

FILED  
07-16-2020  
CIRCUIT COURT  
DANE COUNTY, WI  
2019CV000982

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

DANE COUNTY

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

SPECTRUM BRANDS HOLDINGS, INC.,  
DAVID M. MAURA, JOSEPH S.  
STEINBERG, GEORGE C. NICHOLSON,  
CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A.  
MCKNIGHT, ANDREW WHITTAKER and  
HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982

Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

**DECLARATION OF JONATHAN GARDNER IN SUPPORT OF (I) PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN  
OF ALLOCATION AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

I, Jonathan Gardner, declare as follows, under penalty of perjury:

1. I am a partner of the law firm of Labaton Sucharow LLP ("Labaton Sucharow"), counsel for plaintiff Plymouth County Retirement Association, and the preliminarily approved Settlement Class in the Action.<sup>1</sup> I have been actively involved throughout the prosecution and resolution of the Action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my close supervision of the material aspects of the Action.

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<sup>1</sup> All capitalized terms not otherwise defined herein have the same meaning as that set forth in the Stipulation and Agreement of Settlement, dated as of May 1, 2020 (the "Settlement Agreement") previously filed with the Court as Exhibit 1 to Plaintiff's May 4, 2020 Motion for Preliminary Approval of Proposed Class Action Settlement.

2. I submit this declaration in support of Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses. The motions have the full support of Plaintiff. *See* Declaration of David Sullivan on behalf of Plymouth County, attached hereto as Exhibit 1.<sup>2</sup>

#### **I. PRELIMINARY STATEMENT**

3. Following extensive, arm's-length negotiations and a formal mediation process facilitated by Mediator Jed D. Melnick, Esq., Plaintiff has agreed to settle all claims asserted against Defendants, and related claims, in exchange for the payment of \$9,000,000, for the benefit of the Settlement Class. As set forth in the Settlement Agreement, in exchange for this payment, the proposed Settlement resolves all claims asserted by Plaintiff and the Settlement Class and all Released Claims against the Released Defendant Parties.

4. The Action has been vigorously litigated since its commencement in April 2019 through the execution of the Settlement Agreement. The Settlement was achieved only after Plaintiff and Lead Counsel, *inter alia*, as detailed herein: (i) conducted a thorough investigation concerning the allegedly material false and misleading statements and omissions made by Defendants in connection with HRG's offering of stock to investors in connection with the July 2018 merger (the "Merger") of Old Spectrum and HRG, including gathering and analyzing information about both companies—specifically, publicly available information and analyst reports regarding Old Spectrum and HRG, and contacting 56 former employees and interviewing 18 of them, four of whom provided information for the Amended Complaint; (ii) prepared and filed a detailed Initial Complaint and Amended Complaint; (iii) researched and drafted an

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

opposition to Defendants' comprehensive motion to dismiss the Amended Complaint; (iv) consulted with and retained accounting and damages experts; (v) reviewed a core set of documents produced in advance of mediation; (vi) and engaged in settlement discussions under the guidance of an experienced Mediator. At the time the Parties reached the Settlement, Plaintiff and Lead Counsel had a deep understanding of the strengths and weaknesses of the Parties' positions.

5. The \$9 million Settlement represents a recovery in a range of approximately 4.5% to 9.5% of estimated damages in the Action—a favorable result that is well within the range of reasonableness, particularly in light of the countervailing legal and factual arguments tenaciously pursued by Defendants and attendant litigation risks. Indeed, Defendants argued that any damages in the Action would be far below Plaintiff's estimated range. *See* Plaintiff's Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Plan of Allocation ("Settlement Memorandum) at §I.B.1.(c).

6. In deciding to settle the Action, Plaintiff and Lead Counsel took into consideration the significant risks associated with advancing the claims alleged in the Amended Complaint, as well as the duration and complexity of the legal proceedings, including Defendants' pending motion to dismiss as well as continued briefing on class certification, summary judgment motions, and trial, which remained ahead. The Settlement was achieved in the face of staunch opposition by Defendants who would have, had the Settlement not been reached, continued to raise serious arguments concerning, among other things, materiality, falsity, traceability of the Settlement Class's shares to the Merger, negative causation, and damages. In the absence of a settlement, there was a real risk that the Settlement Class could have recovered nothing or an amount significantly less than the negotiated Settlement.

7. In addition to seeking approval of the Settlement, Plaintiff seeks approval of the proposed Plan of Allocation for the proceeds of the Settlement among claimants. As discussed in further detail below and in Plaintiff's Settlement Memorandum, the proposed Plan of Allocation was developed by Plaintiff's consulting damages expert, and provides for the fair and equitable distribution of the Net Settlement Fund to Settlement Class Members who or which submit Claim Forms that are approved for payment.

8. With respect to Lead Counsel's Fee and Expense Application, on behalf of all Plaintiff's Counsel, the requested fee of 30% of the Settlement Fund is fair to the Settlement Class, and warrants the Court's approval.<sup>3</sup> This fee request is within the range of fee percentages frequently awarded in this type of action and by courts within Wisconsin, and in-line with the lodestar value of Plaintiff's Counsel's time dedicated to the case. *See* Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Fee Memorandum"). Plaintiff's Counsel also seek litigation expenses totaling \$46,081.53, plus an award to Plaintiff, commensurate with the time it dedicated to the case, in the amount of \$3,200.

## II. SUMMARY OF PLAINTIFF'S CLAIMS

9. As set forth in the Amended Complaint, Old Spectrum manufactured, marketed, and distributed branded consumer products worldwide. ¶31.<sup>4</sup> Old Spectrum was divided into four reporting segments: (i) Hardware and Home Improvement, or "HHI"; (ii) Global Pet Supplies, or "PET"; (iii) Home and Garden, or "H&G"; and (iv) Global Auto Care, or "GAC." ¶32. The Action arises out of the Merger between Old Spectrum and HRG on July 13, 2018 and the allegedly false and misleading Registration Statement issued in connection with that Merger.

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<sup>3</sup> Plaintiff's Counsel are the law firms of Labaton Sucharow LLP, Michael Best & Friedrich LLP, and Thornton Law Firm LLP.

<sup>4</sup> Citations to "¶" refer to paragraphs of the Amended Complaint.

As alleged in the Amended Complaint, the Registration Statement contained misstatements or omissions concerning the undisclosed impact of an accumulation of obsolete inventory prior to the Merger, including accounting statements concerning goodwill impairment and impairment of the GAC business unit as well as statements addressing the Companies internal controls, causing the Settlement Class to suffer losses.

10. The Amended Complaint was brought against Defendants for violations of Sections 11, 12(a)(2), and 15 of the Securities Act.

### **III. RELEVANT PROCEDURAL HISTORY**

#### **A. Complaint for Violation of the Securities Act of 1933**

11. The Action was commenced on April 9, 2019, by filing the Initial Complaint in Wisconsin Circuit Court, Dane County, on behalf of a class of investors who purchased or otherwise acquired Spectrum common stock pursuant or traceable to the Registration Statement, captioned *Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.*, No. 2019CV000982, alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act for alleged misstatements and omissions in the Registration Statement. Dkt. 1.

12. Defendants filed a motion to dismiss the Initial Complaint on June 28, 2019. Dkt. 64-65.

13. Plaintiff did not respond to Defendants' June 28, 2019 motion to dismiss and instead filed the Amended Complaint on August 16, 2019. Dkt. 87.

14. The Amended Complaint asserted claims against Spectrum, HRG, David M. Maura (appointed CEO and Executive Chairman of Spectrum's Board of Directors on the Merger closing date),<sup>5</sup> Joseph S. Steinberg (a member of Spectrum's Board of Directors on the

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<sup>5</sup> Prior to the Merger, Defendant Maura was Managing Director and Executive Vice President ("EVP") of Investments at HRG from October 2011 through November 2016.

Merger closing date),<sup>6</sup> George C. Nicholson (Senior Vice President and Chief Accounting Officer of HRG from November 2015 until July 13, 2018, Acting Chief Financial Officer of HRG from January 2016 until January 2017 and CFO of HRG from January 2017 until July 13, 2018); Curtis Glovier (a member of HRG's Board of Directors from February 2015 until July 13, 2018); Frank Ianna (a member of HRG's Board of Directors from April 2013 until July 13, 2018); Gerald Luterman (a member of HRG's Board of Directors from April 2013 until July 13, 2018); Andrew A. McKnight (a member of HRG's Board of Directors from July 2016 until July 13, 2018); Andrew Whittaker (a member of HRG's Board of Directors from July 2014 until July 13, 2018). ¶¶22-29.

15. The Amended Complaint alleged claims on behalf of a class of all persons and entities that purchased or otherwise acquired Spectrum common stock pursuant or traceable to the Registration Statement for the Merger, and who were damaged thereby. ¶162.

16. As alleged in the Amended Complaint, the Registration Statement contained four categories of allegedly untrue statements of material facts, and/or omitted facts necessary to make the statements not misleading, regarding the effect of the undisclosed impact of a large accumulation of obsolete inventory at the company prior to the Merger. Specifically, first, the Registration Statement incorporated by reference historical financial statements from both Old Spectrum and HRG that allegedly did not properly account for, *inter alia*, the build-up of obsolete inventory and failed to write down millions of dollars of goodwill, which resulted in

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Defendant Maura was a member of HRG's Board of Directors from May 2011 until December 2017. Defendant Maura was also interim Chairman and a member of Old Spectrum's Board of Directors since June 2010, non-executive Chairman of Old Spectrum's Board of Directors since July 2011, Executive Chairman of Old Spectrum's Board of Directors since January 2016, and Chief Executive Officer of Old Spectrum since April 2018.

<sup>6</sup> Prior to the Merger, Defendant Steinberg was Chairman of HRG's Board of Directors from December 2014 until the Merger closing date, and CEO of HRG from April 2017 until the Merger closing date. Defendant Steinberg was also a member of Old Spectrum's Board of Directors from February 2015 until the Merger closing date.

materially misleading and overstated financial figures. ¶10. Second, both companies' internal controls allegedly already suffered from significant deficiencies that resulted in materially overstated financial figures. ¶11. Third, allegedly existing issues with obsolete inventory, slowing sales, and overstated goodwill, among other things, were conveyed as mere possibilities rather than adverse events that had already transpired. ¶12. Finally, while Defendants had a duty to inform investors of adverse trends and uncertainties, and factors that would make investment in the combined company more risky, the Registration Statement allegedly did not disclose fundamental problems with Old Spectrum's supply chain, which caused the build-up of obsolete inventory and a slowdown in sales. ¶13.

17. Just a few months after the Merger, Spectrum reported lower-than-expected earnings for the same quarter in which the Merger closed, "primarily due to the [\$92.5 million] write-off from impairment of goodwill" in its Auto Care operating segment. Spectrum wrote off and/or liquidated excess and obsolete inventory to clean up the balance sheet in three of its segments. ¶14. In response, Spectrum's common stock closed at \$57.51 per share—significantly less than the \$82.72 per share Merger price. *Id.* at ¶15.

18. In connection with filing the Initial Complaint and the Amended Complaint, Lead Counsel conducted a comprehensive pre-filing investigation into the facts, circumstances, and claims which included, among other things, a review and analysis of: (i) documents filed publicly with the SEC by Spectrum, Old Spectrum, and HRG; (ii) publicly available information, including press releases, news articles, and other public statements issued by or concerning Spectrum, Old Spectrum, HRG, and the other Defendants; (iii) research reports issued by financial analysts concerning Spectrum, Old Spectrum, and HRG; (iv) other publicly available information and data concerning Spectrum, Old Spectrum, and HRG; (v) documents filed in

other pending litigations naming Spectrum or certain Defendants as a defendant; and (vi) interviews with 18 former employees of Spectrum, Old Spectrum, or HRG (four of whom were included in the Amended Complaint as confidential witnesses). Lead Counsel also retained experts on accounting and damages issues.

**B. Defendants' Motion to Dismiss the Amended Complaint**

19. On October 3, 2019, Defendants filed a motion to dismiss the Amended Complaint. As explained in further detail below, Defendants argued that Plaintiff failed to properly allege: (i) that shareholders had suffered an injury from the allegedly false and misleading Registration Statement; (ii) any misstatements or omissions in the Registration Statement; (iii) that HRG was liable for alleged misstatements and omissions concerning Old Spectrum; and (iv) that the Court had personal jurisdiction over the Individual Defendants. Dkt. 89-90.

20. Defendants first argued that the Amended Complaint fails to show how shareholders were injured by the Registration Statement. Defendants contended that because Plaintiff did not pay cash for its shares, but rather exchanged Old Spectrum shares for them, there was no injury. Moreover, because the errors carried over from Old Spectrum and HRG's financial statements to the combined Spectrum, Defendants argued that any inflation in the shares would be a "wash." Further, though Plaintiff alleged that there were unfavorable deal terms in the Merger, Defendants asserted that there were no allegations that different terms would have resulted in a better deal for shareholders.

21. Defendants also argued that the Amended Complaint failed to allege that Defendants made false and misleading statements about the value of Old Spectrum's inventory. Specifically, Defendants argued that the Amended Complaint failed to adequately allege that accounting adjustments should have been taken earlier or that management's accounting



judgments were not honestly held or unreasonable, and that the risk of inventory write-downs had been disclosed. Furthermore, Defendants argued that the Amended Complaint did not adequately allege misstatements of income and EBITDA, because it did not allege the exact amount of the error, and these allegation were “entirely derivative” of the inventory and goodwill allegations.

22. Defendants attacked the alleged misstatements regarding the write-off for impairment of goodwill. Defendants argued that the Amended Complaint did not show that Old Spectrum was required under relevant accounting rules to record an impairment of its goodwill before the disclosure in November 2018, and that goodwill is a subjective estimate that requires management to exercise judgment, and thus were not false, but rather honestly held by management.

23. Defendants argued that the Amended Complaint failed to sufficiently allege that Old Spectrum’s internal controls were deficient prior to or during the Merger because they had never truly reported any deficiencies. And, those that were reported were immaterial and did not affect the internal controls regarding inventory, goodwill, or adjusted EBITDA. Moreover, Defendants argued that no auditor had ever opined that the internal controls and procedures were deficient.

24. Defendants argued that Plaintiff failed to plead claims under Items 303 and 105 because the Amended Complaint did not allege that any trend or uncertainty existed at the time of the Merger that should have been disclosed, that any Defendant actually knew of the alleged undisclosed negative trend or uncertainty, or that the alleged trend or uncertainty would have had a material effect on Spectrum’s financial condition. Furthermore, Defendants contended that the risk of inventory obsolescence was already disclosed in Old Spectrum’s annual and quarterly

financial statements, and that the Amended Complaint failed to allege the Defendants' knowledge of any excess and obsolete inventory at the time of the Merger.

25. Defendants argued that because the Amended Complaint alleged that HRG's financial statements, internal control certifications, and risk factor disclosures were false because they were based only on the Old Spectrum's financial statements (which Defendants contended were not false), the claims against HRG should be dismissed.

26. Finally, Defendants argued that the claims against the Individual Defendants (except Defendant Maura) would have to be dismissed for lack of personal jurisdiction, as the Amended Complaint failed to allege sufficient contacts with Wisconsin (to establish long-arm jurisdiction) or that any act or omission occurred in Wisconsin (to establish specific jurisdiction).

27. Plaintiff filed an opposition to Defendants' motion to dismiss on November 11, 2019. Dkt. 96. With respect to damages, Plaintiff argued that, although the Amended Complaint was not required to plead damages, damages were established pursuant to the formula under the Securities Act. Moreover, Plaintiff argued that Defendants were attempting to compare the "value" of the stock at the time of the Merger with "value" at the time the Action was filed, rather than the statutory measure of "price" to "value." Additionally, Plaintiff argued that Defendants had ignored that not every member of the class acquired their shares in exchange for Old Spectrum shares.

28. Plaintiff argued that the statements regarding goodwill were actionable, as (i) there were sufficient allegations that an impairment should have been taken before the effective date of the Registration Statement; (ii) the sustained decline in Old Spectrum's share price should have led to a test of its assets for impairment prior to the Merger; (iii) the Amended Complaint included sufficient allegations regarding inventory issues from former employees; and

(iv) Plaintiff properly pled that the goodwill statements were false or not honestly held by Defendants at the time of the Merger.

29. Plaintiff also argued that the allegedly false and misleading statements and omissions were material. Plaintiff argued that Old Spectrum's inventories were important to investors, as the obsolete inventory resulted in the misrepresentation of the value of the combined company and made it more difficult for Spectrum to handle the debt after the Merger. Just because Spectrum was a "diversified consumer products company" with hundreds of products and its financial filings included risk factors, did not mean that investors would not have found this fact material.

30. Plaintiff also explained that the alleged misrepresentations of goodwill were material and actionable, as the impairment inflated Old Spectrum's income, and the impairment totaled almost \$100 million. Plaintiff also argued that the \$890 million in debt incurred in the Merger was material, as it also allegedly misrepresented Old Spectrum's financial condition.

31. Plaintiff explained that the statements regarding Old Spectrum's and HRG's financial figures were allegedly materially false and misleading, because, among other things, the financial statements omitted to disclose the millions of dollars of obsolete inventory that had to be written off or liquidated, resulting in overstated Inventories and GAC Goodwill, which were allegedly overstated by at least \$92.5 million. Plaintiff argued that the relevant Generally Accepted Accounting Principles required Old Spectrum to conduct interim testing if certain triggering events occurred, which existed at Old Spectrum at the time of the Merger. Moreover, Income and Old Spectrum's EBITDA (Earnings Before Interest Taxes Depreciation and Amortization) figures were also allegedly overstated due to manufacturing issues and a multiyear duty catch up accrual, and although Old Spectrum had never filed a restatement, the figures were

nevertheless false. Further, even though the Amended Complaint did not precisely calculate the overstatement, this was not required at the pleading stage. Finally, Income and EBITDA were allegedly inflated for reasons other than the Inventory and Goodwill overstatements, including undisclosed, unfavorable manufacturing variances (at H&G and PET), undisclosed operating inefficiencies, and the failure to timely recognize a multiyear duty catch-up accrual to “clean up” GAC’s balance sheet. These figures were not irrelevant to investors, as Defendants argued, because the Registration Statement was supposed to be accurate as of its effective date, not when it later announced the sale of the GAC segment.

32. Plaintiff argued that the statements regarding Old Spectrum’s and HRG’s internal controls were allegedly materially false and misleading, because had they been effective, Defendants would have been forced to take an almost \$100 million write down earlier, and recognize the build-up of obsolete inventory earlier. Plaintiff also argued that the Registration Statement failed to warn of undisclosed adverse facts and conditions that existed at the time of the Merger, regarding the condition of its inventory and goodwill, as the disclosures warned only of mere possibilities. Indeed Plaintiff had alleged facts regarding the conditions at the Company at the time of the Merger based on information related by former employees.

33. For many of the same reasons, Plaintiff also argued that the Amended Complaint adequately alleged violations of Items 303 and 105, based on the build of obsolete inventory at the Company.

34. Because Old Spectrum’s financial statements were allegedly false and misleading for the above reasons, Plaintiff argued in its opposition to the motion to dismiss that HRG was also liable.

35. Finally, Plaintiff argued that the Court had personal jurisdiction over all the Individual Defendants based on their involvement with Wisconsin-based Spectrum.

36. Defendants filed a reply brief in support of their motion to dismiss on December 9, 2019, reiterating their arguments in the opening motion to dismiss. Dkt. 102.

#### **IV. SETTLEMENT NEGOTIATIONS**

37. On January 14, 2020, the Parties engaged Jed. D. Melnick, Esq., a well-respected, knowledgeable, and experienced mediator, to assist them in exploring a potential negotiated resolution of the claims in the Action. On January 8, 2020, Defendants advised the Court that a mediation was scheduled to proceed on March 9, 2020, and that the Parties would report back as to the outcome of the mediation. In advance of the mediation, the Parties exchanged mediation statements, which addressed issues bearing on both liability and damages, and discussed the Parties' respective views of the claims and alleged damages. Defendants also produced some core documents in advance of the mediation.

38. On March 9, 2020, the Court entered a stipulation that was agreed to among the Parties in which, among other things, (i) Plaintiff dismissed its claims against Spectrum with prejudice as the Parties agreed that HRG, and not Spectrum, was the issuer of common stock under the Registration Statement; and (ii) Defendants would not assert that the dismissal of Spectrum from the Action prejudiced or limited Plaintiff's ability to pursue claims against HRG as issuer of the securities at issue in this case. Dkt. 107.

39. On March 9, 2020, the Parties participated in a full-day mediation session in New York, New York with the Mediator in an attempt to reach a settlement. The Parties reached an agreement in principle to settle the Action that day based on the Mediator's recommendation.

40. The Parties signed the Settlement Agreement on May 1, 2020, and on May 4, 2020, Plaintiff moved for preliminary approval of the Settlement. On May 20, 2020, the Court

entered an order granting preliminary approval of the class action Settlement, and approving the form and manner of notice to potential Settlement Class Members. Dkt. 126.

## **V. RISKS FACED BY PLAINTIFF IN THE ACTION**

41. Based on their experience and close knowledge of the facts and applicable laws, Plaintiff and Lead Counsel, have determined that settlement is in the best interests of the Settlement Class. As described herein, at the time the Settlement was reached, there were sizable risks facing Plaintiff and the Settlement Class with respect to establishing both liability and damages.

42. In agreeing to settle, Plaintiff and Lead Counsel weighed, among other things, the substantial and certain cash benefit to the Settlement Class against: (i) the difficulties involved in proving materiality, falsity, and damages; (ii) the difficulties in overcoming Defendants' negative causation defenses; (iii) the difficulties and challenges involved in certifying a class, and the delays involved in the inevitable appeals of certification; (iv) the difficulty in tracing certain members of the Settlement Class' shares back to the Merger pursuant to Section 11 (*i.e.*, for those that purchased after the Merger); (v) the fact that, even if Plaintiff prevailed at summary judgment and trial, any monetary recovery could have been less than the Settlement Amount; and (vi) the delays that would follow even a favorable final judgment, including appeals.

### **A. Risks Concerning Liability**

43. At the time the Parties reached an agreement, the Court had not yet ruled on Defendants' fully briefed motion to dismiss the Amended Complaint; this was a *major risk* in proceeding with the Action. Had the Court agreed with one or more of Defendants' arguments outlined in Paragraphs 19-26 above, the Settlement Class could have recovered nothing. Indeed, the Court could have dismissed the Action in its entirety; cut down the categories of

misstatements and dismissed in part; and/or accepted Defendants' jurisdiction argument and dismissed the Action as to most of the Individual Defendants.

44. Even if the Court sustained all or part of Plaintiff's Amended Complaint, in order for Plaintiff to prevail on its claims at the summary judgment stage and at trial, Plaintiff would have to marshal evidence and prove that the Registration Statement contained a material omission or misrepresentation. Defendants would of course argue, as they have throughout the litigation, and seek to present evidence that, the Registration Statement did not contain materially false or misleading statements or omissions.

45. Indeed, Defendants would have continued to argue that Spectrum did not make false or misleading statements about the value of its inventory. Among other things, Defendants would argue that evidence would show that the goodwill impairment charge was taken at the appropriate time; that management's accounting judgments were honestly held and reasonable; and that the risk of inventory write-downs had been disclosed.

46. Regarding Defendants' statements concerning goodwill, Defendants would argue that Plaintiff would not be able to show that Old Spectrum was required under relevant accounting rules to record an impairment of its goodwill before the disclosure in November 2018, and that goodwill is a subjective estimate that requires management to exercise judgment, and thus the statements were not false, but rather honestly held by Spectrum.

47. Defendants would also continue to argue that Plaintiff could not establish that Old Spectrum's internal controls were deficient prior to or during the Merger because they had never reported any deficiencies.

48. Regarding Items 303 and 105, there was a risk that the Court, on the motion to dismiss, or on summary judgment, would agree with Defendants that the Amended Complaint

did not allege that any trend or uncertainty existed at the time of the Merger, which should have been disclosed, that any Defendant actually knew of the undisclosed negative trend or uncertainty, or that the alleged trend or uncertainty would have had a material effect on Spectrum's financial condition.

49. There was also a risk that the claims against the Individual Defendants would have been dismissed for lack of personal jurisdiction, for lack of sufficient contacts with Wisconsin (to establish long arm jurisdiction) or that any act or omission occurred in Wisconsin (to establish specific jurisdiction).

50. Finally, even if Plaintiff succeeded in proving all elements of its claims at trial and had obtained a jury verdict, Defendants would almost certainly appeal. An appeal not only would have renewed all the risks faced by Plaintiff and the Settlement Class, as Defendants would undoubtedly reassert all their arguments summarized above, but also would cause significant additional delay and costs before Settlement Class Members could receive any recovery from this case.

#### **B. Risks Concerning Traceability of Shares**

51. Defendants would also undoubtedly argue that Plaintiff would not be able to prove that shares purchased or acquired in the aftermarket were traceable to the Merger as required by Section 11. Defendants would argue that, because there were both pre-Merger HRG shares and shares issued in connection with the Merger in the aftermarket, it would be impossible to prove tracing. While Plaintiff believes that traceability could be established, there is no certainty as to how the Court at summary judgment, or a jury would decide this issue.

