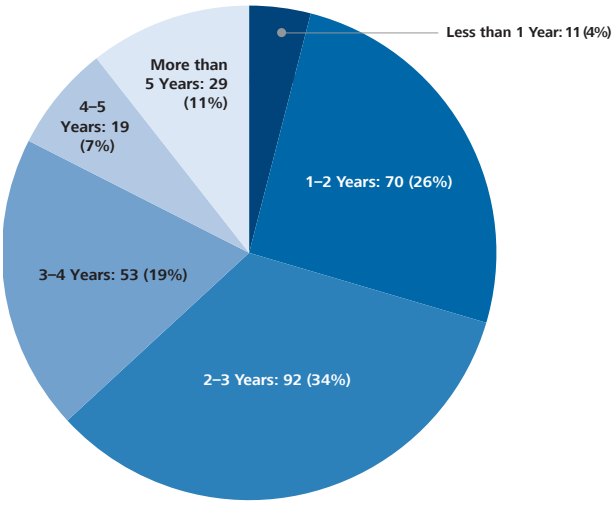
Figure 16. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Approximately 64% of the decisions handed down on motions for class certification were reached within three years of the complaint's original filing date (see Figure 17). The median time was about 2.5 years.

Figure 17. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Trends in Case Resolutions

Number of Cases Settled or Dismissed

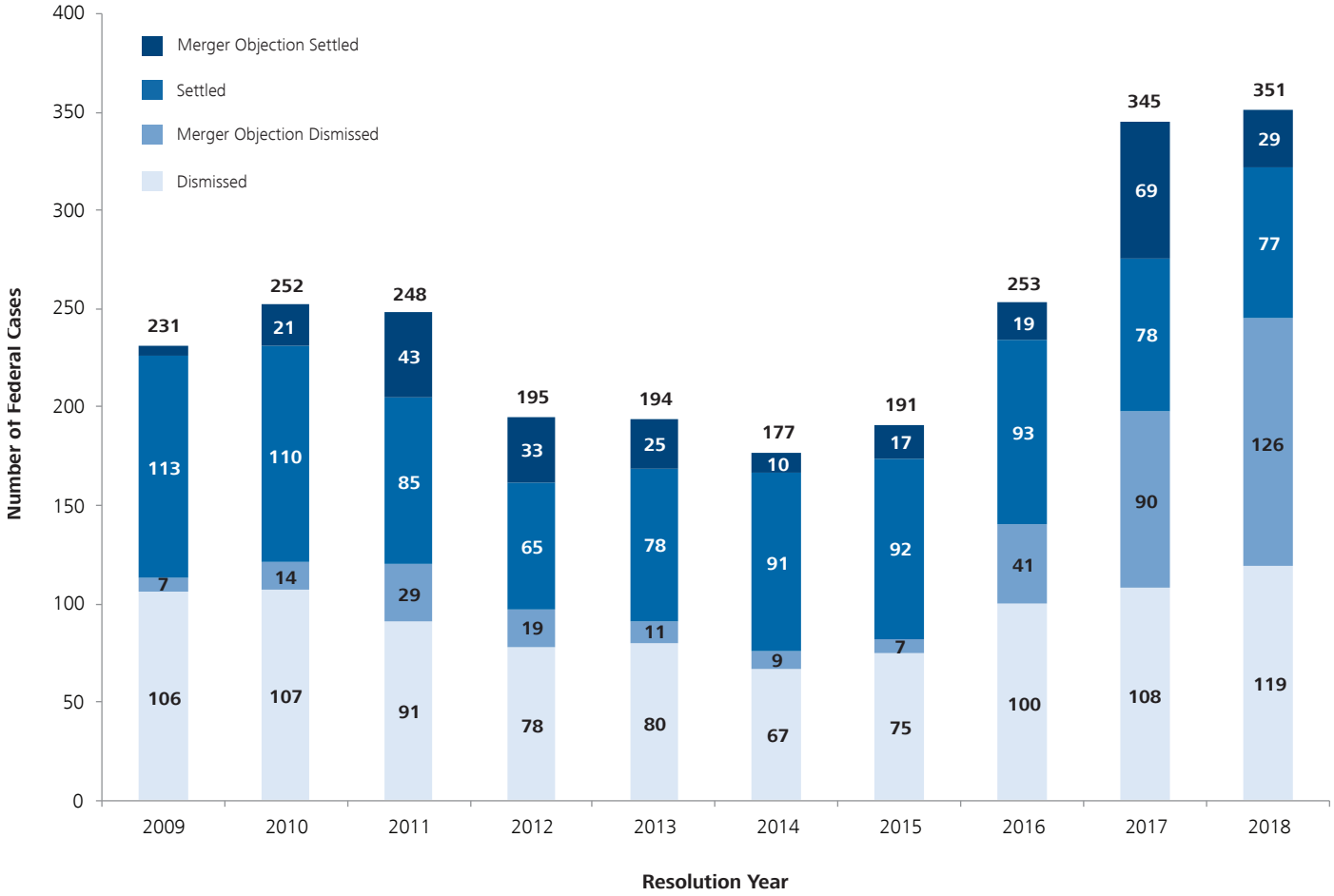
In total, 351 securities class actions were resolved in 2018, the second consecutive year in which a record number of cases concluded (see Figure 18). Resolution numbers were once again dominated by a record number of dismissals, which outnumbered settlements two-to-one for the first time.

Of the 351 resolutions, slightly less than half were resolutions of merger-objection cases (most of which were voluntarily dismissed). The uptick in resolutions over the last few years is largely due to the surge of federal merger-objection cases in the wake of the *Trulia* decision in early 2016.[22] Prior to *Trulia*, only about 13% of resolutions concerned merger-objection litigation. Merger objections had an outsized impact on resolution statistics: despite making up only about 33% of all active cases, they constituted 44% of resolutions.[23]

In 2018, 196 resolutions were of "Standard" securities class actions—those alleging violations of Rule 10b-5, Section 11, and/or Section 12. Standard settlement and dismissal counts closely matched those of 2017, and again more cases were dismissed than settled.

For the second consecutive year, an inordinate number of Standard cases were dismissed within a year of filing, most of which were voluntary dismissals. As shown in Figure 31, the decision to voluntarily dismiss litigation may change with the size of estimated damages to the class. For instance, plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases during the PSLRA bounce-back period.

Figure 18. **Number of Resolved Cases: Dismissed or Settled**
January 2009–December 2018



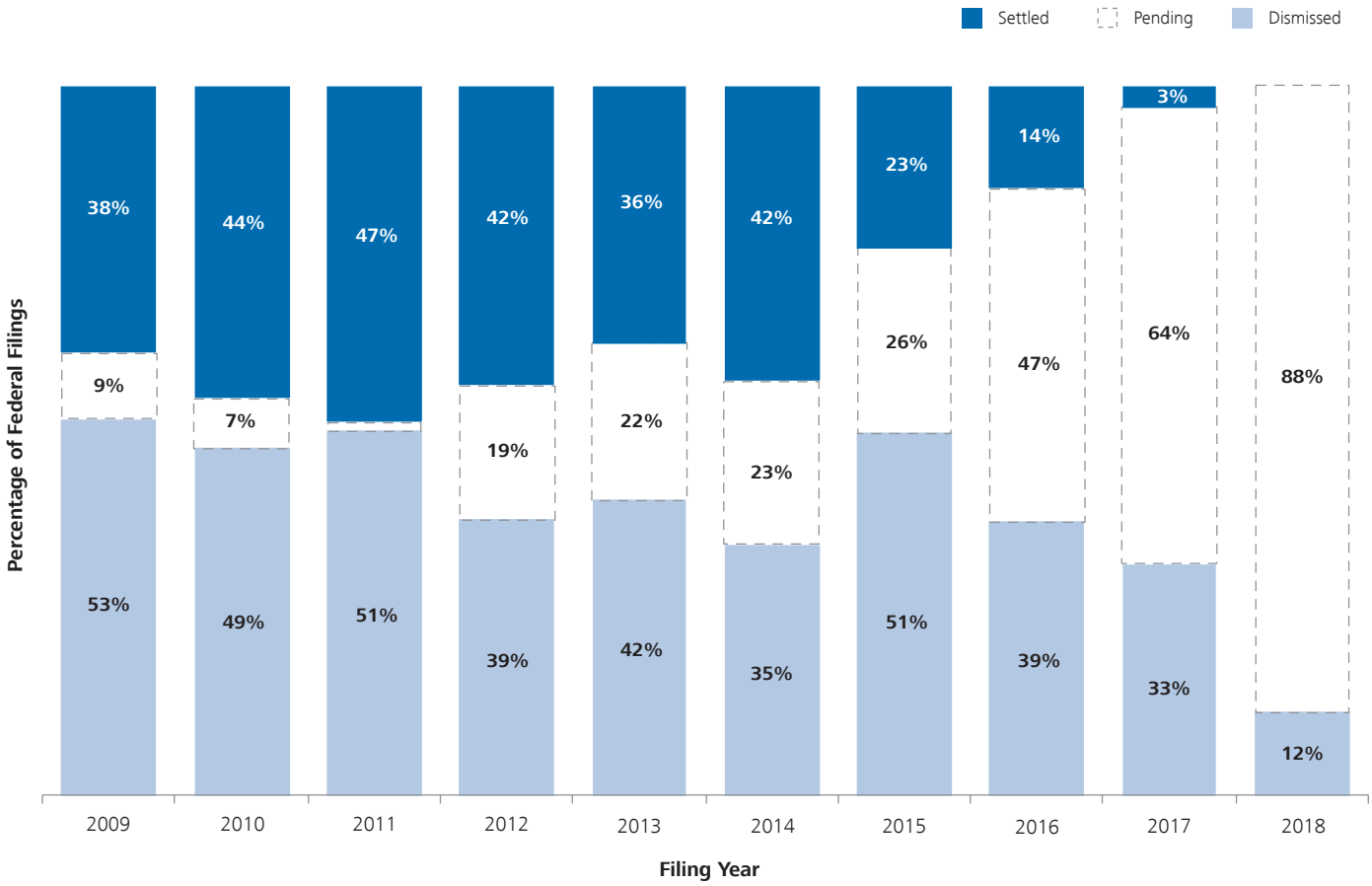
Case Status by Year

Figure 19 shows the current resolution status of cases by filing year. Each percentage represents the current resolution status of cases filed in each year as a proportion of all cases filed in that year. Merger-objection cases are excluded, as are verdicts.

Historically, more cases settled than were dismissed. However, the rate of case dismissal has steadily increased. While only about a third of cases filed between 2000 and 2002 were dismissed, in 2015, the most recent year with substantial resolution data, at least half of filed cases were dismissed.[24]

While dismissal rates have been climbing since 2000, the ultimate dismissal rate for cases filed in more recent years is less certain. On one hand, the dismissal rate may increase further, as there are more pending cases awaiting resolution. On the other hand, it may decrease because recent dismissals have more potential than older ones to be appealed or re-filed, and cases that were recently dismissed without prejudice may ultimately result in settlements.

Figure 19. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excludes Merger Objections and Verdicts
January 2009–December 2018



Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

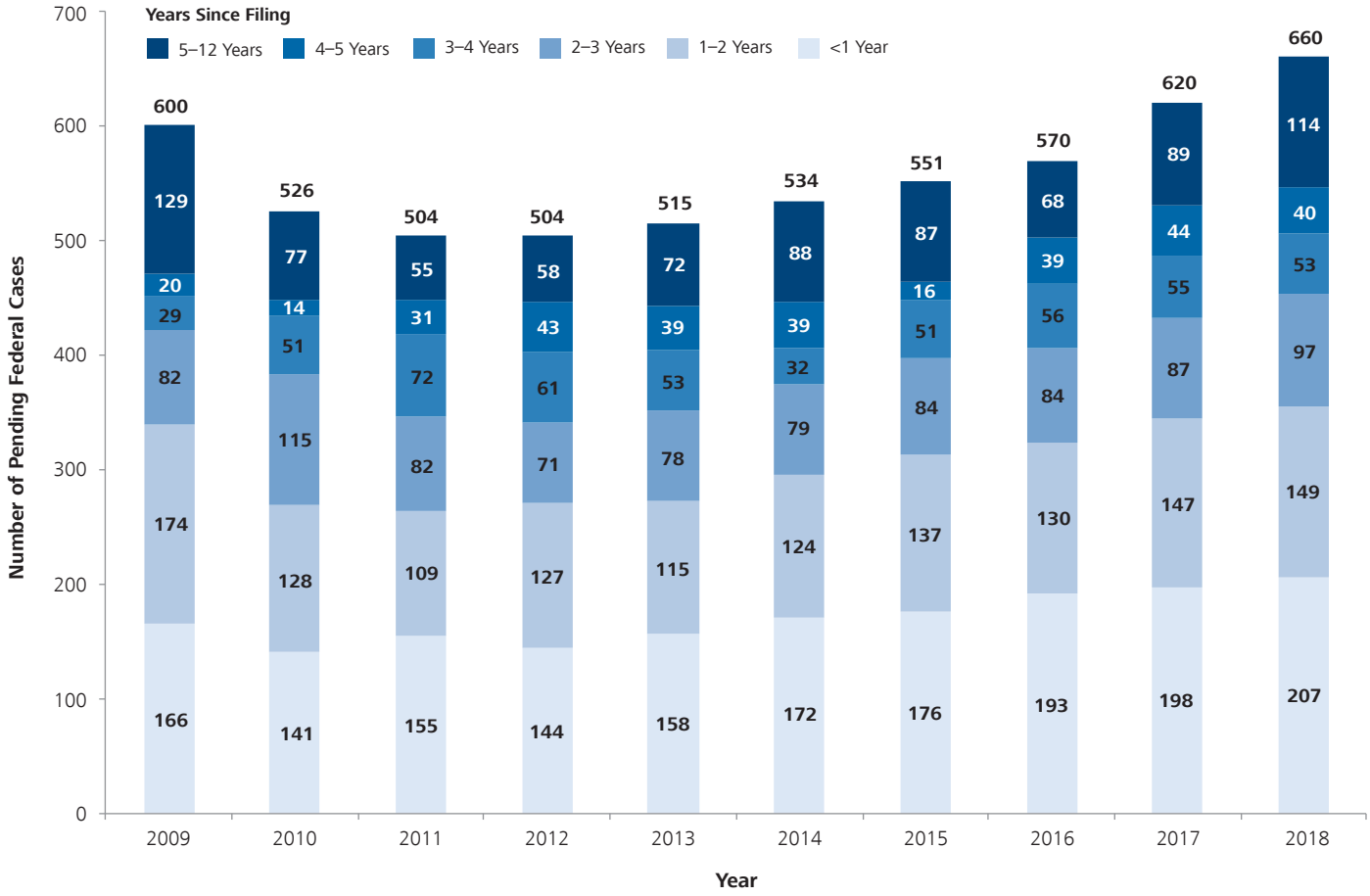
Number of Cases Pending

The number of Standard securities class actions pending in the federal system has steadily increased from a post-PSLRA low of 504 in 2012 (see Figure 20).[25] Since then, pending case counts have increased between 2% and 9% annually. In 2018, the number of pending Standard cases on federal dockets increased to 660, up 6% from 2017 and 31% from 2012.

Generally, since cases are either pending or resolved, a change in filing rate or a lengthening of the time to case resolution potentially contributes to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to case resolution is generally shortening or lengthening.

About 50% of the long-term growth in pending litigation can be explained by recent filing growth (filed over the past two years), the vast majority of which is simply due to more cases being filed that have yet to be resolved. Delayed resolution of older filings (i.e., cases filed before 2017) explains the other 50% or so of growth in pending litigation since 2011. More old cases on federal dockets has driven the median age of pending cases up 14% since 2015 to about 1.9 years, the highest since 2010.[26]

Figure 20. **Number of Pending Federal Cases**
Excludes Merger Objections
January 2009–December 2018



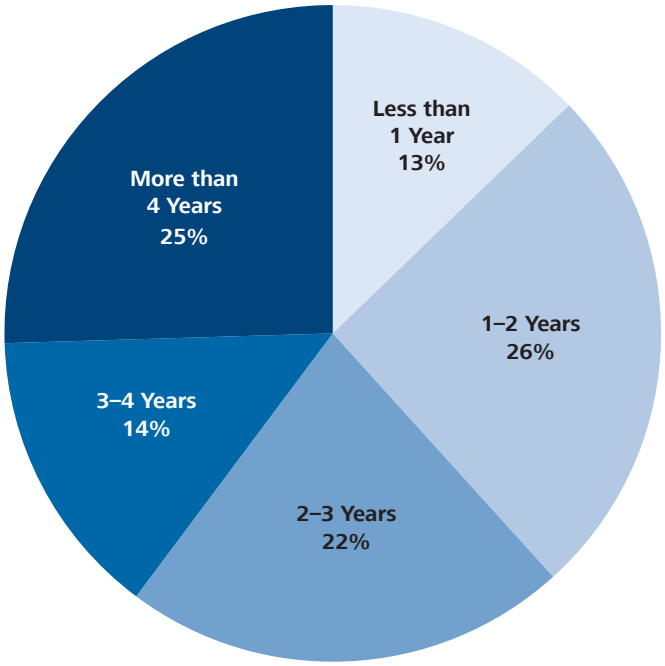
Note: The figure excludes, in each year, cases that had been filed more than 12 years earlier. Years since filing are end-of-year calculations. The figure also excludes IPO laddering cases. The 12-year limit ensure that all pending cases were filed post-PSLRA.

Time to Resolution

The term "time to resolution" denotes the time between the filing of the first complaint and resolution (whether through settlement or dismissal). Figure 21 illustrates the time to resolution for all securities class actions filed between 2001 and 2014, and shows that about 39% of cases are resolved within two years of initial filing and about 61% are resolved within three years.[27]

The median time to resolution for cases filed in 2016 (the last year with sufficient resolution data) was 2.3 years, similar to the range over the preceding five years. Over the past decade, the median time to resolution declined by more than 10%, primarily due to an increase in the dismissal rate (dismissals are generally resolved faster than settlements).

Figure 21. **Time from First Complaint Filing to Resolution**
Cases Filed January 2001–December 2014



Trends in Settlements

We present several settlement metrics to highlight attributes of cases that settled in 2018 and to compare them with cases settled in past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes merger-objection cases and cases that settle with no cash payment to the class, as settlements of such cases may obscure trends in what have historically been more typical cases.

In 2018, the average settlement rebounded to $69 million from a near-record low in 2017, largely due to the $3 billion settlement involving Petróleo Brasileiro S.A.—Petrobras, the fifth-highest settlement ever. Even excluding Petrobras (the only settlement of the year exceeding $1 billion), the average settlement exceeded $30 million, which is about average in the post-PSLRA era (after adjusting for inflation). The median settlement in 2018 was more than twice that of 2017, primarily due to higher settlements of many moderately sized cases and, generally, fewer very small settlements.

The upswing in 2018 settlement metrics may be a prelude to higher settlements in the future. Aggregate NERA-defined Investor Losses of pending cases, a factor that has historically been significantly correlated with settlement amounts, increased for the third consecutive year and currently exceeds $1.4 trillion (or $1.1 trillion excluding 2018 litigation against GE). Excluding GE, average Investor Losses of pending Standard cases have also increased for the third consecutive year to $2.4 billion, but have receded from a 10-year high of $3.8 billion in 2011.

To illustrate how many cases settled over various ranges in 2017 compared with prior years, we provide a distribution of settlements over the past five years. We also tabulated the 10 largest settlements of the year.

Average and Median Settlement Amounts

The average settlement exceeded $69 million in 2018, somewhat less than three times the $25 million average settlement in 2017 (see Figure 22). Infrequent large settlements, such as the 2018 Petrobras settlement, are generally responsible for the wide variability in average settlements over the past decade. Similar spikes to the one observed this year were also seen in 2010, 2013, and 2016, each primarily stemming from mega-settlements.