#### **C. Risks Related to Damages and Negative Causation**

52. Defendants argued in their motion to dismiss (*see, e.g.*, Paragraph 20 above) that Plaintiff and the Settlement Class have no recoverable damages. Indeed, in connection with the



mediation, Defendants provided Plaintiff with a detailed report from their consulting expert economist explaining their conclusion that, even assuming liability, the class would have no recoverable damages.

53. Defendants have taken the position that shareholders who acquired Spectrum common stock in the Merger have not suffered a “cognizable injury” because any artificial inflation in price equally affected the shares of Old Spectrum stock that Settlement Class Members exchanged for new shares of Spectrum stock issued by HRG.

54. Defendants would also likely raise a “negative causation” defense, arguing that the alleged materially misleading statements in the Registration Statement did not cause a substantial portion of the damages Plaintiff has claimed, because most of the decline in the stock price after the Merger was not caused by any alleged misstatements or omissions. Defendants would argue that after controlling for market and industry factors, using an event study, there would be little to no relation between the Company’s stock decline after the Merger and the revelation of any allegedly false and misleading statements in the Registration Statement. Defendants would argue that the price declines were unrelated to the goodwill impairment charge and inventory write-down, and could be explained by other disclosures. In particular, among other things, Defendants would argue that the disclosures conveyed to the market on November 19 related principally to disappointing operating performance in the fourth quarter, and not the impact of the one-time goodwill impairment charge or any write-downs on fourth quarter EBITDA.

55. Assuming the Court were to deny Defendants’ motion to dismiss and Plaintiff was to establish liability at trial, damages would be highly contested. According to Plaintiff’s consulting damages expert, assuming that the factfinder were to accept Defendants’ negative

causation argument and only the stock drop on November 19, 2018 is recoverable, maximum recoverable damages would be approximately \$199 million. If Defendants were successful in establishing that only a portion of the stock drop on November 19 was attributable to the revelation of the truth, damages would decrease. Further, if the Court were to accept Defendants' argument on tracing for aftermarket purchasers, aggregate damages would drop to \$104.6 million (damages for only those who exchanged their shares in the Merger).

56. Alternatively, if the Court were only to accept Defendants' argument that those who exchanged shares were not damaged, aggregate damages would be \$94.4 million. The Settlement thus recovers approximately 9.5%, 8.6%, or 4.5% of these estimated aggregate damages.

57. As the case proceeded, the Parties' respective damages experts would strongly disagree with each other's assumptions and their respective methodologies. Accordingly, the risk that the jury would credit Defendants' damages positions over those of Plaintiff had considerable consequences in terms of the amount of recovery for the class, even assuming liability was proven.

#### **D. Risks Related to Class Certification**

58. At the time of the Settlement, Plaintiff had not yet moved for certification of the class. However, Defendants would have likely raised a number of arguments in their opposition, creating uncertainty as to how the Court would rule. Additionally, under Wisconsin Rule of Civil Procedure 803.08(11)(b), decisions on class certification are immediately appealable and during the pendency of appeal, all discovery and other proceedings in the action are stayed. This would have created further delay and risk, absent a settlement.

## VI. PLAINTIFF'S COMPLIANCE WITH PRELIMINARY APPROVAL ORDER AND REACTION OF THE SETTLEMENT CLASS

59. Pursuant to the Preliminary Approval Order, the Court appointed A.B. Data, Ltd. (“A.B. Data”) as the Claims Administrator for the Settlement and instructed A.B. Data to disseminate copies of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses and Proof of Claim (collectively the “Notice Packet”) by mail and to publish the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses.

60. The Notice, attached as Exhibit A to the Declaration of Adam D. Walter Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections (“Mailing Declaration,” Ex. 2, hereto) provides potential Settlement Class Members with information about the terms of the Settlement and contains, among other things: (i) a description of the Action and the Settlement; (ii) the terms of the proposed Plan of Allocation; (iii) an explanation of Settlement Class Members’ rights to object to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, or exclude themselves from the Settlement Class; and (iv) the manner for submitting a Claim Form in order to be eligible for a payment from the net proceeds of the Settlement. The Notice also informs Settlement Class Members of Lead Counsel’s intention to apply for an award of attorneys’ fees in an amount not to exceed 30% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed \$70,000.

61. As detailed in the Mailing Declaration, on June 4, 2020, the Claims Administrator began mailing Notice Packets to potential Settlement Class Members, as well as banks, brokerage firms, and other third-party nominees whose clients may be Settlement Class Members. Ex. 2 at ¶¶2-9. In total, to date, the Claims Administrator has mailed 31,154 Notice

Packets to potential nominees and Settlement Class Members by first-class mail, postage prepaid. *Id.* at ¶9. To disseminate the Notice, the Claims Administrator obtained the names and addresses of potential Settlement Class Members using information provided by Defendants' transfer agent, and information from banks, brokers and other nominees whose clients may be Settlement Class Members. *Id.* at ¶¶3-8.

62. On June 15, 2020, A.B. Data caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over *PR Newswire* for dissemination across the internet. *Id.* at ¶10 and Exhibits B and C attached thereto.

63. A.B. Data also maintains and posts information regarding the Settlement on a dedicated website established for the Action, [www.SpectrumBrandsSettlement.com](http://www.SpectrumBrandsSettlement.com), to provide Settlement Class Members with information, including downloadable copies of the Notice Packet and the Stipulation. *Id.* at ¶12.

64. Pursuant to the terms of the Preliminary Approval Order, the deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, or to request exclusion from the Settlement Class is July 30, 2020. To date, no objections to the Settlement have been received and the Claims Administrator has received no requests for exclusion. *Id.* at ¶¶13-14.

65. Should any objections or requests for exclusion be received, Plaintiff will address them in its reply papers, which are due to be filed with the Court on August 13, 2020.

## **VII. PLAN OF ALLOCATION FOR DISTRIBUTING SETTLEMENT PROCEEDS TO ELIGIBLE CLAIMANTS**

66. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all members of the Settlement Class who wish to participate in the distribution of the Net Settlement Fund (*i.e.*, the Settlement Fund less any (a) Taxes, (b) Notice and Administration Expenses,

(c) litigation expenses as awarded by the Court, and (d) attorneys' fees and expenses awarded by the Court) must submit valid Claim Forms postmarked no later than October 2, 2020. As set forth in the Notice, the Net Settlement Fund will be distributed among members of the Settlement Class who submit eligible claims according to the Plan of Allocation approved by the Court.

67. Lead Counsel developed the proposed Plan of Allocation for the Net Settlement Fund in consultation with Plaintiff's consulting damages expert. Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants who suffered economic losses allegedly as a result of the asserted violations of federal securities laws. The Plan of Allocation is set forth in full at pages 8 to 10 of the Notice. *See* Ex. 2-A.

68. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to liability and damages. The plan is intended to be generally consistent with an assessment of damages that Plaintiff and Lead Counsel believe are recoverable under the Securities Act. Using the Plan of Allocation, the Claims Administrator will calculate a Recognized Loss Amount for each purchase of Spectrum common stock pursuant or traceable to the Registration Statement that is listed in the Claim Form and for which adequate documentation is provided. Purchases will be considered pursuant or traceable to the Registration Statement if: (i) on or about July 16, 2018, an investor exchanged shares of Old Spectrum common stock for an equal number of shares of newly issued Spectrum common stock as part of the Merger transaction (the "Exchanged Shares"); or (ii) if an investor purchased or acquired shares of publicly traded

Spectrum common stock on the open market between July 16, 2018, and April 9, 2019, inclusive (the “After Market Shares”).

69. In Lead Counsel’s view, because of the difficulty in tracing aftermarket purchases back to the Merger, the claims based on the After Market Shares are significantly weaker than those related to the Exchanged Shares. In order to make the Plan of Allocation fair and reasonable, the recovery for After Market Shares is reduced (i) by 90% for shares acquired in the aftermarket through November 18, 2018 (the date prior to allegedly corrective information being disseminated to the market) and (ii) by 95% for shares acquired in the aftermarket from November 19, 2018 through April 19, 2019 (the date of suit) to reflect the further challenge posed by the truth being revealed before these acquisitions.

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

71. In sum, the Plan of Allocation was designed to equitably allocate the Net Settlement Fund among eligible Settlement Class Members. Accordingly, Plaintiff and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved by the Court.

### **VIII. LEAD COUNSEL’S FEE AND EXPENSE APPLICATION**

72. For their diligent efforts on behalf of the Settlement Class, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis. As explained in Lead Counsel’s Fee Memorandum, consistent with the Notice to the Settlement Class, Lead Counsel, on behalf of Plaintiff’s Counsel, seeks a fee award of 30% of the Settlement Fund. Lead Counsel also requests payment of litigation expenses incurred in connection with the prosecution of the Action in the amount of \$46,081.53 plus accrued interest at the same rate as is earned by the Settlement Fund, and an award of \$3,200 to Plymouth County in connection with its representation of the class. Lead Counsel submits that, for the reasons discussed below and in

the accompanying Fee Memorandum, such awards would be reasonable and appropriate under the circumstances before the Court.

**A. Plaintiff Supports the Fee and Expense Application**

73. Plaintiff Plymouth County is a defined-benefits retirement plan responsible for the retirement income of public employees. Plymouth represents more than 11,000 active and retired public employees and is one of the largest retirement systems in the Commonwealth of Massachusetts, managing more than \$950 million in assets. Ex. 1 at ¶1.

74. Plaintiff has evaluated and fully supports the Fee and Expense Application. *See* Ex. 1 at ¶5. In coming to this conclusion, Plymouth County—which was substantially involved in the prosecution of the Action and negotiation of the Settlement—considered the recovery obtained and the contingency risks faced by Plaintiff’s Counsel’s in obtaining the recovery. *See id.*

**B. The Time and Labor of Lead Counsel**

75. The work undertaken by Lead Counsel to investigate and prosecute this case and arrive at the present Settlement has been time-consuming and challenging. Among other efforts, Lead Counsel conducted a comprehensive investigation into the class’s claims, including contacting 56 and interviewing 18 former employees, of which four provided information that was included in the Amended Complaint; briefed a thorough opposition to Defendants’ motion to dismiss the Amended Complaint; obtained and analyzed core documents from Defendants in advance of mediation; and engaged in a hard-fought settlement process with experienced defense counsel and an experienced Mediator.

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

77. Attached hereto are declarations from Lead and Liaison Counsel, which are submitted in support of the Fee and Expense Application. *See* Declaration of Jonathan Gardner Filed on Behalf of Labaton Sucharow LLP (attached as Exhibit 3 hereto), and Declaration of John C. Scheller on Behalf of Michael Best & Friedrich LLP, (attached as Exhibit 4 hereto).

78. Included with these declarations are schedules that summarize the time reported by each firm, as well as their reported expenses incurred by category (the “Fee and Expense Schedules”).<sup>7</sup> The attached declarations and the Fee and Expense Schedules report the amount of time spent by attorneys and professional support staff employed by Plaintiff’s Counsel and the “lodestar” calculations, *i.e.*, their hours multiplied by their hourly rates. *See* Exs. 3-A and 4-A. As explained in each declaration, they were prepared from daily time records regularly prepared and maintained by the respective firms.

79. The hourly rates of Plaintiff’s Counsel here range from \$575 to \$1,100 for partners, \$750 to \$775 for of counsels, and \$230 to \$500 for associates. *See* Exs. 3-A and 4-A. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary. Exhibit 6, attached hereto, is a table of hourly rates for defense firms compiled by Labaton Sucharow from fee applications submitted by such firms nationwide in bankruptcy proceedings in 2019. The analysis shows that across all types of attorneys, Plaintiff’s Counsel’s rates here are consistent with, or lower than, the firms surveyed.

80. Plaintiff’s Counsel have collectively expended 2,069.60 hours in the prosecution and investigation of the Action. *See* Ex. 5. The resulting collective lodestar is \$1,236,296.50. *Id.* Pursuant to a lodestar “cross-check,” the requested fee of 30% of the Settlement Amount

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<sup>7</sup> Attached hereto as Exhibit 5 is a summary table of the lodestars and expenses of Plaintiff’s Counsel.



results in a “multiplier” of 2.18 on the lodestar, which does not include any time that will necessarily be spent from this date forward administering the Settlement, preparing for and attending the Settlement Hearing, and assisting class members.

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

81. This Action presented substantial challenges from the outset of the case. The specific risks Plaintiff faced in proving Defendants’ liability and damages under the Securities Act are detailed above. These case-specific risks are in addition to the more typical risks accompanying securities class action litigation, such as the fact that this Action was undertaken on a contingent basis.

82. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiff’s Counsel received no compensation during the litigation but have incurred more than 2,069 hours of time for a total lodestar of \$1,236,296.50 and have incurred \$46,081.53 in expenses in prosecuting the Action for the benefit of the Settlement Class.

83. Lead Counsel also bore the risk that no recovery would be achieved (or that a judgment could not be collected, in whole or in part). Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured. Lead

Counsel knows from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to convince sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

84. Lead Counsel is aware of many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel.

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

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

87. Even plaintiffs who succeed at trial may find their verdict overturned on appeal. *See, e.g., Glickenhau & Co., et al. v. Household Int'l, Inc., et al.*, 787 F.3d 408 (7th Cir. 2015)

(reversing and remanding jury verdict of \$2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Capital Grp, Inc. v. First Derivative Traders*, 131 S.Ct. 2296 (2011)); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation). And, the path to maintaining a favorable jury verdict can be arduous and time consuming. See, e.g., *In re Apollo Grp., Inc. Sec. Litig.*, Case No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court tossing unanimous verdict for plaintiffs, which was later reinstated by the Ninth Circuit Court of Appeals (2010 WL 5927988 (9th Cir. June 23, 2010)) and judgment re-entered (*id.*) after denial by the Supreme Court of the United States of defendants' Petition for Writ of Certiorari (*Apollo Grp. Inc. v. Police Annuity and Benefit Fund*, 131 S. Ct. 1602 (2011))).

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

89. Courts have repeatedly held that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. Vigorous private enforcement of the federal securities laws and state corporation laws can only occur if private plaintiffs can obtain some parity in representation with that available to large corporate defendants. If this important public policy is

to be carried out, courts should award fees that will adequately compensate private plaintiffs' counsel, taking into account the enormous risks undertaken with a clear view of the economics of a securities class action.

**D. The Skill Required and Quality of the Work**

90. Labaton Sucharow is among the most experienced and skilled securities litigation law firms in the field. The expertise and experience of its attorneys are described in Exhibit 3-C annexed hereto.

91. Labaton Sucharow has been approved by courts to serve as lead counsel in numerous securities class actions throughout the United States. Here, Labaton Sucharow attorneys have devoted considerable time and effort to this case, thereby greatly benefiting the outcome by bringing to bear many years of collective experience. For example, Labaton has served as lead counsel in a number of high profile matters: *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of \$1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1500 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than \$600 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than \$600 million); *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, Civil Action No. 08-397 (DMC) (JAD) (D.N.J.) (representing Massachusetts Pension Reserves Investment Management Board and reaching a settlement of \$473 million). *See Ex. 3-C.*

**E. Request for Litigation Expenses**

92. Lead Counsel seeks payment from the Settlement Fund of \$46,081.53 for litigation expenses reasonably and necessarily incurred in connection with commencing and prosecuting the claims against Defendants. The Notice informed the Settlement Class that Lead Counsel would apply for payment of litigation expenses of no more than \$70,000, plus interest at the same rate earned by the Settlement Fund. *See* Ex. 2-A at p. 1 and ¶28. The amount requested herein is well below this cap. To date, no objection to Lead Counsel's request for expenses has been raised.

93. As set forth in the Fee and Expense Schedules, Plaintiff's Counsel have incurred a total of \$46,081.53 in litigation expenses in connection with the prosecution of the Action. *See* Exs. 3-B and 4-B; *see also* Ex. 5. As attested to, these expenses are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. These expenses are set forth in detail in Plaintiff's Counsel's declarations, which identify the specific category of expense—*e.g.*, online/computer research, experts' fees, costs related to mediation, duplicating, telephone, fax and postage expenses.

94. A significant component of Plaintiff's Counsel's expenses is the cost of Plaintiff's consulting damages and accounting experts, which totals \$15,099.50 or approximately 33% of aggregate expenses. The services of Plaintiff's consulting damages and accounting experts were necessary for preparing estimates of damages, analyzing accounting and causation issues, and assisting with the preparation of the Plan of Allocation.

95. Plaintiff's Counsel also incurred costs related to working meals and transportation, which total \$4,378.33.

96. Computerized research totals \$8,376.37 or approximately 18% of aggregate expenses. These are the charges for computerized factual and legal research services, including LexisNexis, Westlaw, Thomson, and PACER. These services allowed counsel to perform searches on the Defendants, obtain analysts' reports and financial data for Spectrum and HRG, and conduct legal research.

97. Lead Counsel also paid \$12,808.07 in mediation fees, which total approximately 28% of aggregate expenses, assessed by the mediator in this matter.

98. The other expenses for which Plaintiff's Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients. These expenses include, among others, duplicating costs, long distance telephone and facsimile charges, filing fees, and postage and delivery expenses.

99. All of the litigation expenses incurred, which total \$46,081.53 were necessary to the successful prosecution and resolution of the claims against Defendants.

100. In view of the complex nature of the Action, the expenses incurred were reasonable and necessary to pursue the interests of the class. Accordingly, Plaintiff's Counsel respectfully submit that the expenses incurred should be paid in full from the Settlement Fund.

#### **IX. AN AWARD TO PLAINTIFF IS FAIR AND REASONABLE**

101. Additionally, Plaintiff Plymouth County seeks an award in the amount of \$3,200, which is commensurate with the time it dedicated to prosecuting the Action on behalf of the class. The amount of time and effort devoted to this Action by Plymouth County is detailed in the accompanying Declaration of David Sullivan, on behalf of Plymouth County, attached hereto as Exhibit 1.

102. As discussed in Plaintiff's supporting declaration, Plymouth County has been committed to pursuing the class's claims since it became involved in the litigation. As a large

institutional investor, Plymouth County has actively and effectively fulfilled its obligations, complying with all of the demands placed upon it during the litigation, and providing valuable assistance to Plaintiff's Counsel. These efforts required employees of Plymouth County to dedicate time and resources to the Action that they would have otherwise devoted to their regular duties.

#### **X. THE REACTION OF THE SETTLEMENT CLASS TO THE FEE AND EXPENSE APPLICATION**

103. As mentioned above, consistent with the Preliminary Approval Order, a total of 31,154 Notices have been mailed to potential Settlement Class Members advising them that Plaintiff's Counsel would seek an award of attorneys' fees not to exceed 30% of the Settlement Fund, and payment of expenses in an amount not greater than \$70,000. *See* Ex 2-A at p. 1 and ¶28; Ex. 2 at ¶9. The Notice and the Stipulation have also been available on the settlement website maintained by the Claims Administrator and Lead Counsel's website. *Id.* at ¶12.<sup>8</sup> While the deadline set by the Court for Settlement Class Members to object to the requested fees and expenses has not yet passed, to date Lead Counsel has received no objections. Lead Counsel will respond to any objections received in its reply papers, which are due no later than August 13, 2020.

#### **XI. MISCELLANEOUS EXHIBITS**

104. Attached hereto as Exhibit 7 is a true and correct copy of Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2019 Review and Analysis* (Cornerstone Research 2020).

105. Attached hereto as Exhibit 8 is a compendium of unreported cases, in alphabetical order, cited in the accompanying Motion.

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<sup>8</sup> The Settlement and Fee Memoranda will also be posted on the Settlement website.

## XII. CONCLUSION

106. In view of the significant recovery to the Settlement Class and the substantial risks of this litigation, as described above and in the accompanying memorandum of law, Plaintiff and Lead Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery in the face of substantial risks, the quality of work performed, the contingent nature of the fee, as described above and in the accompanying Fee Memorandum, Lead Counsel respectfully submits that a fee in the amount of 30% of the Settlement Fund be awarded, that litigation expenses in the amount of \$46,081.53 be paid, and that the Plaintiff be awarded \$3,200.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 16, 2020.

  
JONATHAN GARDNER



# **Exhibit 1**

**STATE OF WISCONSIN   CIRCUIT COURT   DANE COUNTY  
BRANCH 3**

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of  
all Others Similarly Situated,

Plaintiff,

VS.

SPECTRUM BRANDS HOLDINGS, INC.,  
DAVID M. MAURA, JOSEPH S.  
STEINBERG, GEORGE C. NICHOLSON,  
CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A.  
MCKNIGHT, ANDREW WHITTAKER AND  
HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982  
Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

**DECLARATION OF PLYMOUTH COUNTY RETIREMENT ASSOCIATION IN SUPPORT  
OF APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND REQUEST FOR  
ATTORNEYS' FEES AND EXPENSES**

I, David Sullivan, declare as follows:

1. I am Executive Director of the Plymouth County Retirement Association (“Plymouth”), the Plaintiff in this proposed securities class action (the “Action”).<sup>1</sup> Plymouth represents more than 11,000 active and retired public employees and is one of the largest public retirement systems in the Commonwealth of Massachusetts, managing more than \$950 million in assets.

2. I respectfully submit this declaration in support of final approval of the proposed settlement of the above-captioned action for \$9 million (the “Settlement”), approval of the proposed Plan of Allocation for distributing the proceeds of the Settlement, and approval of Lead Counsel’s request for attorneys’ fees and expenses. I also respectfully submit this declaration in support of an incentive award to Plymouth for the time we dedicated to the litigation on behalf of the proposed class. I have personal knowledge of the statements herein and, if called as a witness, could competently testify thereto.

3. We initiated this Action by filing a class action complaint on April 9, 2019. Since that time, I, and other staff members, have assisted Plaintiffs’ Counsel with the litigation. In that regard, we regularly consulted with Lead Counsel Labaton Sucharow LLP and the Thornton Law Firm regarding the litigation and the proposed Settlement; and reviewed material pleadings and memoranda filed by Lead Counsel.

4. Plymouth authorized Lead Counsel to settle the Action. In making the determination that the Settlement represented a fair, reasonable, and adequate result for the class, we weighed the substantial benefits to the class against the significant risks and uncertainties of continued litigation.

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<sup>1</sup> Unless otherwise indicated, capitalized terms have those meanings contained in the Stipulation and Agreement of Settlement, dated as of May 1, 2020.

After doing so, we believe that the Settlement represents a favorable recovery, and believe that final approval of the Settlement is in the best interest of the class.

5. Plymouth also believes that Lead Counsel's request, on behalf of all Plaintiff's Counsel, for an award of attorneys' fees in the amount of 30% of the Settlement Fund is fair and reasonable under the circumstances of this case. Plymouth has evaluated Lead Counsel's request in light of the effort required to pursue the case to date, the risks and challenges in the litigation, as well as the recovery obtained for the class. Plymouth understands that Lead Counsel will also devote additional time in the future to administering the Settlement. We further believe that the litigation expenses requested are reasonable and represent the costs and expenses that were necessary for the successful prosecution and resolution of this case. Based on the foregoing, Plymouth fully supports Lead Counsel's motion for attorneys' fees and payment of litigation expenses.

6. I understand the Court may make an award relating to Plymouth's representation of the class. Accordingly, Plymouth is requesting the amount of \$3,200 in connection with our efforts in the Action. This request is based on the conservative estimate that I, and other staff members, devoted approximately 40 hours to the litigation related activities described above, at an effective hourly rate of \$80.00, based on my annual compensation. The time spent on this case was time that we would have otherwise devoted to the regular business of Plymouth.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29<sup>th</sup>  
day of June, 2020.

  
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DAVID SULLIVAN

# **Exhibit 2**

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

DANE COUNTY

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

SPECTRUM BRANDS HOLDINGS, INC.,  
DAVID M. MAURA, JOSEPH S.  
STEINBERG, GEORGE C. NICHOLSON,  
CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A.  
MCKNIGHT, ANDREW WHITTAKER and  
HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982

Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

**DECLARATION OF ADAM D. WALTER REGARDING: (A) MAILING OF THE  
NOTICE AND CLAIM FORM; (B) PUBLICATION OF THE SUMMARY NOTICE;  
AND (C) REPORT ON REQUESTS FOR EXCLUSION AND OBJECTIONS**

I, Adam D. Walter, declare as follows:

1. I am a Senior Project Manager of A.B. Data, Ltd.'s Class Action Administration Division ("A.B. Data"), whose Corporate Office is located in Milwaukee, Wisconsin. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement (the "Preliminary Approval Order"), A.B. Data was authorized to act as the Claims Administrator in connection with the Settlement in the above-captioned action. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

**MAILING OF THE NOTICE AND PROOF OF CLAIM**

2. Pursuant to the Preliminary Approval Order, as discussed below, A.B. Data mailed the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim and Release form (the "Proof of Claim" and collectively with the Notice, the "Notice Packet") to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On May 20, 2020, Lead Counsel forwarded to A.B. Data a data file from Defendants' Counsel that contained the names and addresses of 1,442 record holders of the common stock of Spectrum Brands Holdings, Inc. ("Spectrum"), as successor-in-interest to HRG, during the relevant period. On June 4, 2020, A.B. Data caused Notice Packets to be mailed to these 1,442 record holders.

4. As in most class actions of this nature, the majority of potential Settlement Class Members are beneficial purchasers whose securities are held in "street name" —*i.e.*, the securities are purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. The names and addresses of these beneficial purchasers are known only to the nominees. A.B. Data maintains a proprietary database with names and addresses of the largest and most common banks, brokers, and other nominees. On June 4, 2020, A.B. Data caused Notice Packets to be mailed to the 4,999 mailing records contained in the A.B. Data record holder mailing database.

5. On June 8, 2020, A.B. Data also submitted the Notice to the Depository Trust Company to post on their Legal Notice System, which offers DTC member banks and brokers access to a comprehensive library of notices concerning DTC-eligible securities.

6. The Preliminary Approval Order and Notice required that nominees who purchased or otherwise acquired the common stock of Spectrum, as successor-in-interest to HRG, for the beneficial interest of a person or entity other than themselves, within ten (10) calendar days of receipt of the Notice, either: (a) provide to A.B. Data the name and last known address of each person or entity for whom or which they purchased or otherwise acquired Spectrum common stock; or (b) request additional copies of the Notice Packet from A.B. Data and within ten (10) days of receipt, mail the Notice Packet directly to all the beneficial owners of Spectrum common stock. *See* Notice on page 10.

7. As of the date of this Declaration, A.B. Data has received an additional 1,397 names and addresses of potential Settlement Class Members from individuals or brokerage firms, banks, institutions and other nominees. A.B. Data has also received requests from brokers and other nominee holders for 23,232 Notice Packets, which the brokers and nominees are required to mail to their customers. All such mailing requests have been, and will continue to be, complied with and addressed by A.B. Data in a timely manner.

8. As of the date of this Declaration, 553 Notice Packets were returned by the United States Postal Service to A.B. Data as undeliverable as addressed (“UAA”). Of those returned UAA, 2 had forwarding addresses and were promptly re-mailed to the updated address. The remaining 551 UAAs were processed through TransUnion to obtain an updated address. Of these, 82 new addresses were obtained and A.B. Data promptly re-mailed to these potential Settlement Class Members.

9. As of the date of this Declaration, a total of 31,154 Notice Packets have been mailed to potential Settlement Class Members and their nominees.



### **PUBLICATION OF THE SUMMARY NOTICE**

10. In accordance with Paragraph 12 of the Preliminary Approval Order, A.B. Data caused the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Summary Notice") to be published in *Investor's Business Daily* and transmitted over *PR Newswire* on June 15, 2020. Proof of this publication of the Summary Notice is attached hereto as Exhibits B and C, respectively.

### **TELEPHONE HOTLINE**

11. On or about June 4, 2020, a case-specific toll-free phone number, 800-328-6074, was established with an Interactive Voice Response system and live operators during business hours. An automated attendant answers all calls initially and presents callers with a series of choices to respond to basic questions. If callers need further help, they have the option to be transferred to an operator during business hours. From June 4, 2020 through the date of this Declaration, A.B. Data received 72 telephone calls.

### **WEBSITE**

12. A.B. Data has also established a case-specific website, [www.SpectrumBrandsSettlement.com](http://www.SpectrumBrandsSettlement.com), which includes general information regarding the case and its current status; downloadable copies of the Notice, Proof of Claim, and other court documents, including the Stipulation and Agreement of Settlement; and online claim submission capability. The settlement website is accessible 24 hours a day, 7 days a week.

### **REPORT ON EXCLUSIONS AND OBJECTIONS**

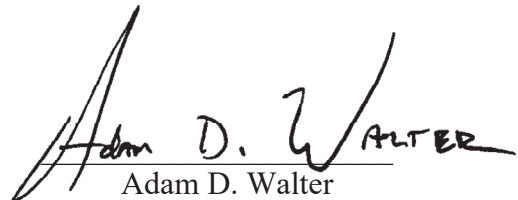
13. The Notice informed potential Settlement Class Members that written requests for exclusion are to be mailed to *Spectrum Brands Holdings Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 173001, Milwaukee, WI 53217 such that they are received no later than July 30,

2020. A.B. Data has been monitoring all mail delivered to the post office box. As of the date of this Declaration, A.B. Data has received no requests for exclusion.

14. According to the Notice, Settlement Class Members seeking to object to the Settlement, the proposed Plan of Allocation of the Net Settlement Fund, and/or Lead Counsel's Fee and Expense Application are required to submit their objection in writing such that the request is received by the Parties and filed with the Court no later than July 30, 2020. As of the date of this Declaration, A.B. Data has not received any objections.

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

Executed this 14<sup>th</sup> day of July 2020.

  
Adam D. Walter

# EXHIBIT A

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

DANE COUNTY

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiff,

vs.

SPECTRUM BRANDS HOLDINGS, INC., DAVID M.  
MAURA, JOSEPH S. STEINBERG, GEORGE C.  
NICHOLSON, CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A. MCKNIGHT,  
ANDREW WHITTAKER and HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982

Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

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

If you purchased or otherwise acquired the common stock of Spectrum Brands Holdings, Inc. ("Spectrum" or the "Company"), as successor-in-interest to HRG Group, Inc. ("HRG"), pursuant or traceable to the Registration Statement for the July 13, 2018 merger of Spectrum Brands Legacy, Inc. ("Old Spectrum") and HRG, you may be entitled to a payment from a class action settlement.

*This Notice was authorized by the Court. This is not a solicitation from a lawyer.*

This Notice describes important rights you may have and what steps you must take if you wish to participate in the proposed Settlement, want to object, or wish to be excluded from the class.

- The Settlement, if approved by the Court, will provide a total recovery of **\$9,000,000** in cash (approximately \$0.20 per damaged share on average before the deduction of Court-approved fees and expenses) for the benefit of the Settlement Class (described below). Your recovery will depend on, among other things, the number of shares of Spectrum common stock you, and other Settlement Class Members who file claims, purchased or acquired and sold, and the prices at which you, and the other Settlement Class Members who file claims, purchased or acquired and sold those shares. The terms and conditions of the Settlement are in the Stipulation and Agreement of Settlement, dated as of May 1, 2020 (the "Settlement Agreement").<sup>1</sup>
- The Settlement resolves claims by Plaintiff Plymouth County Retirement Association ("Plaintiff" or "Plymouth County"), on behalf of itself and the Settlement Class, against David M. Maura, Joseph S. Steinberg, George C. Nicholson, Curtis Glovier, Frank Ianna, Gerald Luterman, Andrew A. McKnight, Andrew Whittaker, and HRG Group, Inc. ("HRG," and collectively "Defendants"). It avoids the costs and risks of continuing the litigation, pays money to eligible Settlement Class Members, and releases the Released Defendant Parties (defined below) from liability.
- Plaintiff claims that Defendants made materially false and misleading statements and omissions in the Registration Statement disseminated to shareholders on or about June 12, 2018 for the merger of Old Spectrum and HRG that shareholders approved on July 13, 2018. Defendants have denied and continue to deny each, any, and all allegations of wrongdoing, fault, liability, or damage whatsoever asserted by Plaintiff. Defendants have also denied, *inter alia*, the allegations that Plaintiff or the Settlement Class have suffered damages or that Plaintiff or the Settlement Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit. The Court did not decide in favor of either the investors or Defendants.
- Court-appointed lawyers for the investors will ask the Court for up to \$2,700,000 in attorneys' fees (30% of the Settlement Fund) and up to \$70,000 in expenses for their and the Plaintiff's work litigating the case and negotiating the Settlement. If approved by the Court, these amounts (totaling on average approximately \$0.06 per damaged share) will be deducted from the \$9,000,000 Settlement.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and after any appeals are resolved. Please be patient.

<sup>1</sup> The Settlement Agreement can be viewed at [www.spectrumbrandsettlesment.com](http://www.spectrumbrandsettlesment.com). All capitalized terms not otherwise defined in this Notice have the same meanings as in the Settlement Agreement.

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

### YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b>SUBMIT A CLAIM FORM POSTMARKED OR RECEIVED NO LATER THAN OCTOBER 2, 2020</b>	The <u>only</u> way to be eligible to receive a payment from the Net Settlement Fund.
<b>EXCLUDE YOURSELF BY SUBMITTING A WRITTEN REQUEST SO THAT IT IS RECEIVED NO LATER THAN JULY 30, 2020</b>	This is the only option that, assuming your claim is timely brought, might allow you to ever bring or be part of any other lawsuit against Defendants and/or the other Released Defendant Parties concerning the Released Claims. If you exclude yourself, you will not be eligible to receive any payment from the Settlement. <i>See</i> Question 11 below for details.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN JULY 30, 2020</b>	Write to the Court about why you do not like the Settlement, the Plan of Allocation, and/or Lead Counsel's Fee and Expense Application. If you object, you will still be a member of the Settlement Class. <i>See</i> Question 15 below for details.
<b>GO TO A HEARING ON AUGUST 20, 2020 AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN JULY 30, 2020</b>	Ask to speak in Court about the Settlement. If you submit an objection, you may (but you do not have to) attend the hearing and speak in Court about your objection. <i>See</i> Question 19 below for details.
<b>DO NOTHING</b>	You will not be eligible to receive a payment, you will give up rights, and you will still be bound by the Settlement.

#### 1. Why did I get this Notice?

1. The Court authorized that this Notice be sent to you because you or someone in your family, or an investment account for which you serve as a custodian, may have purchased or otherwise acquired the common stock of Spectrum pursuant or traceable to the Registration Statement for the merger. **Please Note: Receipt of this Notice does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment from the Settlement. If you wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice and supporting documents, as explained in the Claim Form. *See* Question 8 below.**

2. The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, including whether or not to object or exclude themselves from the Settlement Class, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

3. The Court in charge of the Action is the Circuit Court of the State of Wisconsin, Dane County, and the case is known as *Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.*, Case No. 2019-CV-000982 (Wis. Cir. Ct. Dane Cty.). The Action is assigned to the Hon. Valerie L. Bailey-Rihn.

#### 2. What is this case about?

4. On August 16, 2019, Plaintiff filed an Amended Class Action Complaint ("Complaint") on behalf of Old Spectrum shareholders and other persons and entities that purchased or acquired shares of the newly issued common stock of Spectrum Brands Holdings, Inc. ("Spectrum" or the "Company") pursuant or traceable to the Registration Statement for the July 13, 2018, merger of Old Spectrum and HRG. The Complaint asserts claims for violations of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act").

5. The Complaint alleges that the Registration Statement contained false statements and omissions of material fact. These alleged misstatements primarily concerned undisclosed materially adverse contentions, trends, and uncertainties involving Old Spectrum's inventory, supply chain, segment goodwill, and operational efficiencies, and are alleged to have caused the Settlement Class to suffer losses after the merger.

6. Defendants have denied and continue to deny each, any, and all allegations of wrongdoing, fault, liability, or damage whatsoever asserted in the Action. The Settlement shall in no event be construed as, or deemed to be evidence of, liability, fault,

wrongdoing, injury or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Parties (as defined in the Settlement Agreement), or of any infirmity of any defense, or of any damages to Plaintiff or any other Settlement Class Member. The Settlement resolves all of the claims in the Action, as well as certain other claims or potential claims, whether known or unknown.

### 3. Why is this a class action?

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

### 4. What are the reasons for the Settlement?

8. The Court did not finally decide in favor of Plaintiff or Defendants. Instead, both sides agreed to a settlement following discussions with an experienced mediator.

9. Plaintiff and Lead Counsel believe that the claims asserted in the Action have merit. Plaintiff and Lead Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims in the Action through trial and appeals, as well as the difficulties in establishing liability. For example, Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial), including that the company’s financial disclosures were accurate at all times and that, in any event, investors did not sustain any financial loss. Even assuming Plaintiff could establish liability at trial, the amount of damages that could be attributed to the allegedly false and misleading statements would also be hotly contested. For example, Defendants would still have the opportunity to persuade the Court or the jury that recoverable damages under the Securities Act should be reduced or eliminated because (1) Old Spectrum shareholders who acquired newly issued Spectrum common stock in the merger were not injured by the alleged false statements or omissions, and (2) a portion, or all, of the losses were attributable to causes other than the alleged false statements or omissions. In the absence of a settlement, the Parties would present factual and expert testimony on each of these issues, and there is a risk that the Court or jury would resolve these issues unfavorably against Plaintiff and the Settlement Class. In light of the Settlement and the guaranteed cash recovery to the Settlement Class, Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

10. Defendants have denied and continue to deny any wrongdoing and deny that they have committed any act or omission giving rise to any liability or violation of law. Defendants deny the allegations that they made any material misstatements or omissions or that any Member of the Settlement Class has suffered damages. Nonetheless, Defendants have concluded that continuation of the Action would be protracted, time-consuming, and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement.

11. The parties mediated the case before Jed D. Melnick, Esq., of JAMS, an experienced mediator of securities class actions. Mr. Melnick has been involved in the resolution of thousands of disputes, with aggregate values in the billions of dollars, including matters related to the Adelphia and Lehman Brothers bankruptcies, as well as hundreds of securities class actions like this one. He has authorized the following statement to be included in this Notice:

“The proposed Settlement is the result of good-faith, arm’s-length negotiations among the Parties. The parties participated in a nearly 12-hour mediation session before me in New York on March 9, 2020. Both sides made presentations addressing key issues in the case, and advancing aggressive positions on behalf of their clients. While I am bound by confidentiality with regard to the content of the discussions at the mediation, I can say that the arguments and positions asserted by all involved were plainly the result of detailed analysis and hard work, by competent counsel who are highly experienced in the field of securities litigation. Over the course of the negotiations, I encouraged each side to take a hard look at the merits and value of the claims and defenses in the case. While the negotiations were professional, they were also highly adversarial. In the end, the Settlement amount itself is the product of a proposal by me that both sides accepted, and that I believe to be fair, reasonable, and adequate under all of the circumstances.”

## WHO IS IN THE SETTLEMENT

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

12. To be eligible for a payment from the proceeds of the Settlement, you must be a Settlement Class Member. The Court has directed, for the purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and subject to the Settlement unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves from the Settlement Class (*see* Question 11 below):

**All Persons and entities that purchased or otherwise acquired the common stock of Spectrum, as successor-in-interest to HRG, pursuant or traceable to the Registration Statement for the July 13, 2018, merger of Old Spectrum and HRG.**

13. If you purchased or otherwise acquired Spectrum common stock pursuant or traceable to the Registration Statement for the July 13, 2018 merger of Old Spectrum and HRG, you are a Settlement Class Member, unless you are excluded by definition, which is explained below. For purposes of this Settlement, “pursuant to” the Registration Statement means that on or about July 16, 2018, you exchanged shares of Old Spectrum common stock for an equal number of shares of newly issued Spectrum common stock as part of the merger transaction. Additionally, for purposes of this Settlement, you will be presumed to have purchased “traceable to” the Registration Statement if you purchased or acquired shares of publicly traded Spectrum common stock on the open market between July 16, 2018, and April 9, 2019, inclusive. This lawsuit was filed on April 9, 2019. If you purchased or acquired shares of Spectrum common stock on dates both before and after April 9, 2019, you are a member of the Settlement Class and you are releasing all of your claims with respect to all of your transactions. If, however, your **only** purchases or acquisitions of shares of Spectrum common stock occurred after April 9, 2019, you are not part of the Settlement Class.

14. Check your investment records or contact your broker to see if you have any eligible purchases or acquisitions.

#### 6. Are there exceptions to being included?

15. Yes. There are some individuals and entities that are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: (i) the current and former Defendants in the Action; (ii) Spectrum; (iii) the officers and directors of Old Spectrum, Spectrum, and HRG (at all relevant times); (iv) members of the immediate families of the Individual Defendants; (v) Spectrum’s and HRG’s employee retirement or benefit plans and their participants and/or beneficiaries to the extent they purchased or otherwise acquired Spectrum common stock pursuant or traceable to the Registration Statement through any such plans; (vi) any firm, trust, corporation, or other entity in which any current or former defendant has or had a controlling interest; and (vii) the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such excluded Person or entity. Also excluded from the Settlement Class will be any Person that timely and validly seeks exclusion from the Settlement Class in accordance with the procedures described in Question 11 below.

### THE SETTLEMENT BENEFITS — WHAT YOU GET

#### 7. What does the Settlement provide?

16. In exchange for the Settlement and the release of the Released Claims against the Released Defendant Parties (*see* Question 10 below), Defendants have agreed to cause a payment of Nine Million Dollars (\$9,000,000.00) to be made, which, along with any interest earned on this amount, will be distributed after deduction of Court-awarded attorneys’ fees and litigation expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court (the “Net Settlement Fund”), among all Settlement Class Members who submit valid Claim Forms and are found to be eligible to receive a distribution from the Net Settlement Fund (“Authorized Claimants”).

#### 8. How can I receive a payment?

17. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. If you did not receive a Claim Form, you can obtain one from the website dedicated to the Settlement: [www.spectrumbrandssettlement.com](http://www.spectrumbrandssettlement.com), or from Lead Counsel’s website: [www.labaton.com](http://www.labaton.com). You can also request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at (800) 328-6074.

18. Please read the instructions contained in the Claim Form carefully, fill out the Claim Form, include all the documents the form requests, sign it, and mail or submit it to the Claims Administrator so that it is **postmarked or received no later than October 2, 2020**. Settlement Class Members who do not timely submit valid Claim Forms will not share in the Net Settlement Fund, but will still be bound by the Settlement.

#### 9. When will I receive my payment?

19. The Court will hold a Settlement Hearing on **August 20, 2020**, to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

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

20. If you are a Settlement Class Member, unless you exclude yourself from the Settlement Class by the July 30, 2020, deadline, you will remain a member of the Settlement Class and will be bound by the release of claims against the Released Defendant Parties if the Settlement is approved. That means you and all other Settlement Class Members and each of their respective present, former, and future direct and indirect parent entities, principals, general or limited partners or partnerships, any affiliated entity, any entity in which you have a controlling interest, and each of their successors, assigns, heirs, spouses, executors, trustees, administrators, legal representatives, attorneys, agents, officers, and directors, will release (agreeing never to sue, continue to sue, or be part of any other lawsuit), as against the Released Defendant Parties, all Released Claims, which are essentially any and all claims which arise out of, are based upon or relate in any way to the purchase or acquisition, holding, sale, or disposition of Spectrum common stock issued in connection with the merger that occurred on or about July 13, 2018. It means that all of the Court’s orders will apply to you and legally bind you. The specific terms of the release are included in the Settlement Agreement and the main definitions are below.

(a) “**Released Claims**” means and includes any and all claims, demands, losses, liabilities, rights, and causes of action of any nature whatsoever, whether known or unknown, whether foreign or domestic, whether arising under federal, state, common, or foreign law, whether brought directly or indirectly, that (1) have been asserted in the Action or (2) could have been asserted in this Action or could in the future be asserted in any forum, by Plaintiff Releasors, which arise out of, are based upon, or relate in any way to (i) any of the allegations, acts, transactions, facts, events, matters, occurrences, representations or omissions involved, set forth, alleged or referred to in this Action and (ii) the purchase, acquisition, holding, sale, or disposition of Spectrum common stock issued pursuant or traceable to the Registration Statement or HRG common stock by members of the Settlement Class. Notwithstanding the foregoing, “Released Claims” shall not include the causes of action asserted in *In re Spectrum Brands Securities Litigation*, No. 19-cv-347-jdp (W.D. Wis.), or claims to enforce the terms of this Settlement Agreement or orders or judgments issued by the Court in connection with this Settlement.

(b) “**Released Defendant Parties**” means, individually and collectively, (i) Defendants, Spectrum, and Old Spectrum; (ii) the present and former parents, subsidiaries, divisions, and affiliates of Spectrum, Old Spectrum, and HRG; and (iii) each of their respective present, former and future direct and indirect parent entities, affiliates, subsidiaries, predecessors, successors, and assigns, and the officers, directors, attorneys, agents, insurers, employees, contractors, auditors, principals, general or limited partners or partnerships, limited liability companies, and legal representatives of each of them, and any person or entity which is or was related to or affiliated with any Released Defendant Party or in which any Released Defendant Party has a controlling interest, and each of their respective immediate family members, spouses, heirs, representatives, administrators, executors, trustees, successors, assigns, devisees, legatees, and estates, as well as any trust of which any Released Defendant Party is the settlor or which is for the benefit of any of their immediate family members.

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

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

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

21. If the Settlement is approved, Defendants will also provide a release of any claims against Plaintiff and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action.

22. As a Settlement Class Member, you will not be giving up any rights that you currently have by submitting a Proof of Claim to receive a payment.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

23. If you do not want to be eligible to receive a payment from the Settlement and you do not want to release the Released Claims against the Released Defendant Parties, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or “opting out.”

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

24. To exclude yourself from the Settlement Class, you must mail a signed letter stating that you “request to be excluded from the Settlement Class in *Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.*, Case No. 2019-CV-000982 (Wis. Cir. Ct. Dane Cty.)” You cannot exclude yourself by telephone or email. Each request for exclusion must also state: (i) the name, address, and telephone number of the person or entity requesting exclusion; (ii) (a) the number of shares of Spectrum common stock received in exchange for Old Spectrum common stock in the merger as well as the price per share of each share received, and/or (b) the number of shares of Spectrum common stock purchased, acquired, or sold between July 16, 2018, and April 9, 2019, inclusive,



as well as the date, number of shares, and price per share of each such purchase, acquisition, and sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion must be submitted so that it is **received no later than July 30, 2020**, at:

*Spectrum Brands Holdings Securities Litigation*  
*Exclusions*  
c/o A.B. Data, Ltd.  
P.O. Box 173001  
Milwaukee, WI 53217

**Your exclusion request must comply with these requirements in order to be valid.**

25. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, you cannot object to the Settlement because you will not be a Settlement Class Member. However, if you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants and the other Released Defendant Parties in the future. If you have a pending lawsuit related to any Released Claims, speak to your lawyer in that case immediately, since you must exclude yourself from this Settlement Class to continue your own lawsuit.

**12. If I exclude myself, can I get money from the proposed Settlement?**

26. No. If you exclude yourself, you are no longer a Settlement Class Member, so do not send in a Claim Form to ask for any money.

**THE LAWYERS REPRESENTING YOU**

**13. Do I have a lawyer in this case?**

27. Plaintiff will request that the Court appoint the law firm of Labaton Sucharow LLP to represent all Settlement Class Members. These lawyers are called "Lead Counsel." You will not be separately charged for these lawyers. The Court will determine the amount of Plaintiff's Counsel's fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

**14. How will the lawyers be paid?**

28. Lead Counsel will ask the Court to award Plaintiff's Counsel, which are Labaton Sucharow LLP, Michael Best & Friedrich LLP, and Thornton Law Firm LLP, attorneys' fees of no more than 30% of the Settlement Fund, or \$2,700,000, plus any accrued interest. Plaintiff's Counsel have been prosecuting the Action on a contingent basis and have not been paid for any of their work. Lead Counsel will also seek payment of litigation expenses incurred by Plaintiff's Counsel in the prosecution of the Action of no more than \$70,000, which may include a payment to Plaintiff to reimburse it for its time and expenses incurred in representing the Settlement Class. As explained above, any attorneys' fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

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

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

29. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or Lead Counsel's Fee and Expense Application. Your objection must state why you are objecting and whether your objection applies only to you, a subset of the Settlement Class, or the entire Settlement Class. If you would like the Court to consider your views, you must file a proper objection within the deadline, and according to the following procedures.

30. To object, you must send a signed letter stating that you object to the proposed Settlement in "*Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.*, Case No. 2019-CV-000982 (Wis. Cir. Ct. Dane Cty.)." The objection must: (i) state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (ii) contain a statement of the objection and the specific reasons for it, including any legal and evidentiary support (including witnesses) the Settlement Class Member wishes to bring to the Court's attention; and (iii) include information sufficient to prove membership in the Settlement Class, including (a) the number of shares of Spectrum common stock received in exchange for Old Spectrum common stock in the merger as well as the price per share of each share received, and/or (b) the number of shares of Spectrum common stock purchased, acquired, or sold between July 16, 2018, and April 9, 2019, inclusive, as well as the date, number of shares and price per share of each such purchase, acquisition, and sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to the proposed Settlement, the Plan of Allocation, and/or Lead Counsel's Fee and Expense Application. Your objection must be filed with the Court **no later than July 30, 2020, and** be mailed or delivered to the following counsel so that it is **received no later than July 30, 2020**:

**Court**  
**Clerk of the Court**  
Circuit Court of Wisconsin  
Dane County Courthouse  
215 South Hamilton Street  
Madison, WI 53703

**Lead Counsel**  
**Labaton Sucharow LLP**  
Alfred L. Fatale III, Esq.  
140 Broadway  
New York, NY 10005

**Defendants' Counsel**  
**Paul, Weiss, Rifkind, Wharton &  
Garrison LLP**  
Richard A. Rosen, Esq.  
1285 Avenue of the Americas  
New York, NY 10019

31. You do not need to attend the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has not submitted a request for exclusion and who has complied with the procedures described in this Question 15 and below in Question 19 may appear at the Settlement Hearing and be heard, to the extent allowed by the Court, about their objection. An objector may appear in person or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

**16. What is the difference between objecting and seeking exclusion?**

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

**THE SETTLEMENT HEARING**

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

33. The Court will hold the Settlement Hearing on **August 20, 2020, at 10:00 a.m.**, in Courtroom 8107 at the Circuit Court of the State of Wisconsin, Dane County, Dane County Courthouse, 215 South Hamilton Street, Madison, Wisconsin 53703.