Figure 22. **Average Settlement Value**
Excludes Merger Objections and Settlements for $0 to the Class
January 2009–December 2018

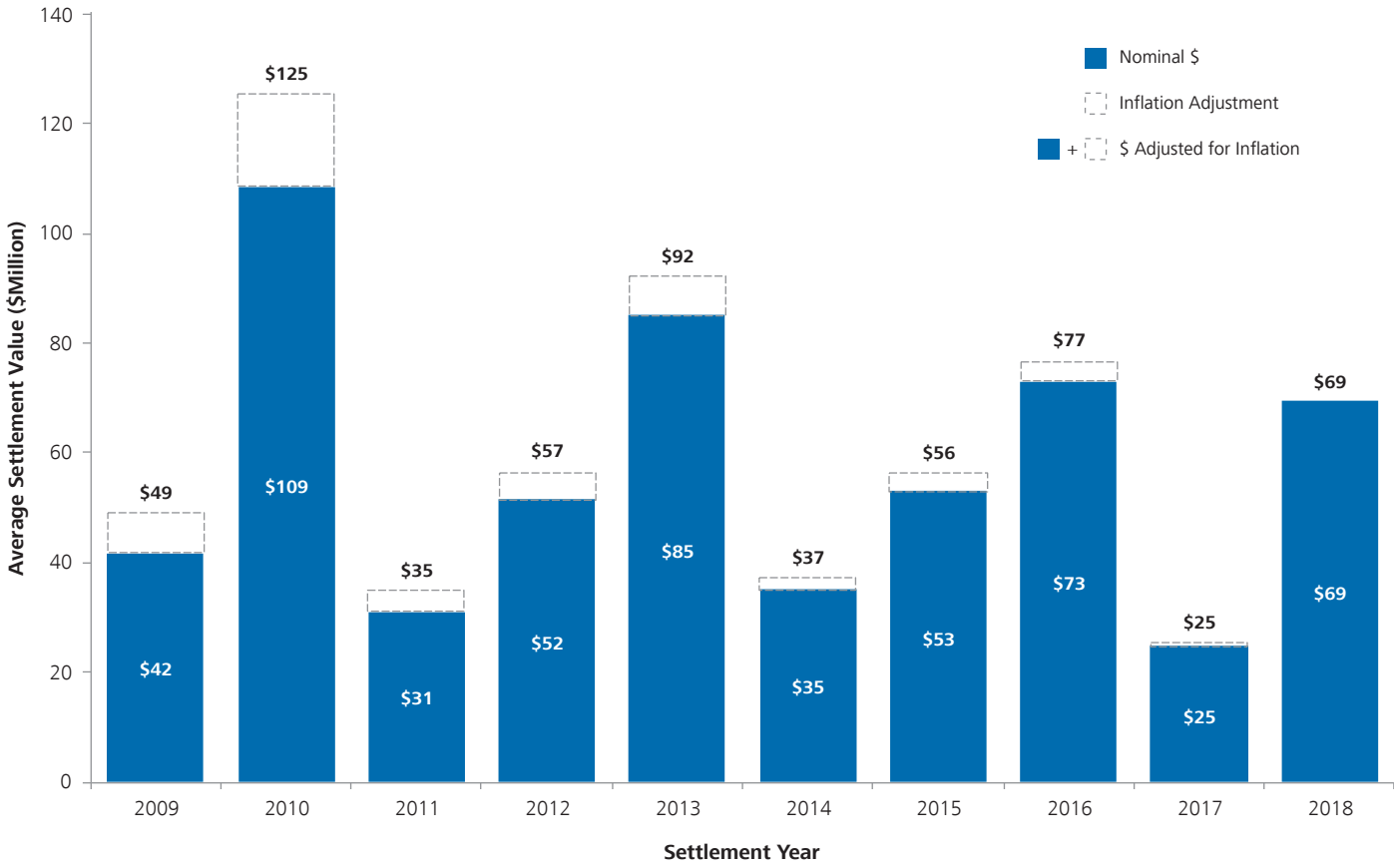
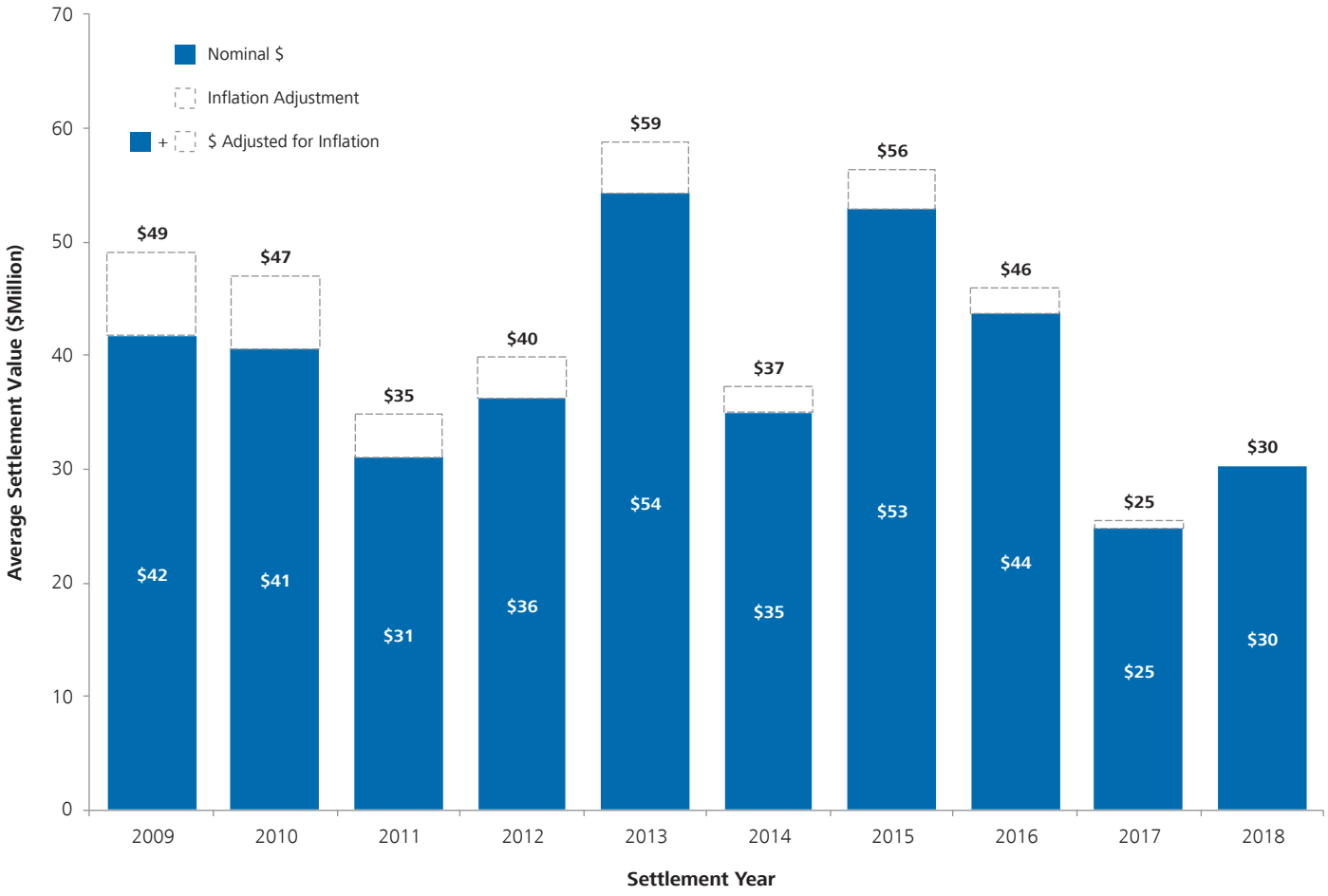


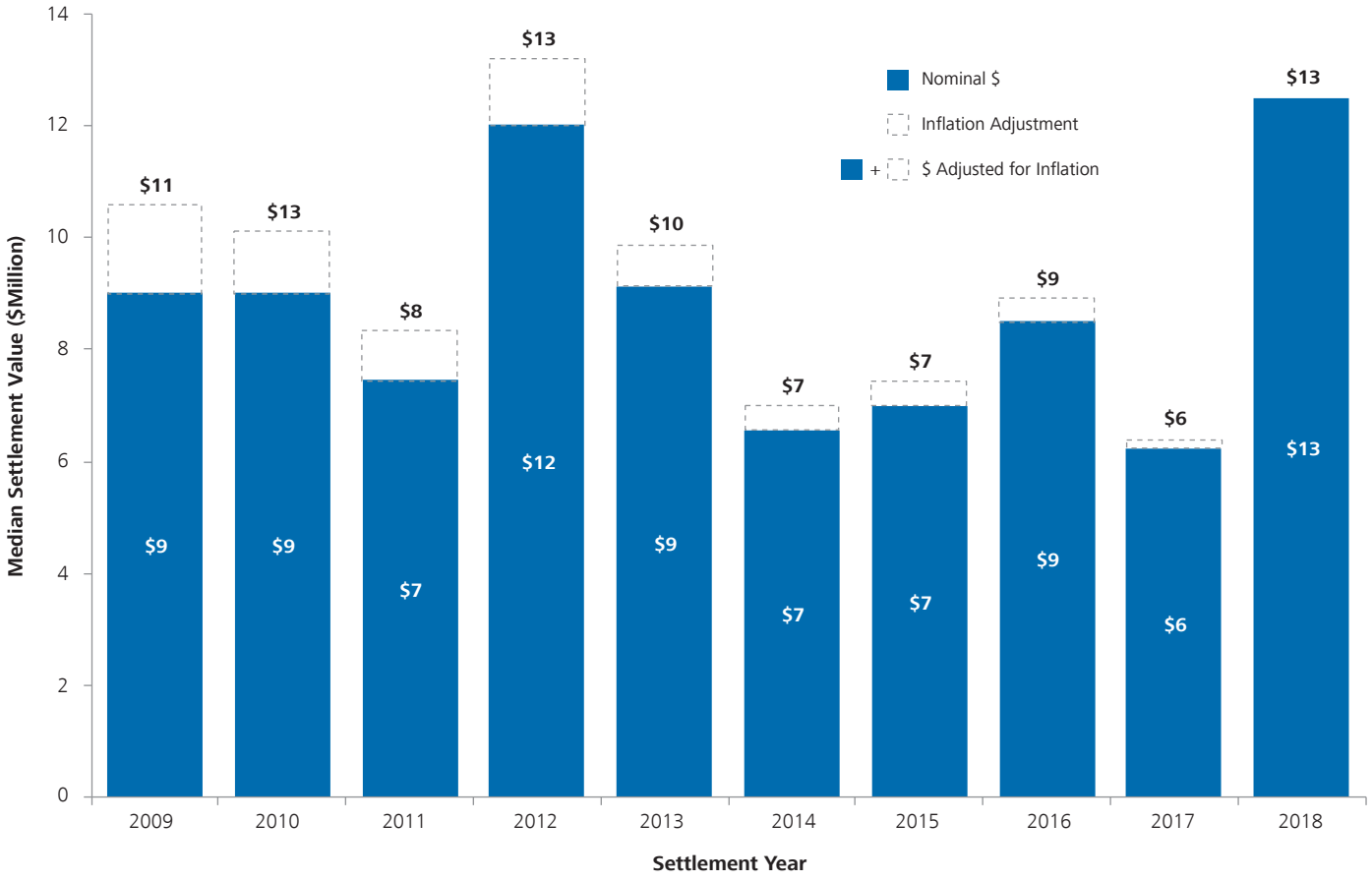
Figure 23 illustrates that, excluding settlements over $1 billion, the average settlement rebounded from the record low seen in 2017 to $30 million. Despite this rebound, and setting aside the $3 billion Petrobras settlement, the 2018 average settlement remained below average compared to the past decade. The metric would have roughly matched the near-record low seen in 2017 but for the $480 million Wells Fargo settlement that was finalized in mid-December 2018.

Figure 23. **Average Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2009–December 2018



The 2018 median settlement was a near-record $13 million. This was driven primarily by relatively high settlements of moderately sized cases (as measured by NERA-defined Investor Losses). Cases of moderate size not only made up the bulk of settlements in 2018 but also had a median ratio of settlement to Investor Losses more than 50% higher than in past years. Moreover, unlike 2017, there were generally few very small settlements.

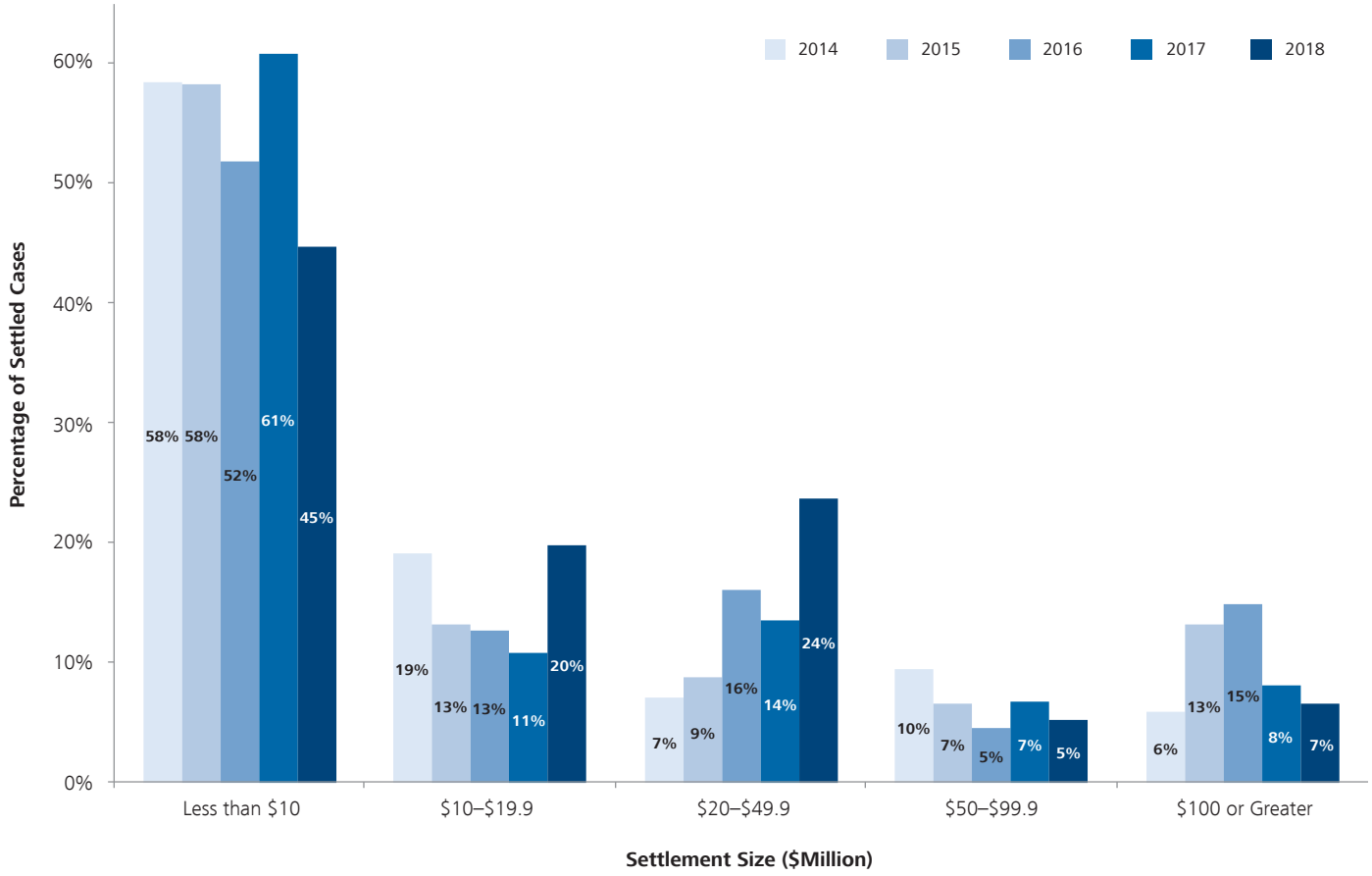
Figure 24. **Median Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2009–December 2018



Distribution of Settlement Amounts

The relatively high settlements of moderately sized cases in 2018 are also captured in the distribution of settlement values (see Figure 25). In 2018, fewer than 45% of settlements were for less than $10 million (the lowest rate since 2010), which stands in stark contrast with 2017, when more than 60% of settlements were in the smallest strata (the highest rate since 2011).

Figure 25. **Distribution of Settlement Values**
Excludes Merger Objections and Settlements for $0 to the Class
January 2014–December 2018



The 10 Largest Settlements of Securities Class Actions of 2018

The 10 largest securities class action settlements of 2018 are shown in Table 1. The two largest settlements, against Petrobras and Wells Fargo & Company, are among many large regulatory cases filed in recent years. Three of the 10 largest settlements involved defendants in the Finance sector. Overall, these 10 cases accounted for about $4.4 billion in settlement value, a near-record 84% of the $5.3 billion in aggregate settlements.

Despite the size of the Petrobras settlement, it is not even half the size of the second-largest settlement since passage of the PSLRA, WorldCom, Inc., at $6.2 billion (see Table 2).

Table 1. **Top 10 2018 Securities Class Action Settlements**

Ranking	Case Name	Total Settlement Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
1	Petróleo Brasileiro S.A.—Petrobras (2014)	$3,000.0	$205.0
2	Wells Fargo & Company (2016)	$480.0	$96.4
3	Allergan, Inc.	$290.0	$71.0
4	Wilmington Trust Corporation	$210.0	$66.3
5	LendingClub Corporation	$125.0	$16.8
6	Yahoo! Inc. (2017)	$80.0	$14.8
7	SunEdison, Inc.	$73.9	$19.0
8	Marvell Technology Group Ltd. (2015)	$72.5	$14.1
9	3D Systems Corporation	$50.0	$15.5
10	Medtronic, Inc. (2013)	$43.0	$8.6
	Total	**$4,424.4**	**$527.4**

Table 2. **Top 10 Securities Class Action Settlements**
As of 31 December 2018

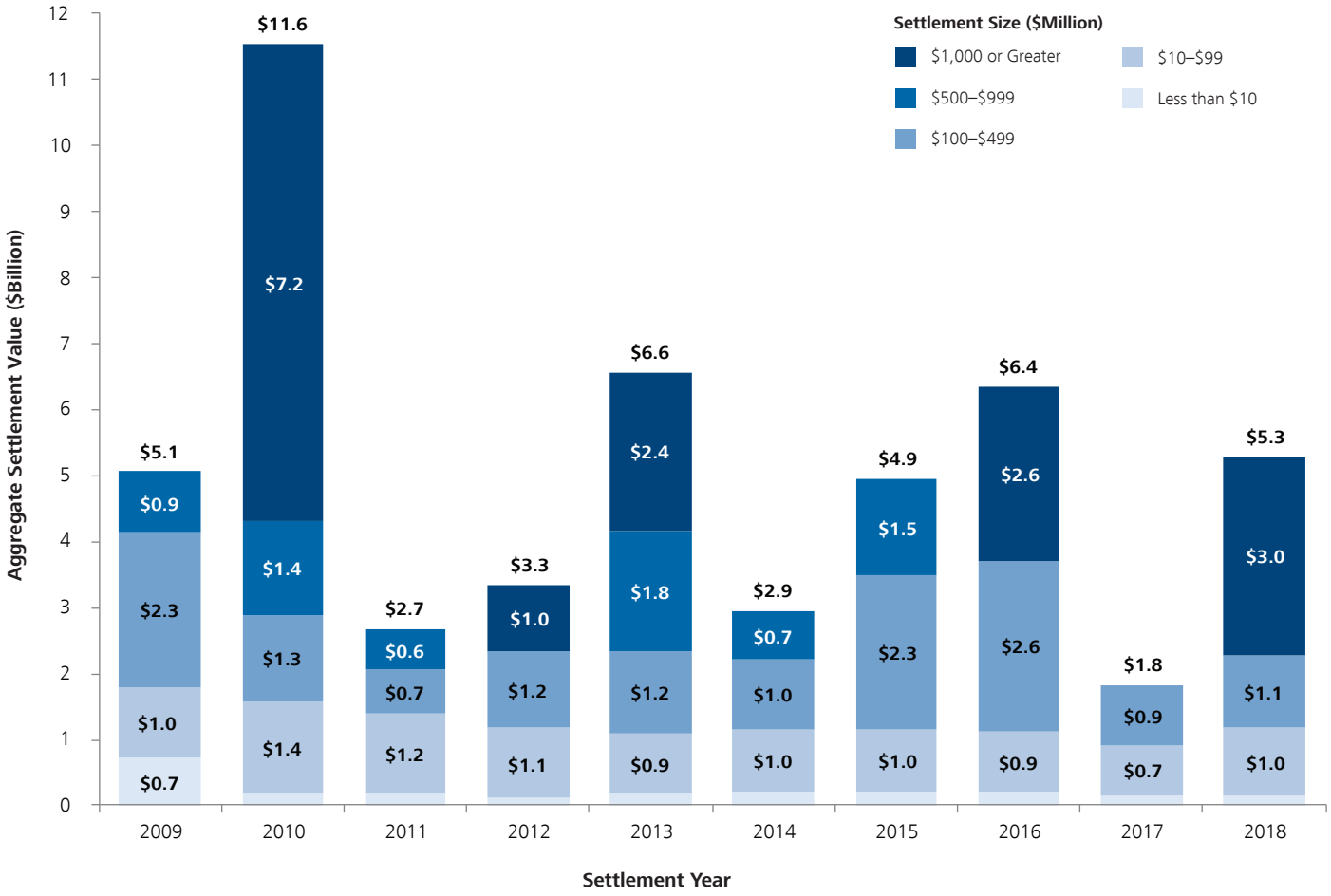
Ranking	Defendant	Settlement Year(s)	Total Settlement Value ($Million)	Codefendant Settlements		Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
				Financial Institutions Value ($Million)	Accounting Firms Value ($Million)	
1	ENRON Corp.	2003–2010	$7,242	$6,903	$73	$798
2	WorldCom, Inc.	2004–2005	$6,196	$6,004	$103	$530
3	Cendant Corp.	2000	$3,692	$342	$467	$324
4	Tyco International, Ltd.	2007	$3,200	No codefendant	$225	$493
5	Petróleo Brasileiro S.A.—Petrobras	2018	$3,000	$0	$50	$205
6	AOL Time Warner Inc.	2006	$2,650	No codefendant	$100	$151
7	Bank of America Corp.	2013	$2,425	No codefendant	No codefendant	$177
8	Household International, Inc.	2006–2016	$1,577	Dimissed	Dismissed	$427
9	Nortel Networks (I)	2006	$1,143	No codefendant	$0	$94
10	Royal Ahold, NV	2006	$1,100	$0	$0	$170
	Total		**$32,224**	**$13,249**	**$1,017**	**$3,368**

Aggregate Settlements

We use the term "aggregate settlements" to denote the total amount of money to be paid to settle litigation by (non-dismissed) defendants based on the court-approved settlements during a year.

Aggregate settlements rebounded to nearly $5.3 billion in 2018, more than double the 2017 total (see Figure 26). More than 80% of the growth stems from the $3.0 billion Petrobras settlement. Excluding Petrobras and Wells Fargo, aggregate settlements are near the 2017 record low, reflecting a persistent slowdown in overall settlement activity.