34. At this hearing, the Court will consider, among other things, whether: (i) the Settlement is fair, reasonable, adequate, and should be finally approved; (ii) the Plan of Allocation is fair and reasonable, and should be approved; and (iii) the application of Lead Counsel for an award of attorneys' fees and payment of litigation expenses, including that of Plaintiff, is reasonable and should be approved. The Court will take into consideration any written objections filed in accordance with the instructions in Question 15 above. We do not know how long it will take the Court to make these decisions.

35. You should be aware that the Court may change the date and time of the Settlement Hearing, or hold the hearing telephonically, without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel beforehand to be sure that the date and/or time has not changed, or periodically check the Settlement website at [www.spectrumbrandssettlement.com](http://www.spectrumbrandssettlement.com) to see if the Settlement Hearing stays as scheduled or is changed.

**18. Do I have to come to the Settlement Hearing?**

36. No. Lead Counsel will answer any questions the Court may have. But, you are welcome to attend at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to come to Court to discuss it. You may have your own lawyer attend (at your own expense), but it is not required. If you do hire your own lawyer, he or she must file and serve a Notice of Appearance in the manner described in the answer to Question 19 below **no later than July 30, 2020**.

**19. May I speak at the Settlement Hearing?**

37. You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (*see* Question 15), **no later than July 30, 2020**, a statement that you, or your attorney, intend to appear in "*Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.*, Case No. 2019-CV-000982 (Wis. Cir. Ct. Dane Cty.)." Persons who intend to present evidence at the Settlement Hearing must also include in their objections (prepared and submitted in accordance with the answer to Question 15 above) the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you exclude yourself or if you have not provided written notice in accordance with the procedures described in this Question 19 and Question 15 above.

**IF YOU DO NOTHING**

**20. What happens if I do nothing at all?**

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

## GETTING MORE INFORMATION

### 21. Are there more details about the Settlement?

39. This Notice summarizes the proposed Settlement. More details are contained in the Settlement Agreement. You may review the Settlement Agreement filed with the Court and other documents in the case during business hours at the Circuit Court of the State of Wisconsin, Dane County, Dane County Courthouse, 215 South Hamilton Street, Room 1000, Madison, Wisconsin 53703. You may also contact Labaton Sucharow LLP at (888) 219-6877 or [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com). **DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.**

40. You can also get a copy of the Settlement Agreement, and other documents related to the Settlement, as well as additional information about the case and Settlement by visiting the website dedicated to the Settlement, [www.spectrumbrandssettlement.com](http://www.spectrumbrandssettlement.com), where you will find answers to common questions about the Settlement and can download copies of the Settlement Agreement or Claim Form. You may also call the Claims Administrator toll-free at (800) 328-6074 or write to the Claims Administrator at *Spectrum Brands Holdings Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 173104, Milwaukee, WI 53217. **Please do not call the Court with questions about the Settlement.**

## PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

### 22. How will my claim be calculated?

41. As discussed above, the Settlement provides \$9,000,000 in cash for the benefit of the Settlement Class. The Settlement Amount and any interest it earns constitute the Settlement Fund. The Settlement Fund, after deduction of Court-approved attorneys' fees and litigation expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court, is the Net Settlement Fund. If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants—*i.e.*, members of the Settlement Class who timely submit valid Claim Forms that are accepted for payment—in accordance with this proposed Plan of Allocation or such other plan of allocation as the Court may approve. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the settlement website, [www.spectrumbrandssettlement.com](http://www.spectrumbrandssettlement.com).

42. The objective of the Plan of Allocation is to distribute the Net Settlement Fund equitably among those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations in accordance with the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants, because the Net Settlement Fund will be less than the total losses alleged to be suffered by Settlement Class Members. The computations under the Plan of Allocation are only a method to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund. The Plan of Allocation provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a Recognized Claim as defined in Paragraph 47 below.

43. To design this Plan, Lead Counsel has conferred with Plaintiff's damages expert. This Plan is intended to be generally consistent with an assessment of the damages that Plaintiff and Lead Counsel believe were recoverable in the Action under the Securities Act. The formulas below are based on, among other factors, (i) the prices of newly issued Spectrum common stock on July 16, 2018, the date the stock began to trade publicly on the New York Stock Exchange; and (ii) the \$57.51 closing price of Spectrum common stock on April 9, 2019, the date this Action was commenced. Shares purchased or acquired after April 9, 2019, are not eligible for a recovery.

44. An individual Settlement Class Member's recovery will depend on, for example: (i) whether the claimant purchased or acquired shares pursuant or traceable to the Registration Statement; (ii) the total number and value of claims submitted; (iii) when the claimant purchased or acquired Spectrum common stock; and (iv) whether and when the claimant sold his, her, or its shares of common stock.

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

## CALCULATION OF RECOGNIZED LOSS AMOUNTS

46. The Claims Administrator will calculate a "Recognized Loss Amount" as set forth below for each purchase of Spectrum common stock pursuant or traceable to the Registration Statement that is listed in the Claim Form and for which adequate documentation is provided.

47. The sum of a claimant's Recognized Loss Amounts will be the claimant's "Recognized Claim." The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a "Distribution Amount" will be calculated for each Authorized Claimant, which shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants. To the extent a claimant had a gain from his, her, or its overall

transactions in Spectrum common stock pursuant or traceable to the Registration Statement, the value of his, her, or its Recognized Claim will be zero.

**Formulas for Calculation of Recognized Loss Amounts**

Intraday high price on date of merger (July 16, 2018): \$83.25 per share

Closing price on date Action filed (April 9, 2019): \$57.51 per share

1. **For shares of Spectrum common stock received on or about July 16, 2018, in exchange for an equal number of shares of Old Spectrum common stock in connection with the merger transaction, and:**
  - a. sold on or before April 9, 2019, the claim per share is the price per share of the stock received (not to exceed \$83.25)<sup>2</sup> minus the sales price per share.
  - b. retained as of the close of trading on April 9, 2019, the claim per share is the price per share of the stock received (not to exceed \$83.25) minus \$57.51.
2. **For shares of Spectrum common stock purchased or acquired on the open market between July 16, 2018 and November 18, 2018, and:**
  - a. sold on or before April 9, 2019, the claim per share is (i) the purchase price per share (not to exceed \$83.25) minus the sales price per share, (ii) multiplied by 0.10.<sup>3</sup>
  - b. retained as of the close of trading on April 9, 2019, the claim per share is (i) the purchase price per share (not to exceed \$83.25) minus \$57.51, (ii) multiplied by 0.10.
3. **For shares of Spectrum common stock purchased or acquired on the open market between November 19, 2018 and April 9, 2019, and:**
  - a. sold on or before April 9, 2019, the claim per share is (i) the purchase price per share (not to exceed \$83.25) minus the sales price per share, (ii) multiplied by 0.05.<sup>4</sup>
  - b. retained as of the close of trading on April 9, 2019, the claim per share is (i) the purchase price per share (not to exceed \$83.25) minus \$57.51, (ii) multiplied by 0.05.

**ADDITIONAL PROVISIONS**

48. Spectrum common stock (CUSIP: 84790A105) is the only security eligible for recovery under the Plan of Allocation. Purchases or acquisitions of Old Spectrum common stock (CUSIP: 84763R101) or HRG securities are not eligible transactions under the Plan of Allocation.

49. For purposes of determining whether a claimant has a Recognized Claim, if a Settlement Class Member has more than one purchase/acquisition or sale of publicly traded Spectrum common stock, all purchases/acquisitions and sales shall be matched on a First In/First Out (FIFO) basis. Sales will be matched first against shares of Spectrum stock received in exchange for shares of Old Spectrum stock, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made between July 16, 2018 and April 9, 2019.

50. Purchases or acquisitions and sales of Spectrum common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift or inheritance of Spectrum common stock shall not be deemed a purchase, acquisition, or sale of these shares of Spectrum common stock for the calculation of an Authorized Claimant’s Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such shares of such Spectrum common stock unless (i) the donor or decedent purchased or otherwise acquired such shares of Spectrum common stock pursuant or traceable to the Registration Statement; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares of Spectrum common stock; and (iii) it is specifically so provided

<sup>2</sup> Under the Securities Act, an investor may not recover for an amount paid for a security to the extent it exceeds the price at which the security was offered to the public. On July 16, 2018, Spectrum common stock opened for trading at \$82.70 per share, traded at an intraday high of \$83.25 per share, traded at an intraday low of \$78.62 per share, and closed at \$79.60 per share. For purposes of this Plan of Allocation, the price per share of stock purchased or acquired pursuant or traceable to the Registration Statement cannot exceed \$83.25.

<sup>3</sup> The Plan applies a ninety percent (90%) discount to the claims of Settlement Class Members that purchased Spectrum common stock on the open market between July 16, 2018 and November 18, 2018. This discount reflects the difficulty that Settlement Class Members would have in “tracing” their shares to the Registration Statement.

<sup>4</sup> The Plan applies a ninety-five percent (95%) discount to the claims of Settlement Class Members that purchased Spectrum common stock on the open market between November 19, 2018 and April 9, 2019. The deeper discount reflects the relative weakness of the claims of such Settlement Class Members in view of certain subsequent disclosures that Defendants made on November 18, 2018, as well as the additional difficulty these Settlement Class Members would have in “tracing” their shares to the Registration Statement.

in the instrument of gift or assignment.

51. In accordance with the Plan of Allocation, the Recognized Loss Amount on any portion of a purchase or acquisition that matches against (or “covers”) a “short sale” is zero. The Recognized Loss Amount on a “short sale” that is not covered by a purchase or acquisition is also zero. In the event that a claimant has an opening short position in Spectrum common stock as of July 16, 2018, the earliest purchases or acquisitions thereafter shall be matched against such opening short position in accordance with the FIFO matching described above and any portion of such purchases or acquisition that covers such short sales will not be entitled to recovery. In the event that a claimant newly establishes a short position after July 16, 2018, the earliest subsequent purchase or acquisition shall be matched against such short position on a FIFO basis and will not be entitled to a recovery.

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

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

54. Distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. No Person shall have any claim of any kind against the Defendants or their related parties with respect to the investment or distribution of the Settlement Fund. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys’ fees and expenses, if any, redistribute such balance among Authorized Claimants who have cashed their initial checks in an equitable and economic fashion. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys’ fees and expenses, if any, shall be disposed of as follows. At least 50% of any such residual balance must be disbursed to the Wisconsin Trust Foundation, Inc. (“WisTAF”), to support direct delivery of legal services to persons of limited means in non-criminal matters. The law authorizes the Court to disburse the remainder of any residual balance to WisTAF for purposes that have a relationship to the objectives of this Action or that promote the interests of the Settlement Class.

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

56. Each claimant is deemed to have submitted to the jurisdiction of the Circuit Court of the State of Wisconsin, Dane County, with respect to his, her, or its claim.

### **SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES**

57. If you purchased or acquired “new” Spectrum common stock (CUSIP: 84790A105) pursuant or traceable to the Registration Statement between July 16, 2018 and April 9, 2019, inclusive, for the beneficial interest of a person or entity other than yourself, the Court has directed that **WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER:** (a) provide to the Claims Administrator the name and last known address (and email address, if available) of each person or entity for whom or which you purchased or acquired Spectrum common stock; or (b) request additional copies of this Notice and the Claim Form from the Claims Administrator, which will be provided to you free of charge, and **WITHIN TEN (10) CALENDAR DAYS** of receipt, mail the Notice and Claim Form directly to all the beneficial owners of those securities. If you choose to follow procedure (b), the Court has also directed that, upon making that mailing, **YOU MUST SEND A STATEMENT** to the Claims Administrator confirming that the mailing was made as directed and keep a record of the names and mailing addresses used. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon submission of appropriate supporting documentation and timely compliance with the above directives. All communications concerning the foregoing should be addressed to the Claims Administrator:

*Spectrum Brands Holdings Securities Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 173104  
Milwaukee, WI 53217  
(800) 328-6074

Dated: June 4, 2020

BY ORDER OF THE CIRCUIT COURT OF THE  
STATE OF WISCONSIN, DANE COUNTY

## STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

## DANE COUNTY

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiff,

vs.

SPECTRUM BRANDS HOLDINGS, INC., DAVID M.  
MAURA, JOSEPH S. STEINBERG, GEORGE C.  
NICHOLSON, CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A. MCKNIGHT,  
ANDREW WHITTAKER and HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982

Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

**PROOF OF CLAIM AND RELEASE**

**A. GENERAL INSTRUCTIONS**

1. To recover as a member of the Settlement Class based on your claims in the action entitled *Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc.*, Case No. 2019-CV-000982 (Wis. Cir. Ct. Dane Cty.) (the "Action"), you must complete and, on page 5 hereof, sign this Proof of Claim and Release form ("Claim Form"). If you fail to submit a timely and properly addressed (as set forth in paragraph 3 below) Claim Form, your claim may be rejected and you may not receive any recovery from the Net Settlement Fund created in connection with the proposed Settlement.

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

**3. YOU MUST MAIL OR SUBMIT YOUR COMPLETED AND SIGNED CLAIM FORM ONLINE SO THAT IT IS POSTMARKED OR RECEIVED NO LATER THAN OCTOBER 2, 2020, ADDRESSED AS FOLLOWS:**

*Spectrum Brands Holdings Securities Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 173104  
Milwaukee, WI 53217  
[www.spectrumbrandssettlement.com](http://www.spectrumbrandssettlement.com)

4. If you are NOT a member of the Settlement Class (as defined in the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Notice") which accompanies this Claim Form), DO NOT submit a Claim Form.

5. If you are a member of the Settlement Class and you did not timely request exclusion in response to the Notice dated June 4, 2020, you are bound by the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM FORM.

**B. CLAIMANT IDENTIFICATION**

6. If you purchased or otherwise acquired Spectrum common stock pursuant or traceable to the Registration Statement for the July 13, 2018 merger of Old Spectrum and HRG, you are a Settlement Class Member, unless you are excluded by definition.

7. If you purchased or otherwise acquired Spectrum common stock and held the stock in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or acquired the common stock of Spectrum through a third party, such as a brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

8. Use Part I of this form entitled "Claimant Identification" to identify each beneficial purchaser or acquirer of Spectrum common stock that forms the basis of the Claim Form, as well as the purchaser or acquirer of record if different. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S).

9. All joint purchasers must sign the Claim Form. Executors, administrators, guardians, conservators, and trustees must complete and sign the Claim Form on behalf of persons represented by them and their authority must accompany the Claim Form and their titles or capacities must be stated. The Social Security (or Taxpayer Identification) Number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

### **C. IDENTIFICATION OF TRANSACTIONS**

10. Use Part II of the Claim Form entitled “Schedule of Transactions in Spectrum Common Stock” to supply all required details of your transaction(s) in Spectrum common stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

11. On the schedules, provide all of the requested information with respect to all of your purchases or acquisitions and all of your sales of Spectrum common stock, whether such transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

12. The date of covering a “short sale” is deemed to be the date of purchase of Spectrum common stock. The date of a “short sale” is deemed to be the date of sale of Spectrum traded stock.

13. Copies of broker confirmations or other documentation of your transactions in Spectrum common stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. The Parties do not have information about your transactions in Spectrum common stock.

14. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All claimants MUST submit a manually signed paper Claim Form whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at (800) 328-6074 to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

**PART I – CLAIMANT INFORMATION**

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

Beneficial Owner's Name:

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First Name

Last Name

Joint Beneficial Owner's Name (if applicable):

---

First Name

Last Name

If this claim is submitted for an IRA, and if you would like any check that you MAY be eligible to receive made payable to the IRA, please include "IRA" in the "Last Name" box above (e.g., Jones IRA).

---

Entity Name (if the Beneficial Owner is not an individual)

---

Name of Representative, if applicable (*executor, administrator, trustee, c/o, etc.*), if different from Beneficial Owner

---

Social Security Number or Taxpayer Identification Number

---

Street Address

---

City

State/Province

Zip Code

---

Foreign Postal Code (if applicable)

Foreign Country (if applicable)

---

Telephone Number (Day)

Telephone Number (Evening)

---

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

Type of Beneficial Owner (specify one of the following):

Individual(s)

Corporation

UGMA Custodian

IRA

Partnership

Estate

Trust

Other (describe) \_\_\_\_\_



**PART II – SCHEDULE OF TRANSACTIONS IN SPECTRUM COMMON STOCK**

**1. RECEIPT OF SPECTRUM STOCK IN EXCHANGE FOR OLD SPECTRUM STOCK.** State the total number of shares of newly issued Spectrum common stock (CUSIP: 84790A105) you received on or about July 16, 2018 in exchange for Old Spectrum common stock (CUSIP: 84763R101) in connection with the merger of Old Spectrum and HRG, and the price per share. (Must be documented.) If none, write “zero” or “0.”

Number of Shares:

Price per Share: \$

**2. PURCHASES AND ACQUISITIONS IN THE AFTERMARKET.** Separately list each and every purchase or acquisition of Spectrum common stock on the open market from the opening of trading on July 16, 2018 through and including the close of trading on April 9, 2019. (Must be documented.)

Date of Purchase (List Chronologically) (MM/DD/YYYY)	Number of Shares Purchased	Purchase Price Per Share	Total Purchase Price (excluding taxes, commissions, and fees)
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$

**3. SALES IN THE AFTERMARKET.** Separately list each and every sale/disposition of Spectrum common stock on the open market from the opening of trading on July 16, 2018 through and including the close of trading on April 9, 2019. (Must be documented.)

Date of Sale (List Chronologically) (MM/DD/YYYY)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$
/ /		\$	\$

**4. HOLDINGS AS OF APRIL 9, 2019.** State the total number of shares of Spectrum common stock held as of the close of trading on April 9, 2019. (Must be documented.) If none, write “0” or “Zero.”

**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS  
YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX**

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

**PART III – ACKNOWLEDGMENTS AND RELEASE**

**A. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim and Release under the terms of the Stipulation and Agreement of Settlement, dated as of May 1, 2020 (the “Settlement Agreement”), described in the Notice. I (We) also submit to the jurisdiction of the Circuit Court of the State of Wisconsin, Dane County with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Action. I (We) agree to furnish additional information to the Claims Administrator to support this claim (including transactions in other Spectrum securities) if requested to do so. I (We) have not submitted any other claim in the Action covering the same purchases or sales of Spectrum common stock during the Relevant Period and know of no other person having done so on my (our) behalf.

**B. RELEASE AND ACKNOWLEDGMENT**

1. Upon the occurrence of the Court’s approval of the Settlement, as detailed in the accompanying Notice, I (we) agree and acknowledge that my (our) signature(s) below shall effect and constitute a full and complete release and discharge by me (us) and my (our) “Releasers”<sup>1</sup> (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of one or more other Persons, by it, him, her, or them, and by its, his, her, or their “Releasers”), of each of the “Released Defendant Parties” of all “Released Claims,” as those terms are defined in the Settlement Agreement.

2. Upon the occurrence of the Court’s approval of the Settlement, as detailed in the accompanying Notice, I (we) agree and acknowledge that my (our) signature(s) below shall effect and constitute an agreement by me (us) and my (our) Releasers (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of one or more other Persons, by it, him, her, or them, and by its, his, her, or their Releasers), to permanently refrain from prosecuting or attempting to prosecute any Released Claims against any of the Released Defendant Parties.

3. I (We) acknowledge that the inclusion of “Unknown Claims” in the definition of “Released Claims” set forth in the Settlement Agreement was separately bargained for and is a material element of the Settlement of which this release is a part.

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

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

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_  
(Month / Year) (City) (State/Country)

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
Print Name of Claimant

\_\_\_\_\_  
Print Name of Joint Claimant, if any

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

<sup>1</sup> “Releasers” means your present, former, and future direct and indirect parent entities, principals, general or limited partners or partnerships, and any entity which is or was affiliated with any of them or in which any of them has a controlling interest, and each of their or your successors, assigns, heirs, spouses, executors, trustees, administrators, legal representatives, attorneys, agents, officers, and directors, in their capacities as such.

**REMINDER CHECKLIST**

1. Please sign the above release and acknowledgment.
2. If this claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of certificates.
5. Keep a copy of your Claim Form and all supporting documentation for your records.
6. The Claims Administrator will acknowledge receipt of your Claim Form within 60 days. Your claim is not deemed submitted until you receive an acknowledgment email or postcard. If you do not receive an acknowledgment email or postcard within 60 days, please call the Claims Administrator toll-free at (800) 328-6074.
7. If you move, please send your new address to:  
*Spectrum Brands Holdings Securities Litig.*  
c/o A.B. Data, Ltd.  
P.O. Box 173104  
Milwaukee, WI 53217  
[www.spectrumbrandssettlement.com](http://www.spectrumbrandssettlement.com)  
(800) 328-6074
8. **Do not use red pen or highlighter** on the Claim Form or supporting documentation.

# EXHIBIT B

INVESTOR'S BUSINESS DAILY

MUTUAL FUND PERFORMANCE

WEEK OF JUNE 15, 2020 A11

SMALL-CAP GROWTH FUNDS VS. BIG-CAP GROWTH FUNDS. Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

GROWTH FUNDS VS. VALUE FUNDS. Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.



Top Industry & Sector Funds. Table with columns for Fund Name, % Change, and \$ Bn Assets.

Top Industry & Sector Funds. Table with columns for Fund Name, % Change, and \$ Bn Assets.

Table with columns for Fund Name, % Change, and \$ Bn Assets.

U.S. Stock Fund Cash Position (11/00) 4.2% Low (12/17) 2.1%. Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

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Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

Table with columns for Fund Name, YTD, 1Y, 3Y, 5Y, 10Y, and Net Assets.

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY. LYREWOOD COUNTY RETIREMENT ASSOCIATION, Plaintiff, vs. SPECTRUM BRANDS HOLDINGS, INC., DAVID M. MAURA, JOSEPH S. STEINBERG, GEORGE C. NICHOLSON, CURTIS GLOVER, FRANK L. LUTERMAN, ANDREW A. MCKNIGHT, ANDREW WHITTAKER and HRG GROUP, INC., Defendants.

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

TO: All Persons and Entities That Purchased or Otherwise Acquired the Common Stock of Spectrum Brands Holdings, Inc. ("Spectrum") in the "Company" or "HRG Group, Inc. ("HRG")...

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Circuit Court of the State of Wisconsin, Dane County, and Wis. Stat. §803.08, that Plymouth County Retirement Association ("Plaintiff") or "Plymouth County", on behalf of all other members of the proposed Settlement Class, on the one hand, and David M. Maura, Joseph S. Steinberg, George C. Nicholson, Curtis Glover, Frank L. Luterman, Andrew A. McKnight, Andrew Whittaker, and HRG (collectively, "Defendants"), on the other, have reached an agreement on the proposed Settlement of the Net Settlement Fund, in the amount of \$9,000,000, that, if approved, will resolve the Action in its entirety (the "Settlement").

A hearing will be held before the Honorable Valerie L. Bailey-Rieth on August 20, 2020, at 10:00 a.m., in Courtroom 8107 at the Circuit Court of the State of Wisconsin, Dane County Courthouse, 215 South Hamilton Street, Madison, WI 53703 (the "Settlement Hearing") to determine whether the Court should, among other things: (i) approve the proposed Settlement as fair, reasonable, and adequate; (ii) dismiss the Action with prejudice as provided in the Stipulation and Agreement of Settlement, dated as of May 1, 2020; (iii) approve the proposed Plan of Allocation for distribution of the Net Settlement Fund; and (iv) approve Lead Counsel's Fee and Expense Application. The Court may change the date of the Settlement Hearing, or hold it telephonically, without providing another notice. You do NOT need to attend the Settlement Hearing to receive a distribution from the Net Settlement Fund.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO A MONETARY PAYMENT. If you have not sent received a Notice and Proof of Claim and Release Form ("Claim Form"), you may obtain copies of these documents by visiting the website dedicated to the Settlement, www.spectrumbrandsettlem.com or by contacting the Claims Administrator at:

Spectrum Brands Holdings Securities Litigation c/o A.B. Data, Ltd. P.O. Box 173104 Milwaukee, WI 53217 (800) 226-6074

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

Alfred L. Falck III, Esq. LABATON SUCHAROW LLP 140 Broadway New York, NY 10005 (888) 219-6877 settlementquestions@labaton.com

If you are a Settlement Class Member, to be eligible to share in the distribution of the Net Settlement Fund, you must submit a Claim Form postmarked or submitted online no later than October 2, 2020. If you are a Settlement Class Member and do not timely submit a valid Claim Form, you will not be eligible to share in the distribution of the Net Settlement Fund, but you will nevertheless be bound by all judgments or orders entered by the Court in the Action, whether favorable or unfavorable.

If you are a Settlement Class Member and wish to exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is received no later than July 30, 2020. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action, whether favorable or unfavorable, and you will not be eligible to share in the distribution of the Net Settlement Fund.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's Fee and Expense Application must be filed with the Court and mailed to counsel for the Parties in accordance with the instructions in the Notice, such that they are filed and received no later than July 30, 2020.

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

By ORDER OF THE CIRCUIT COURT OF THE STATE OF WISCONSIN, DANE COUNTY

# EXHIBIT C

# Labaton Sucharow LLP Announces a Notice of Settlement in Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.

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NEWS PROVIDED BY

**Labaton Sucharow LLP →**

Jun 15, 2020, 16:00 ET

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NEW YORK, June 15, 2020 /PRNewswire/ --

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

BRANCH 3

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<p>PLYMOUTH COUNTY RETIREMENT ASSOCIATION, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. SPECTRUM BRANDS HOLDINGS, INC., DAVID M. MAURA, JOSEPH S. STEINBERG, GEORGE C. NICHOLSON, CURTIS GLOVIER, FRANK IANNA, GERALD LUTERMAN, ANDREW A. MCKNIGHT, ANDREW WHITTAKER and HRG GROUP, INC., Defendants.</p>	<p>Case No. 2019-CV-000982 Case Code: 30301 (Money Judgment) Hon. Valerie L. Bailey-Rihn</p>
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**SUMMARY NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT, AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

**To: All Persons and Entities That Purchased or Otherwise Acquired the Common Stock of Spectrum Brands Holdings, Inc. ("Spectrum" or the "Company"), as Successor-in-Interest to HRG Group, Inc. ("HRG"), Pursuant or Traceable to the Registration Statement for the July 13, 2018, Merger of Spectrum Brands Legacy, Inc. ("Old Spectrum") and HRG (the "Settlement Class").**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Circuit Court of the State of Wisconsin, Dane County, and Wis. Stat. §803.08, that Plymouth County Retirement Association ("Plaintiff" or "Plymouth County"), on behalf of itself and all other members of the proposed Settlement Class, on the one hand, and David M. Maura, Joseph S. Steinberg, George C. Nicholson, Curtis Glovier, Frank Ianna, Gerald Luterman, Andrew A. McKnight, Andrew Whittaker, and HRG (collectively, "Defendants"), on the other, have reached a proposed settlement of the above-captioned action (the "Action") in the amount of \$9,000,000 that, if approved, will resolve the Action in its entirety (the "Settlement").

A hearing will be held before the Honorable Valerie L. Bailey-Rihn on August 20, 2020, at 10:00 a.m., in Courtroom 8107 at the Circuit Court of the State of Wisconsin, Dane County Courthouse, 215 South Hamilton Street, Madison, WI 53703 (the "Settlement Hearing") to determine whether the Court should, among other things: (i) approve the proposed Settlement as fair, reasonable, and adequate; (ii) dismiss the Action with prejudice as provided in the Stipulation and Agreement of Settlement, dated as of May 1, 2020; (iii) approve the proposed Plan of Allocation for distribution of the Net Settlement Fund; and (iv) approve Lead Counsel's Fee and Expense Application. The Court may change the date of the Settlement Hearing, or hold it telephonically, without providing another notice. You do NOT need to attend the Settlement Hearing to receive a distribution from the Net Settlement Fund.

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOUR RIGHTS WILL BE AFFECTED BY THE PROPOSED SETTLEMENT AND YOU MAY BE ENTITLED TO A MONETARY PAYMENT.** If you have not yet received a Notice and Proof of Claim and Release form ("Claim Form"), you may obtain copies of these documents by visiting the website dedicated to the Settlement, [www.spectrumbrandssettlement.com](http://www.spectrumbrandssettlement.com), or by contacting the Claims Administrator at:

*Spectrum Brands Holdings Securities Litigation*

c/o A.B. Data, Ltd.

P.O. Box 173104



Milwaukee, WI 53217

(800) 328-6074

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

Alfred L. Fatale III, Esq.  
LABATON SUCHAROW LLP  
140 Broadway  
New York, NY 10005  
(888) 219-6877  
settlementquestions@labaton.com

If you are a Settlement Class Member, to be eligible to share in the distribution of the Net Settlement Fund, you must submit a Claim Form **postmarked or submitted online no later than October 2, 2020**. If you are a Settlement Class Member and do not timely submit a valid Claim Form, you will not be eligible to share in the distribution of the Net Settlement Fund, but you will nevertheless be bound by all judgments or orders entered by the Court in the Action, whether favorable or unfavorable.

If you are a Settlement Class Member and wish to exclude yourself from the Settlement Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is **received no later than July 30, 2020**. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action, whether favorable or unfavorable, and you will not be eligible to share in the distribution of the Net Settlement Fund.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's Fee and Expense Application must be filed with the Court and mailed to counsel for the Parties in accordance with the instructions in the Notice, such that they are **filed and received no later than July 30, 2020**.

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

SOURCE Labaton Sucharow LLP

# **Exhibit 3**

**STATE OF WISCONSIN   CIRCUIT COURT   DANE COUNTY  
BRANCH 3**

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

SPECTRUM BRANDS HOLDINGS, INC.,  
DAVID M. MAURA, JOSEPH S.  
STEINBERG, GEORGE C. NICHOLSON,  
CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A.  
MCKNIGHT, ANDREW WHITTAKER and  
HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982

Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

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

I, JONATHAN GARDNER, declare as follows:

1. I am a partner of the law firm of Labaton Sucharow LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action (the "Action") from inception through July 10, 2020 (the "Time Period").

2. My firm, which served as lead counsel in the Action, was involved in all aspects of the litigation, as explained in detail in the accompanying Declaration of Jonathan Gardner in Support of (I) Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, filed herewith.

3. The information in this declaration regarding my firm's time and expenses is taken from time and expense records prepared and maintained by the firm in the ordinary course of business. These records were reviewed by others at my firm, under my direction, to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses committed to the Action. The review also confirmed that the firm's guidelines and policies regarding expenses were followed. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by attorneys and professional support staff members of my firm who were involved in the prosecution of the Action, and the lodestar calculation based on my firm's current hourly rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

5. After the reductions mentioned above, the total number of hours spent on this Action reported by my firm during the Time Period is 2,036.7. The total lodestar amount for reported attorney/professional staff time based on the firm's current rates is \$1,222,184.50.

6. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are my firm's usual and customary hourly rates, which have been approved by Courts in

other securities class action litigations. My firm's lodestar figures are based upon the firm's hourly rates, which do not include charges for expense items. Expense items are recorded separately and are not duplicated in my firm's hourly rates.

7. As detailed in Exhibit B, my firm has incurred a total of \$45,565.65 in expenses in connection with the prosecution of the Action. The expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

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

(a) Court, Witness and Service Fees: \$1,543.35. These expenses have been paid to the State Bar of Wisconsin or to reimburse Liaison Counsel for court and filing fees that it advanced on my firm's behalf.

(b) Work-Related Transportation & Meals: \$4,378.33. In connection with the prosecution of this case, the firm has paid for work-related transportation expenses and meals.

(c) Experts/Consultants: \$15,099.50.

(i) \$9,600.00 – fees charged by Plaintiff's consulting damages expert in connection with analyzing aggregate damages and negative causation issues, and preparing the proposed Plan of Allocation.

(ii) \$5,499.50 – fees charged by Plaintiff's consulting accounting and financial expert in connection with Lead Counsel's investigation.

(d) Online Legal and Financial Research: \$8,376.37. These expenses relate to the usage of electronic databases, such as PACER, Westlaw, LexisNexis Risk Solutions and LexisNexis. These databases were used to obtain access to financial data, factual information, and legal research.

(e) Mediation Fees: \$12,808.07. These expenses relate to the fees assessed by JAMS, Inc. in connection with the mediated settlement negotiations.

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of July, 2020.



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JONATHAN GARDNER

## **Exhibit A**



***Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.,  
Case No. 2019-CV-000982***

**EXHIBIT A**

**LODESTAR REPORT**

FIRM: LABATON SUCHAROW LLP

REPORTING PERIOD: INCEPTION THROUGH JULY 10, 2020

<b>PROFESSIONAL</b>	<b>STATUS</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
Keller, C.	P	\$1,100	38.50	\$42,350.00
Gardner, J.	P	\$1,050	104.00	\$109,200.00
Zeiss, N.	P	\$950	39.00	\$37,050.00
Belfi, E.	P	\$950	4.50	\$4,275.00
Goldsmith, D.	P	\$925	122.20	\$113,035.00
McConville, F.	P	\$775	38.00	\$29,450.00
Rosenberg, E.	OC	\$775	60.50	\$46,887.50
Fatale, A.	OC	\$750	462.70	\$347,025.00
Chang, H.	A	\$500	52.40	\$26,200.00
Menkova, A.	A	\$450	255.40	\$114,930.00
Leggio, P.	A	\$450	170.90	\$76,905.00
Duenas, M.	A	\$425	394.80	\$167,790.00
Schervish, W.	DMI	\$565	72.60	\$41,019.00
Ahn, E.	RA	\$340	10.90	\$3,706.00
Rodriguez, D.	RA	\$315	4.00	\$1,260.00
Ginefra, V.	RA	\$190	28.00	\$5,320.00
Cheung, S.	RA	\$190	20.00	\$3,800.00
Greenbaum, A.	I	\$550	10.30	\$5,665.00
Lindquist, S.	I	\$275	59.50	\$16,362.50
Malonzo, F.	PL	\$355	18.60	\$6,603.00
Jordan, E.	PL	\$335	41.60	\$13,936.00
Schneider, P.	PL	\$335	13.60	\$4,556.00
Boria, C.	PL	\$335	8.20	\$2,747.00
Gutierrez, K.	PL	\$325	6.50	\$2,112.50
<b>TOTALS</b>			<b>2,036.70</b>	<b>\$1,222,184.50</b>

Partner (P)                      Research Analyst (RA)  
Of Counsel (OC)                Investigator (I)  
Associate (A)                    Paralegal (PL)  
Director of Market Intelligence (DMI)

## **Exhibit B**

*Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.,*

*Case No. 2019-CV-000982*

**EXHIBIT B**

**EXPENSE REPORT**

FIRM: LABATON SUCHAROW LLP

REPORTING PERIOD: INCEPTION THROUGH JULY 10, 2020

<b>CATEGORY</b>		<b>TOTAL AMOUNT</b>
Duplicating		\$ 3,053.60
Postage / Overnight Delivery Services		\$ 287.04
Long Distance Telephone / Fax/ Conference Calls		\$ 19.39
Court / Witness / Service Fees		\$ 1,543.35
Computer Research Fees		\$ 8,376.37
Expert / Consultant Fees		\$ 15,099.50
Loss Causation and Damages	\$ 9,600.00	
Accounting and Financial Issues	\$ 5,499.50	
Mediation Fees		\$ 12,808.07
Work-Related Transportation / Meals <sup>1</sup>		\$ 4,378.33
<b>TOTAL</b>		<b>\$ 45,565.65</b>

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<sup>1</sup> It is anticipated that the final Settlement Hearing will be held remotely, however if an in-person hearing is required, \$3,000.00 in estimated travel costs (for airfare, hotel, taxis, meals) has been included for attorneys from Labaton Sucharow to attend the hearing. If less than \$3,000.00 is incurred, the actual amount incurred will be deducted from the Settlement Fund. If more than \$3,000.00 is incurred, \$3,000.00 will be the cap and only \$3,000.00 will be deducted from the Settlement Fund.

## **Exhibit C**

**Labaton  
Sucharow**

# Securities Litigation Practice Profile

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## ABOUT THE FIRM

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Founded in 1963, Labaton Sucharow LLP has earned a reputation as one of the leading plaintiffs' firms in the United States. For more than half a century, Labaton Sucharow has successfully exposed corporate misconduct and recovered billions of dollars in the United States and around the globe on behalf of investors and consumers. Our mission is to continue this legacy and to continue to advance market fairness and transparency in the areas of securities, antitrust, corporate governance and shareholder rights, data privacy and cybersecurity, and consumer protection law and whistleblower representation.

The Firm has recovered significant losses for investors and secured corporate governance reforms on behalf of the nation's largest institutional investors, including public pension, Taft-Hartley, and hedge funds, investment banks, and other financial institutions. These recoveries include more than \$1 billion in *In re American International Group, Inc. Securities Litigation*, \$671 million in *In re HealthSouth Securities Litigation*, \$624 million in *In re Countrywide Financial Corporation Securities Litigation*, and \$473 million in *In re Schering-Plough/ENHANCE Securities Litigation*.

Along with securing newsworthy recoveries, the Firm has a track record for successfully prosecuting complex cases from discovery to trial to verdict. In court, as *Law360* has noted, our attorneys are known for "fighting defendants tooth and nail." Our appellate experience includes winning appeals that increased settlement values for clients and securing a landmark 2013 US Supreme Court victory benefitting all investors by reducing barriers to the certification of securities class action cases.

Our Firm is equipped to deliver results due to our robust infrastructure of more than 60 full-time attorneys, a dynamic professional staff, and innovative technological resources. Labaton Sucharow attorneys are skilled in every stage of business litigation and have challenged corporations from every sector of the financial market. Our professional staff includes paralegals, financial analysts, e-discovery specialists, a certified public accountant, a certified fraud examiner, and a forensic accountant. We have one of the largest in-house investigative teams in the securities bar.

Outside of the courtroom, the Firm is known for its leadership and participation in investor protection organizations, such as the Council for Institutional Investors, the World Federation of Investors, and the National Association of Shareholder and Consumer Attorneys, as well as serving as a patron of the John L. Weinberg Center for Corporate Governance of the University of Delaware. The Firm shares these groups' commitment to a market that operates with greater transparency, fairness, and accountability.

Labaton Sucharow is consistently ranked as a leading law firm by top industry publications, including *Chambers & Partners USA*, *The Legal 500*, and *Benchmark Litigation*, among others. *The National Law Journal* "Elite Trial Lawyers" named Labaton Sucharow the 2020 "Law Firm of the Year" for Securities Litigation. The award marks the second consecutive year the Firm has received the prestigious award and the third award overall. The winner was chosen for their "cutting-edge work on behalf of plaintiffs over the last 15 months" as well as possessing "a solid track record of client wins over the past three to five years." Additionally, the Firm was recognized as a "Finalist" in the Antitrust and Class Action categories. The Firm was also



recognized for its pro bono efforts being named the 2020 “Law Firm of the Year” in the Immigration category. In addition, Labaton Sucharow partners have been recognized as leaders in their respective practice areas, including such accolades as *Law360* Securities MVP, *Law360* Class Action Rising Star, *NLJ* Plaintiffs’ Trailblazer, and *NLJ* Elite Woman in the Plaintiffs’ Bar, among others.

Visit [www.labaton.com](http://www.labaton.com) for more information about our Firm.



## SECURITIES CLASS ACTION LITIGATION

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Labaton Sucharow is a leader in securities litigation and a trusted advisor to more than 300 institutional investors. Since the passage of the Private Securities Litigation Reform Act of 1995 (PSLRA), the Firm has recovered more than \$10 billion in the aggregate for injured investors through securities class actions prosecuted throughout the United States and against numerous public corporations and other corporate wrongdoers.

These notable recoveries would not be possible without our exhaustive case evaluation process. The Firm has developed a proprietary system for portfolio monitoring and reporting on domestic and international securities litigation, and currently provides these services to more than 300 institutional investors, which manage collective assets of more than \$2 trillion. The Firm's in-house investigators also gather crucial details to support our cases, whereas other firms rely on outside vendors or fail to conduct any confidential investigation at all.

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

### NOTABLE SUCCESSES

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

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

In one of the most complex and challenging securities cases in history, Labaton Sucharow secured more than \$1 billion in recoveries on behalf of lead plaintiff Ohio Public Employees' Retirement System in a case arising from allegations of bid rigging and accounting fraud. To achieve this remarkable recovery, the Firm took over 100 depositions and briefed 22 motions to dismiss. The full settlement entailed a \$725 million settlement with American International Group (AIG), \$97.5 million settlement with AIG's auditors, \$115 million settlement with former AIG officers and related defendants, and an additional \$72 million settlement with General Reinsurance Corporation, which was approved by the Second Circuit on September 11, 2013.

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

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



settlement, which is one of the top 20 securities class action settlements in the history of the PSLRA.

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

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

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

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

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

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

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

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

- ***Arkansas Teacher Retirement System v. State Street Corp., No. 11-cv-10230 (D. Mass.)***

Labaton Sucharow served as lead counsel for the plaintiff Arkansas Teacher Retirement System (ATRS) in a securities class action against Boston-based financial services company, State Street Corporation (State Street). On November 2, 2016, the court granted final approval of the \$300 million settlement with State Street. The plaintiffs claimed that State Street, as custodian bank to a number of public pension funds, including ATRS, was responsible for foreign exchange (FX) trading in connection with its clients' global trading. Over a period of many years, State Street systematically overcharged pension fund clients, including Arkansas, for those FX trades.

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

Labaton Sucharow secured a \$285 million class action settlement against the El Paso Corporation on behalf of the co-lead plaintiff, an individual. The case involved a securities fraud stemming from the company's inflated earnings statements, which cost shareholders hundreds of millions of dollars during a four-year span. On March 6, 2007, the court approved the settlement and also commended the efficiency with which the case had been prosecuted, particularly in light of the complexity of the allegations and the legal issues.

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

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

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

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

**class members to reach an excellent resolution and maximize recovery for the class.”**

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

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

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

Labaton Sucharow served as lead counsel representing the lead plaintiff, union-owned LongView Collective Investment Fund of the Amalgamated Bank (LongView), against drug company Bristol-Myers Squibb (BMS). LongView claimed that the company’s press release touting its new blood pressure medication, Vanlev, left out critical information—that undisclosed results from the clinical trials indicated that Vanlev appeared to have life-threatening side effects. The FDA expressed serious concerns about these side effects, and BMS released a statement that it was withdrawing the drug’s FDA application, resulting in the company’s stock price falling and losing nearly 30 percent of its value in a single day. After a five-year battle, we won relief on two critical fronts. First, we secured a \$185 million recovery for shareholders, and second, we negotiated major reforms to the company’s drug development process that will have a significant impact on consumers and medical professionals across the globe. Due to our advocacy, BMS must now disclose the results of clinical studies on all of its drugs marketed in any country.

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

As co-lead counsel representing co-lead plaintiff Boston Retirement System, Labaton Sucharow secured a \$170 million settlement on March 3, 2015, with Fannie Mae. The lead plaintiffs alleged that Fannie Mae and certain of its current and former senior officers violated federal securities laws, by making false and misleading statements concerning the company’s internal controls and risk management with respect to Alt-A and subprime mortgages. The lead plaintiffs also alleged that defendants made misstatements with respect to Fannie Mae’s core capital, deferred tax assets, other-than-temporary losses, and loss reserves. Labaton Sucharow successfully argued that investors’ losses were caused by Fannie Mae’s misrepresentations and poor risk management, rather than by the financial crisis. This settlement is a significant feat, particularly following the unfavorable result in a similar case involving investors in Fannie Mae’s sibling company, Freddie Mac.

▪ ***In re Broadcom Corp. Class Action Litigation, No. 06-cv-05036 (C.D. Cal.)***

Labaton Sucharow served as lead counsel on behalf of lead plaintiff New Mexico State Investment Council in a case stemming from Broadcom Corp.’s \$2.2 billion restatement of its historic financial statements for 1998-2005. In August 2010, the court granted final approval of a \$160.5 million settlement with Broadcom and two individual defendants to

resolve this matter. It is the second largest up-front cash settlement ever recovered from a company accused of options backdating. Following a Ninth Circuit ruling confirming that outside auditors are subject to the same pleading standards as all other defendants, the district court denied the motion by Broadcom's auditor, Ernst & Young, to dismiss on the ground of loss causation. This ruling is a major victory for the class and a landmark decision by the court—the first of its kind in a case arising from stock-options backdating. In October 2012, the court approved a \$13 million settlement with Ernst & Young.

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

Satyam Computer Services Ltd. (Satyam), referred to as “India’s Enron,” engaged in one of the most egregious frauds on record. In a case that rivals the Enron and Bernie Madoff scandals, the Firm represented lead plaintiff UK-based Mineworkers’ Pension Scheme, which alleged that Satyam, related entities, Satyam’s auditors, and certain directors and officers made materially false and misleading statements to the investing public about the company’s earnings and assets, artificially inflating the price of Satyam securities. On September 13, 2011, the court granted final approval to a settlement with Satyam of \$125 million and a settlement with the company’s auditor, PricewaterhouseCoopers, in the amount of \$25.5 million. Judge Barbara S. Jones commended lead counsel during the final approval hearing, noting the “**...quality of representation[,] which I found to be very high.**”

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

Labaton Sucharow served as co-lead counsel on behalf of co-lead plaintiff Steamship Trade Association/International Longshoremen’s Association Pension Fund, which alleged that Mercury Interactive Corp. (Mercury) backdated option grants used to compensate employees and officers of the company. Mercury’s former CEO, CFO, and General Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of the company’s shareholders and the investing public. On September 25, 2008, the court granted final approval of the \$117.5 million settlement.

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

Labaton Sucharow served as lead counsel and represented individuals and the proposed class in two related securities class actions brought against OppenheimerFunds, Inc., among others, and certain officers and trustees of two funds—Oppenheimer Core Bond Fund and Oppenheimer Champion Income Fund. The lawsuits alleged that the investment policies followed by the funds resulted in investor losses when the funds suffered drops in net asset value although they were presented as safe and conservative investments to consumers. In May 2011, the Firm achieved settlements amounting to \$100 million: \$52.5 million in *In re Oppenheimer Champion Fund Securities Fraud Class Actions* and a \$47.5 million settlement in *In re Core Bond Fund*.

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

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

## LEAD COUNSEL APPOINTMENTS IN ONGOING LITIGATION

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

- ***In re AT&T/DirecTV Now Securities Litigation, No. 19-cv-2892 (S.D.N.Y.)***

Labaton Sucharow represents Steamfitters Local 449 Pension Plan in this securities class action against AT&T and multiple executives and directors of the company alleging wide-ranging fraud, abusive sales tactics, and misleading statements to the market in regards to the streaming service, DirecTV Now.

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

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

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

Labaton Sucharow represents the West Virginia Investment Management Board against SCANA Corporation and certain of the company's senior executives in a securities class action alleging false and misleading statements about the construction of two new nuclear power plants.

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

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



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

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

## INNOVATIVE LEGAL STRATEGY

Bringing successful litigation against corporate behemoths during a time of financial turmoil presents many challenges, but Labaton Sucharow has kept pace with the evolving financial markets and with corporate wrongdoers' novel approaches to committing fraud.

Our Firm's innovative litigation strategies on behalf of clients include the following:

- ***Mortgage-Related Litigation***

In *In re Countrywide Financial Corporation Securities Litigation*, No. 07-cv-5295 (C.D. Cal.), our client's claims involved complex and data-intensive arguments relating to the mortgage securitization process and the market for residential mortgage-backed securities (RMBS) in the United States. To prove that defendants made false and misleading statements concerning Countrywide's business as an issuer of residential mortgages, Labaton Sucharow utilized both in-house and external expert analysis. This included state-of-the-art statistical analysis of loan level data associated with the creditworthiness of individual mortgage loans. The Firm recovered \$624 million on behalf of investors.

Building on its experience in this area, the Firm has pursued claims on behalf of individual purchasers of RMBS against a variety of investment banks for misrepresentations in the offering documents associated with individual RMBS deals.

- ***Options Backdating***

In 2005, Labaton Sucharow took a pioneering role in identifying options-backdating practices as both damaging to investors and susceptible to securities fraud claims, bringing a case, *In re Mercury Interactive Securities Litigation*, No. 05-cv-3395 (N.D. Cal.), that spawned many other plaintiff recoveries.

Leveraging its experience, the Firm went on to secure other significant options backdating settlements in, for example, *In re Broadcom Corp. Class Action Litigation*, No. 06-cv-5036 (C.D. Cal.) and *In re Take-Two Interactive Securities Litigation*, No. 06-cv-0803 (S.D.N.Y.). Moreover, in *Take-Two*, Labaton Sucharow was able to prompt the SEC to reverse its initial position and agree to distribute a disgorgement fund to investors, including class members. The SEC had originally planned for the fund to be distributed to the US Treasury. As a result, investors received a very significant percentage of their recoverable damages.

- ***Foreign Exchange Transactions Litigation***

The Firm has pursued and is pursuing claims for state pension funds against BNY Mellon and State Street Bank, the two largest custodian banks in the world. For more than a decade, these banks failed to disclose that they were overcharging their custodial clients for foreign exchange transactions. Given the number of individual transactions this practice affected, the damages caused to our clients and the class were significant.



Our claims, involving complex statistical analysis, as well as qui tam jurisprudence, were filed ahead of major actions by federal and state authorities related to similar allegations that commenced in 2011. Our team favorably resolved the BNY Mellon matter in 2012. The case against State Street Bank resulted in a \$300 million recovery.

## APPELLATE ADVOCACY AND TRIAL EXPERIENCE

When it is in the best interest of our clients, Labaton Sucharow repeatedly has demonstrated our willingness and ability to litigate these complex cases all the way to trial, a skill unmatched by other firms in the plaintiffs' bar.

Labaton Sucharow is one of the few firms in the plaintiffs' securities bar to have prevailed in a case before the US Supreme Court. In *Amgen Inc. v. Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455 (2013), the Firm persuaded the court to reject efforts to thwart the certification of a class of investors seeking monetary damages in a securities class action. This represents a significant victory for all plaintiffs in securities class actions.