Figure 26. **Aggregate Settlement Value by Settlement Size**
January 2009–December 2018



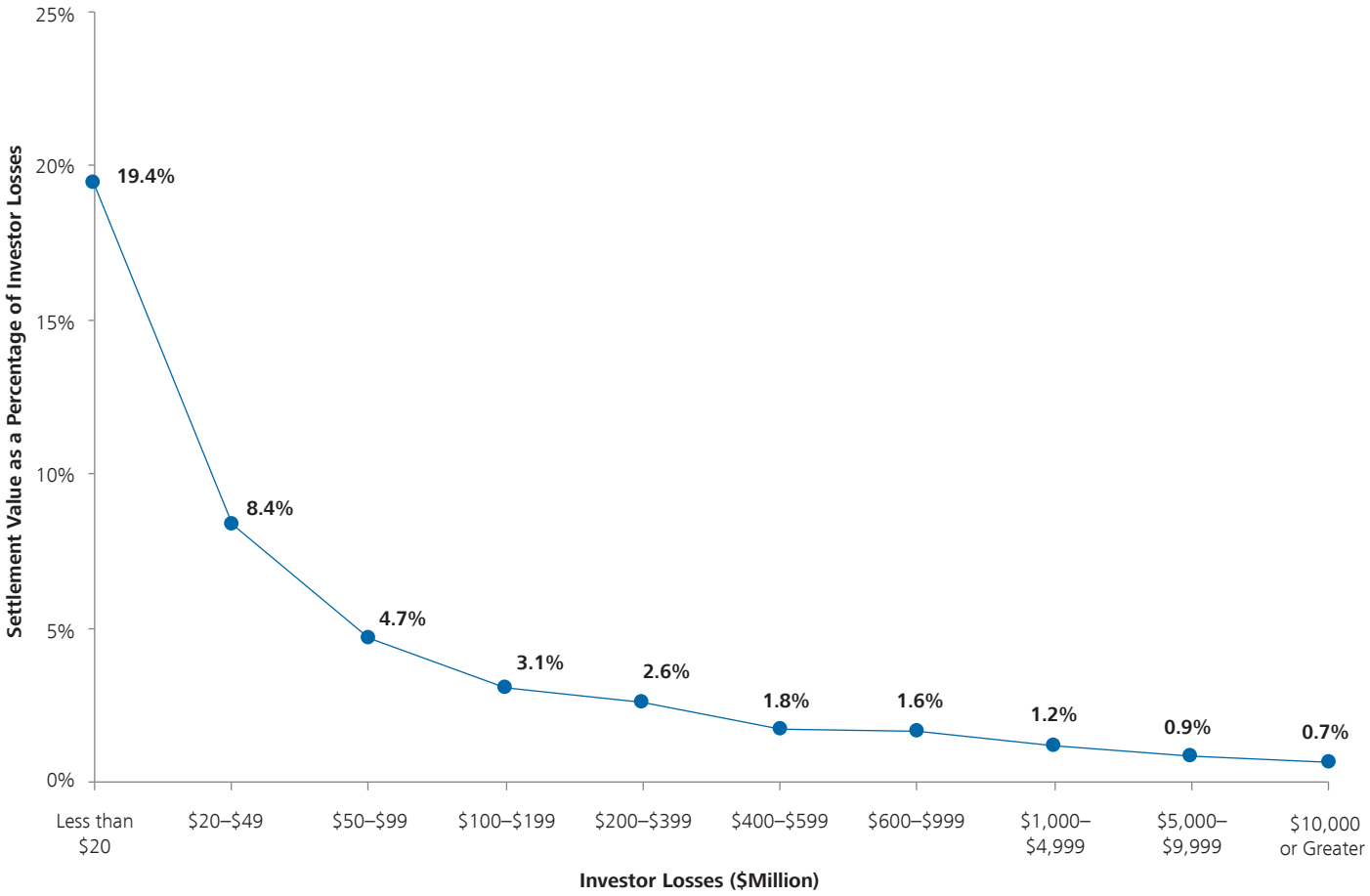
NERA-Defined Investor Losses vs. Settlements

As noted above, our proxy for case size, NERA-defined Investor Losses, is a measure of the aggregate amount investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as NERA-defined Investor Losses grow, but the relationship is not linear. Based on our analysis of data from 1996 to 2018, settlement size grows less than proportionately with Investor Losses. In particular, small cases typically settle for a higher fraction of Investor Losses (i.e., more cents on the dollar) than larger cases. For example, the ratio of settlement to Investor Loss for the median case was 19.4% for cases with Investor Losses of less than $20 million, while it was 0.7% for cases with Investor Losses over $10 billion (see Figure 27).

Our findings about the ratio of settlement amount to NERA-defined Investor Losses should not be interpreted as the share of damages recovered in settlement, but rather as the recovery compared to a rough measure of the "size" of the case. Notably, the percentages given here apply *only* to NERA-defined Investor Losses. Using a different definition of investor losses would result in a different ratio. Also, the use of the ratio alone to forecast the likely settlement amount would be inferior to a proper all-encompassing analysis of the various characteristics shown to impact settlement amounts, as discussed in the section *Explaining Settlement Values*.

Figure 27. **Median of Settlement Value as a Percentage of NERA-Defined Investor Losses by Level of Investor Losses**
Excludes Settlements for $0 to the Class
January 1996–December 2018

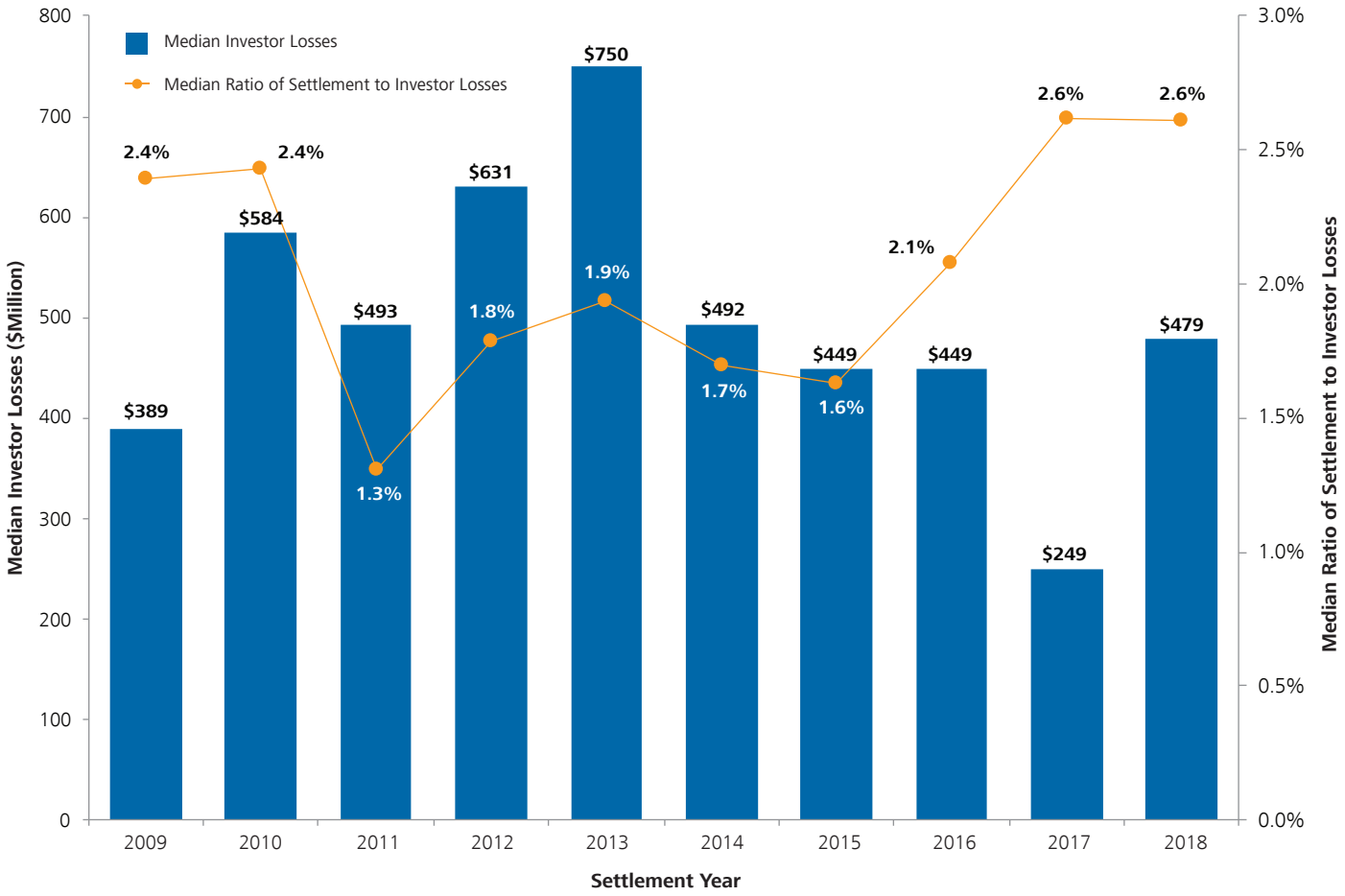


Median NERA-Defined Investor Losses over Time

Prior to 2014, median NERA-defined Investor Losses for settled cases had been on an upward trajectory since the passage of the PSLRA. As described above, the median ratio of settlement size to Investor Losses generally decreases as Investor Losses increase. Over time, the increase in median Investor Losses coincided with a decreasing trend in the median ratio of settlement to Investor Losses. Of course, there are also year-to-year fluctuations.

As shown in Figure 28, the median ratio of settlements to NERA-defined Investor Losses was 2.6% in 2018. This was the third consecutive year of at least a short-term reversal of a long-term downtrend of the ratio between passage of the PSLRA and 2015.

Figure 28. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2009–December 2018



Explaining Settlement Amounts

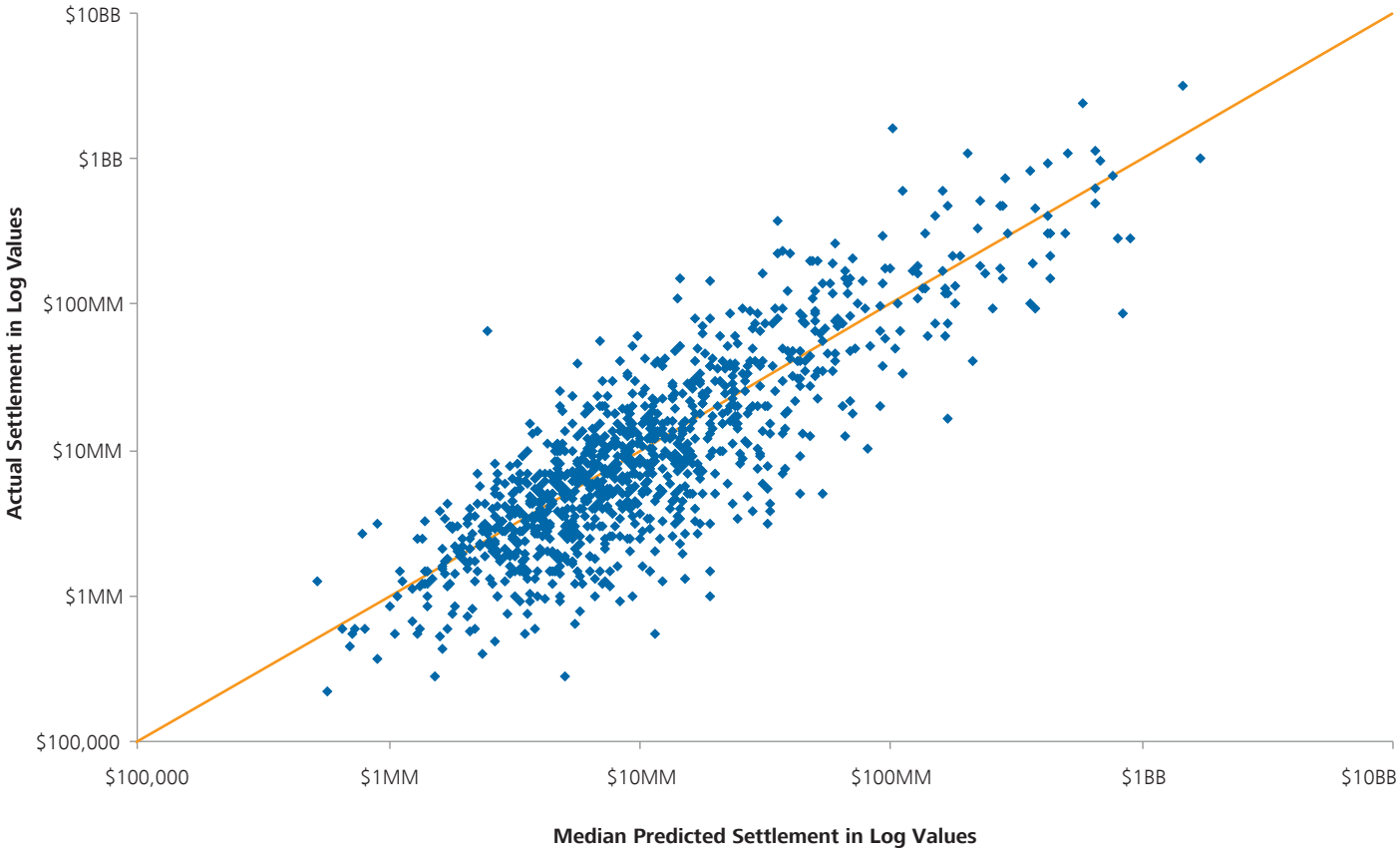
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors correlated with settlement amounts. NERA has examined settlements in more than 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlements:

- NERA-defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the "merit" of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 29.[28]

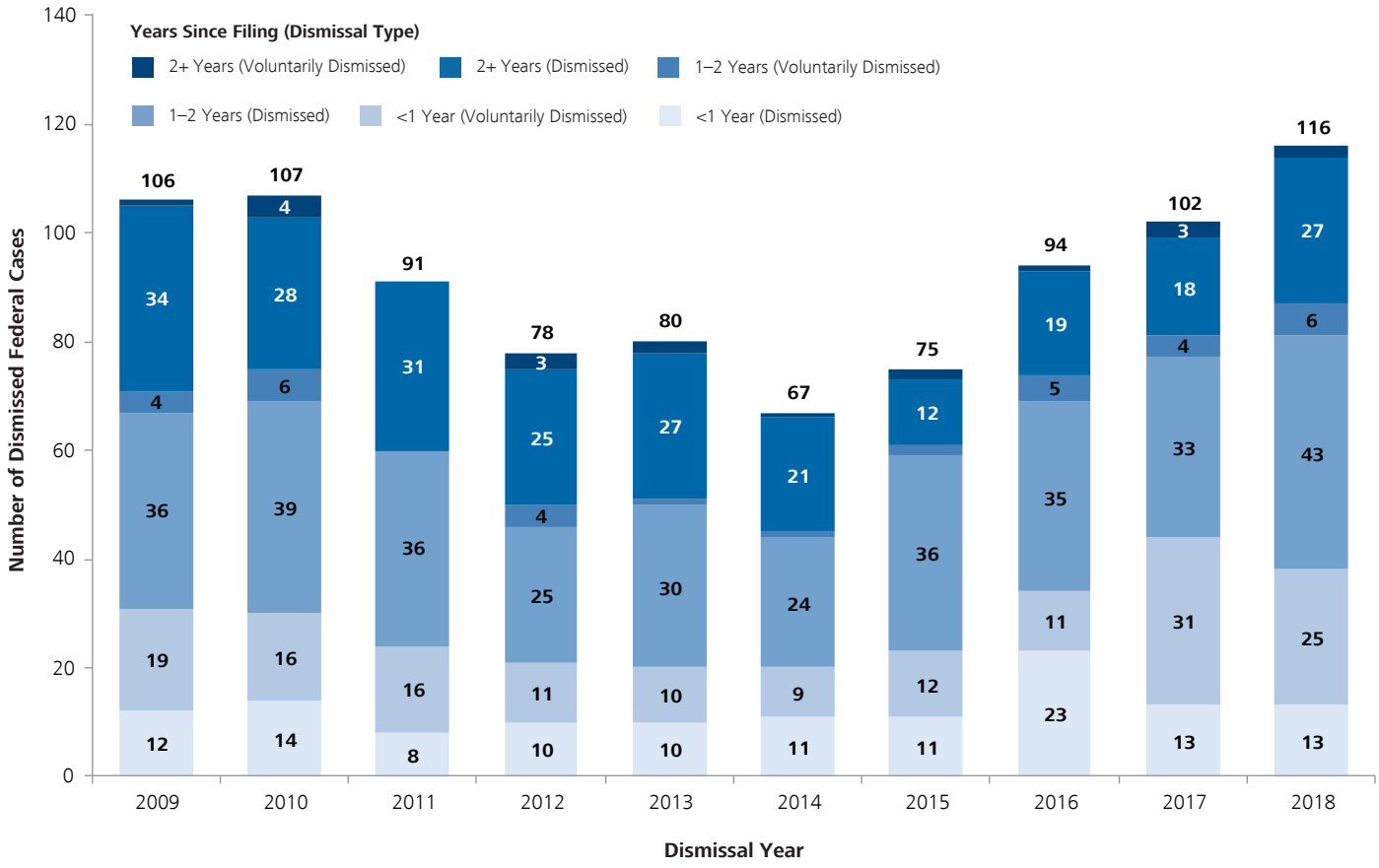
Figure 29. **Predicted vs. Actual Settlements**



Trends in Dismissals

The elevated rate of case dismissal persisted in 2018 (excluding merger objections), with more than 100 dismissals for the second consecutive year (see Figure 30). This partially stems from more cases being filed over the past couple of years, as 75% of dismissals are of cases less than two years old. Additionally, there were 25 voluntary dismissals within a year of filing, an elevated rate for the second year in a row.

Figure 30. **Number of Dismissed Cases by Case Age**
Excludes Merger Objections
January 2009–December 2018



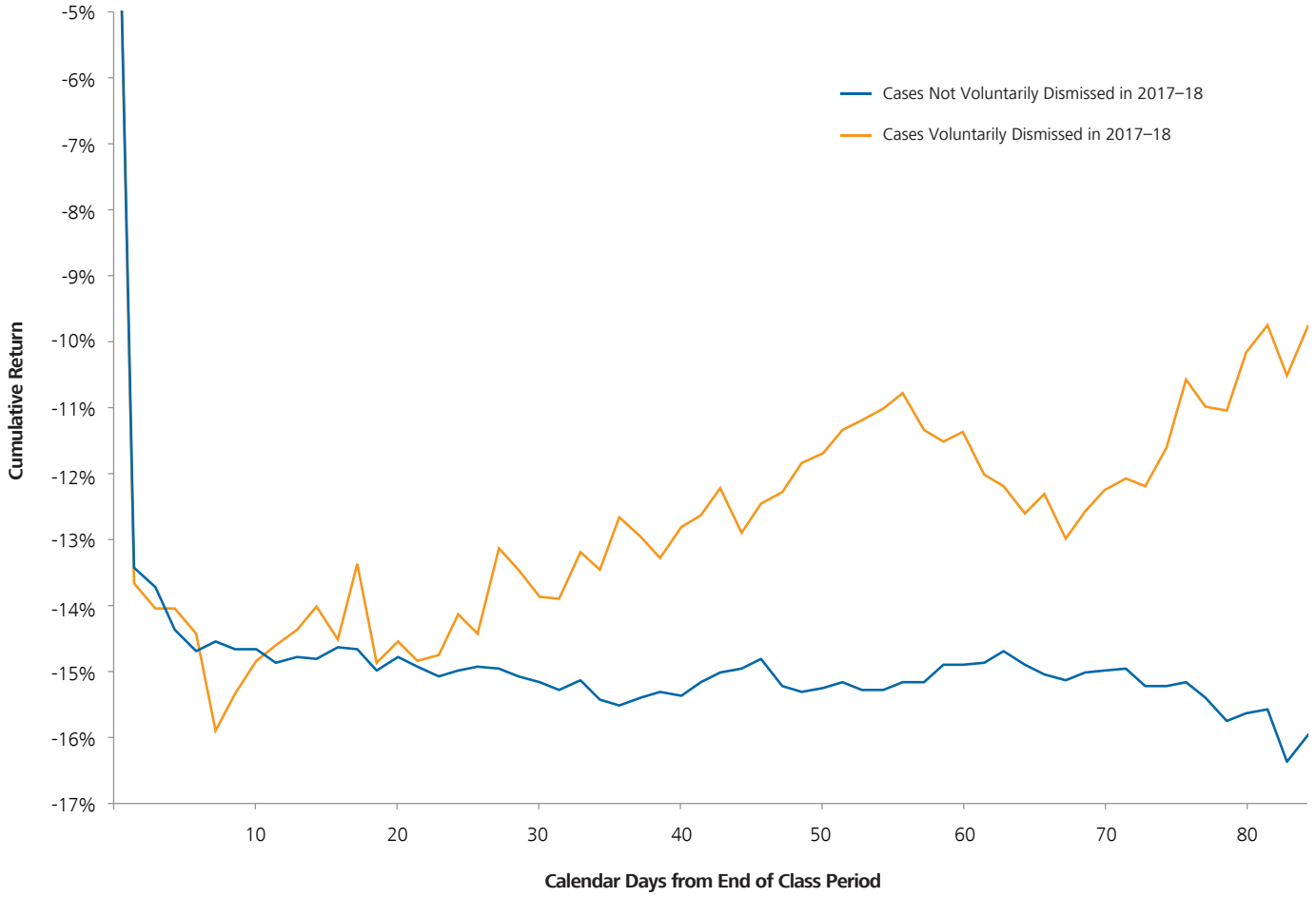
In 2018, about 12% of Standard cases were filed and resolved within the same calendar year, the second-highest rate in at least a decade (after 2017). By the end of the year, 8% of cases were voluntarily dismissed (down from 11% in 2017, but double the 2012–2016 average). Plaintiffs' voluntary dismissal of a case may be a result of perceived case weakness or changes in financial incentives. Recent research also documented forum selection by plaintiffs as a driver of voluntary dismissal without prejudice.[29]

The incentive for plaintiffs (and/or their counsel) to proceed with litigation may change with estimated damages to the class and expected recoveries since filing. For instance, the PSLRA 90-day bounce-back provision caps the award of damages to plaintiffs by the difference between the purchase price of a security and the mean trading price of the security during the 90-day period beginning on the date of the alleged corrective disclosure.