In *In re Real Estate Associates Limited Partnership Litigation*, Labaton Sucharow's advocacy significantly increased the settlement value for shareholders. The defendants were unwilling to settle for an amount the Firm and its clients viewed as fair, which led to a six-week trial. The Firm and co-counsel ultimately obtained a landmark \$184 million jury verdict. The jury supported the plaintiffs' position that the defendants knowingly violated federal securities laws and that the general partner had breached his fiduciary duties to shareholders. The \$184 million award was one of the largest jury verdicts returned in any PSLRA action and one in which the class, consisting of 18,000 investors, recovered 100 percent of their damages.



## OUR CLIENTS

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Labaton Sucharow represents and advises the following institutional investor clients, among others:

- Arkansas Teacher Retirement System
- Baltimore County Retirement System
- Boston Retirement System
- California State Teachers' Retirement System
- Chicago Teachers' Pension Fund
- City of New Orleans Employees' Retirement System
- Connecticut Retirement Plans & Trust Funds
- Division of Investment of the New Jersey Department of the Treasury
- Genesee County Employees' Retirement System
- Illinois Municipal Retirement Fund
- Indiana Public Retirement System
- Los Angeles County Employees Retirement Association
- Macomb County Employees Retirement System
- Metropolitan Atlanta Rapid Transit Authority
- Michigan Retirement Systems
- New York State Common Retirement Fund
- Norfolk County Retirement System
- Office of the Ohio Attorney General and several of its Retirement Systems
- Oklahoma Firefighters Pension and Retirement System
- Plymouth County Retirement System
- Office of the New Mexico Attorney General and several of its Retirement Systems
- Public Employees' Retirement System of Mississippi
- Public Employee Retirement System of Idaho
- Rhode Island State Investment Commission
- Santa Barbara County Employees' Retirement System
- State of Oregon Public Employees' Retirement System
- State of Wisconsin Investment Board
- Utah Retirement Systems
- Virginia Retirement System
- West Virginia Investment Management Board



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## AWARDS AND ACCOLADES

### CONSISTENTLY RANKED AS A LEADING FIRM:



*The National Law Journal* "Elite Trial Lawyers" named Labaton Sucharow the **2020 Law Firm of the Year for Securities Litigation**. This marks the second consecutive year the Firm has received the prestigious award and the third time overall. The winner was chosen for their "**cutting-edge work on behalf of plaintiffs over the last 15 months**" as well as possessing "**a solid track record of client wins over the past three to five years.**" Additionally, the Firm was recognized as a finalist in the **Antitrust** and **Class Action** categories. The Firm was also recognized for its pro bono efforts, being named the **2020 Law Firm of the Year in the Immigration Category**.



*Benchmark Litigation US* recognized Labaton Sucharow both nationally and regionally, in Delaware and New York, in its 2020 edition and named nine partners as **Litigation Stars** and **Future Stars** across the U.S. The Firm received top rankings in the **Securities** and **Dispute Resolution** categories. The publication also named the Firm as one of the "**Top 10 Plaintiff's Firms**" in the nation.



Labaton Sucharow LLP

Labaton Sucharow is recognized by *Chambers USA 2020* as among the leading plaintiffs' firms in the nation, receiving a total of five practice group rankings and seven individual rankings. *Chambers* notes that the Firm is "**considered one of the greatest plaintiffs' firms,**" a "**very good and very thoughtful group.**" They "**take strong advocacy positions on behalf of their clients.**"



In 2019, Labaton Sucharow was a finalist for *Euromoney LMG's Women in Business Law Awards* in the North American Best Gender Diversity Initiative category. *Euromoney LMG* recognized the Firm's 2018 event "Institutional Investing in Women and Minority-Owned Investment Firms," which featured two all-female panels of the country's leading asset allocators and fund managers and addressed the importance of diversity investing.



Labaton Sucharow has named *Law360 Practice Group of the Year* in two categories, Class Action and Securities. The awards recognize the firms behind the wins that "resonated throughout the legal industry in the past year."



Labaton Sucharow has been recognized as one of the nation's best plaintiffs' firms by *The Legal 500*. In 2019, the Firm once again earned a Tier 1 ranking in **Securities Litigation** and, for the first time, was ranked Tier 1 for **M&A Litigation**. The Firm is also ranked for its excellence in the **Antitrust** category, and 12 Labaton Sucharow lawyers were ranked or recommended in the 2019 guide.



## COMMUNITY INVOLVEMENT

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To demonstrate our deep commitment to the community, Labaton Sucharow has devoted significant resources to pro bono legal work and public and community service.

### FIRM COMMITMENTS

#### **Immigration Justice Campaign**

Labaton Sucharow has partnered with the Immigration Justice Campaign to represent immigrants in their asylum proceedings.

#### **Brooklyn Law School Securities Arbitration Clinic**

Labaton Sucharow partnered with Brooklyn Law School to establish a securities arbitration clinic. The program, has run for five years, assisted defrauded individual investors who could not otherwise afford to pay for legal counsel and provided students with real-world experience in securities arbitration and litigation. Former partners Mark S. Arisohn and Joel H. Bernstein led the program as adjunct professors.

#### **Change for Kids**

Labaton Sucharow supports Change for Kids (CFK) as a Strategic Partner of P.S. 182 in East Harlem. One school at a time, CFK rallies communities to provide a broad range of essential educational opportunities to under-resourced public elementary schools. By creating inspiring learning environments at partner schools, CFK enables students to discover their unique strengths and develop the confidence to achieve.

#### **The Lawyers' Committee for Civil Rights Under Law**

The Firm is a long-time supporter of the Lawyers' Committee for Civil Rights Under Law (the Lawyers' Committee), a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy. The Lawyers' Committee involves the private bar in providing legal services to address racial discrimination.

Labaton Sucharow attorneys have contributed on the federal level to national voters' rights initiatives and US Supreme Court nominee analyses (analyzing nominees for their views on such topics as ethnic equality, corporate diversity, and gender discrimination).

#### **Sidney Hillman Foundation**

Labaton Sucharow supports the Sidney Hillman Foundation. Created in honor of the first president of the Amalgamated Clothing Workers of America, Sidney Hillman, the foundation supports investigative and progressive journalism by awarding monthly and yearly prizes. Partner Thomas A. Dubbs is frequently invited to present these awards.



## INDIVIDUAL ATTORNEY COMMITMENTS

Labaton Sucharow attorneys give of themselves in many ways, both by volunteering and by filling leadership positions in charitable organizations. A few of the awards our attorneys have received and organizations they are involved in are as follows:

- Awarded “Champion of Justice” by the Alliance for Justice, a national nonprofit association of over 100 organizations that represent a broad array of groups “committed to progressive values and the creation of an equitable, just, and free society.”
- Recipient of a Volunteer and Leadership Award from a tenants’ advocacy organization for work defending the rights of city residents and preserving their fundamental sense of public safety and home.
- Board Member of the Ovarian Cancer Research Fund—the largest private funding agency of its kind supporting research into a method of early detection and, ultimately, a cure for ovarian cancer.

Our attorneys have also contributed to or continue to volunteer with the following charitable organizations, among others:

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



## COMMITMENT TO DIVERSITY

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Diversity and inclusion are vital to our success as a national law firm, giving us diverse viewpoints from which to address our global clients' most pressing needs and complex legal challenges. At Labaton Sucharow, we are continually committed to developing initiatives that focus on our diversity and inclusion goals—which include recruiting, professional development, and attorney retention and advancement of diverse and minority candidates—while also raising awareness to the legal profession as a whole.

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*“There is strength in diversity. At Labaton Sucharow, we strive to improve diversity within the Firm’s ranks and the legal profession as a whole. We believe having a variety of viewpoints and backgrounds improves the quality of our work and makes us better lawyers.”*

— Gregory Ascioffa, Partner and Chair of the Diversity & Inclusion Committee

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## OUR MISSION

Over the last 50 years, our Firm has earned global recognition for extraordinary success in securing historic recoveries and reform for investors and consumers. We strive to achieve the same level of success in promoting fairness and equality within our ranks as we do within the industry, and believe that can only be achieved by building a team of professionals who have a broad range of backgrounds, orientations, and interests. The Firm’s leadership recognizes the importance of extending leadership positions to diverse lawyers and is committed to investing time and resources to recruit, mentor, promote and sponsor the next generation of diverse attorneys

## WOMEN’S INITIATIVE

### Women’s Networking and Mentoring Initiative

Labaton Sucharow became the first—and remains the only—securities litigation firm with a dedicated program that fosters growth, leadership, and success for its female attorneys. Established in 2007, Labaton Sucharow’s Women’s Initiative has hosted numerous educational seminars and networking events at the Firm. The goal of the Women’s Initiative is to promote the advancement and growth of female lawyers and staff in order to groom them into future leaders, as well as to collaborate with industry and thought leaders to promote the advancement of women as a whole. The Women’s Initiative does this in part by engaging phenomenal female speakers who can impart wisdom, share professional lessons learned, and serve as an inspiration to the group. The Women’s Initiative also hosts numerous workshops throughout the year that focus on enhancing professional development. Past workshops have focused on strengthening negotiation and public speaking skills, the importance of business development, and addressing gender inequality issues for women in the law.

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## Institutional Investing in Women and Minority-Led Investment Firms



In September 2018, Labaton Sucharow's Women's Initiative hosted its inaugural half-day event featuring two all-female panels on institutional investing in women and minority-led investment firms at the Four Seasons Hotel in New York. The event was designed to bring public pension funds, diverse managers, hedge funds, investment consultants, and legal counsel together to address the importance of diversity investing and to hear firsthand from leaders in the space as to how we can advance institutional investing in diverse investment firms. Noteworthy research has shown that diversity in background, gender, and ethnicity leads to smarter, more balanced, and better-informed decision making—which leads to generations of greater returns for all involved. And investing in women and minority-led firms creates a positive social impact, which can address economic imbalances that may be socially driven.

The event allows us to provide a platform for highly accomplished women within the pension and investment community to share their experiences and expertise in this area. One of the primary goals of this event is to foster awareness of diverse asset management opportunities and discuss the benefits of allocations to diverse firms, while highlighting best practices for enabling diverse managers to showcase their unique strengths to institutional investors. While diverse in other aspects, it is notable that the event features all-female panels, an important step to support the recognition and advancement of women and a trend that we hope and believe will continue to gain visibility at national and international conferences each year. In terms of its audience, the event has been targeted to those in the investment community who can continue a dialogue and advance the program's cause. As such, while very well-attended by guests from all over the country, the event is designed to be intimate in nature to allow for a free exchange of thoughts and ideas.

The inaugural event, which was co-chaired by partners Serena P. Hallowell, Carol C. Villegas, and Marisa N. DeMato, was shortlisted for *Euromoney's* Best Gender Diversity Initiative award and for a *Chambers USA* Diversity & Inclusion Award. Our Women's Initiative hosted its second annual event in September 2019 and is planning additional events in 2020.



## MINORITY SCHOLARSHIP AND INTERNSHIPS

Demonstrating our commitment to diversity in law and at Labaton Sucharow, we established the Labaton Sucharow Minority Scholarship and Internship in 2006.

Every year, we present a grant and a summer associate position to a first-year minority student from a metropolitan New York law school who has demonstrated academic excellence, community commitment, and superior personal integrity. Several past scholarship recipients have become full-time attorneys at the Firm.

The Firm also offers two annual summer internships to Hunter College students, who rotate through our various departments, shadowing Firm partners and getting a feel for the inner workings of a law firm.



## PROFESSIONAL PROFILES

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Labaton Sucharow employs 170 individuals, composed of 68 attorneys (including partners, of counsel, and associates), 22 staff attorneys, 37 legal support staff (including law clerks, case development professionals, investigators, data analysts, and paralegals), and 43 other support staff. The attorneys in the Firm's New York office are primarily dedicated to securities class action litigation and antitrust litigation services. The Firm's Case Evaluation Team, which includes attorneys dedicated to case development, in-house securities data analysts, and our internal investigative unit, also is based in the New York office. The Firm's case evaluation process is led by a team of seven attorneys focused on evaluating the merits of filed cases and developing proprietary new matters overlooked by other firms. We have four separate litigation teams dedicated to prosecuting securities class actions, which include several senior female partners. The personnel in Labaton Sucharow's Delaware office focuses on representing institutional investors in shareholder derivative, merger & acquisition, and corporate governance litigation. The focus of our Washington, D.C. office is U.S. and non-U.S. securities litigation and whistleblower representation.

### PROFESSIONAL PROFILES

#### Christopher J. Keller Chairman

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

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

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

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



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

Chris is a member of several professional groups, including the New York State Bar Association and the New York County Lawyers' Association. In 2017, he was elected to the Board of Directors for the New York City Bar Fund—a nonprofit 501(c)(3) arm of the New York City Bar Association aimed at engaging and supporting the legal profession in advancing social justice.

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

## Lawrence A. Sucharow Of Counsel and Senior Adviser

Lawrence A. Sucharow is Of Counsel and Senior Adviser in the New York office of Labaton Sucharow LLP. In this role, Larry focuses on counseling the Firm's large institutional clients, developing creative and compelling strategies to advance and protect clients' interests, and prosecuting and resolving many of the Firm's leading cases. With more than four decades of experience, Larry is an internationally recognized trial lawyer and a leader of the class action bar. Under his guidance, the Firm has earned its position as one of the top plaintiffs securities and antitrust class action firms in the world.

In recognition of his career accomplishments and standing in the securities bar, Larry was selected by *Law360* as one of the 10 Most Admired Securities Attorneys in the United States and as a Titan of the Plaintiffs Bar. Larry was honored with the *National Law Journal's* Elite Trial Lawyers Lifetime Achievement Award, and he is one of a small handful of plaintiffs' securities lawyers in the United States recognized by *Chambers & Partners USA*, *The Legal 500*, and *Benchmark Litigation* for his successes in securities litigation. Larry has been consistently recognized by *Lawdragon* as one of the country's leading lawyers, and in 2020, Larry was inducted in the Hall of Fame in recognition of his outstanding contributions as a leader and litigator. Referred to as a "legend" by his peers in *Benchmark Litigation*, *Chambers* describes him as an "immensely respected plaintiff advocate" and a "renowned figure in the securities plaintiff world...[that] has handled some of the most high-profile litigation in this field." According to *The Legal 500*, clients characterize Larry as "a strong and passionate advocate with a desire to win." In addition, Brooklyn Law School honored Larry as Alumni of the Year Award in 2012 for his notable achievements in the field.

Over the course of his career, Larry has prosecuted hundreds of cases and the Firm has recovered billions in groundbreaking securities, antitrust, business transaction, product liability, and other class actions. In fact, a landmark case tried in 2002—*In re Real Estate Associates Limited Partnership Litigation*—was the very first securities action successfully tried to a jury verdict following the enactment of the Private Securities Litigation Reform Act (PSLRA). Experience such as this has made Larry uniquely qualified to evaluate and successfully prosecute class actions.

Other representative matters include: *Arkansas Teacher Retirement System v. State Street Corporation* (\$300 million settlement); *In re CNL Resorts, Inc. Securities Litigation* (\$225 million settlement); *In re Paine Webber Incorporated Limited Partnerships Litigation* (\$200 million settlement); *In re Prudential Securities Incorporated Limited Partnerships Litigation* (\$110 million partial settlement); *In re Prudential Bache Energy Income Partnerships Securities Litigation* (\$91 million settlement); and *Shea v. New York Life Insurance Company* (over \$92 million settlement).

Larry's consumer protection experience includes leading the national litigation against the tobacco companies in *Castano v. American Tobacco Co.*, as well as litigating *In re Imprelis Herbicide Marketing, Sales Practices and Products Liability Litigation*. Currently, he plays a key role in *In re Takata Airbag Products Liability Litigation* and a nationwide consumer class action against



Volkswagen Group of America, Inc., arising out of the wide-scale fraud concerning Volkswagen's "Clean Diesel" vehicles. Larry further conceptualized the establishment of two Dutch foundations, or "Stichtingen" to pursue settlement of claims against Volkswagen on behalf of injured car owners and investors in Europe.

In 2018, Larry was appointed to serve on Brooklyn Law School's Board of Trustees. He has served a two-year term as President of the National Association of Shareholder and Consumer Attorneys, a membership organization of approximately 100 law firms that practice complex civil litigation including class actions. A longtime supporter of the Federal Bar Council, Larry serves as a trustee of the Federal Bar Council Foundation. He is a member of the Federal Bar Council's Committee on Second Circuit Courts, and the Federal Courts Committee of the New York County Lawyers' Association. He is also a member of the Securities Law Committee of the New Jersey State Bar Association and was the Founding Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association, a position he held from 1988-1994. In addition, Larry serves on the Advocacy Committee of the World Federation of Investors Corporation, a worldwide umbrella organization of national shareholder associations. In May 2013, Larry was elected Vice Chair of the International Financial Litigation Network, a network of law firms from 15 countries seeking international solutions to cross-border financial problems.

Larry earned his Juris Doctor, *cum laude*, from Brooklyn Law School. He received his bachelor's degree from Baruch School of the City College of the City University of New York.

## Eric J. Belfi

### Partner

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

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

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

Under Eric's direction, the Firm's Non-U.S. Securities Litigation Practice—one of the first of its kind—also serves as liaison counsel to institutional investors in such cases, where appropriate. Eric represents nearly 30 institutional investors in over a dozen non-U.S. cases against companies including SNC-Lavalin Group Inc. in Canada, Vivendi Universal, S.A. in France, OZ Minerals Ltd. in Australia, Lloyds Banking Group in the UK, and Olympus Corporation in Japan. Eric's international





experience also includes securing settlements on behalf of non-U.S. clients including the U.K.-based Mineworkers' Pension Scheme in *In re Satyam Computer Securities Services Ltd. Securities Litigation*, an action related to one of the largest securities fraud in India, which resulted in \$150.5 million in collective settlements. While representing two of Europe's leading pension funds, Deka Investment GmbH and Deka International S.A., Luxembourg, in *In re General Motors Corp. Securities Litigation*, Eric was integral in securing a \$303 million settlement in relation to multiple accounting manipulations and overstatements by General Motors.

As head of the Financial Products and Services Litigation Practice, Eric served as lead counsel to Arkansas Teacher Retirement System in a class action against State Street Corporation and certain affiliated entities alleging misleading actions in connection with foreign currency exchange trades, which resulted in a \$300 million recovery. He has also represented the Commonwealth of Virginia in its False Claims Act case against Bank of New York Mellon, Inc.

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

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

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

## Michael P. Canty

### Partner

Michael P. Canty is a Partner in the New York office of Labaton Sucharow LLP, where he serves as General Counsel and head of the Firm's Consumer Cybersecurity and Data Privacy group. Michael's practice focuses on complex fraud cases on behalf of institutional investors and consumers.

Recommended by *The Legal 500* and *Benchmark Litigation* as an accomplished litigator, Michael has more than a decade of trial experience in matters relating to national security, white collar crime, and cybercrime. Michael has been recognized as a Plaintiffs' Trailblazer and a NY Trailblazer by the *National Law Journal* and the *New York Law Journal*, respectively, for his impact on the practice and business of law.

Michael has successfully prosecuted a number of high-profile securities matters involving technology companies. Most notably, Michael is part of the litigation team that recently achieved a historic \$550 million settlement in the *In re Facebook Biometric Information Privacy Litigation* matter—the largest consumer data privacy settlement ever and one of the first cases asserting consumers' biometric privacy rights under Illinois' Biometric Information Privacy Act (BIPA). Michael has also led cases against AMD, a multi-national semiconductor company, and Ubiquiti Networks, Inc., a global software company. In both cases, Michael played a pivotal role in securing favorable settlements for investors.

Prior to joining Labaton Sucharow, Michael served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Eastern District of New York, where he was the Deputy Chief of the Office's General Crimes Section. During his time as a federal prosecutor, Michael also served in the Office's National Security and Cybercrimes Section. Prior to this, he served as an Assistant District Attorney



for the Nassau County District Attorney's Office, where he handled complex state criminal offenses and served in the Office's Homicide Unit.

Michael has extensive trial experience both from his days as a prosecutor in New York City for the U.S. Department of Justice and as a Nassau County Assistant District Attorney. Michael served as trial counsel in more than 35 matters, many of which related to violent crime, white-collar, and terrorism-related offenses. He played a pivotal role in *United States v. Abid Naseer*, where he prosecuted and convicted an al-Qaeda operative who conspired to carry out attacks in the United States and Europe. Michael also led the investigation in *United States v. Marcos Alonso Zea*, a case in which he successfully prosecuted a citizen for attempting to join a terrorist organization in the Arabian Peninsula and for providing material support for planned attacks.

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

Before becoming a prosecutor, Michael worked as a Congressional Staff Member for the U.S. House of Representatives. He primarily served as a liaison between the Majority Leader's Office and the Government Reform and Oversight Committee. During his time with the House of Representatives, Michael managed congressional oversight of the United States Postal Service and reviewed and analyzed counter-narcotics legislation as it related to national security matters.

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

## Marisa N. DeMato

### Partner

Marisa N. DeMato is a Partner in the New York office of Labaton Sucharow LLP. With more than 15 years of securities litigation experience, Marisa advises leading pension funds and other institutional investors in the United States and Canada on issues related to corporate fraud in U.S. securities markets and provides representation in complex civil actions. Her work focuses on monitoring the well-being of institutional investments and counseling clients on best practices in corporate governance of publicly traded companies. Marisa also advises municipalities and health plans on issues related to U.S. antitrust law and potential violations.

Marisa is known to be "the ultimate professional." *Lawdragon* has named her one of the 500 Leading Plaintiff Financial Lawyers in America, and as a result of her work, the Firm has received a Tier 1 ranking in Plaintiff Securities Litigation from *Legal 500*. According to clients, "It is because of Marisa that Labaton stands out from its competitors."

Marisa has achieved significant settlements on behalf of clients. She represented Seattle City Employees' Retirement System in a \$90 million derivative settlement that achieved historic corporate governance reforms from Twenty-First Century Fox, Inc., following allegations of workplace harassment incidents at Fox News. Marisa also represented the Oklahoma Firefighters Pension and Retirement System in an \$11 million settlement with Rent-A-Center, Inc. to resolve claims that the company made false and misleading statements regarding its point-of-sale information management system. In *In re Walgreen Co. Derivative Litigation*, she served as legal adviser to the West Palm



Beach Police Pension Fund and secured significant corporate governance reforms and extended Drug Enforcement Agency commitments from Walgreens in response to the company's violation of the U.S. Controlled Substances Act.

Marisa is one of the Firm's leading advocates for institutional investing in women and minority-led firms. Since 2018, Marisa serves as co-chair of the Firm's annual Women's Initiative Forum, which has been recognized by *Euromoney* and *Chambers USA* as one of the best gender diversity initiatives. Marisa is instrumental in the development and execution of these events, and the programs have been praised by attendees for offering insightful discussions on how pension funds and other institutional investors can provide opportunities for women and minority-owned firms.

An accomplished speaker, Marisa frequently lectures on topics pertaining to securities fraud litigation, fiduciary responsibility, and corporate governance issues. Marisa has spoken widely on the subprime mortgage crisis and its disastrous effect on the pension fund community in the United States, as well as on the global implications and related fraud to institutional investors in Italy, France, and the U.K. She has also presented on issues arising from the federal regulatory response to the financial crisis, including implications of the Dodd-Frank Act and the national debate on executive compensation and proxy access for shareholders. Marisa has testified before the Texas House of Representatives Pensions Committee on the changing legal landscape for public pensions following the Supreme Court's *Morrison* decision and best practices for non-U.S. investment recovery. Her skillful communication also extends to her interactions with clients. "Marisa stands out as the most effective communicator in regards to our portfolio. She will always keep us informed as to what cases are out there, how solid the merits of the case are, and our potential success as a lead plaintiff."

Prior to joining Labaton Sucharow, Marisa worked for a nationally recognized securities litigation firm and devoted a substantial portion of her time to litigating securities, derivatives, mergers and acquisitions, and consumer fraud. Over the course of those eight years, she represented numerous pension funds, municipalities, and individual investors throughout the U.S. and was an integral member of legal teams that secured multimillion dollar settlements, including *In re Managed Care Litigation* (\$135 million recovery); *Cornwell v. Credit Suisse Group* (\$70 million recovery); *Michael v. SFBC International, Inc.* (\$28.5 million recovery); *Ross v. Career Education Corporation* (\$27.5 million recovery); and *Village of Dolton v. Taser International Inc.* (\$20 million recovery). Early in her career, Marisa was featured on the sixth season of NBC's "The Apprentice." As a result of her role on "The Apprentice," Marisa has appeared in numerous news media outlets, such as *The Wall Street Journal*, *People*, and various national legal journals.

Marisa is an active member of the National Association of Public Pension Attorneys (NAPPA) and the National Association of Securities Professionals (NASP). She is also a member of the Federal Bar Council, an organization of lawyers dedicated to promoting excellence in federal practice and fellowship among federal practitioners.

Marisa earned her Juris Doctor from the University of Baltimore School of Law. She received her Bachelor of Arts from Florida Atlantic University.

## Thomas A. Dubbs

### Partner

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

Tom is recognized as a leading securities class action attorney and has been named a top litigator by *Chambers & Partners* for 10 consecutive years. In addition to his *Chambers & Partners* recognition,



Tom was named a Leading Lawyer by *The Legal 500* and inducted into its Hall of Fame, an honor presented to only three other plaintiffs securities litigation lawyers “who have received constant praise by their clients for continued excellence.” *Law360* also named him an MVP of the Year for distinction in class action litigation, and he has been recognized by *The National Law Journal*, *Lawdragon 500*, and *Benchmark Litigation* as a Securities Litigation Star. In addition, Tom has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

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

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

Due to his reputation in securities law, Tom frequently lectures to institutional investors and other groups, such as the Government Finance Officers Association, the National Conference on Public Employee Retirement Systems, and the Council of Institutional Investors. He is a prolific author of articles related to his field, including “Textualism and Transnational Securities Law: A Reappraisal of Justice Scalia’s Analysis in *Morrison v. National Australia Bank*,” which he penned for the *Southwestern Journal of International Law*. He has also written several columns in U.K. publications regarding securities class actions and corporate governance.

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

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

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



## Christine M. Fox

### Partner

Christine M. Fox is a Partner in the New York office of Labaton Sucharow LLP. With more than 20 years of securities litigation experience, Christine prosecutes complex securities fraud cases on behalf of institutional investors.

Christine is actively involved in litigating matters against Molina Healthcare, Hain Celestial, Avon, Adient, AT&T, and Apple. She has played a pivotal role in securing favorable settlements for investors in class actions against Barrick Gold Corporation, one of the largest gold mining companies in the world (\$140 million recovery); CVS Caremark, the nation's largest pharmacy retail chain (\$48 million recovery); Nu Skin Enterprises, a multilevel marketing company (\$47 million recovery); and Intuitive Surgical, a manufacturer of robotic-assisted technologies for surgery (\$42.5 million recovery).

Christine is actively involved in the Firm's pro bono immigration program and recently reunited a father and child separated at the border. She is currently working on their asylum application.

Prior to joining the Firm, Christine worked at a national litigation firm focusing on securities, antitrust, and consumer litigation in state and federal courts. She played a significant role in securing class action recoveries in a number of high-profile securities cases, including *In re Merrill Lynch Co., Inc. Research Reports Securities Litigation* (\$475 million recovery); *In re Informix Corp. Securities Litigation* (\$136.5 million recovery); *In re Alcatel Alsthom Securities Litigation* (\$75 million recovery); and *In re Ambac Financial Group, Inc. Securities Litigation* (\$33 million recovery).

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

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

Christine is conversant in Spanish.

## Jonathan Gardner

### Partner

Jonathan Gardner is a Partner in the New York office of Labaton Sucharow LLP and serves as Head of Litigation for the Firm. With more than 28 years of experience, Jonathan oversees all of the Firm's litigation matters, including prosecuting complex securities fraud cases on behalf of institutional investors.

A *Benchmark Litigation* "Star" acknowledged by his peers as "engaged and strategic," Jonathan has also been named an MVP by *Law360* for securing hard-earned successes in high-stakes litigation and complex global matters. He is recommended by *The Legal 500*, whose sources remarked on Jonathan's ability to "understand the unique nature of complex securities litigation and strive for practical yet results-driven outcomes."

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



against Carter's and certain officers, as well as its auditing firm PricewaterhouseCoopers); *In re Aeropostale Inc. Securities Litigation* (\$15 million recovery); *In re Lender Processing Services Inc.* (\$13.1 million recovery); and *In re K-12, Inc. Securities Litigation* (\$6.75 million recovery).

Jonathan has led the Firm's representation of investors in many high-profile cases including *Rubin v. MF Global Ltd.*, which involved allegations of material misstatements and omissions in a Registration Statement and Prospectus issued in connection with MF Global's IPO. The case resulted in a recovery of \$90 million for investors. Jonathan also represented lead plaintiff City of Edinburgh Council as Administering Authority of the Lothian Pension Fund in *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in settlements exceeding \$600 million against Lehman Brothers' former officers and directors, Lehman's former public accounting firm, as well the banks that underwrote Lehman Brothers' offerings. In representing lead plaintiff Massachusetts Bricklayers and Masons Trust Funds in an action against Deutsche Bank, Jonathan secured a \$32.5 million recovery for a class of investors injured by the bank's conduct in connection with certain residential mortgage-backed securities.

Jonathan has also been responsible for prosecuting several of the Firm's options backdating cases, including *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million settlement); *In re SafeNet, Inc. Securities Litigation* (\$25 million settlement); *In re Semtech Securities Litigation* (\$20 million

settlement); and *In re MRV Communications, Inc. Securities Litigation* (\$10 million settlement). He also was instrumental in *In re Mercury Interactive Corp. Securities Litigation*, which settled for \$117.5 million, one of the largest settlements or judgments in a securities fraud litigation based on options backdating. Jonathan also represented the Successor Liquidating Trustee of Lipper Convertibles, a convertible bond hedge fund, in actions against the fund's former independent auditor and a member of the fund's general partner as well as numerous former limited partners who received excess distributions. He successfully recovered over \$5.2 million for the Successor Liquidating Trustee from the limited partners and \$29.9 million from the former auditor.

Jonathan is a member of the Federal Bar Council, New York State Bar Association, and the Association of the Bar of the City of New York.

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

## David Goldsmith Partner

David J. Goldsmith is a Partner in the New York office of Labaton Sucharow LLP. A principal litigator at the Firm, David is responsible for the Firm's appellate practice and has briefed and argued multiple appeals in the federal Courts of Appeals and state appellate courts. David has extensive experience representing public and private institutional investors in a variety of securities and class action litigations.

David is recognized by *Lawdragon* as "among the leading plaintiff financial lawyers nationwide" and has been recommended by *The Legal 500* as part of the Firm's top-tier plaintiffs' team in securities class action litigation.

David's significant pending cases include federal appeals of dismissed actions against Molina Healthcare and Skechers U.S.A., and appeals by an intervenor challenging a landmark class action settlement with Endo Pharmaceuticals in state court. In the Supreme Court of the United States, David acted as co-counsel for AARP and AARP Foundation as *amici curiae* in *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018), and as co-counsel for a group of federal jurisdiction and securities law



scholars as *amici curiae* in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018).

As a trial lawyer, David was an integral member of the team representing the Arkansas Teacher Retirement System in a significant action alleging unfair and deceptive practices by State Street Bank in connection with foreign currency exchange trades executed for its custodial clients. The resulting \$300 million settlement is the largest class action settlement ever reached under the Massachusetts consumer protection statute, and one of the largest class action settlements reached in the First Circuit. David also represented the New York State Common Retirement Fund and New York City pension funds as lead plaintiffs in the landmark *In re Countrywide Financial Corp. Securities Litigation*, which settled for \$624 million. He has successfully represented state and county pension funds in class actions in California state court arising from the IPOs of technology companies, and recovered tens of millions of dollars for a large German bank and a major Irish special-purpose vehicle in individual actions alleging fraud in connection with the sale of residential mortgage-backed securities.

David regularly advises the Genesee County (Michigan) Employees' Retirement Commission with respect to potential securities, shareholder, and antitrust claims, and represented the System in a major action charging a conspiracy by some of the world's largest banks to manipulate the U.S. Dollar ISDAfix benchmark interest rate. This case, which settled for a total of \$504.5 million, was featured in *Law360's* selection of the Firm as a Class Action Group of the Year for 2017.

David is an active member of several professional organizations, including The National Association of Shareholder & Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice complex civil litigation including class actions, the American Association for Justice, New York State Bar Association, and the Association of the Bar of the City of New York. David is a long-time tenor and board member with AmorArtis, a chamber chorus dedicated to illuminating the relationship between Renaissance, Baroque, and Contemporary music.

David earned his Juris Doctor from Benjamin N. Cardozo School of Law, Yeshiva University. During law school, David was Managing Editor of the *Cardozo Arts & Entertainment Law Journal* and served as a judicial intern to the Honorable Michael B. Mukasey, then a United States District Judge for the Southern District of New York. He received his bachelor's and master's degrees from the University of Pennsylvania.

## Serena P. Hallowell

### Partner

Serena P. Hallowell is a partner in the New York office of Labaton Sucharow and Head of the Direct Action Litigation Practice. Serena focuses on complex litigation, prosecuting securities fraud cases on behalf of some of the world's largest institutional investors, including pension funds, hedge funds, mutual funds, asset managers, and other large institutional investors. She also regularly advises and/or represents institutional investors who are seeking counsel on evaluating recovery opportunities in connection with fraud-related conduct. In addition to her active caseload, Serena serves as Co-Chair of the Firm's Women's Networking and Mentoring Initiative and oversees the Firm's summer associate and lateral hiring programs.

Serena is highly regarded as one of the elite securities lawyers in New York. She was selected to *The National Law Journal's* 2020 class of "Elite Women of the Plaintiffs Bar" for her innate ability to consistently excel in high-stakes matters on behalf of plaintiffs. She has been named a "Securities MVP" by *Law360*; a "Trailblazer" by *The National Law Journal*; and as a "Leading Lawyer in America" by *Lawdragon*. Serena has also been recommended in securities litigation by *The Legal 500*, named a "Future Star" by *Benchmark Litigation* and a "Rising Star" by *Law360*.



Serena is currently prosecuting cases against Valeant Pharmaceuticals and Endo International, among others. Recently, in Endo, the parties have announced an agreement to settle the matter for \$50 million. Also, in Valeant, Serena leads a team that won a significant motion in the District of New Jersey, when the court sustained claims arising under the NJ RICO Act in direct actions filed against Valeant.

Serena was part of a highly skilled team that reached a \$140 million settlement against one of the world's largest gold mining companies in *In re Barrick Gold Securities Litigation*. Playing a principal role in prosecuting *In re Computer Sciences Corporation Securities Litigation* in a "rocket docket" jurisdiction, she helped secure a settlement of \$97.5 million on behalf of lead plaintiff Ontario Teachers' Pension Plan Board, the third largest all cash settlement in the Fourth Circuit at the time. She was also instrumental in securing a \$48 million recovery in *Medoff v. CVS Caremark Corporation*, a \$42.5 million settlement in *In re Intuitive Surgical Securities Litigation*, and a \$41.5 million settlement in *In re NII Holdings, Inc. Securities Litigation*. Serena also has broad appellate and trial experience.

Serena earned her Juris Doctor from Boston University School of Law, where she served as the Note Editor for the *Journal of Science Technology Law*. She received her bachelor's degree from Occidental College.

Serena is a member of the New York City Bar Association, where she serves on the Securities Litigation Committee, the Federal Bar Council, the South Asian Bar Association, the National Association of Public Pension Attorneys (NAPPA), and the National Association of Women Lawyers (NAWL). Her pro bono work includes representing immigrant detainees in removal proceedings for the American Immigrant Representation Project and devoting time to the Securities Arbitration Clinic at Brooklyn Law School.

She is conversational in Urdu/Hindi.

## **Thomas G. Hoffman, Jr.**

### **Partner**

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

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

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

## **James W. Johnson**

### **Partner**

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





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

A recognized leader in his field, Jim has successfully litigated a number of complex securities and RICO class actions including: *In re Bear Stearns Companies, Inc. Securities Litigation* (\$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor); *In re HealthSouth Corp. Securities Litigation* (\$671 million settlement); *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)* (\$200 million settlement); *In re Bristol Myers Squibb Co. Securities Litigation* (\$185 million settlement), in which the court also approved significant corporate governance reforms and recognized plaintiff's counsel as "extremely skilled and efficient"; *In re Amgen Inc. Securities Litigation* (\$95 million settlement); *In re National Health Laboratories, Inc. Securities Litigation*, which resulted in a recovery of \$80 million in the federal action and a related state court derivative action; and *In re Vesta Insurance Group, Inc. Securities Litigation* (\$79 million settlement).

In *County of Suffolk v. Long Island Lighting Co.*, Jim represented the plaintiff in a RICO class action, securing a jury verdict after a two-month trial that resulted in a \$400 million settlement. The Second Circuit quoted the trial judge, Honorable Jack B. Weinstein, as stating "counsel [has] done a superb job [and] tried this case as well as I have ever seen any case tried." On behalf of the Chugach Native Americans, he also assisted in prosecuting environmental damage claims resulting from the Exxon Valdez oil spill.

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

Jim is a member of the American Bar Association and the Association of the Bar of the City of New York, where he served on the Federal Courts Committee, and he is a Fellow in the Litigation Council of America.

Jim has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

## Edward Labaton Partner

Edward Labaton is a partner in the New York office of Labaton Sucharow LLP. An accomplished trial and appellate lawyer, Ed has devoted his 50 years of practice to representing a full range of clients in class action and complex litigation matters in state and federal court.

Ed has played a leading role as plaintiffs' class counsel in a number of successfully prosecuted, high-profile cases, involving companies such as PepsiCo, Dun & Bradstreet, Financial Corporation of America, ZZZZ Best, Revlon, GAF Co., American Brands, Petro Lewis and Jim Walter, as well as several Big Eight (now Four) accounting firms. He has also argued appeals in state and federal courts, achieving results with important precedential value.

Ed has been President of the Institute for Law and Economic Policy (ILEP) since its founding in 1996. Each year, ILEP co-sponsors at least one symposium with a major law school dealing with issues relating to the civil justice system. In 2010, he was appointed to the newly formed Advisory Board of George Washington University's Center for Law, Economics, & Finance (C-LEAF), a think tank within the Law School, for the study and debate of major issues in economic and financial law confronting the United States and the globe. Ed is an Honorary Lifetime Member of the Lawyers' Committee for Civil Rights under Law, a member of the American Law Institute, and a life member of the ABA



Foundation. In addition, he has served on the Executive Committee and has been an officer of the Ovarian Cancer Research Fund since its inception in 1996.

Ed is the past Chairman of the Federal Courts Committee of the New York County Lawyers Association, and was a member of the Board of Directors of that organization. He is an active member of the Association of the Bar of the City of New York, where he was Chair of the Senior Lawyers' Committee and served on its Task Force on the Role of Lawyers in Corporate Governance. He has also served on its Federal Courts, Federal Legislation, Securities Regulation, International Human Rights, and Corporation Law Committees. He also served as Chair of the Legal Referral Service Committee, a joint committee of the New York County Lawyers' Association and the Association of the Bar of the City of New York. He has been an active member of the American Bar Association, the Federal Bar Council and the New York State Bar Association, where he has served as a member of the House of Delegates.

Ed earned his LL.B. from Yale University. He received his B.B.A. from City College of New York.

For more than 30 years, Ed has lectured on a variety of topics including federal civil litigation, securities litigation and corporate governance. In 2015, he was the recipient of the Alliance for Justice's Champion of Justice Award, given to outstanding individuals whose life and work exemplifies the principle of equal justice.

## Francis P. McConville

### Partner

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

Francis has played a key role in filing several matters on behalf of the Firm including, *In re PG&E Corporation Securities Litigation*; *In re SCANA Securities Litigation*; *Steamfitters Local 449 Pension Plan v. Skechers U.S.A., Inc.*; and *In re Nielsen Holdings PLC Securities Litigation*.

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

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

## Domenico (Nico) Minerva

### Partner

Domenico "Nico" Minerva is a Partner in the New York office of Labaton Sucharow LLP. A former financial advisor, his work focuses on securities, antitrust, and consumer class actions and shareholder derivative litigation, representing Taft-Hartley and public pension funds across the



country. Nico advises leading pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets.

Nico is described by clients as “always there for us” and known to provide “an honest answer and describe all the parameters and/or pitfalls of each and every case.” As a result of his work, the Firm has received a Tier 2 ranking in Antitrust Civil Litigation and Class Actions from *Legal 500*.

Nico’s extensive securities litigation experience includes the case against global security systems company Tyco and co-defendant PricewaterhouseCoopers (*In re Tyco International Ltd., Securities Litigation*), which resulted in a \$3.2 billion settlement—the largest single-defendant settlement in post-PSLRA history. He also has counseled companies and institutional investors on corporate governance reform.

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

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

An accomplished speaker, Nico has given numerous presentations to investors on topics related to corporate fraud, wrongdoing, and waste. He is also an active member of the National Association of Public Pension Plan Attorneys.

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

## Corban S. Rhodes

### Partner

Corban S. Rhodes is a partner in the New York office of Labaton Sucharow LLP. Corban focuses on prosecuting consumer cybersecurity and data privacy litigation, as well as complex securities fraud cases on behalf of institutional investors.

Corban has been recognized as a “Rising Star” in Consumer Protection Law by *Law360*. Corban was also recognized as a New York Metro “Rising Star,” by *Super Lawyers*, a Thomson Reuters publication, noting his experience and contribution to the securities litigation field.

Corban is actively pursuing a number of matters involving consumer data privacy, including cases of alleged misuse or misappropriation of consumer data. Most notably, Corban is part of the litigation team that recently achieved a historic \$550 million settlement in the *In re Facebook Biometric Information Privacy Litigation* matter—the largest consumer data privacy settlement ever, and one of the first cases asserting biometric privacy rights of consumers under Illinois’ Biometric Information Privacy Act (BIPA). Corban has also litigated cases of negligence or other malfeasance leading to data



breaches, including the largest known data breach in history, *In re Yahoo! Inc. Customer Data Breach Security Litigation*, affecting nearly 3 billion consumers.

Corban maintains an active practice representing shareholders litigating fraud-based claims and has successfully litigated dozens of cases against most of the largest Wall Street banks in connection with their underwriting and securitization of mortgage-backed securities leading up to the financial crisis. Currently, Corban is litigating the massive high frequency trading scandal in *City of Providence, et al. v. BATS Global Markets, et al.*, alleging preferential treatment of trading orders for certain customers of the large securities exchanges. Corban is also actively prosecuting several securities fraud actions against pharmaceutical giant AbbVie Inc., stemming from alleged misrepresentations in connection with their failed \$54 billion merger with UK-based Shire.

Prior to joining Labaton Sucharow, Corban was an associate at Sidley Austin LLP where he practiced complex commercial litigation and securities regulation and served as the lead associate on behalf of large financial institutions in several investigations by regulatory and enforcement agencies related to the financial crisis.

Corban received a Juris Doctor, *cum laude*, from Fordham University School of Law, where he received the 2007 Lawrence J. McKay Advocacy Award for excellence in oral advocacy and was a board member of the Fordham Moot Court team. He earned his Bachelor of Arts, *magna cum laude*, in History from Boston College.

Corban has served on the Securities Litigation Committee of the New York City Bar Association and is also a past recipient of the Thurgood Marshall Award for his pro bono representation on a habeas petition of a capital punishment sentence.

## Michael H. Rogers, Partner

Michael H. Rogers is a Partner in the New York office of Labaton Sucharow LLP. An experienced litigator, Mike focuses on prosecuting complex securities fraud cases on behalf of institutional investors. He is actively involved in prosecuting *In re Goldman Sachs, Inc. Securities Litigation*; *3226701 Canada, Inc. v. Qualcomm, Inc.*; *In re SCANA Securities Litigation*; *Murphy v. Precision Castparts Corp.*; and *Vancouver Asset Alumni Holdings, Inc. v. Daimler AG*.

Mike is a member of the lead counsel teams in federal class actions against Countrywide Financial Corp. (\$624 million settlement), HealthSouth Corp. (\$671 million settlement), State Street (\$300 million settlement), Mercury Interactive Corp. (\$117.5 million settlement), and Computer Sciences Corp. (\$97.5 million settlement).

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

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

Mike is proficient in Spanish.



## Ira A. Schochet, Partner

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

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

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

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

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

From 1996 through 2012, Ira served as Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. During his tenure, he has served on the Executive Committee of the Section and authored important papers on issues relating to class action procedure including revisions proposed by both houses of Congress and the Advisory Committee on Civil Procedure of the United States Judicial Conference. Examples include: “Proposed Changes in Federal Class Action Procedure”; “Opting Out On Opting In,” and “The Interstate Class Action Jurisdiction Act of 1999.”

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

Ira has lectured extensively on securities litigation at seminars throughout the country.



## David J. Schwartz Partner

David J. Schwartz is a partner in the New York office of Labaton Sucharow LLP. David focuses on event driven and special situation litigation using legal strategies to enhance clients' investment return.

David has been named a "Future Star" by Benchmark Litigation. He was also selected to Benchmark's "40 & Under Hot List," which recognized him as one of the nation's most accomplished partners under 40 years old.

David's extensive experience includes prosecuting, as well as defending against, securities and corporate governance actions for an array of institutional clients including hedge funds, merger arbitrage investors, pension funds, mutual funds, and asset management companies. He played a pivotal role in several securities class action cases, including against real estate service provider Altisource Portfolio Solutions, where he helped achieve a \$32 million cash settlement, and investment management firm Virtus Investment Partners, which resulted in a \$22 million settlement. David has also done substantial work in mergers and acquisitions appraisal litigation, and direct action/opt-out litigation.

David earned his Juris Doctor from Fordham University School of Law, where he served as an editor of the *Urban Law Journal*. He received his bachelor's degree, with honors, from the University of Chicago.

## Irina Vasilchenko, Partner

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

Irina is recognized as an up-and-coming litigator whose legal accomplishments transcend her age. Irina has been named to *Benchmark Litigation's* 40 & Under Hot List and has been recognized as a "Rising Star" by *Law360*.

Since joining Labaton Sucharow, she has been actively involved in achieving significant settlements for the Firm's clients, including *In re Massey Energy Co. Securities Litigation* (\$265 million all-cash settlement), *In re Fannie Mae 2008 Securities Litigation* (\$170 million settlement), *In re Amgen Inc. Securities Litigation* (\$95 million settlement), and *In re Hewlett-Packard Company Securities Litigation* (\$57 million settlement).

Prior to joining Labaton Sucharow, Irina was an Associate in the general litigation practice group at Ropes & Gray LLP, where she focused on securities litigation.

Irina maintains a commitment to pro bono legal service including, most recently, representing an indigent defendant in a criminal appeal case before the New York First Appellate Division, in association with the Office of the Appellate Defender. As part of this representation, she argued the appeal before the First Department panel.

Irina is a member of the New York City Bar Association's Women in the Courts Task Force.

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



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

Irina is fluent in Russian and proficient in Spanish.

## Carol C. Villegas

### Partner

Carol C. Villegas is a Partner in the New York office of Labaton Sucharow LLP. Carol focuses on prosecuting complex securities fraud cases on behalf of institutional investors. Leading one of the Firm's litigation teams, she is actively overseeing litigation against AT&T, Marriott, Nielsen Holdings, Skechers, U.S.A., Inc., Shanda Games, and Danske Bank. In addition to her litigation responsibilities, Carol holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee and serving as Co-Chair of the Firm's Women's Networking and Mentoring Initiative.

Carol's skillful handling of discovery work, her development of innovative case theories in complex cases, and her adept ability during oral argument has earned her accolades from the *New York Law Journal* as a "Top Woman in Law." *The National Law Journal* recognized Carol's superb ability to excel in high-stakes matters on behalf of plaintiffs and selected her to its 2020 class of "Elite Women of the Plaintiffs Bar." She has also been recognized as a "Future Star" by *Benchmark Litigation* and a "Next Generation Lawyer" by *The Legal 500*, where clients praised her for helping them "better understand the process and how to value a case."

Carol has played a pivotal role in securing favorable settlements for investors, including AMD, a multi-national semiconductor company; Liquidity Services, an online auction marketplace; Aeropostale, a leader in the international retail apparel industry; ViroPharma Inc., a biopharmaceutical company; and Vocera, a healthcare communications provider, among others. Carol has also helped revive a securities class action against LifeLock after arguing an appeal before the Ninth Circuit. A true advocate for her clients, Carol's argument in the case against Vocera resulted in a ruling from the bench, denying defendants' motion to dismiss in that case.

Prior to joining Labaton Sucharow, Carol served as the Assistant District Attorney in the Supreme Court Bureau for the Richmond County District Attorney's office, where she took several cases to trial. She began her career as an Associate at King & Spalding LLP, where she worked as a federal litigator.

Carol is a member of the Executive Council for the New York State Bar Association's Committee on Women in the Law and a Board Member of the City Bar Fund, the nonprofit 501(c)(3) arm of the New York City Bar Association. She is also a member of the National Association of Public Pension Attorneys, the National Association of Women Lawyers, and the Hispanic National Bar Association.

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

She is fluent in Spanish.

## Ned Weinberger

### Partner

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



shareholder rights, Ned focuses on representing investors in corporate governance and transactional matters, including class action and derivative litigation.

Highly regarded in his practice, Ned has been recognized by *Chambers & Partners USA* in the Delaware Court of Chancery and was named “Up and Coming” for three consecutive years—the by-product of his impressive range of practice areas. He has also been named a “Future Star” by *Benchmark Litigation* and a “Leading Lawyer” by *The Legal 500*, whose sources remarked that “Ned Weinberger is one of the best plaintiffs’ lawyers in Delaware” and that “he commands respect and generates productive discussion where it is needed.”