Since most securities class actions are filed well before the end of the bounce-back period (see Figure 14 for time-to-file metrics), plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases. As shown in Figure 31, in 2017 and 2018, the 90-day return of securities underlying cases voluntarily dismissed was about seven percentage points greater, on average, than securities underlying cases not voluntarily dismissed.[30]

The rate of voluntary dismissals was not particularly concentrated in terms of jurisdiction or the specific allegations we track.

Figure 31. **Average PSLRA Bounce-Back Period Returns of Voluntary Dismissals**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
January 2017–December 2018



Note: To control for the impact of outliers on the average of each group, for each day the most extreme 5% of cumulative returns are dropped. Observations on the three final trading days of the bounce-back period for each category are dropped due to incomplete return data.

Trends in Attorneys' Fees

Plaintiffs' Attorneys' Fees and Expenses

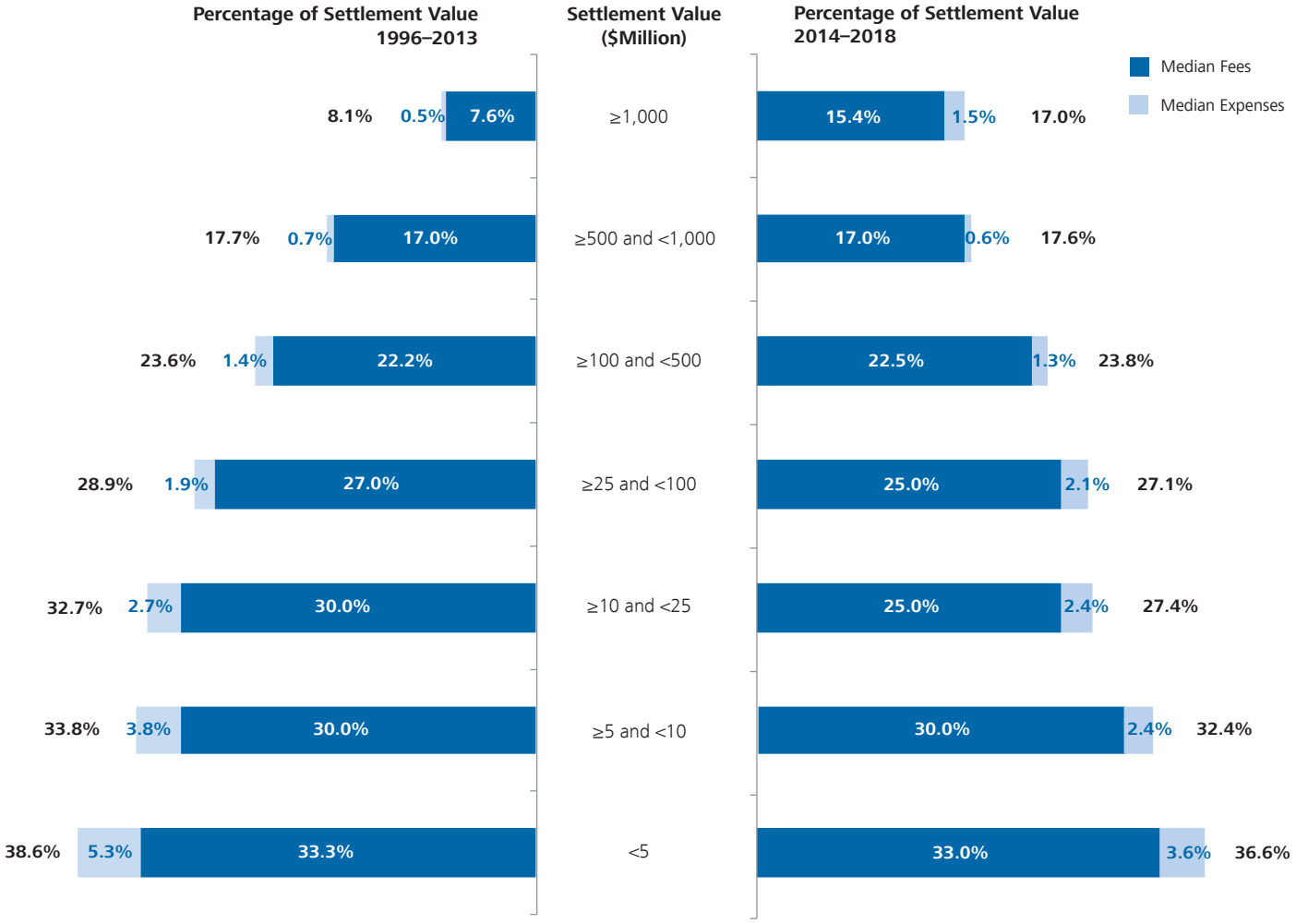
Usually, plaintiffs' attorneys' remuneration is determined as a fraction of any settlement amount in the form of fees, plus expenses. Figure 32 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data shown in this figure excludes settlements for merger-objection cases and cases with no cash payment to the class.

A strong pattern is evident in Figure 32; typically, fees grow with settlement size, but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows).

To illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and reported the median fee percentage for each group. While fees are stable at around 30% of settlement values for settlements below $10 million, this percentage declines as settlement size increases.

We also observe that fee percentages have been decreasing over time, except for fees awarded on very large settlements. For settlements above $1 billion, fee rates have increased.

Figure 32. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for $0 to the Class



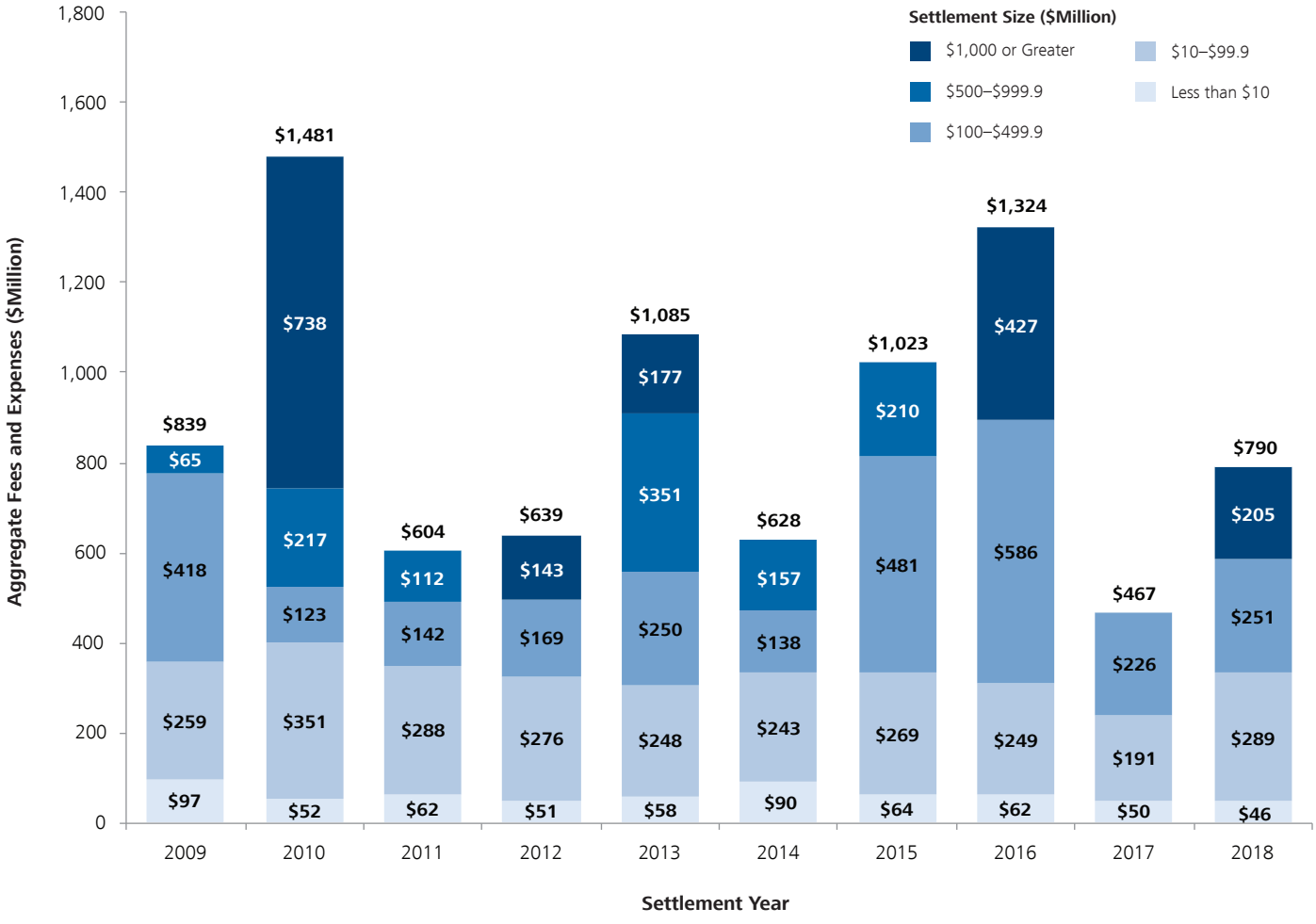
Aggregate Plaintiffs' Attorneys' Fees and Expenses

Aggregate plaintiffs' attorneys' fees and expenses are the sum of all fees and expenses received by plaintiffs' attorneys for all securities class actions that receive judicial approval in a given year.

In 2018, aggregate plaintiffs' attorneys' fees and expenses were $790 million, about 70% higher than in 2017 (see Figure 33). The increase in fees partially reflects the rebound in settlements, but fees grew substantially less than the near-tripling of aggregate settlements. This is partially due to the outsized impact of the $3 billion Petrobras settlement, one of several mega-settlements that historically generates lower fees as a percentage of settlement value.

Note that Figure 33 differs from the other figures in this section because the aggregate includes fees and expenses that plaintiffs' attorneys receive for settlements in which no cash payment was made to the class.

Figure 33. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2009–December 2018



Notes

[1] This edition of NERA's report on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors also thank Dr. Milev for helpful comments on this edition. These individuals receive credit for improving this paper; all errors and omissions are ours.

[2] Data for this report are collected from multiple sources, including Institutional Shareholder Services Inc., complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., Nasdaq, Inc., Intercontinental Exchange, Inc., US Securities and Exchange Commission (SEC) filings, and public press reports.

[3] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[4] Craig Doidge, G. Andrew Karolyi, and René M. Stulz, "The U.S. Listing Gap," National Bureau of Economic Research Working Paper No. 21181, May 2015.

[5] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[6] For M&A statistics, see "Mergers & Acquisitions Review: First Nine Months 2018," Thomson Reuters, October 2018, available at http://dmi.thomsonreuters.com/Content/Files/3Q2018_MA_Legal_Advisor_Review.pdf.

[7] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[8] Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016.

[9] Warren S. de Wied, "Delaware Forum Selection Bylaws After Trulia," Harvard Law School Forum on Corporate Governance and Financial Regulation, 25 February 2016.

[10] *In re: Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).

[11] Federal securities class actions that allege violations of Rule 10b-5, Section 11, and/or Section 12 have historically dominated federal securities class action dockets and often been referred to as "Standard" cases.

[12] *Cyan, Inc. v. Beaver County Employees Retirement Fund*, Supreme Court No. 15-1439.

[13] See Restoration Robotics Inc. SEC Form 8-K, filed 17 October 2017, and Snap, Inc. SEC Form S-1, filed 2 February 2017.

[14] Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.

[15] Industries with fewer than 25 firms listed on US exchanges are dropped.

[16] For M&A statistics, see "Mergers & Acquisitions Review, Full Year 2017," Thomson Reuters, December 2017.

[17] For M&A statistics, see "Mergers & Acquisitions Review, First Nine Months 2018," Thomson Reuters, October 2018.

[18] "SAC to pay $1.8 billion to settle insider trading charges," Chicago Tribune, 4 November 2013, available at https://www.chicagotribune.com/business/ct-xpm-2013-11-04-chi-sac-to-pay-18-billion-to-settle-insider-trading-charges-20131104-story.html.

[19] Filings indicate that most firms in the SP 500 have adopted 10b5-1 plans as of 2014. See "Balancing Act: Trends in 10b5-1 Adoption and Oversight Article," Morgan Stanley, 2019.

[20] This case was filed after the SEC filed a complaint, more than four years after the end of the proposed class period, which plaintiffs in the class action state first revealed the alleged fraud.

[21] Outcomes of the motions for summary judgment are available from NERA but are not shown in this report.

[22] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[23] Active cases equals the sum of pending cases at the beginning of 2018 plus those filed during the year.

[24] Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates. Data since then is inconclusive given pending litigation.

[25] We only consider pending litigation filed after the PSLRA.

[26] These metrics exclude merger objections.

[27] Each of the metrics in the *Time to Resolution* sub-section exclude IPO laddering cases and merger-objection cases because the former usually take much longer to resolve and the latter are usually much shorter to resolve.

[28] The axes are in logarithmic scale, and the two largest settlements are excluded from this figure.

[29] Commentary regarding a 2017 ruling in the Southern District of New York indicated that "[p]laintiffs in [*Cheung v. Bristol-Myers Squibb*] had originally filed their lawsuits in a federal district court, but after the federal district court issued a ruling that was unfavorable for the plaintiffs, the plaintiffs voluntarily dismissed their lawsuits without prejudice and then refiled them in Delaware state court." See Colin E. Wrabley and Joshua T. Newborn, "Getting Your Company's Case Removed to Federal Court When Sued in Your 'Home' State," *The Legal Intelligencer*, 19 December 2017. The case referred to is *Cheung v. Bristol-Myers Squibb*, Case No. 17cv6223(DLC), (S.D.N.Y. Oct. 12, 2017).

[30] To control for the impact of outliers on the average of each group, for each day the most extreme 5% of daily cumulative returns are dropped. Observations on the three final days of the bounce-back period for each category are dropped due to incomplete return data.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

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Exhibit 16

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KENT EUBANK, JERRY DAVIS, RICKY FALASCHETTI, RITA CICINELLI, ROBERT JOSEPHBERG, JEFFREY ACTON, KENNETH HECTHMAN, JAMES NEIMAN, AMY CHASIN and EDWARD RUHNKE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

PELLA CORPORATION and PELLA WINDOWS AND DOORS, INC.,

Defendants.

No.: 06 C 4481

Hon. Sharon Johnson Coleman

MOTION FOR ATTORNEYS' FEES AND FOR INCENTIVE AWARD, AND MEMORANDUM OF LAW IN SUPPORT, OF THEODORE FRANK, ATTORNEY FOR OBJECTOR MICHAEL SCHULZ

This case, the Court of Appeals explained, "underscores the importance . . . of objectors" in class litigation. *Eubank v. Pella Corp.*, 753 F.3d 718, 721 (7th Cir. 2014). When the first settlement landed before the Court of Appeals, the Circuit described it as "inequitable" and "scandalous"—a settlement that was "stacked against the class." *Id.* at 721, 724. The settlement "should have been disproved on multiple grounds." *Id.* at 723. But for the work of objectors, with Theodore Frank as their lead attorney on appeal, the class would have been between about $15 million and $22 million worse off. Seventh Circuit precedent supports an attorneys' fees award of over 30% of this added value or over 30% of the total fee award, *Kaufman v. American Express Travel Related Services Co.*, 877 F.3d 276, 287-88 (7th Cir. 2017), yet Frank requests only $1,500,000.

BACKGROUND

I. The District Court Approves a Settlement That Pays Class Counsel More in Attorneys' Fees Than the Class Will Receive in Benefits

A. The Settlement

Plaintiff Leonard Saltzman sued defendant Pella Corporation in 2006. Dkt. 1. Saltzman was represented in the case by his son-in-law, Paul M. Weiss of the Complex Litigation Group. *Eubank v. Pella Corp.*, 753 F.3d 718, 721 (7th Cir. 2014). The class action complaint alleged that Pella sold defective windows. Dkt. 1 ¶¶11-16. Saltzman sought damages under product-liability and consumer-protection laws. *Id.* ¶¶39-77.

In 2011, class counsel signed a settlement agreement with Pella. *See* Dkt. 277-1 ("Initial Settlement"). The Initial Settlement created two mechanisms by which class members could receive compensation for their defective windows. The relatively less cumbersome one, dubbed the "Claims Process," allowed for an award of up to $750 if a class member submitted a 12-page, notarized claim form. *Id.* ¶55. Alternatively, the "Arbitration Process" offered up to $6,000 in

compensation *but required the class member to show causation*. *Id.* ¶¶55, 61(b). Electing to arbitrate also required submission of a 13-page, notarized form. Dkt. 277-1. The class representatives asserted that the settlement was worth over $100 million to the class, Dkt. 291 at 8-10, while Pella claimed it was worth between $36 million and $54 million. Dkt. 290-1.

To class counsel, the settlement was worth $11 million—that was the maximum amount of attorneys' fees and expenses that Pella agreed to pay. Initial Settlement ¶¶50(7), 101. The trial court approved the settlement (over the objections described below). Class counsel requested, and the court ordered that he receive, the full $11 million. *Eubank*, 753 F.3d at 723.

B. Opposition to the Settlement and Schulz's Objection

Objectors opposed the Initial Settlement both in the trial court and on appeal. The objectors included four class members, who had earlier served as class representatives but who were dismissed by Saltzman and Weiss after refusing to support the Initial Settlement. Class member Michael J. Schulz also objected. Schulz's attorney Christopher Bandas engaged Theodore Frank to handle any appeal. Declaration of Theodore Frank ¶2 ("Frank Decl.").[1] Frank is the leading attorney vindicating the rights of class members against unfair class action settlements through his work with the non-profit Center for Class Action Fairness (the "Center"), which he founded in 2009. Frank and the attorneys of the Center have represented class members in dozens of cases challenging unfair and abusive class action procedures, settlements, and fee requests. *Id.* ¶3. Those efforts have generated over $100 million in additional settlement benefits. *Id.* The Center has won reversal or remand of unfair class action settlements or

[1] At first, Bandas made the sole appearance on behalf of Schulz, while Frank ghostwrote briefs on behalf of Bandas. Frank performed the great majority of appellate work on behalf of Schulz. Frank Decl. ¶4. Bandas is not submitting a separate fee request; he will receive a portion of any fees that are awarded to Frank. *Id.* ¶16.

distributions in fifteen different federal appeals spanning five different circuits. *Id.* In cases where the Center did not have a client, such as this one, Frank has worked as a private attorney on appellate issues if he found merit in the objection.

Through Bandas and a local counsel, Schulz filed an objection in the trial court raising three main defects. First, he argued that Weiss—who at the time he negotiated the settlement was the subject of an attorney disciplinary investigation—was motivated to reach a quick settlement over a fair settlement as a result of his impending disciplinary problems. Weiss was thus impermissibly conflicted and inadequate to serve as class counsel. Dkt. 319 at 2-4; Dkt. 255. Second, Schulz argued that Saltzman was an inadequate class representative because of his close familial relationship to Weiss. Dkt. 319 at 4; Dkt. 255. Finally, Schulz argued that the settlement was not worth the $100 million value that class counsel had ascribed to it (or even the $36 million to $54 million that Pella claimed it to be worth). Dkt. 319 at 5-6.

The district court denied the objections and approved the settlement. Schulz appealed, as did the group of former class representatives.[2]

II. Relying Heavily on Schulz's Arguments, the Seventh Circuit Reverses the District Court's Approval of the Settlement

Schulz led the charge on the appeal. In his briefing, Schulz added to and expanded upon the deficiencies he had first identified in his objection. *See* Frank Decl. Exs. 1-3. Schulz's counsel, Frank, received the majority of the objectors' time at oral argument. Counsel for the group of four objectors received the remaining time. *Id.* ¶6. For Schulz and the other objectors, the appeal was a wholesale victory, a complete win. The court not only rejected the settlement,

[2] Another class member, Ron Pickering, objected and appealed. Pickering's brief did not make any unique arguments. He filed no reply and presented no oral argument. Frank Decl. ¶6. A fourth appeal was filed by objector Dave Thomas, but was dismissed for a failure to prosecute.

but also concluded Saltzman and his lawyer, Weiss, were not adequate representatives of the class. *Eubank*, 753 F.3d at 729.

In reaching that conclusion, the Seventh Circuit drew heavily from Schulz's arguments. For example, the Seventh Circuit agreed with Schulz that "it was improper for the lead class counsel to be the son-in-law of the lead class representative." *Eubank*, 753 F.3d at 723. As Schulz explained, "[e]ven though a plaintiff is not entitled to share in the attorney's fees, a plaintiff might still be motivated to maximize the attorney's fee where there is a close relationship between the plaintiff and the attorney." Frank Decl. Ex. 1 at 16. The court adopted nearly identical reasoning, explaining that the relationship between Saltzman and Weiss "created a grave conflict of interest; for the larger the fee award to class counsel, the better off Saltzman's daughter and son-in-law [Weiss] would be financially." *Eubank*, 753 F.3d at 724.[3]

The Seventh Circuit also adopted Schulz's argument that Weiss's ethical and financial problems rendered him inadequate class counsel. Schulz pointed out that Weiss was the subject of a disciplinary investigation, explaining that "class counsel's own legal troubles created settlement leverage that prejudiced the class relative to a class counsel not facing sexual harassment allegations." Frank Decl. Ex. 1 at 19. "[I]f Weiss were suspended or disbarred before the case settled," Schulz continued, "he might be precluded from obtaining his share of a multi-million-dollar fee." *Id.* at 20. The Seventh Circuit said exactly the same thing: "Weiss's ethical embroilment was another compelling reason for kicking him and Saltzman off the case"

[3] The settling parties defended the adequacy of Saltzman as class representative by noting that four additional named plaintiffs bore no familial relationship to Weiss. But Schulz pointed out that those four named plaintiffs, chosen at the time of settlement, were chosen *precisely* because they supported the settlement after the original four did not. Frank Decl. Ex. 1 at 11. The Seventh Circuit invoked that very argument: "The appellees . . . point out that Saltzman was one of five class representatives, and the other four didn't have a conflict of interest," but the Court of Appeals rejected the new named plaintiffs because they were "selected by the conflicted lead class counsel." *Eubank*, 753 F.3d at 724.

because "[i]t was very much in [Weiss's] personal interest . . . to get the settlement signed and approved *before* the disciplinary proceeding culminated in a sanction that might abrogate his right to share in the attorneys' fee award in this case." *Eubank*, 753 F.3d at 724; *see id.* at 722.

Appellees defended Weiss's conflicts by arguing that he was just one of many attorneys representing the class. The Seventh Circuit, however, adopted Schulz's argument that Weiss had "*de facto* control of the litigation through power of the purse" because the Initial Settlement's provision vested in Lead Class Counsel the "sole discretion" to allocate any attorneys' fees, costs, expenses, and disbursements. *Compare* Frank Decl. Ex. 3, *with Eubank*, 753 F.3d at 721 ("Realistically *he* [*i.e.*, Weiss] was the lead class counsel.").

Even beyond those deficiencies, Schulz identified numerous indicia of "self-dealing" that, he argued, precluded approval of the settlement. Again, the Seventh Circuit agreed:

- Schulz pointed out that recovery under the settlement required claimants to "successfully jump[ ] through all the hoops of a 12-page claim form," among other requirements, which would "substantially" reduce the value of the settlement's benefits. Frank Decl. Ex. 1 at 23, 24. And, at least for the Arbitration Process, Pella retained the right to challenge payment of the claim for lack of causation. *Id.* at 24. The Seventh Circuit seized on these aspects of the settlement, agreeing with Schulz that the settlement's value to the class was likely "less than $1.5 million." *Eubank*, 753 F.3d at 724-26; *compare* Frank Decl. Ex. 1 at 23 (settlement worth "substantially less than $1.5 million").

- Schulz explained that Pella was already issuing some refunds to class members under its warranty program, and noted that the valuation of the settlement agreement did not account for money that class members would have received anyway under the warranty. Frank Decl. Ex. 1 at 23. The Seventh Circuit agreed that the settlement's treatment of payments received under the warranty further undermined the reasonableness of the settlement. *Eubank*, 753 F.3d at 726.

- Schulz noted that the class attorneys received their $11 million fee award immediately—in fact, they received $2 million even before the settlement was final—while the benefits to class members were paid out over time. Frank Decl. Ex. 1 at 24. The Seventh Circuit criticized this "suspicious feature of the settlement," commenting that class counsel's "feeble efforts" did not justify "generous attorneys' fees[ ]." *Eubank*, 753 F.3d at 724, 726; *see also id.* at 723 (noting "asymmetry").

- Schulz criticized the "clear sailing" and "kicker" provisions of the settlement as used in the original settlement, which prohibited Pella from contesting any fee request at or below $11 million and which ensured that any unawarded fees would revert to Pella rather than the class. The clear-sailing provision "lays the groundwork for lawyers to 'urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red carpet treatment on fees,'" Frank Decl. Ex. 1 at 28, while the kicker "deter[s] court scrutiny of the fee award," *id.* at 30. The Seventh Circuit again agreed, finding these provisions "questionable" and faulted the district court for refusing to delete them from the settlement agreement. *Eubank*, 753 F.3d at 723.

Indeed, Schulz was the only appellant to argue several of these points.[4]

Ultimately, Schulz argued, the "settlement requires class members to accept a $750 cap on claims through a burdensome claims process that in many ways gives class members no more than what they already had before the settlement"—*i.e.*, payment under the warranty. Frank Decl. Ex. 1 at 30. Pella was "required to pay nearly nothing it was not already paying. . . . What the class does receive is subject to Pella's challenge later, and even those who overcome Pella's challenges might get nothing but a coupon." Frank Decl. Ex. 2 at 14. "Pella, on the other hand: is exonerated from future lawsuits; surrenders no defenses; retains the right to challenge claims; . . . and caps its potential liability to every potential claimant." *Id.* at 14-15. The Seventh Circuit put it more colorfully: "Class counsel sold out the class." *Eubank*, 753 F.3d at 726. For a settlement worth *at most* $8.5 million, a highly compromised class counsel agreed to a settlement that guaranteed $11 million for himself. *Id.* That was not fair, adequate, and reasonable. It was Objector Schulz's advocacy that helped the Seventh Circuit reach that conclusion.

In the Seventh Circuit, Frank also opposed both a motion to dismiss the appeal and a petition for rehearing; Frank further protected the appeal through ghostwriting an opposition to a motion for a gigantic appeal bond that, if successful, might have derailed the appeal. Frank Decl.

[4] Schulz was the only objector-appellant, for example, who challenged the "kicker" provision or who argued that the inordinately complex claims process would reduce class recovery below $1.5 million.

¶8. Such scorched-earth tactics are not uncommon in appeals challenging a class settlement, in part because deficient class settlements so often result where class counsel abdicate their ethical duties to the class. *Id.* Because of Frank's experience in opposing unfair class settlements, he ably opposed these tactics. *Id.*

Unsurprisingly, the press lauded Frank's efforts in the Seventh Circuit. Reporting on the case, *Forbes* explained that "[w]ere it not for objectors (represented in this case by attorney Ted Frank . . .), there would be no one to point out the obvious conflicts of interest that riddle such cases." Frank Decl. Ex. 5. And a headline in *The Litigation Daily* proclaimed, "Objector Frank Convinces Posner To Toss Pella Deal." *Id.* Ex. 6.

III. The Parties Reach a Revised Settlement That Triples the Relief for the Class

Back in district court on remand, class counsel—now Robert Clifford of the Clifford Law Offices (Weiss having been suspended from the practice of law for 30 months)—sought preliminary approval of a new settlement on February 8, 2018. *See* Dkt. 672. That settlement creates a $25,750,000 fund to compensate claims associated with the defective windows. *Id.* at 5. Of that fund, $23,750,000 will compensate class members during the claims period and is non-reversionary—with one exception, unclaimed funds will not revert to Pella. *Id.* An additional $2,000,000, which is reversionary, will be used to compensate claimants during an "extended period." *Id.* at 10. Thus, the Revised Settlement represents an increase in value of over $15 million above the Seventh Circuit's $8.5-million estimate of the Initial Settlement's value. The complex claims process of the Initial Settlement was also overcome by the appeal, with the Revised Settlement calling for a "simple and efficient claims process." *Id.* at 12-13.

Finally, the Revised Settlement provides for $9 million in attorneys' fees. *Id.* at 21.

ARGUMENT

I. Frank Is Entitled to Fees for the Approximately $15 Million to $22 Million Improvement Achieved Through His Efforts on Appeal

Counsel for an objector who confers a material benefit on the class is entitled to a fee award. *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 748 (7th Cir. 2011); 7B Charles A. Wright & Arthur Miller, *Federal Practice & Procedure* § 1803 n.6 (3d ed. 2004). As Judge Posner remarked in this very case, if "object[ors] persuade the judge to disapprove [the settlement], and as a consequence a settlement more favorable to the class is negotiated and approved, the objectors *will receive a cash award that can be* substantial." *Eubank*, 753 F.3d at 720 (emphasis added); *see also Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 288 (7th Cir. 2002) (holding that objectors' "lawyers who contribute materially to the proceeding" are entitled to a fee).

Objectors are entitled to attorneys' fees because they "serve as a highly useful vehicle for class members, for the court and for the public generally" to bring adversarial scrutiny to proposed class action settlements. *Great Neck Capital Appreciation Inv. P'ship, LP v. PricewaterhouseCoopers, LLP*, 212 F.R.D. 400, 412 (E.D. Wis. 2002). "Therefore, a lawyer for an objector who raises pertinent questions about the terms or effects, intended or unintended, of a proposed settlement renders an important service." *Id.* at 413. When those efforts "improve[ ] the settlement, assist[ ] the court, and/or enhance[ ] the recovery in any discernible fashion," the objectors' counsel are entitled to a fee. *Id.* at 413.

A. A $1.5 Million Attorney's Fee Is Less Than the Amount Due to Frank

Improve the settlement, assist the court, and enhance the recovery of the class is precisely what Objector Schulz did. In fact, Schulz's efforts enabled the class to increase its recovery from three-fold to ten-fold. In rejecting the flawed Initial Settlement, the Seventh Circuit

concluded it was worth far less than advertised—at most only $8.5 million. *Eubank*, 753 U.S. at 726-27. Schulz plausibly argued that the accurate characterization of the settlement's value was less than $2 million. Frank Decl. Ex. 2 at 8-15. On remand, though, the parties negotiated a settlement worth a guaranteed $23,750,000 and as much as $25,750,000. They had that opportunity only because Schulz challenged the settlement's deficiencies on appeal and won.

In exchange for earning that substantial benefit for the class, Frank seeks attorneys' fees of $1.5 million.[5] By each metric, that fee request is reasonable and justified. In the Seventh Circuit the "central consideration" in assessing the reasonableness of an attorneys' fee "is what [objector's] counsel achieved for the members of the class rather than how much effort [objector's] counsel invested in the litigation." *Redman v. Radioshack Corp.*, 768 F.3d 622, 633 (7th Cir. 2014). Thus, the Seventh Circuit has approved objectors' fees calculated as a percentage of the total attorneys' fees that matches the percentage of class recovery attributable to the objectors' efforts. *Trans Union*, 629 F.3d at 747-48 (awarding objectors 37% of total fee award where objectors' efforts were responsible for 37% of the total benefit conferred).

Here, the appeal yielded between *two-thirds and ninety percent of the total class recovery*: an increase of between $15,250,000 and $21,750,000 resulting in a total class benefit of $23,750,000 (excluding the reversionary $2 million fund).[6] To be sure, "[t]he final settlement

[5] Counsel for Frank did confer with current class counsel, Clifford, concerning a negotiated fee award for Schulz. Clifford neither agreed nor disagreed, and simply advised that attorneys who believe they are entitled to a fee from the settlement fund should independently file a motion for such fees as directed in the Court's preliminary approval order. Dkt. 675.

[6] The total value may be slightly less. If any amount of the $23,750,000 remains after all claims have been paid, Pella is entitled to seek reimbursement of the notice costs that it paid. Because "[n]otice and fees . . . are costs, not benefits," any reimbursement should not be included in the value of the settlement. *Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014). Thus, if the claims do not exhaust the $23,750,000 fund and Pella is reimbursed the cost of notice, the increased value to the class may be less than $15,250,000. The settling parties do not appear to have disclosed the cost of notice, however, or to have estimated the likelihood that money will remain in the fund at the end of the claims period. We thus

was the result of the combined efforts" of class counsel and objectors' counsel. *Trans Union*, 629 F.3d at 747. Recognizing that fact, Frank proposes that one-third of the increased settlement value be attributed to objectors who prevailed on appeal, and two-thirds of the increased value be attributed to class counsel's efforts on remand. *See id.* at 747-48. Under that allocation, the counsel for objectors who prevailed on appeal would receive one-third of the $9 million in common benefit fees, or $3 million. Frank further proposes that he evenly split that $3 million with counsel for the other objector group that fully briefed the appeal and argued alongside Frank at oral argument. *See id.* (splitting attorneys' fees between objectors that prevailed on appeal). Thus, Frank requests an attorneys' fee award of $1.5 million. That $1.5 million fee award amounts to just 16.7% of the $9 million allocated for attorneys' fees.

The $3 million fee that Frank proposes for the objectors who succeeded on appeal (which he proposes splitting with another objector group) represents between 13.8% and 19.7% of the $15,250,000 to $21,750,000 increase in value that is attributable to objectors' efforts. That is well below the percentage that the Seventh Circuit has approved as a reasonable fee award to objectors. In *Kaufman*, 877 F.3d 276, for example, the court approved an attorneys' fee award for objectors that amounted to 34% of the increased value of the settlement. *Id.* at 287-88. The court did so, moreover, even though the *Kaufman* objectors had "filed 'a number of repetitive and meritless objections'" and thus the court questioned the extent to which they could rightfully claim credit for some of the improvements in the settlement. *Id.* at 288. Schulz did none of that here. If an attorneys' fee award amounting to 34% of the improvement is appropriate in

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assume that the fund will be completely exhausted by claims. Even if not, the approximate magnitude of the benefit delivered will not change dramatically unless notice is unusually expensive.

Kaufman, then an award ranging between 13.8% and 19.7% of the benefit in this case is eminently reasonable.

B. Efficiency and Risk Justify the Lodestar Multiple that Schulz's Counsel Would Receive

District courts in the Seventh Circuit are under no obligation to cross-check the requested fees against the lodestar. *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 849 (N.D. Ill. 2015); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011); 5 *Newberg on Class Actions* § 15:88 (5th ed.) (noting in Seventh Circuit that "a cross-check is not applicable"). Indeed, the Seventh Circuit has emphasized that attorneys' fees do not depend on "how much effort . . . counsel invested in the litigation," but rather on "what . . . counsel achieved." *Redman*, 768 F.3d at 633. Taking account of "what counsel achieved" in this case, a $1.5 million fee is reasonable.

"[T]he reasonableness of a fee cannot be assessed in isolation from what it buys." *Redman*, 768 F.3d at 633. The $1.5 million fee Frank requests bought a lot—most notably, a tremendous increase in the value of the settlement. Schulz's counsel, Frank and Bandas, worked with exceptional efficiency and achieved exceptional results in the face of extraordinary opposition. In achieving those exceptional results, Frank amassed a lodestar of $161,125—an underestimate that does not include Bandas's time. Frank Decl. ¶¶ 15-16.[7] A $1.5 million fee on that lodestar would represent a multiplier of 9.3. Including Bandas's fees would drive the multiplier lower. (A conservative combined lodestar of $200,000 yields a 7.5 multiplier.) Under these circumstances, where Frank delivered an extremely valuable benefit for the class and

[7] The lodestar calculation does not include any of Bandas' hours and investment in the case because Bandas was unable to report with accuracy the time that he spent representing Schulz during the objection and appeal. Bandas will nonetheless share in any fee award. Frank Decl. ¶ 16.

worked with enviable efficiency, a $1.5 million fee represents a reasonable multiple of counsel's investment.

In fact, the lodestar multiplier is high *only* because Frank worked with efficiency and alacrity. For good reason, courts are "reluctant to rely heavily on a method for determining whether a contingency fee is reasonable that penalizes efficiency." *Kirby v. Berryhill*, No. 14 CV 5936, 2017 WL 5891059, at *1 (N.D. Ill. Nov. 29, 2017); *see also Grayson v. Berryhill*, No. 4:16-cv-61, 2017 WL 6209703, at *3 (N.D. Okla. Dec. 8, 2017) ("[I]f a firm can organize its practice efficiently by using less of its lawyers' time, yet still produce high quality legal work, it should not be penalized in the fee . . . ."); *Blatt v. Dean Witter Reynolds Intercapital Inc.*, 566 F. Supp. 1294, 1298 (S.D.N.Y. July 1, 1983) ("[T]o place exclusive reliance on time as a factor would penalize efficient performance of legal tasks."); *O'Rourke v. Healthdyne, Inc.*, Civ. A. Nos. 84-4295, 84-4296, 1986 WL 923, at *2 (E.D. Pa. Jan. 16, 1986) ("Awarding fees based on time alone may reward inefficiency and penalize those who are efficient and expeditious . . . .").

Objections are exceptionally risky and difficult. That too demonstrates the reasonableness of the fee. While a multiplier of 7.5 or 9.3 is high, it would not be a windfall here because so many objectors' successes go entirely uncompensated. Objectors often fail in procuring additional benefits for the class—even if an appeal succeeds—and thus risk receiving no fee at all. Between his non-profit work and his private practice, as of May 16, 2018, Frank has worked for objector-appellants on over thirty intermediate appeals of settlement approvals that have been ultimately decided on the merits. Though Frank and his team have had unprecedented success in this field—winning eighteen of those appeals—Frank has received court-awarded fees in only four of these cases. Frank Decl. ¶17. Attorneys who take on such risk are entitled to a multiple of their lodestar. *E.g.*, *In re Synthroid Mktg. Litig.*, 325 F.3d 974, 978 (7th Cir. 2003).

Further, a multiplier of 7.5 or 9.3 is far from unprecedented. In *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. Civ. A. 03-4578, 2005 WL 1213926 (E.D. Pa. May 19, 2005), the court awarded a multiplier of 15.6. *Id.* at *18; *see also In re Penthouse Exec. Club Compensation Litig.*, No. 10 Civ. 1145, 2014 WL 185628, at *10 (S.D.N.Y. Jan. 14, 2014) (noting multipliers as high as eight or "even higher"); *In re Qwest Commc'ns Int'l, Inc. Secs. Litig.*, No. 01-cv-1451, 2006 WL 8429707, at *4 (D. Colo. Sept. 29, 2006) (noting multipliers as high as ten).

While Frank has litigated against large multipliers in other cases, those cases either involved substantially less risk or were litigated substantially less efficiently, or achieved compromised results rather than the complete success of Schulz's fully-litigated appeal. Frank Decl. ¶18. Where, as here, counsel is heavily experienced and uniquely accomplished in subjecting class action settlements to detailed appellate scrutiny, and those abilities are orchestrated efficiently to deliver tremendous benefit to the class, a lodestar multiplier of 7.5 to 9.3 is well within reason.

II. Schulz Is Entitled to a $2,000 Incentive Award

Frank requests for Schulz a $2,000 incentive award. Frank Decl. ¶¶19-20. It is appropriate to award objectors incentive awards. *See, e.g.*, *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 816-17 (N.D. Ohio 2010); *In re Apple Inc. Secs. Litig.*, No. 5:06-cv-05208, 2011 WL 1877988, at *16 (N.D. Cal. May 17, 2011). Objector incentive awards are justified for the same reason as class representative awards: "to induce individuals to become named representatives." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 722 (7th Cir. 2001). An objector such as Schulz, while not a named representative, acts on behalf of the class at cost to himself.

By objecting, Schulz exposed himself to the risk of private investigation and harassing discovery. He also forsook personal gain to benefit the entire class. Objectors, if they are

willing to selfishly sell-out the class, can settle their objections for substantial sums much larger than a $2,000 incentive payment. *See, e.g.*, Edward Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. Chi. Legal F. 403, 428-32. Just as class representatives receive incentive payments, so should objectors whose objections meaningfully contribute to class recovery. Schulz did that here. Because he did, the class is receiving *three times* what it would have received otherwise.

III. Objectors' Fees and the Incentive Award Should Be Funded from the $9 Million for Attorneys' Fees

"[T]he 'common benefit' theory is premised on a court's equity power." *United Steelworkers of Am. v. Sadlowski*, 435 U.S. 977, 979 (1978); *accord Rodriguez v. Disner*, 688 F.3d 645, 654 (9th Cir. 2012). Although class counsel who negotiated the Revised Settlement was not responsible for the deficiencies in the Initial Settlement, the class nonetheless should not pay twice for a benefit it should have received from the outset. *See McDonough v. Toys "R" Us, Inc.*, 80 F. Supp. 3d 626, 651 (E.D. Pa. 2015) (debiting objector's fee award from class counsel's award because class' benefit was only achieved on the "second try").

Perhaps this is why many courts across the nation have paid objector fees from class counsel's award.[8] That practice recognizes several realities, equities, and best practices of settlement and class representation. *See Great Neck*, 212 F.R.D. at 416-17. In *Great Neck*, the

[8] *See e.g., McDonough*, 80 F. Supp. 3d at 662 (awarding objector's attorneys' fees out of class counsel's fee award); *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, MDL No. 09-2067, 2014 WL 4446464, at *10 n.1 (D. Mass. Sept. 8, 2014) (same); *Lonardo*, 706 F. Supp. 2d at 816-817 (same); *Parker v. Time Warner Entm't Co., L.P.*, 631 F. Supp. 2d 242, 277 (E.D.N.Y. 2009) (same); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 273 F. Supp. 563, 573 (D.N.J. 2003), *aff'd* 103 Fed. Appx. 695, 697 (3d Cir. 2004) (same); *In re Ikon Office Solutions*, 194 F.R.D. 166, 197 (E.D. Pa. 2000) (same); *Duhaime v. John Hancock Mut. Life Ins. Co.*, 2 F. Supp. 2d 175, 176 (D. Mass. 1998) (same); *In re Horizon/CMS Healthcare Corp. Secs. Litig.*, 3 F. Supp. 2d 1208, 1215 (D.N.M. 1998) (same); *In re Citigroup Secs. Litig.*, No. 07-cv-9901(SHS), Dkt. No. 286, Order at 1-2 (S.D.N.Y. Sept. 10, 2013) (same with objector's expenses).

court recognized its equitable discretion to require the class to pay objector's fees, but correctly declined to do so. *Id*. at 417. Instead, the *Great Neck* court awarded the objector fees from "class counsel and the defendants as they may agree but without diminution of the sum awarded to the class." *Id*.; *accord Ikon Office Solutions*, 194 F.R.D. at 197 (Objectors' "fees and costs will be taken from class counsel's award to avoid dilution of the settlement fund.").

Awarding all legal expenses from the initial fee pot is not merely equitable, it is also good policy. It incentivizes class counsel to reject settlements that are objectionable to class members and to courts. Plenty of unfavorable settlements are approved quickly, quietly and unopposed, without a single objection filed. *See generally In re Continental Ill. Secs. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) ("No class member objected either—but why should he have? His gain from a reduction, even a large reduction, in the fees awarded the lawyers would be minuscule."). If class counsel are not responsible for paying the fees of successful objectors, then there will be little, if any, incentive for them to reach good settlements from the very outset.

While the $9 million fee award is in a separate and segregated fund, that $9 million should be considered part of a "constructive common fund" for purposes of the court's equitable powers regarding the common benefit doctrine. "Courts have relied on 'common fund' principles and the inherent management powers of the court to award fees to lead counsel in cases that do not actually generate a common fund." *In re Gen. Motors Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) (evaluating separate negotiated fee award as part of a "constructive common fund"); *see also Redman*, 768 F.3d at 630 (treating coupons plus the awarded attorneys' fees as if they were both part of a common fund).

CONCLUSION

The Court should award Schulz attorneys' fees in the amount of $1.5 million and Schulz an incentive payment of $2,000.

Dated: May 21, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed on May 21, 2018 the foregoing Motion for Attorneys' Fees and for Incentive Award, and Memorandum of Law in Support, of Theodore Frank, Attorney for Objector Michael Schulz, and accompanying documents, using the CM/ECF System, which will effect service on all parties.

/s/ *Thomas J. Wiegand*

Exhibit 17

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GARY HEFLER, et al.,

Plaintiffs,

v.

WELLS FARGO & COMPANY, et al.,

Defendants.

Case No. 16-cv-05479-JST

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES

Re: ECF Nos. 238, 239

Before the Court are Lead Plaintiff's motion for final approval of a class action settlement and plan of allocation and Plaintiff's Counsel's[1] motion for an award of attorneys' fees and litigation expenses. ECF Nos. 238, 239. The Court previously granted a motion for preliminary approval of the settlement, ECF No. 234, and held a fairness hearing on December 18, 2018. The Court will grant the motions.

I. BACKGROUND

A. The Parties and Claims

Plaintiffs bring this federal securities class action against Wells Fargo & Company and several of its officers and directors for violations of sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 and the Securities and Exchange Commission's Rule 10b-5. *See* ECF No. 207.

Lead Plaintiff Union Asset Management Holding, AG ("Union") brings these claims "on behalf of all persons who purchased Wells Fargo common stock between February 26, 2014 and

[1] Because Class Counsel seeks this award on behalf of the counsel for all class representatives as well, *see* ECF No. 239 at 9, the Court refers to the proposed fees recipients collectively as "Plaintiffs' Counsel," except where referring to individual firms.

September 20, 2016, inclusive (the 'Class Period')." ECF No. 207 ¶ 2.

The substance of Union's claims is set forth in greater detail in the Court's prior order granting in part and denying in part Defendants' motions to dismiss. *See* ECF No. 205. In short, Union alleges that Defendants made "repeated misrepresentations and omissions about a core element of Wells Fargo's business: its acclaimed 'cross-selling' business model," ECF No. 207 ¶ 3, artificially inflating Wells Fargo's stock price, *id.* ¶ 261. Union seeks damages related to this inflation of Wells Fargo's stock price and its subsequent decline when the truth about Wells Fargo's practices came to light through a series of disclosures in September 2016. *See, e.g.*, *id.* ¶¶ 262, 270.

B. Procedural Background

Plaintiff Gary Hefler filed the initial complaint in this action on September 26, 2016. ECF No. 1. Several related lawsuits based on the same misconduct were subsequently filed against Wells Fargo. ECF Nos. 8, 12, 14, 18, 47, 55, 222. On January 5, 2017, the Court granted Union's motion to consolidate *Hefler v. Wells Fargo & Co.*, Case No. 16-cv-5479, with *Klein v. Wells Fargo & Co.*, Case No. 16-cv-5513, and to appoint Union as Lead Plaintiff, Motley Rice LLC as Lead Counsel, and Robbins Geller Rudman & Dowd LLP as Liaison Counsel. ECF No. 58. The Court later granted Union's motion to substitute Bernstein Litowitz Berger & Grossman LLP ("BLB&G") as Lead Counsel. ECF No. 95.

Wells Fargo and the Individual Defendants filed a set of eight motions to dismiss, which the Court granted in part and denied in part on February 27, 2018. *See* ECF No. 205. Shortly thereafter, Union filed the operative second amended class action complaint. ECF No. 207.

On July 31, 2018, Union filed an unopposed motion to certify a settlement class and for preliminary approval of a settlement. ECF No. 225. On September 4, 2018, the Court granted the motion for preliminary approval, conditionally certified the class, and appointed BLB&G as Class Counsel. ECF No. 234. Union has now filed a motion for final approval of the class action settlement and the plan of allocation and Class Counsel has filed a motion for an award of attorneys' fees and litigation expenses. ECF Nos. 238, 239. The Court held a fairness hearing on December 18, 2018.

C. Terms of the Agreement

The proposed settlement agreement ("Settlement") resolves claims between Wells Fargo and the class, which the Court conditionally certified as follows:

> [A]ll persons and entities who purchased Wells Fargo common stock from February 26, 2014 through September 20, 2016, inclusive. Excluded from the Settlement Class are: (i) Defendants; (ii) Immediate Family Members of any Individual Defendant; (iii) any person who was a director or member of the Operating Committee of Wells Fargo during the Class Period and their Immediate Family Members; (iv) any parent, subsidiary or affiliate of Wells Fargo; (v) any firm, trust, corporation, or other entity in which Defendants or any other excluded person or entity has, or had during the Class Period, a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded persons or entities. Notwithstanding the foregoing exclusions, no Investment Vehicle shall be excluded from the Settlement Class. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

ECF No. 234 at 2-3; *see also id.* at 6-7.

Under the Settlement, Wells Fargo has paid $480 million dollars (the "Settlement Amount") into the Settlement Fund. ECF No. 225-1 at 13, 17; *see also* ECF No. 240 ¶ 102. The following amounts will be subtracted from the Settlement Amount: (1) taxes; (2) notice costs; and (3) attorneys' fees and expenses. ECF No. 225-1 at 17; ECF No. 225 at 33.[2]

Pursuant to the proposed plan of allocation, class members who submit timely claims will receive payments on a pro rata basis based on the date(s) class members purchased and sold Wells Fargo common stock, as well as the total number and amount of claims filed. ECF No. 225-1 at 75–78. To calculate the amount that will be paid to each class member, the Claims Administrator[3] will determine each claim's share of the Settlement Fund proceeds based upon the claimant's recognized loss. *Id.* at 75–76. The recognized loss calculation will be "based primarily on the difference in the amount of alleged artificial inflation in the prices of Wells Fargo common stock at the time of purchase and at the time of sale or the difference between the actual purchase price

[2] Although the Settlement indicates that it may be used to pay service awards to named Plaintiffs, they no longer seek a service award. *See* ECF No. 240 ¶ 243.

[3] The Court approved Union's selection of Epiq Class Action & Mass Tort Solutions as the Claims Administrator. ECF No. 234 at 18-19; *see also* ECF No. 225 at 30.

and the sale price." *Id.* at 75. Before deducting any costs or attorneys' fees, the Settlement represents an average recovery of $0.44 per eligible share. *Id.* at 62. After deductions, the recovery will be approximately $0.35 per share. *See id.* at 64 ("The estimated average cost per affected share of Wells Fargo common stock, if the Court approves Lead Counsel's fee and expense application, is $0.09 per share."). No distribution will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00; instead, those funds will be included in the distribution to other Authorized Claimants. *Id.* at 78. Nine months after the initial distribution, the Claims Administrator will make additional re-distributions to class members if it is cost effective to do so. *Id.* Any Settlement Funds not distributed to the class will be paid to a cy pres recipient: the Investor Protection Trust. *Id.*

In exchange for the settlement payment, Plaintiffs agree to release the following:

> [A]ny and all claims, debts, demands, rights or causes of action or liabilities of every nature and description (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, local, foreign, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, that both (i) concern, arise out of, relate to, or are based upon the purchase, acquisition, or ownership of Wells Fargo common stock during the Class Period and (ii) were asserted or could have been asserted in this Action by Lead Plaintiff or any other member of the Settlement Class against any of the Defendants' Releasees that arise out of, relate to, or are based upon any of the allegations, circumstances, events, transactions, facts, matters, occurrences, statements, representations or omissions involved, set forth, or referred to in the Complaint, except for claims relating to the enforcement of the Settlement.

Id. at 12. The Settlement does not, however, cover "the claims asserted in any derivative or ERISA action against any of the Defendants." *Id.* at 12–13.

Wells Fargo reserves the right to terminate the Settlement "in the event that Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet the conditions set forth in Wells Fargo's confidential supplemental agreement with Lead Plaintiff."

ECF No. 225-1 at 28.[4]

II. FINAL APPROVAL OF SETTLEMENT AGREEMENT

A. Legal Standard

"The claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "Adequate notice is critical to court approval of a class settlement under Rule 23(e)." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998).

In addition, Rule 23(e) "requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." *Id.* at 1026. Under Ninth Circuit precedent, the district court must balance a number of factors in this analysis:

> (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.

Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004). Recent amendments to Rule 23 require the district court to consider a similar list of factors, namely, whether:

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

[4] The Court granted Union's motion to file the confidential supplemental agreement under seal in connection with preliminary approval of the settlement. ECF No. 234 at 9-11.

Fed. R. Civ. P. 23(e)(2).[5] In the notes accompanying these amendments, the Advisory Committee acknowledged that "[c]ourts have generated lists of factors" to determine the fairness, reasonableness, and adequacy of a settlement, and that "each circuit has developed its own vocabulary for expressing these concerns." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment. The Advisory Committee notes explain that adding these specific factors to Rule 23(e)(2) was not designed "to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id.*; *see also United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) ("[T]he Advisory Committee Notes provide a reliable source of insight into the meaning of a rule . . . ."). Accordingly, the Court applies the framework set forth in Rule 23, while continuing to draw guidance from the Ninth Circuit's factors and relevant precedent. The Court bears in mind, moreover, the Advisory Committee's instruction not to let "[t]he sheer number of factors . . . distract both the court and the parties from the central concerns that bear on review under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment.

Settlements that occur before formal class certification also require a higher standard of fairness. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such settlements, in addition to considering the above factors, the court also must ensure that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

B. Class Action Fairness Act Compliance

This action is subject to the requirements of the Class Action Fairness Act of 2005 ("CAFA"), which requires that, within ten days of the filing of a proposed settlement, each

[5] After promulgating the amendments, the Supreme Court transmitted them to Congress with the instruction that the amendments "shall take effect on December 1, 2018, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending." Order Submitting Amendments to Federal Rules of Civil Procedure at 3 (April 26, 2018), https://www.supremecourt.gov/orders/courtorders/frcv18_5924.pdf; *see generally*, *In re Pangang Grp. Co., LTD.*, 901 F.3d 1046, 1050 (9th Cir. 2018) (describing amendment process). The Court finds it is just and practicable to apply the new Rule to this proceeding, particularly because Union has addressed the new Rule in its briefing on this motion. *See* ECF No. 238 at 24-27.

defendant serve a notice containing certain required information upon the appropriate State and Federal officials. 28 U.S.C. § 1715(b). Defendants have provided evidence that they complied with this requirement on August 10, 2018, ten days after the motion for preliminary approval was filed. *See* ECF No. 235.

CAFA also prohibits a court from granting final approval until ninety days have elapsed since notice was served under § 1715(b). 28 U.S.C. § 1715(d). This requirement has also been satisfied.

C. Analysis

1. Adequacy of Notice

"The class must be notified of a proposed settlement in a manner that does not systematically leave any group without notice." *Officers for Justice v. Civil Serv. Comm'n of City & County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted).

The Court has previously approved the parties' proposed notice procedures. ECF No. 234 at 19. In the motion for final approval, Union states that the parties have since carried out this notice plan. ECF No. 238 at 23. Epiq, the Claims Administrator, mailed 1,866,302 Notice Packets to potential class members, including various institutions that requested copies to forward to stock holders. ECF No. 240-3 at 4 ¶ 8. The Notice informed class members about all key aspects of the Settlement, the date, time, and place of the fairness hearing, and the process for objections. *Id.* at 9-23. 9,416 Notice Packets were returned as undeliverable. *Id.* at 4-5 ¶ 8. Epiq obtained forwarding addresses from the post office for 2,637 of the class members and mailed each a second Notice Packet. *Id.*

In addition, the Court-approved Summary Notice was published in *The Wall Street Journal* and the *Los Angeles Times*, as well as transmitted over the *PR Newswire* on October 9, 2018. *Id.* at 5 ¶ 9. As required by the Preliminary Approval Order, Epiq also maintains and posts information regarding the Settlement on a dedicated website established for the Action, www.WellsFargoSecuritiesLitigation.com, to provide class members with information concerning the Settlement, as well as downloadable copies of the Notice Packet, Settlement, and Preliminary Approval Order. *Id.* at 5 ¶ 13. Finally, Epiq maintains a toll-free number that class members can

call for further information; the number is provided in the Notice Packet, Summary Notice, and on the Website. *Id.* at 5 ¶¶ 10-12.

The deadline for class members to submit objections to the Settlement, the Plan of Allocation, or the Fees and Expenses Motion, or to request exclusion from the Settlement Class, was November 27, 2018. *Id.* at 6 ¶ 14. In its reply brief, Union states that 9 objections and 253 requests for exclusion[6] have been received. ECF No. 249 at 6 & nn. 2-3.

In light of these actions, and the Court's prior order granting preliminary approval, the Court finds the parties have sufficiently provided notice to the settlement class members. *See Lundell v. Dell, Inc.*, Case No. 05–3970 JWRS, 2006 WL 3507938, at *1 (N.D. Cal. Dec. 5, 2006) (holding that notice sent via email and first class mail constituted the "best practicable notice" and satisfied due process requirements).

2. Fairness, Adequacy, and Reasonableness

a. Procedural Concerns

The Court must consider whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(A)-(B). As the Advisory Committee notes suggest, these are "matters that might be described as 'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e)(2)(A)-(B) advisory committee's note to 2018 amendment. These concerns implicate factors such as the non-collusive nature of the negotiations, as well as the extent of discovery completed and stage of the proceedings. *See Hanlon*, 150 F.3d at 1026.

■ **Adequate Representation of the Class**

The Ninth Circuit has explained that "adequacy of representation . . . requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 462.

[6] 15 of those requests for exclusion were received after the November 27, 2018 deadline. ECF No. 249 at 6 n.3. Union asks the Court to exclude those class members as well. *Id.*

In its Preliminary Approval Order, the Court found that there was no evidence of a conflict between either class representatives or Class Counsel and the rest of the class. ECF No. 234 at 5. No contrary evidence has emerged.

Similarly, the Court found that Class Counsel had vigorously prosecuted this action through dispositive motion practice, extensive initial discovery, and formal mediation. *Id.* at 7, 15. The Court further found that, given this prosecution of the action, counsel "possessed 'sufficient information to make an informed decision about settlement.'" *Id.* at 15 (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459). Moreover, counsel's preliminary approval motion included information regarding the settlement outcomes of similar cases, further indicating that counsel "had an adequate information base" when negotiating the settlement. Fed. R. Civ. P. 23(e)(2)(A)-(B) advisory committee's note to 2018 amendment. The Court finds that Class Counsel have continued to represent the class's interest by diligently complying with the notice plan and other settlement procedures.

For its part, Union actively participated in the prosecution of this case, including reviewing filings and discovery, and attending and participating in settlement negotiations. ECF No. 240-2 ¶¶ 8-12.

Accordingly, the Court concludes that this factor weighs in favor of approval.

■ **Arm's Length Negotiations**

Here, the Settlement was the product of arm's length negotiations through two full-day mediation sessions and multiple follow-up calls supervised by former U.S. District Judge Layn Phillips. *See* ECF No. 240-1 ¶¶ 7-14.

Moreover, pursuant to Ninth Circuit precedent, the Court must examine the Settlement for additional indicia of collusion that would undermine seemingly arm's length negotiations. Because the Settlement was reached prior to class certification, "there is an even greater potential for a breach of fiduciary duty owed the class during settlement," and the Court must examine the risk of collusion with "an even higher level of scrutiny for evidence of collusion or other conflicts of interest." *In re Bluetooth*, 654 F.3d at 946. Signs of collusion include: (1) a disproportionate distribution of the settlement fund to counsel; (2) negotiation of a "clear sailing provision"; and (3)

an arrangement for funds not awarded to revert to defendant rather than to be added to the settlement fund. *Id.* at 947. If "multiple indicia of possible implicit collusion" are present, a district court has a "special 'obligat[ion] to assure itself that the fees awarded in the agreement were not unreasonably high.'" *Id.* (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003)).

The Court previously found no signs of collusion because Class Counsel's intended fee request was presumptively proportionate to the settlement fund, there was no clear sailing provision, and no funds would revert to Defendants. ECF No. 234 at 13-14. These findings remain applicable. Further, as discussed in greater detail when evaluating the fees motion, the Court finds that the requested fees are in fact reasonable.

The Court therefore concludes that this factor weighs in favor of approval.

b. Substantive Concerns

Rule 23(e)(2)(C) and (D) set forth factors for conducting "a 'substantive' review of the terms of the proposed settlement." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. In determining whether "the relief provided for the class is adequate," the Court must consider "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). In addition, the Court must consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D).

■ **Strength of Plaintiffs' Case and Risk of Continuing Litigation**

Consistent with Rule 23's instruction to consider "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), courts in this circuit evaluate "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; [and] the risk of maintaining class action status throughout the trial," *Hanlon*, 150 F.3d at 1026.

In its prior order, the Court found that Plaintiffs faced significant obstacles in surviving

summary judgment and ultimately prevailing at trial. ECF No. 234 at 14. As set forth in Union's motion, these obstacles include inherent difficulties in proving scienter and loss causation, as well as overcoming a "truth-on-the-market" defense that could have eliminated any recovery. ECF No. 238 at 17-18. In addition to this uncertainty, the Court found that any relief to class members obtained through trial and possible appeals would be substantially delayed. ECF No. 234 at 14-15.

The Court continues to find that this factor weighs in favor of approval.

- **Effectiveness of Distribution Method, Terms of Attorneys' Fees, and Supplemental Agreements**

The Court must consider "the effectiveness of [the] proposed method of distributing relief to the class." Fed. R. Civ. P. 23(e)(2)(C)(ii). As explained below, the Court concludes that the plan of allocation, which is based on the relative size of claims compromised, is reasonable. The Court further finds that the proposed claims process provides an effective method of implementing that plan by ensuring that the claimant provides sufficient information to calculate the recognized loss amount. Therefore, this factor weighs in favor of approval.

The Court evaluates in detail "the terms of [the] proposed award of attorney's fees," Fed. R. Civ. P. 23(e)(2)(C)(iii), in connection with Class counsel's motion for fees and costs. In short, this factor also weighs in favor of approval.

The only supplemental "agreement identified under Rule 23(e)(3)," Fed. R. Civ. P. 23(e)(C)(iv), permits Wells Fargo to terminate the Settlement if a certain percentage of the class requests exclusion. ECF No. 234 at 9; ECF No. 225-1 at 28. The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015). The Court previously reviewed the supplemental agreement under seal and concluded that the termination provision is fair and reasonable. ECF No. 234 at 17. The Court concludes that the agreement does not weigh against approval.

- **Equitable Treatment of Class Members**

Consistent with Rule 23's instruction to consider whether "the proposal treats class

members equitably relative to each other," Fed. R. Civ. P. 23(e)(2)(C)(i), the Court considers whether the Settlement "improperly grant[s] preferential treatment to class representatives or segments of the class." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

Under the Settlement, class members who submit timely claims will receive payments on a pro rata basis based on the date(s) class members purchased and sold Wells Fargo shares as well as the total number and amount of claims filed. ECF No. 225-1 at 75-78. In granting preliminary approval, the Court found that this allocation did not constitute improper preferential treatment. ECF No. 234 at 16. As explained in greater detail below, the Court adheres to its view that the allocation plan is equitable.

In its motion for preliminary approval, Union indicated that it intended to seek service awards on behalf of Named Plaintiffs. *See* ECF No. 234 at 16. Although such awards are permissible, *see, e.g.*, *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009), Union now indicates that it will not seek any additional service award, *see* ECF No. 240 ¶ 243.

The Court therefore concludes that this factor weighs in favor of approval.

■ **Settlement Amount**

Although not articulated as a separate factor in Rule 23(e), "[t]he relief that the settlement is expected to provide to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. The Court therefore examines "the amount offered in settlement." *Hanlon*, 150 F.3d at 1026.

To evaluate the adequacy of the settlement amount, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware*, 484 F. Supp. 2d at 1080. But "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *Officers for Justice*, 688 F.2d at 628.

Here, the $480 million fund achieves a good result for the class. Union's expert calculates that the maximum potential damages the class could have won at trial ranged from $353.1 million to $3.063 billion, depending on which "corrective disclosures were accepted as demonstrating loss

causation." ECF No. 225-2 ¶ 34. Even accepting the high estimate that the class is settling claims worth $3.063 billion, the Settlement provides the class with a greater than 15 percent recovery. *Id.* ¶ 36. This recovery is higher than recoveries achieved in other securities fraud class actions of similar size (over $1 billion in estimated damages), which settled for median recoveries of 2.5 percent between 2008 and 2016, and 3 percent in 2017. *Id.* (citing Cornerstone Research, Securities Class Action Settlements, 2017 Review and Analysis, at 8 (2018)).[7] Accordingly, the amount of the Settlement also weighs in favor of approval.

■ **Counsel's Experience**

The Court also considers "the experience and views of counsel." *Hanlon*, 150 F.3d at 1026. That counsel advocate in favor of this Settlement weighs in favor of its approval.[8]

c. Reaction of the Class

Finally, the Court considers the class's reaction to the Settlement. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision*, 559 F. Supp. 2d at 1043 (citation omitted).

In this case, the Court received and filed correspondence from nine class members. *See* ECF Nos. 237, 241, 242, 243, 244, 245, 246, 247, 248.[9] In addition, Class Counsel provided the Court with an email from a putative class member. ECF No. 250-1.

These ten letters are properly construed as objections. Although the precise number of potential class members is unclear, the Claims Administrator mailed out more than 1.8 million Notice Packets to potential class members. ECF No. 240-3 at 4 ¶ 8. Even assuming some

[7] Neither Union's percentage calculations for this action nor the calculation of comparison cases appears to exclude attorneys' fees paid from the common fund. But even subtracting Class counsel's fees and costs, *see* Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment, the Class's recovery of roughly $384 million (or 12.5 percent) still far outstrips comparable securities class actions.

[8] The Court considers this factor, as it must, but gives it little weight. "[A]lthough a court might give weight to the fact that counsel for the class or the defendant favors the settlement, the court should keep in mind that the lawyers who negotiated the settlement will rarely offer anything less than a strong, favorable endorsement." *Principles of the Law of Aggregate Litigation* § 3.05 cmt. a (Am. Law. Inst. 2010).

[9] The Court considers all of these letters even though four – ECF Nos. 245, 246, 247, 248 – were filed after the November 27, 2018 deadline to file objections. *See* ECF No. 240-3 at 21.

duplication, 10 objections represents a minute fraction of the potential class, as does the 253 requests for exclusion. *See* ECF No. 249 at 6 & n.3. Moreover, the objectors have alleged ownership of a combined 452 shares, as compared to 1.1 billion shares affected. *See id.* at 6. This overwhelmingly positive response supports approval. *See Rodriguez*, 563 F.3d at 967 (54 objections out of roughly 376,000 putative class members); *Churchill Vill.*, 361 F.3d at 577 (45 objections and 500 opt-outs from approximately 90,000 class members); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2009) (3 objections out of approximately 57,000 class members). Further, no institutional investor submitted an objection or requested exclusion, although institutional investors held between 80.9 to 92.1 percent of outstanding shares of Wells Fargo common stock throughout the Class Period. ECF No. 250 ¶ 3. Under these circumstances, "[t]hat not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness." *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, No. MDL 12-2389, 2018 WL 6168013, at *9 (S.D.N.Y. Nov. 26, 2018); *see also In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004).

Turning to the specific objections, the Court observes as a preliminary matter that five of the objectors do not indicate that they are members of the class. *See* ECF Nos. 237, 241, 242, 245, 250-1; *cf.* ECF No. 240-3 at 21 (instructing objectors to state "the basis for your belief that you are a member of the settlement class"). The Court could reject their objections on this basis, but nonetheless finds that they lack merit as well. *See Perkins v. Linkedin Corp.*, No. 13-CV-04303-LHK, 2016 WL 613255, at *3 (N.D. Cal. Feb. 16, 2016).

The Court construes[10] six of the objections as expressing dissatisfaction with this lawsuit or securities lawsuits in general, including suggestions that suing Wells Fargo would actually harm shareholders. ECF Nos. 237, 241, 242, 245, 246, 250-1. Objections that a "case should never have been brought" and advocating "no recovery for the Class" are contrary to the interests

[10] Many of the objections failed to "state with specificity the grounds for the objection." Fed. R. Civ. P. 23(e)(5)(A). Nonetheless, the Court "take[s] care . . . to avoid unduly burdening class members who wish to object" by "recogniz[ing] that a class member who is not represented by counsel may present objections that do not adhere to technical legal standards." Fed. R. Civ. P. 23(e)(5)(A) advisory committee's note to 2018 amendment.

of the class and are therefore not a basis for finding a settlement unreasonable. *Perkins*, 2016 WL 613255, at *4. The Court therefore overrules these objections.

One objection contended that Wells Fargo should pay the full amount of damages and attorneys' fees. ECF No. 244. Another objection contended that the Settlement Amount was inadequate because each class member's loss amount will be determined by the lower of various metrics. ECF No. 245 at 1.[11] As an initial matter, the loss amount goes to determining each class member's pro rata share, but does not affect the total Settlement Amount, i.e., the class's recovery. *See* ECF No. 225-1 at 21. Thus, contrary to the objection, choosing the lesser of or the greater of those metrics does not reflect a lack of zealous advocacy on the part of Class Counsel. Moreover, as Union points out, this provision parallels the relevant damage provisions of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(e). And finally, for the reasons stated above, the Court finds that the amount of the class's recovery is reasonable under the Settlement. Thus, these objections are overruled.

Two objectors argued that they should not have to spend their own resources to opt out of the class or file objections. ECF Nos. 241, 242. These costs are an inherent feature of opt-out class actions, which are authorized by the Federal Rules. Moreover, the Court finds that the Notice Plan did not make it unduly difficult for class members to exercise their rights to request exclusion or object.

Two objectors argued that they received inadequate notice prior to the November 27, 2018 deadline. The first objector received notice in late October. ECF No. 245 at 1. Epiq has no record of mailing a Notice Packet to the objector, suggesting that he received one from "a nominee who requested Notice Packets from Epiq in bulk to forward to its clients." ECF No. 250-10 ¶ 3(a). The second objector received notice on November 14, 2018. ECF No. 247 ¶ 3. Epiq received the objector's information from Fidelity Investments on October 16, 2018, and mailed a Notice Packet on October 22, 2018. ECF No. 250-10 ¶ 3(b). Where "brokerages, banks and institutions [hold]

[11] For instance, for shares held at the end of the Class Period, the loss amount "will be *the lesser of*: (1) the amount of artificial inflation per share on the date of purchase as stated in Table A; or (ii) the purchase price *minus* $48.96." ECF No. 240-3 at 19.

shares in their street names for the beneficial owners," delays in dissemination of class notice may result. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993). Nonetheless, adequacy of notice does not turn on "whether some individual shareholders got adequate notice, but whether the class as a whole had notice adequate to flush out whatever objections might reasonably be raised to the settlement." *Id.* at 1375; *see also Silber v. Mabon*, 18 F.3d 1449, 1452-54 (9th Cir. 1994) (finding that best notice practicable had been given even though individual shareholder did not receive notice from nominee until after opt-out deadline). Indeed, in both *Torrisi* and *Silber*, the objectors did not receive notice until after the deadline to object or opt-out. *See Silber*, 18 F.3d at 1454; *Torrisi*, 8 F.3d at 1374. Here, both objectors received notice between two to four weeks before the deadline and the Court has considered the merits of their objections. Although these pro se objectors' desire for more time is understandable, it does not mean that notice to the class was inadequate.

One objector contended that the class should have been certified earlier in the litigation. ECF No. 247 ¶ 4. "Litigation takes time." *Orange Cty. Water Dist. v. Unocal Corp.*, No. SACV0301742CJCANX, 2016 WL 11201024, at *13 (C.D. Cal. Nov. 3, 2016). It is not surprising that litigation of this scale over sums of this magnitude took a period of many months to resolve. In any event, this fact does not bear on the reasonableness of the Settlement.

That same objector argued that the Settlement should have included holders of Wells Fargo preferred stock. ECF No. 247 ¶ 6. Plaintiffs have never asserted claims on behalf of preferred shareholders and those claims are not released by the Settlement. *See* ECF No. 207 ¶ 2; ECF No. 225-1 at 12-13. This objection is thus largely immaterial. To the extent it is relevant to the adequacy of representation of the class, courts have generally rejected objections challenging lead plaintiffs' decisions not to bring certain claims in securities class actions. *See N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 239 (E.D. Mich. 2016) (rejecting objection because "the Settlement does not preclude warrant holders from bringing their own lawsuit and claims seeking recovery against GM" and "the decision whether to include GM warrant holders in this litigation fell within NYSTRS' discretion as lead plaintiff"); *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, No. 12-CV-4081, 2013 WL 4399215, at *3

(S.D.N.Y. Aug. 13, 2013) (observing that courts "have consistently held that a lead plaintiff has the sole authority to determine what claims to pursue on behalf of the class").[12]

Two objections argued that the Settlement's de minimis provision was unreasonable because class members with less than $10.00 in claims do not receive a distribution. *See* ECF No. 245 at 1; ECF No. 248 at 3-7; *see also* ECF No. 225-1 at 78. A $10 threshold, however, is "standard in securities class actions and benefit[s] the Settlement Class as a whole because [it] reduce[s] the costs associated with printing and mailing checks for de minimis amounts, as well as costly follow-up to ensure those checks have been received and cashed." *N.Y. State Teachers' Ret. Sys.*, 315 F.R.D. at 241; *see also In re MGM Mirage Sec. Litig.*, 708 F. App'x 894, 897 (9th Cir. 2017) (collecting cases and noting that "numerous cases that have approved similar or higher minimum thresholds" than $10).[13]

One objection disagreed with the chosen cy pres beneficiary, the Investor Protection Trust. ECF No. 248 at 7. As Union notes, a cy pres distribution will be made only after an initial 100 percent distribution to the class and subsequent rounds of re-distribution until the amount "of uncashed or returned checks is sufficiently small that a further re-distribution to claimants would not be cost-effective." ECF No. 249 at 17 (citing ECF No. 240-3 at 20). Moreover, the Court concludes that the Investor Protection Trust's mission of educating investors makes it an appropriate cy pres beneficiary. *See In Re: Volkswagen "Clean Diesel" Mktg., Sales Practices, And Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2018 WL 6198311, at *5 (N.D. Cal. Nov. 28, 2018) (finding the Trust an appropriate cy pres beneficiary because "[a] savvy, educated investor is hopefully more likely to identify signs of securities fraud, which furthers the Exchange Act's purpose of maintaining "fair and honest markets" (quoting 15 U.S.C. § 78b)). As to the objector's proposal that claimants vote on their preferred beneficiaries, ECF No. 248 at 9, the Court

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[12] The credibility of this objector's claim is also undermined by the fact that he attempted to solicit a $1 million payment from Class counsel to withdraw his objection. *See* ECF No. 250-11 ¶ 3. The Advisory Committee specifically remarked on this predatory practice and amended Rule 23 to provide additional safeguards: "But some objectors may be seeking only personal gain, and using objections to obtain benefits for themselves rather than assisting in the settlement-review process." Fed. R. Civ. P. 23(e)(5)(B) advisory committee's note to 2018 amendment.

[13] Pursuant to Ninth Circuit Rule 36-3, *In re MGM* is not precedential. Nevertheless, the Court relies upon it as persuasive authority.

concludes that the administrative costs of implementing that system at this stage of the litigation would outweigh any putative benefits to the class.

For the foregoing reasons, the Court overrules the above objections. Objectors also raised concerns regarding the proposed attorneys' fees. The Court considers those objections in connection with that motion.

Balancing the relevant factors, the Court finds the Settlement fair and reasonable.

III. FINAL APPROVAL OF PLAN OF ALLOCATION

A. Legal Standard

"Approval of a plan of allocation of settlement proceeds in a class action . . . is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate." *In re Oracle Sec. Litig.*, No. C–90–0931–VRW, 1994 WL 502054, at *1-2 (N.D. Cal. June 16, 1994) (citing *Class Pls. v. City of Seattle*, 955 F.2d 1268, 1284-85 (9th Cir. 1992)).

B. Analysis

The allocation plan for the Settlement tailors the recovery of each class member to the timing of any sales or purchases of Wells Fargo common stock relative to periods of alleged artificial inflation and corrective disclosures, as well as the number of shares involved with each class member's claim. *See* ECF No. 225 at 28. In other words, the allocation plan disburses the Settlement Fund to class members "on a *pro rata* basis based on the relative size of" the potential claims that they are compromising. *Id.* This type of pro rata distribution has frequently been determined to be fair, adequate, and reasonable. *See, e.g.*, *Thomas v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST, 2017 WL 4750628, at *8 (N.D. Cal. Oct. 20, 2017); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *4 (N.D. Cal. Apr. 3, 2013) (approving similar plan of distribution); *In re Vitamins Antitrust Litig.*, No. 99-197 TFH, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000) ("Settlement distributions, such as this one, that apportions funds according to the relative amount of damages suffered by class members, have repeatedly been deemed fair and reasonable."). The Court concludes that this plan, which does not

discriminate between class members, is fair and reasonable.[14]

IV. ATTORNEYS' FEES

A. Legal Standard

"While attorneys' fees and costs may be awarded in a certified class action where so authorized by law or the parties' agreement, Fed. R. Civ. P. 23(h), courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth*, 654 F.3d at 941. Courts have discretion to "award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar." *Id.* at 942.

For more than two decades, the Ninth Circuit has set the "benchmark for an attorneys' fee award in a successful class action [at] twenty-five percent of the entire common fund." *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). Courts in the Ninth Circuit generally start with the 25 percent benchmark and adjust upward or downward depending on:

> 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 . . . 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.

In re Online DVD-Rental Antitrust Litig., 779 F.3d at 954-55 (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002)).

Courts often also cross-check the amount of fees against the lodestar. "Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050.

B. Analysis

Plaintiffs' Counsel move the Court for 20 percent of the overall $480 million Settlement Amount. ECF No. 239 at 9. This represents an award of approximately $95.9 million in

[14] The Court GRANTS Union's request to strike the portion of the plan of allocation that imposes restrictions on how an ERISA Plan claimant may distribute funds to its own beneficiaries, given the potential conflict with applicable law. *See* ECF No. 238 at 29.

attorneys' fees. ECF No. 239 at 19.[15] Plaintiffs' Counsel argue that the award is reasonable because counsel achieved an excellent recovery, faced substantial litigation risks, displayed a high level of skill and professionalism, and pursued the litigation on a contingent basis. *Id.* at 24-29.

1. Benchmark Analysis

After careful review of Plaintiffs' Counsel's declarations and filings, the Court concludes that awarding $95.9 million in attorneys' fees is reasonable. Because the 20 percent award requested is below the "benchmark" percentage for a reasonable fee award in the Ninth Circuit, it is "presumptively reasonable." *Ching v. Siemens Industry, Inc.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at *7 (N.D. Cal. June 27, 2014) (quoting *In re Bluetooth*, 654 F.3d at 942). In addition, it is within the median range of 19-22.3 percent in fees awarded in cases with large settlements over $100 million. *See Rodman v. Safeway Inc.*, No. 11-CV-03003-JST, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018). Plaintiffs' Counsel also provide a report on securities fraud class action settlements, which reveals a similar range. The report documents a median attorneys' fee of 22 percent in settlements of $100-500 million and 17 percent in settlements of $500 million-$1 billion, consistent during the periods from 1996 to 2011 and from 2012 to 2017. NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review* at 42 (2018), ECF No. 240-11 at 45.

In addition, the other relevant factors do not support a downward adjustment. The Court considers the results achieved; the level of risk; and the burdens on class counsel. The first and "most critical factor [in determining an attorneys' fee] is the degree of success obtained."[16] *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). As noted above, Plaintiffs' Counsel obtained an excellent result for the class when compared to similar cases, despite comparable risks. *See In re Omnivision*, 559 F. Supp. 2d at 1046 (noting that a 9 percent recovery for the class was "more than triple the average recovery in securities class action settlements"); ECF No. 239 at 16 (collecting

[15] Counsel request that the 20 percent share be applied after subtracting any litigation expenses awarded. ECF No. 239 at 9.

[16] As the Court has noted in the past, consideration of counsel's degree of success is at least partly subsumed by the percentage recovery method, under which "counsel's success provides its own reward." *Rodman*, 2018 WL 4030558, at *3 n.3.

cases). Second, Plaintiffs' Counsel faced substantial risks in pursuing this litigation, given the inherent uncertainties of trying securities fraud cases and the demanding pleading standards of the PLSRA. *Id.* at 1046; *see also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 2018 WL 6168013, at *15 ("Courts have recognized that, in general, securities actions are highly complex and that securities class litigation is notably difficult and notoriously uncertain." (internal quotation marks and citations omitted)). Given the litigation resources involved, any victory in this Court would almost certainly have had to be defended on appeal as well. Third, although the two-plus year lifespan of this litigation is not as lengthy as some other cases, *see Rodman*, 2018 WL 4030558, at *3 (six years), Plaintiffs' Counsel bore a heavy financial burden in expending substantial resources – a claimed lodestar of over $29 million – on a contingency basis. Each of these factors weighs in favor of the award.

2. Lodestar Cross-Check

To confirm an award's reasonableness through a lodestar cross-check, a court takes "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461 U.S. at 433. "[T]he determination of fees 'should not result in a second major litigation'" and "trial courts need not, and indeed should not, become green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826, 838 (2011) (quoting *Hensley*, 461 U.S. at 437). Rather, the Court seeks to "do rough justice, not to achieve auditing perfection." *Fox*, 563 U.S. at 838. A district court must "exclude from this initial fee calculation hours that were not 'reasonably expended.'" *Hensley*, 461 U.S. at 434 (citation omitted). Additionally, the reasonable hourly rate must be based on the "experience, skill, and reputation of the attorney requesting fees" as well as "the rate prevailing in the community for similar work performed by [comparable] attorneys. . . ." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986), *amended by* 808 F.2d 1373 (9th Cir. 1987). To inform and assist the Court in making this assessment, "the burden is on the fee applicant to produce satisfactory evidence . . . that the requested rates are in line with those prevailing in the community." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).

Plaintiffs' Counsel's rates range from $650 to $1,250 for partners or senior counsel, from

$400 to $650 for associates, and from $245 to $350 for paralegals.[17] ECF No. 240-5 at 11-13; ECF No. 240-6 at 10; ECF No. 240-7 at 12; ECF No. 240-8 at 8. The blended hourly rate for all timekeepers is $406. For purposes of the lodestar cross-check, the Court finds that these rates are reasonable. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (finding reasonable rates of $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals, given blended hourly rate of $529).

Plaintiffs' Counsel have documented in detail the amount of hours spent on different tasks per month. The Court has some concerns about counsel's hours. For instance, BLB&G spent 1,192 hours preparing complaints and its substitution motion, and 1,535 hours opposing the motions to dismiss. ECF No. 240-5 at 88. Even given the complexity of this litigation and the eight concurrent motions to dismiss, these hours are excessive. More problematically, a disproportionate amount of this time was spent by senior partners with top-of-market billing rates. BLB&G partner Salvator Graziano – whose claimed rate is $995 per hour – billed 84.25 hours for "[p]reparation of complaints & substitution of BLB&G" and 197.75 hours for "[m]otion to dismiss." *Id.* at 70. Similarly, partner Gerald Silk billed 124 hours towards the complaints and the substitution motions at a rate of $995 per hour. *Id.* at 71. Partner Adam Wierzbowski devoted 307.5 hours to the motion to dismiss, at a rate of $750 per hour. *Id.*

Plaintiffs' Counsel's total lodestar of $29,504,271.25 results in a multiplier of 3.22. And even if the Court were to reduce the senior partner billing rates for drafting tasks to a more reasonable $500 per hour, or reduce by half the hours spent on complaint drafting and responding to motions to dismiss, the multiplier would still be less than four. Percentage awards in the range of one to four times the lodestar are typical in common fund cases. *See Vizcaino*, 290 F.3d at 1051 n.6 (citations omitted) (finding a range of 0.6 to 19.6 in a survey of 24 cases, with 83 percent

[17] The Court uses Plaintiffs' Counsel's current rather historic rates, which is a well established method of ensuring that "[a]ttorneys in common fund cases [are] compensated for any delay in payment." *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002) (citing *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 609 (9th Cir. 1997)).

in the 1.0 to 4.0 range and 54 percent in the 1.5 to 3.0 range). Because Plaintiffs' Counsel's lodestar multiplier is within the range of reasonableness, it supports the requested award.

3. Reaction of the Class

As with the Settlement itself, the lack of objections from institutional investors "who presumably had the means, the motive, and the sophistication to raise objections" weighs in favor of approval. *In re Bisys Sec. Litig.*, No. 04 CIV. 3840(JSR), 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007).

Five objectors generally asserted that Plaintiffs' Counsel's fees request was unreasonably high, but they provided no specific objections as reasons to reject the request. ECF Nos. 241, 242, 245, 246. These generalized objections do not provide a basis to contravene the Court's benchmark analysis and lodestar cross-check. *See Asghari v. Volkswagen Grp. of Am., Inc.*, No. CV1302529MMMVBKX, 2015 WL 12732462, at *30 (C.D. Cal. May 29, 2015) (overruling objections that "conclusorily assert that the fees are too high as compared to the benefits class members will receive"). Two of the objectors also requested that the Court appoint an independent expert to assess the fee request. ECF Nos. 241, 242. Given the above analysis, the Court declines to exercise its discretion to do so. *See Vizcaino*, 290 F.3d at 1051 n.7. Another one of the objectors contended that Plaintiffs' Counsel had provided inadequate documentation in support of their fee request, but he appears to have been mistakenly referring to the Notice Packet. ECF No. 247 ¶ 5 (citing "Notice ¶ 22"). Plaintiffs' Counsel have produced meticulous documentation in support of their motion.

One objection also contended that fees should be reduced because "the great bulk of the time in the case" was billed by staff attorneys rather than senior partners. ECF No. 248 at 10. Because the staff attorneys have lower billing rates, however, this results in a lower lodestar, which factors into the Court's cross-check. The objector also expressed dissatisfaction with effectively applying a multiplier to time spent by paralegals and other support personnel. *Id.* To the extent that the objector – who is represented by counsel – contends that paralegals' work, unlike that of senior partners, is not worthy of a multiplier in meritorious cases, the Court disagrees with the premise of the argument and is not aware of any authority to support it.

The objector further contended that Plaintiffs' Counsel's hours were duplicative because the same documents were produced in a related case. *Id.* at 10-11 (citing *In re Wells Fargo & Company Shareholder Derivative Litigation*, No. 16-cv-05541-JST (N.D. Cal.)). The derivative litigation is still ongoing. Even assuming that counsel requested the same documents in both cases, the appropriate remedy would be to preclude double recovery in the derivative litigation, not to withhold compensation in this case.

The objector argued that Plaintiffs' Counsel faced less substantial risk because of the government enforcement action against Wells Fargo. ECF No. 248 at 11. But the government's investigation and enforcement action concerned Wells Fargo's underlying fraudulent consumer practices. It was not addressed to fraud on investors, and it did not reduce the costs or risks of litigating this securities fraud case or help establish elements of the securities claims such as materiality, scienter, or loss causation.

Finally, an objector argued that Union's 20 percent fee agreement with Class Counsel was unreasonable, citing another litigation where Class Counsel purportedly agreed to a fee scale that would have produced an 8.5% fee. ECF No. 243 at 2-3. While plaintiffs and counsel may negotiate for such graduated fee scales, Union was not required to do so in its role as Lead Plaintiff. And in any event, courts are not bound by such agreements, and Plaintiffs' Counsel's request falls within the range for settlements of this size. *See Rodman*, 2018 WL 4030558, at *5. Indeed, Class Counsel ultimately received a 20 percent award from an approximately $1 billion settlement in the case on which the objector relies. *See In re Merck & Co., Inc. Sec., Deriv. & "ERISA" Litig.*, No. 2:05-cv-02367, slip op. at 10-11 (D.N.J. June 28, 2016) (ECF No. 240-15 at 11-12).[18] Accordingly, the Court does not find the objector's argument persuasive as to the adequacy of Union or the reasonableness of Plaintiffs' Counsel's fees.[19]

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[18] *In re Merck* does not help Class Counsel as much as they represent, however. There, counsel's lodestar was $205.6 million, for a multiplier of roughly one. ECF No. 240-3 at 12.

[19] The Court notes, but does not rely on, the apparent history of objector's counsel, Steve Miller and John Pentz, as serial meritless objectors. *See, e.g.*, *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 890 (C.D. Cal. 2016) (listing Miller as one of the "'serial' objectors who are well-known for routinely filing meritless objections to class action settlements for the improper purpose of extracting a fee rather than to benefit the Class"); *In re Wal-Mart Wage & Hour Employment Practices Litig.*, No. 2:06CV00225-PMPPAL, 2010 WL 786513, at *1 (D. Nev. Mar. 8, 2010)

The Court therefore overrules those objections. Because the Court has verified under both the lodestar method and the percentage-recovery method that the amount of requested fees is reasonable, the Court awards 20 percent of the $480 million Settlement Amount, or $95,906040.956, to Plaintiffs' Counsel.

V. EXPENSES

A. Legal Standard

An attorney is entitled to "recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted). To support an expense award, Plaintiffs should file an itemized list of their expenses by category, listing the total amount advanced for each category, allowing the Court to assess whether the expenses are reasonable. *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at *30 (N.D. Cal. Apr. 1, 2011), *supplemented*, No. 06-cv-05778-JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011).

B. Analysis

Although the Notice Packet informed class members that Plaintiffs' Counsel would seek reimbursement of up to $750,000 in expenses, ECF No. 240-3 at 21, counsel are now seeking reimbursement of $469,795.22 in expenses, ECF No. 239 at 30; ECF No. 240 ¶ 236. Plaintiffs' Counsel have provided itemized lists of the costs and expenses separated by category. ECF No. 240-9; *see also, e.g.*, ECF No. 240-5 at 97-132. Most expenses resulted from retention of experts, research costs, and Freedom of Information Act request charges. ECF No. 249-9 at 2. The Court finds counsel's expenses reasonable and grants the request.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. For the reasons set forth in its September 4, 2018 order, ECF No. 234, the Court confirms its certification of the class for settlement purposes only.

(noting Pentz's "documented history of filing notices of appeal from orders approving other class action settlements, and thereafter dismissing said appeals when they and their clients were compensated by the settling class or counsel for the settling class").

2. For the reasons set forth in its September 4, 2018 order, ECF No. 234, the Court confirms its appointment of Bernstein Litowitz Berger & Grossman LP as Class Counsel.

3. The Court grants final approval of the proposed settlement and plan of allocation.

4. The Court grants the 253 requests to be excluded from the class.

5. The Court grants the motion for attorneys' fees and litigation expenses.

IT IS SO ORDERED.

Dated: December 17, 2018

United States District Court
Northern District of California

Exhibit 18

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM, SJUNDE AP-FONDEN, BOARD OF TRUSTEES OF THE CITY OF FORT LAUDERDALE GENERAL EMPLOYEES' RETIREMENT SYSTEM, EMPLOYEES' RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS, AND PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI on behalf of themselves and all others similarly situated, Plaintiffs, v. GREEN MOUNTAIN COFFEE ROASTERS, INC., LAWRENCE J. BLANFORD and FRANCES G. RATHKE, Defendants.	No. 2:11-CV-00289-WKS

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

WHEREAS, this matter came on for hearing on October 22, 2018 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the

fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested; and

WHEREAS, this Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated June 18, 2018 (ECF No. 336-1) (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

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

2. **Notice** – Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement 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 motion for an award of attorneys' fees and reimbursement of Litigation Expenses 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 (the "PSLRA"), and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto.

3. **Fee and Expense Award** – Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 17% of the Settlement Fund and $2,478,468.65 in reimbursement of Plaintiffs' 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 they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

4. **Factual Findings** – In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $36,500,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by Class Representatives, institutional investors that oversaw the prosecution and resolution of the Action;

(c) More than 188,700 copies of the Notice were mailed to potential 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 Litigation Expenses in an amount not to exceed $3,400,000;

(d) Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Class Representatives and the other members of the Class may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted more than 60,300 hours, with a lodestar value of approximately $28,543,600, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and Litigation Expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

5. **PLSRA Awards** – Class Representative Louisiana Municipal Police Employees' Retirement System is hereby awarded $5,715.80 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

6. Class Representative Sjunde AP-Fonden is hereby awarded $21,650.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

7. Class Representative Board of Trustees of the City of Fort Lauderdale General Employees' Retirement System is hereby awarded $3,862.87 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

8. Class Representative Employees' Retirement System of the Government of the Virgin Islands is hereby awarded $24,823.71 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

9. Class Representative Public Employees' Retirement System of Mississippi is hereby awarded $38,175.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

10. **No Impact on Judgment** – 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.

11. **Retention of Jurisdiction** – Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order.

12. **Termination of Settlement** – 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.

13. **Entry of Order** – There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 22 day of October, 2018.

/s/ William K. Sessions III
Honorable William K. Sessions III
United States District Judge

Exhibit 19

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROBERT F. BACH, et al., Plaintiff, v. AMEDISYS, INC., et al., Defendants.	Consolidated Securities Class Action Civil Action No. 10-00395-BAJ-RB Consolidated With: No. 10-464-BAJ-RB No. 10-470-BAJ-RB No. 10-497-BAJ-RB

ORDER AWARDING ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES

This matter came on for hearing on December 13, 2017 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated August 4, 2017 (ECF No. 336-1) (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 to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 17% of the Settlement Fund and $532,510.64 in reimbursement 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 they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $43,750,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by Lead Plaintiffs, institutional investors that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 154,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not exceed 20% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed $975,000, and no objections to the requested attorneys' fees and expenses were received;

(d) Lead Counsel conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted over 15,500 hours, with a lodestar value of approximately $9,322,800, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff the Public Employees' Retirement System of Mississippi is hereby awarded $43,937.50 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

7. Lead Plaintiff the Puerto Rico Teachers' Retirement System is hereby awarded $6,977.21 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

8. 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.

9. 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.

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.

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.

SO ORDERED this 19th day of December, 2017.

The Honorable Brian A. Jackson
Chief United States District Judge
Middle District of Louisiana

Exhibit 20

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE SCHERING-PLOUGH CORPORATION / ENHANCE SECURITIES LITIGATION	Civil Action No. 08-397 (DMC) (JAD)

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on October 1, 2013 (the "Settlement Hearing") on Co-Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class Members who or which could be identified with reasonable effort, except those persons or entities excluded from the definition of the Class, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and litigation expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated as of June 3, 2013 (ECF No. 419-1) (the "Stipulation") and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

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

3. Notice of Co-Lead Counsel's motion for attorneys' fees and reimbursement 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 motion for attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §§ 77z-1(a)(7), 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 16.92% of the Settlement Fund, which sum the Court finds to be fair and reasonable, and $3,620,049.63 in reimbursement of litigation expenses, which fees and expenses shall be paid to Co-Lead Counsel from the Settlement Fund. Co-Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.

5. Lead Plaintiff the Arkansas Teacher Retirement System is hereby awarded $8,020.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

6. Lead Plaintiff the Public Employees' Retirement System of Mississippi is hereby awarded $39,080.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

7. Lead Plaintiff the Louisiana Municipal Police Employees' Retirement System is hereby awarded $19,575.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

8. Lead Plaintiff the Massachusetts Pension Reserves Investment Management Board is hereby awarded $35,772.26 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

9. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court adopts and approves the recommendations of the Court-appointed Special Masters, Stephen M. Greenberg, Esq. and Jonathan J. Lerner, Esq., as set forth in their Report and Recommendations of the Special Masters Relating to the Award of Attorneys' Fees and Expenses dated August 27, 2013 (ECF No. 435). In addition, the Court has considered and found that:

(a) The Settlement has created a fund of $473,000,000 in cash that has been funded into an escrow account pursuant to the terms of the Stipulation, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Co-Lead Counsel has been reviewed and approved as fair and reasonable by Lead Plaintiffs, which are sophisticated institutional investors that were substantially involved in all aspects of the prosecution and resolution of the Action;

(c) Copies of the Settlement Notice were mailed to over 406,000 potential Class Members and nominees stating that Co-Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 17% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed $5,250,000, and only one objection to the requested attorneys' fees was submitted. The Court has considered the objection and found it to be without merit;

(d) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action involves complex factual and legal issues and was actively prosecuted for over four years;

(f) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the other members of the Class may have recovered less or nothing from the Defendants;

(g) Plaintiffs' Counsel devoted over 126,000 hours, with a lodestar value of approximately $59.7 million, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

10. 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.

11. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

12. 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.

13. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 1 day of Oct, 2013.

The Honorable Dennis M. Cavanaugh
United States District Judge

#753453

Exhibit 21

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.2.2
Eastern Division

Joshi Living Trust, et al.

Plaintiff,

v.

Case No.: 1:18−cv−01713
Honorable Matthew F. Kennelly

Akorn, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, June 26, 2018:

MINUTE entry before the Honorable Matthew F. Kennelly: Motion hearing held on 6/26/2018. Motion for limited relief from the PSLRA discovery stay [43] is denied subject to entry of a preservation order. Mailed notice. (pjg,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

Exhibit 22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

In Re: FACEBOOK, INC., IPO SECURITIES AND DERIVATIVE LITIGATION,

12 MD 2389 (RWS)

----------x

September 5, 2018
10:15 a.m.

Before:

HON. ROBERT W. SWEET,

District Judge

APPEARANCES

LABATON SUCHAROW, LLP
Attorneys for Plaintiffs
BY: THOMAS A. DUBBS
JAMES W. JOHNSON
NICOLE M. ZEISS

BERNSTEIN, LITOWITZ, BERGER & GROSSMANN, LLP
Attorneys for Plaintiffs
BY: JOHN RIZIO-HAMILTON

HACH, ROSE, SCHIRRIPA & CHEVERIE, LLP
Attorneys for Plaintiffs
BY: FRANK R. SCHIRRIPA

KIRKLAND & ELLIS, LLP
Attorneys for Defendant Facebook
BY: NATHANIEL J. KRITZER

LATHAM & WATKINS, LLP
Attorneys for Defendants
BY: ANDREW B. CLUBOK

DAVIS POLK & WARDWELL, LLP
Attorneys for Underwriter Defendants
BY: CHARLES S. DUGGAN
ANDREW DITCHFIELD

THE COURT: Anyone else in support? Anyone in opposition?

Let me just say for a moment my own reaction to what you have told me and to this resolution: This, I think, is a paradigm of the way in which our system achieves justice. Intelligent, hard working, every -- I think every aspect of this difficult case and there will be no question about it. The case, from the inception, has been a difficult case and we are all familiar with all the nuances and the difficulties which were presented by it.

But, to have a difficult case like this thoroughly explored, all the facts, relevant facts really known, brought out, and then to have it resolved in the best interests of the class and of the defendants by skilled and very able lawyers, is really the hallmark of a justice system that we, I think we can all be very proud of. And, I certainly am most grateful to all counsel for all the help you gave me, for all the tsuris I suffered as a result of the efforts you gave me, and it was very worth while. I salute you all for, I think, quite a monumental achievement.

I think our system is much stronger as a result of everything that was done from beginning to the end. And so, I am grateful to you and I am sure this society is grateful to you as well. So, thank you very much. I will research decision.

Exhibit 23

Bourg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. GOLDMAN SACHS GROUP, INC., et al., Defendants.	Civil Action No. 09-CV-1110-HB ECF CASE CLASS ACTION

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter came on for hearing on November 8, 2012 (the "Settlement Hearing") on Lead Counsel's motion to determine, among other things, whether and in what amount to award in the above-captioned consolidated securities class action (the "Action") for attorneys' fees and expenses.

The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class members who or which could be identified with reasonable effort, and that a summary notice of the hearing was published pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated July 31, 2012 (ECF No. 140-1) (the "Stipulation") and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Litigation and all parties to the Litigation, including all Class members.

3. Notice of Lead Counsel's application for attorneys' fees and 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 satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 and the Rules of the Court, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel is hereby awarded attorneys' fees in the amount of $4,488,972.68, plus interest, and reimbursement of Lead Counsel's expenses in the amount of $715,797.32, plus interest, which sums the Court finds to be fair and reasonable. (reflecting a $10,000 reduction for a misreported expert retainer) The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a manner which, in the opinion of Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution and settlement of the Action.

5. Lead Plaintiff, Public Employees' Retirement System of Mississippi, on behalf of itself and the Office of the Attorney General of the State of Mississippi, is hereby awarded $25,230.00 from the Settlement Amount as reimbursement for its reasonable costs and expenses directly related to its representation of the Class.

6. The Court approves payment from the Settlement Amount to the claims administrator for its fees and expenses in the total amount of $60,000.00.

7. The attorneys' fees and expenses as awarded above in Paragraphs 4 through 6 may be paid from the Settlement Amount immediately after entry of this Order, notwithstanding

the existence of any timely filed objection thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof.

8. In making this award of attorneys' fees and expenses to be paid from the Settlement Amount the Court has considered and found that:

(a) Copies of the Notice were mailed to over 2,300 potential Class members or their nominees stating that Lead Counsel would apply for attorneys' fees, reimbursement of litigation expenses (which, in accordance with 15 U.S.C. § 78u-4(a)(4), may include the costs and expenses of Lead Plaintiff directly related to its representation of the Class), and claims administration expenses in an amount not to exceed $5.3 million, plus interest earned at the same rate and for the same period as earned by the Settlement Amount, and there are no objections to the requested attorneys' fees or expenses;

(b) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(c) The Action involves complex factual and legal issues and was actively prosecuted for nearly three years;

(d) Had the Settlement not been achieved, there would remain a significant risk that Lead Plaintiff and the other members of the Class may have recovered less or nothing from Defendants;

(e) Plaintiffs' Counsel devoted over 14,000 hours, with a lodestar value of over $6.4 million, to achieve the Settlement; and

(f) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Amount are fair and reasonable and consistent with awards in similar cases.

9. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees or expense application shall in no way disturb or affect the finality of the Order and Final Judgment entered with respect to the Settlement.

10. Exclusive jurisdiction is hereby retained over the parties and the Class members for all matters relating to this Litigation, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

11. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with terms of the Stipulation.

12. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 8th day of November 2012.

Harold Baer

HONORABLE HAROLD BAER, JR.
UNITED STATES DISTRICT JUDGE

Exhibit 24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. GOLDMAN SACHS GROUP, INC., et al., Defendants.	Civil Action No. 09-CV-1110-HB ECF CASE CLASS ACTION

DECLARATION OF JOHN L. GADOW, IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF POND GADOW & TYLER

John L. Gadow, declares as follows:

1. I am a member of the law firm Pond Gadow & Tyler of Jackson, Mississippi. I submit this declaration in support of my firm's application for an award of attorneys' fees in connection with services rendered in the above-captioned action (the "Action").

2. My firm, which represents the Public Employees' Retirement System of Mississippi, performed the following tasks: Researched and developed the claims in questions and conducted all local matters associated with this litigation, including, but not limited to, interaction with and updates of the litigation to the attorney General's Office and to the Public Employees Retirement System of Mississippi. My firm also reviewed and participated in the drafting of pleadings, briefs and correspondence associated with the litigation, responded to discovery requests propounded by the Defendant(s) as well as reviewed all pleadings, briefs and orders filed in this litigation.

3. The schedule attached hereto as Exhibit 1 is a summary indicating the amount of time spent by each attorney of my firm who was involved in litigating this Action, and the lodestar calculation based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

5. The total number of hours expended on this Action by my firm from its inception through October 1st, 2012 is 153.30. The total lodestar for my firm is $69320.00.

6. With respect to the standing of my firm, attached hereto as Exhibit 2 is a brief biography of my firm and attorneys in my firm who were principally involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on October 1, 2012 in Jackson, Mississippi.

John L. Gadow (MBN 9644)

EXHIBIT 1

EXHIBIT 1

Public Employees' Retirement System of Mississippi, et al. v. Goldman Sachs Group, Inc., et al.
Civil Action No. 09-CV-1110-HB

POND GADOW & TYLER

TIME REPORT

Inception through October 1, 2012

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Blake A. Tyler	36.65	$300	$10995.00
John L. Gadow	62.00	$500	$31000.00
Michael G. Pond	54.65	$500	$27325.00
TOTAL LODESTAR	**153.30**		**$69320.00**

EXHIBIT 2

The law firm of POND GADOW & TYLER has proudly served and represented Mississippi consumers since 1991 and has assisted thousands of Chapter 7 and Chapter 13 Debtors in the United States Bankruptcy Courts for both the Northern and Southern Districts of Mississippi. In addition to its consumer bankruptcy practice, POND GADOW & TYLER has considerable experience with civil lawsuits against banks, mortgage companies and finance companies that engage in predatory lending practices, mortgage fraud and other consumer violations. In 2009, POND GADOW & TYLER, along with two other Mississippi firms and two National firms, assisted Mississippi Attorney General Jim Hood in a landmark settlement against Microsoft Corporation for violations of the Mississippi Consumer Protection Act and the Mississippi Antitrust Act. Currently, POND GADOW & TYLER has a separate Antitrust and Consumer Protection Action pending in Mississippi State Court against BASF Corp and certain affiliates and approximately seven other securities class actions pending in Federal Court in New York based upon the securitization and sale of mortgage backed securities.

Michael G. Pond has assisted thousands of Chapter 7 and Chapter 13 consumer debtors in the U.S. Bankruptcy Courts for the Northern and Southern Districts of Mississippi. In addition to representing individuals and families before the U.S. Bankruptcy Courts, Michael has considerable experience with civil lawsuits against banks, mortgage companies and finance companies that engage in predatory lending practices. Michael's 2002 settlement against The Money Store and its successors on behalf of over 1500 Mississippi homeowners represented one of the 10 largest settlements in the nation that year. Due to a multitude of consumer and lending law violations all mortgages were cancelled and each homeowner received substantial compensation for their damages. Michael has also successfully resolved finance cases against City Finance, Washington Mutual, Wachovia, American General and others. Michael completed his undergraduate degree in Finance and Economics and subsequently worked for a regional mortgage bank and a national automobile lender. He has almost 20 years of consumer bankruptcy experience with Chapter 7 and Chapter 13. Michael knows credit, collections and bankruptcy. He has also successfully obtained compensation for his clients who used the defective pharmaceutical diet drugs Phen-Fen and the diabetes drug Rezulin.

Blake A. Tyler began his undergraduate studies at Rockhurst University in Kansas City, Missouri prior to heading back to his home state of Mississippi to complete his undergraduate degrees in psychology and biology at Delta State University in Cleveland, Mississippi. After college, Mr. Tyler entered the counseling psychology program at Delta State and left the program early to enter law school at Mississippi College School of Law, where he graduated in 2004. After a brief internship with then Mississippi Attorney General Mike Moore, Mr. Tyler joined Michael Pond and John Gadow to start POND GADOW & TYLER. Mr. Tyler has been appointed by the current Attorney General of Mississippi, Jim Hood, as a Special Assistant Attorney General and has assisted General Hood in a number of areas of civil litigation and he regularly defends state agencies in labor disputes before the Mississippi Workers' Compensation Commission. Mr. Tyler also successfully prosecuted approximately seventy (70) actions on behalf of the State of Mississippi for the termination of parental rights against Mississippians who abused or neglected their children, thereby protecting hundreds of Mississippi children.

John L. Gadow is a Louisiana native who came to Mississippi to attend law school at Mississippi College School of Law, where he earned his Juris Doctorate in 1993. Prior to that time, Mr. Gadow studied at Louisiana State University and earned his undergraduate degree in business finance at Nichols State University in 1985. Prior to entering private practice, Mr. Gadow spent several years as a Special Assistant Attorney General under former Mississippi Attorney General Mike Moore in the civil litigation division. After leaving the Attorney General's office, Mr. Gadow then went on to work for a large Jackson, Mississippi law firm prior to joining POND GADOW & TYLER. Mr. Gadow has successfully handled numerous contested matters before the United States Bankruptcy Courts for both the Northern and Southern Districts of Mississippi and has considerable experience in consumer class actions and personal injury matters. Mr. Gadow has represented the Attorney General as outside Counsel since leaving the Attorney General's Office and is appointed as a Special Assistant Attorney General in representing the State of Mississippi.

Messrs. Gadow, Pond and Tyler were also instrumental in Mississippi Attorney General Jim Hood's prosecution of Microsoft Corporation for violations of the Mississippi Consumer Protection Act and the Mississippi Antitrust Act and helped negotiate a $100 Million settlement with the software giant.