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

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

Prior to joining Labaton Sucharow, Ned was a litigation associate at Grant & Eisenhofer P.A., where he gained substantial experience in all aspects of investor protection, including representing shareholders in matters relating to securities fraud, mergers and acquisitions, and alternative entities. Representative of Ned’s experience in the Delaware Court of Chancery is *In re Barnes & Noble Stockholders Derivative Litigation*, in which Ned assisted in obtaining approximately \$29 million in settlements on behalf of Barnes & Noble investors. Ned was also part of the litigation team in *In re Clear Channel Outdoor Holdings, Inc. Shareholder Litigation*, the settlement of which provided numerous benefits for Clear Channel Outdoor Holdings and its shareholders, including, among other things, a \$200 million cash dividend to the company’s shareholders.

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

## Mark Willis

### Partner

With nearly three decades of experience, Mark S. Willis’ practice focuses on domestic and international securities litigation. Mark advises leading pension funds, investment managers, and other institutional investors from around the world on their legal remedies when impacted by securities fraud and corporate governance breaches. Mark represents clients in U.S. litigation and maintains a significant practice advising clients of their legal rights abroad to pursue securities-related claims.

Mark represents institutions from the United Kingdom, Spain, the Netherlands, Denmark, Germany, Belgium, Canada, Japan, and the United States in a novel lawsuit in Texas against BP plc to salvage claims that were dismissed from the U.S. class action because the claimants’ BP shares were purchased abroad (thus running afoul of the Supreme Court’s *Morrison* rule that precludes a U.S.





legal remedy for such shares). These previously dismissed claims have now been sustained and are being pursued under English law in a Texas federal court.

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

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

In the corporate governance arena, Mark has represented both U.S. and overseas investors. In a shareholder derivative action against Abbott Laboratories' directors, he charged the defendants with mismanagement and fiduciary breaches for causing or allowing the company to engage in a 10-year off-label marketing scheme, which had resulted in a \$1.6 billion payment pursuant to a Justice Department investigation—at the time the second largest in history for a pharmaceutical company. In the derivative action, the company agreed to implement sweeping corporate governance reforms, including an extensive compensation clawback provision going beyond the requirements under the Dodd-Frank Act, as well as the restructuring of a board committee and enhancing the role of the Lead Director. In the *Parmalat* case, known as the “Enron of Europe” due to the size and scope of the fraud, Mark represented a group of European institutions and eventually recovered nearly \$100 million and negotiated governance reforms with two large European banks who, as part of the settlement, agreed to endorse their future adherence to key corporate governance principles designed to advance investor protection and to minimize the likelihood of future deceptive transactions. Securing governance reforms from a defendant that was not an issuer was a first at that time in a shareholder fraud class action.

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

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

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



## Nicole M. Zeiss

### Partner

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

Nicole was part of the Labaton Sucharow team that successfully litigated the \$185 million settlement in *In re Bristol-Myers Squibb Securities Litigation*. She played a significant role in *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million settlement). Nicole also litigated on behalf of investors who have been damaged by fraud in the telecommunications, hedge fund, and banking industries. Over the past decade, Nicole has been actively involved in finalizing settlements with Massey Energy Company (\$265 million), Fannie Mae (\$170 million), and Schering-Plough (\$473 million), among many others.

Prior to joining Labaton Sucharow, Nicole practiced poverty law at MFY Legal Services. She also worked at Gaynor & Bass practicing general complex civil litigation, particularly representing the rights of freelance writers seeking copyright enforcement.

Nicole maintains a commitment to pro bono legal services by continuing to assist mentally ill clients in a variety of matters—from eviction proceedings to trust administration.

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

Nicole is a member of the Association of the Bar of the City of New York.

## Rachel A. Avan

### Of Counsel

Rachel A. Avan is Of Counsel in the New York office of Labaton Sucharow LLP. With more than a decade of experience in securities litigation, she focuses on advising institutional investors regarding fraud-related losses on securities and the investigation and development of U.S. and non-U.S. securities fraud class, group, and individual actions.

Rachel has been consistently recognized as a New York Metro "Rising Star" in securities litigation by Super Lawyers, a Thomson Reuters publication.

Rachel has extensive experience prosecuting complex securities fraud cases on behalf of institutional investors. She was an active member of the team prosecuting the securities fraud class action against Satyam Computer Services, Inc., in *In re Satyam Computer Services Ltd. Securities Litigation*, dubbed "India's Enron." The case achieved a \$150.5 million settlement for investors from the company and its auditors. She also had an instrumental part in the pleadings in a number of class actions, including *In re Barrick Gold Securities Litigation* (\$140 million settlement); *Freedman v. Nu Skin Enterprises, Inc.* (\$47 million recovery); and *Iron Workers District Council of New England Pension Fund v. NII Holdings, Inc.* (\$41.5 million recovery).

Rachel also has spearheaded the filing of more than 75 motions for lead plaintiff appointment in U.S. securities class actions, including *In re Facebook, Inc. IPO Securities & Derivative Litigation*; *In re Computer Sciences Corporation Securities Litigation*; *In re Petrobras Securities Litigation*; *In re Spectrum Pharmaceuticals, Inc. Securities Litigation*; *Weston v. RCS Capital Corporation*; and *Cummins v. Virtus Investment Partners Inc.*



In addition to her securities class action litigation experience, Rachel also played a role in prosecuting several of the Firm's derivative matters, including *In re Barnes & Noble Stockholder Derivative Litigation*; *In re Coca-Cola Enterprises Inc. Shareholders Litigation*; and *In re The Student Loan Corporation Litigation*.

This extensive experience has aided Rachel in her work with the Firm's Non-U.S. Securities Litigation Practice, which is dedicated to analyzing the merits, risks, and benefits of potential claims outside the United States. She has played a key role in ensuring that the Firm's clients receive substantial recoveries through non-U.S. securities litigation.

Rachel brings valuable insight into corporate matters, having previously served as an Associate at a corporate law firm, where she counseled domestic and international public companies regarding compliance with federal and state securities laws. Her analysis of corporate securities filings is also informed by her previous work assisting with the preparation of responses to inquiries by the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority.

Rachel earned her Juris Doctor from Benjamin N. Cardozo School of Law. She received her master's degree in English and American Literature from Boston University and her bachelor's degree, *cum laude*, in Philosophy and English from Brandeis University.

Rachel is proficient in Hebrew.

## Mark Bogen Of Counsel

Mark Bogen is Of Counsel in the New York office of Labaton Sucharow LLP. Mark advises leading pension funds and other institutional investors on issues related to corporate fraud in domestic and international securities markets. His work focuses on securities, antitrust, and consumer class action litigation, representing Taft-Hartley and public pension funds across the country.

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

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

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

## Jeffrey A. Dubbin Of Counsel

Jeffrey A. Dubbin is Of Counsel in the New York office of Labaton Sucharow LLP. Jeff focuses on prosecuting complex securities fraud cases on behalf of institutional investors. He is actively involved in prosecuting notable class actions, such as *In re Goldman Sachs Group, Inc. Securities Litigation, Inc.*; *In re Eaton Corporation Securities Litigation*; and *In re PG&E Corporation Securities Litigation*.



Jeff joined Labaton Sucharow following clerkships with the Honorable Marilyn L. Huff and the Honorable Larry Alan Burns in the U.S. District Court for the Southern District of California. Prior to that, he worked as legal counsel for the investment management firm Matrix Capital Management.

Jeff received his Juris Doctor from the University of Pennsylvania Law School and his Bachelor of Arts, *magna cum laude*, from Harvard University.

## Joseph H. Einstein, Of Counsel

Joseph H. Einstein is Of Counsel in the New York office of Labaton Sucharow LLP. A seasoned litigator, Joe represents clients in complex corporate disputes, employment matters, and general commercial litigation. He has litigated major cases in state and federal courts and has argued many appeals, including appearing before the U.S. Supreme Court.

Joe has an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

His experience encompasses extensive work in the computer software field including licensing and consulting agreements. Joe also counsels and advises business entities in a broad variety of transactions.

Joe serves as a Mediator for the U.S. District Court for the Southern District of New York. He has served as a Commercial Arbitrator for the American Arbitration Association and currently is a FINRA Arbitrator and Mediator. Joe is a former member of the New York State Bar Association Committee on Civil Practice Law and Rules, and the Council on Judicial Administration of the Association of the Bar of the City of New York. He also is a former member of the Arbitration Committee of the Association of the Bar of the City of New York.

Joe received his Bachelor of Laws and Master of Laws from New York University School of Law. During his time at NYU, Joe was a Pomeroy and Hirschman Foundation Scholar and served as an Associate Editor of the *New York University Law Review*.

## John J. Esmay, Of Counsel

John J. Esmay is Of Counsel in the New York office of Labaton Sucharow LLP. John focuses on prosecuting complex securities fraud cases on behalf of institutional investors.

Prior to joining Labaton Sucharow, John was an Associate at a white collar defense firm where he assisted in all aspects of complex litigation including securities fraud, banking regulation violations, and other regulatory matters. John successfully defended a disciplinary hearing brought by the Financial Industry Regulatory Authority's (FINRA) enforcement division for allegations of insider trading and securities fraud. John helped reach a successful conclusion of a criminal prosecution of a trader for one of the nation's largest financial institutions involved in a major bid-rigging scheme. He was also instrumental in clearing charges and settling a regulatory matter against a healthcare provider brought by the New York State Office of the Attorney General.

Prior to his white collar defense experience, John was an Associate at Hogan Lovells US LLP and litigated many large complex civil matters including securities fraud cases, antitrust violations, and intellectual property disputes.

John also served as a Judicial Clerk for the Honorable William H. Pauley III in the Southern District of New York.



John earned his Juris Doctor, *magna cum laude*, from Brooklyn Law School and his Bachelor of Science from Pomona College.

## Derrick B. Farrell Of Counsel

Derrick Farrell is Of Counsel in the Delaware office of Labaton Sucharow LLP. He focuses his practice on representing shareholders in appraisal, class, and derivative actions.

Derrick has substantial trial experience as both a petitioner and a respondent on a number of high-profile matters, including *In re Appraisal of Ancestry.com, Inc.*; *IQ Holdings, Inc. v. Am. Commercial Lines Inc.*; and *In re Cogent, Inc. Shareholder Litigation*. He has also argued before the Delaware Supreme Court on multiple occasions.

Prior to joining Labaton Sucharow, Derrick practiced with Latham & Watkins LLP, where he gained substantial insight into the inner workings of corporate boards and the role of investment bankers in a sale process. Derrick started his career as a Clerk for the Honorable Donald F. Parsons, Jr., Vice Chancellor, Court of Chancery of the State of Delaware.

He has guest lectured at Harvard University and co-authored numerous articles for publications including the *Harvard Law School Forum on Corporate Governance and Financial Regulation* and *PLI*.

Derrick received his Juris Doctor, *cum laude*, from the Georgetown University Law Center. At Georgetown, he served as an advocate and coach to the Barrister's Council (Moot Court Team) and was Magister of Phi Delta Phi. He received his Bachelor of Science in Biomedical Science from Texas A&M University.

## Alfred L. Fatale III, Of Counsel

Alfred L. Fatale III is Of Counsel in the New York office of Labaton Sucharow LLP. Alfred focuses on prosecuting complex securities fraud cases on behalf of institutional and individual investors.

Alfred represents investors in cases related to the protection of financial markets in trial and appellate courts throughout the country. In particular, he leads the Firm's efforts in litigating securities class actions in state courts following the U.S. Supreme Court's decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*. This includes prosecuting *In re ADT Inc. Shareholder Litigation*, a case alleging that the offering documents for ADT's \$1.47 billion IPO misrepresented the competition the company was facing from do-it-yourself home security products.

He secured an \$11 million settlement for investors in *In re CPI Card Group Inc., Securities Litigation*, a class action brought by an individual retail investor against a debit and credit card manufacturer that allegedly misrepresented demand for its products prior to the company's IPO.

Alfred is actively involved in *Murphy v. Precision Castparts Corp.*, a case against a major aerospace parts manufacturer that allegedly misled investors about its market share and demand for its products, and *Boston Retirement System v. Alexion Pharmaceuticals Inc.*, a class action arising from the company's conduct in connection with sales of Soliris—a drug that costs between \$500,000 and \$700,000 a year.

Prior to joining Labaton Sucharow, Alfred was an Associate at Fried, Frank, Harris, Shriver & Jacobson LLP, where he advised and represented financial institutions, investors, officers, and



directors in a broad range of complex disputes and litigations including cases involving violations of federal securities law and business torts.

Alfred is an active member of the American Bar Association, Federal Bar Council, New York State Bar Association, New York County Bar Association, and New York City Bar Association.

Alfred earned his Juris Doctor from Cornell Law School, where he was a member of the *Cornell Law Review*, as well as the Moot Court Board. While at Cornell, he also served as a Judicial Extern under the Honorable Robert C. Mulvey. Alfred received his bachelor's degree, *summa cum laude*, from Montclair State University.

## Mark Goldman Of Counsel

Mark S. Goldman is Of Counsel in the New York office of Labaton Sucharow LLP. Mark has 30 years of experience in commercial litigation, primarily litigating class actions involving securities fraud, consumer fraud, and violations of federal and state antitrust laws.

Mark has been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

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

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

Mark is a member of the American Bar Association.

Mark earned his Juris Doctor from the University of Kansas. He earned his Bachelor of Arts from Pennsylvania State University.

## Lara Goldstone Of Counsel

Lara Goldstone is Of Counsel in the New York office of Labaton Sucharow LLP. Lara advises pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets.

Before joining Labaton Sucharow, Lara worked as a legal intern in the Larimer County District Attorney's Office and the Jefferson County District Attorney's Office. Prior to her legal career, Lara worked at Industrial Labs where she worked closely with Federal Drug Administration standards and regulations. In addition, she was a teacher in Irvine, California.

Lara earned her Juris Doctor from University of Denver Sturm College of Law, where she was a judge of the Providence Foundation of Law & Leadership Mock Trial and a competitor of the Daniel S.



Hoffman Trial Advocacy Competition. She earned a Bachelor of Arts degree from George Washington University where she was a recipient of a Presidential Scholarship for academic excellence.

## James McGovern Of Counsel

James McGovern is Of Counsel in the New York office of Labaton Sucharow LLP and advises leading pension funds and other institutional investors on issues related to corporate fraud in domestic and international securities markets. James' work focuses primarily on securities litigation and corporate governance, representing Taft-Hartley, public pension funds, and other institutional investors across the country in domestic securities actions. He also advises clients as to their potential claims tied to securities-related actions in foreign jurisdictions.

James has worked on a number of large securities class action matters, including *In re Worldcom, Inc. Securities Litigation*, the second-largest securities class action settlement since the passage of the PSLRA (\$6.1 billion recovery); *In re Parmalat Securities Litigation* (\$90 million recovery); *In re American Home Mortgage Securities Litigation* (amount of the opt-out client's recovery is confidential); *In re The Bancorp Inc. Securities Litigation* (\$17.5 million recovery); *In re Pozen Securities Litigation* (\$11.2 million recovery); *In re Cabletron Systems, Inc. Securities Litigation* (\$10.5 million settlement); and *In re UICI Securities Litigation* (\$6.5 million recovery).

In the corporate governance arena, James helped bring claims against Abbott Laboratories' directors, on account of their mismanagement and breach of fiduciary duties for allowing the company to engage in a 10-year off-label marketing scheme. Upon settlement of this action, the company agreed to implement sweeping corporate governance reforms, including an extensive compensation clawback provision going beyond the requirements under the Dodd-Frank Act.

Following the unprecedented takeover of Fannie Mae and Freddie Mac by the federal government in 2008, James was retained by a group of individual and institutional investors to seek recovery of the massive losses they had incurred when the value of their shares in these companies was essentially destroyed. He brought and continues to litigate a complex takings class action against the federal government for depriving Fannie Mae and Freddie Mac shareholders of their property interests in violation of the Fifth Amendment of the U.S. Constitution, and causing damages in the tens of billions of dollars.

James also has addressed members of several public pension associations, including the Texas Association of Public Employee Retirement Systems and the Michigan Association of Public Employee Retirement Systems, where he discussed how institutional investors could guard their assets against the risks of corporate fraud and poor corporate governance.

Prior to focusing his practice on plaintiffs securities litigation, James was an attorney at Latham & Watkins where he worked on complex litigation and FIFRA arbitrations, as well as matters relating to corporate bankruptcy and project finance. At that time, he co-authored two articles on issues related to bankruptcy filings: *Special Issues In Partnership and Limited Liability Company Bankruptcies* and *When Things Go Bad: The Ramifications of a Bankruptcy Filing*.

James earned his J.D., *magna cum laude*, from Georgetown University Law Center. He received his bachelor's and master's from American University, where he was awarded a Presidential Scholarship and graduated with high honors.



## Mark D. Richardson Of Counsel

Mark D. Richardson is Of Counsel in the New York office of Labaton Sucharow LLP. Mark focuses on representing shareholders in derivative litigation and corporate governance matters.

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

Mark has contributed to several publications over the years. In 2016, he was the recipient of the Distinguished Legal Writing award by the Burton Awards for Legal Achievement for an article published in the *New York Law Journal*, "Options When a Competitor Raids the Company."

Mark earned his Juris Doctor from Emory University School of Law, where he served as the President of the Student Bar Association. He now teaches as an Adjunct Professor in Emory's Kessler-Eidson Program for Trial Techniques. He received his Bachelor of Science degree from Cornell University.

## Elizabeth Rosenberg Of Counsel

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

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

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



# **Exhibit 4**

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

DANE COUNTY

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

SPECTRUM BRANDS HOLDINGS, INC.,  
DAVID M. MAURA, JOSEPH S.  
STEINBERG, GEORGE C. NICHOLSON,  
CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A.  
MCKNIGHT, ANDREW WHITTAKER and  
HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982

Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

**DECLARATION OF JOHN C. SCHELLER ON BEHALF OF  
MICHAEL BEST & FRIEDRICH, LLP IN SUPPORT OF APPLICATION  
FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, John C. Scheller, declare as follows:

1. I am a partner of the law firm of Michael Best & Friedrich LLP (“Michael Best” or “firm”) and submit this declaration in support of my firm’s application for an award of attorneys’ fees and expenses in connection with services rendered in the above-entitled action (the “Action”) from inception through July 10, 2020 (the “Time Period”).

2. Michael Best served as liaison counsel in the Action, advising and consulting with Lead Counsel on various matters throughout the course of the litigation, which is described in detail in the accompanying Declaration of Jonathan Gardner in Support of (I) Plaintiff’s Motion for Final

Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, filed herewith.

3. The information in this declaration regarding Michael Best time and expenses is taken from time and expense records prepared and maintained by the firm in the ordinary course of business. These records were reviewed by myself to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses committed to the Action. The review also confirmed that Michael Best's guidelines and policies regarding expenses were followed. As a result of this review, time reductions were made in the exercise of billing judgment. Additionally, I understand that attorneys working on this matter did not record every effort expended on this matter. For instance, I frequently did not record interactions with Lead Counsel if the interactions were brief. As a result of my review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by attorneys and professional support staff members of my firm who were involved in the prosecution of the Action, and the lodestar calculation based on my firm's current hourly rates. The schedule was prepared from daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

5. The total number of hours spent on this Action reported by my firm during the Time Period is 32.90. The total lodestar amount for reported attorney/professional staff time based on the firm's current rates is \$14,112.00.

6. The hourly rates for the attorneys and professional support staff of my firm included in Exhibit A are my firm's usual and customary hourly rates, which have been approved by Courts in other litigations. My firm's lodestar figures are based upon the firm's hourly rates, which do not include charges for expense items. Expense items are recorded separately and are not duplicated in my firm's hourly rates.

7. As detailed in Exhibit B, my firm has incurred a total of \$515.88 in unreimbursed expenses in connection with the prosecution of the Action. The expenses are reflected on the books and records of my firm. These books and records are prepared from internal reports, check records, and other source materials and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm, attached hereto as Exhibit C is my website biography as well as a brief over of my firm and its focus areas of practice.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed this 6th day of July, 2020.

**MICHAEL BEST & FRIEDRICH LLP**

*Electronically signed by John C. Scheller*

John C. Scheller, SBN 1031247

One South Pinckney Street, Suite 700

P.O. Box 1806

Madison, Wisconsin 53701-1806

Phone: (608) 257-3501

Fax: (608) 283-2275

[jcscheller@michaelbest.com](mailto:jcscheller@michaelbest.com)

# **Exhibit A**

*Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.,  
Case No. 2019-CV-000982*

**EXHIBIT A**

**LODESTAR REPORT**

FIRM: Michael Best & Friedrich LLP

REPORTING PERIOD: Inception Through July 10, 2020

<b>PROFESSIONAL</b>	<b>STATUS</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
John C. Scheller	P	\$575.00	20.20	\$11,615.00
Chelsea T. Zielke	A	\$230.00	2.10	\$483.00
Nancy Cruz	RA	\$190.00	10.60	\$2,014.00
<b>TOTALS</b>			<b>32.90</b>	<b>\$14,112.00</b>

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

## **Exhibit B**

*Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.,*

*Case No. 2019-CV-000982*

**EXHIBIT B**

**EXPENSE REPORT**

FIRM: Michael Best & Friedrich LLP

REPORTING PERIOD: Inception Through July 10, 2020

<b>CATEGORY</b>		<b>TOTAL AMOUNT</b>
Duplicating		\$
Postage / Overnight Delivery Services		\$15.88
Court / Witness / Service Fees		\$500.00
<b>TOTAL</b>		<b>\$515.88</b>



## **Exhibit C**

*Plymouth County Retirement Association v. Spectrum Brands Holdings, Inc., et al.,*

*Case No. 2019-CV-000982*

**EXHIBIT C**

**MICHAEL BEST & FRIEDRICH LLP BIOGRAPHIES**



## John C. Scheller

### Partner

### Overview

Clients count on John's extensive experience in commercial and intellectual property litigation before federal, state, and administrative courts across the United States.

His strong background in life sciences as well as the chemical, pharmaceutical, and mechanical arts has contributed to an excellent track record in trying patent cases. He is particularly successful at obtaining and defeating injunction requests in intellectual property disputes.

In the commercial sector, John is a trusted advisor in regard to litigation involving:

- Construction
- Customs
- Covenants not to compete
- Environmental issues, including the frac sand industry
- Insurance
- Breach of contract

Within the firm, John is the former chair of the Litigation Practice Group and co-chair of the Venture Best® industry group. Prior to joining Michael Best, he practiced appellate litigation at a top Chicago-based law firm.

### Experience

#### Major trademark case across multiple jurisdictions

John coordinated state and federal actions in a heated dispute involving a trademark in the health care insurance industry, leading to an injunction and favorable settlement. The cases were particularly challenging as the matters were expedited and involved concurrent proceedings before the commissioner of insurance. Though the parties were not in a position to change their marks, John was able to construct a mutually agreeable settlement following substantive motion practice and discovery.



[jcscheller@michaelbest.com](mailto:jcscheller@michaelbest.com)

### Madison

T. 608.283.2276

### Legal Assistant

#### Fran Wiley

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T. 608.283.0115

### Industries

Life Sciences

### Practices

Commercial Litigation

Enforcement, Clearance & Defense

Litigation



### **Injunction defeat leading to invalidated patents**

In response to an injunction request filed near Christmas Eve regarding a series of patents relating to exercise equipment, John swiftly responded, forcing the plaintiff to voluntarily abandon its injunction motion in Utah federal court. Following successful motion practice, including prevailing on counterclaims, John later invalidated two of the patents through separate *inter partes* review (IPR) before the United States Patent & Trademark Office.

### **Tortious interference contract with patent related counterclaims**

John defended his client against claims of intentional interference relating to client's pursuit and retention of competitor's sales force in highly competitive cookware industry. John prevailed for the client, knocking out all of plaintiff's claims on summary judgment, followed by a successful jury trial on counterclaims.

### **Defective parts lawsuit on behalf of manufacturer**

In a complex legal action relating to defective food products, John successfully coordinated his client's claims, resulting in a complete, favorable settlement in which the client was not only fully compensated, but also addressed specifics with respect to replacement products. John also advised his client in developing strategies to protect its reputation in the industry.

### **Defeat of massive injunction that threatened client's survival**

John successfully defeated a critical injunction motion brought in the archery industry by an archrival; if granted, the injunction would have ended the client's business. In this action, he replaced the lead counsel from a large, national law firm that had handled the prior case, ensuring a seamless transition and, ultimately, a favorable settlement that preserved the client's business.

### **Antitrust bench trial for publicly traded company**

John represented the plaintiff, SanDisk Corp., regarding its patents directed at flash memory technology. Serving as local counsel in U.S. District Court for the Western District of Wisconsin, John assisted in successfully defending an antitrust counterclaim, which challenged SanDisk's licensing. Following a bench trial, the court wholly rejected the counterclaim.

### **Honors & Recognitions**

- "Wisconsin Super Lawyers" list, Intellectual Property Litigation, *Super Lawyers magazine*, 2015-present
- Litigation Star (Intellectual Property), *Benchmark Litigation*, 2013-present
- *The Best Lawyers in America*®, Litigation - Patent, 2013-present

### **Professional Activities**

- Member, State Bar of Illinois
- Member, State Bar of Wisconsin
- Member, Dane County Bar Association
- Member, Western District of the United States District Court Bar Association
- Member, American Bar Association, Intellectual Property Litigation Section
- Wisconsin Chair, Intellectual Property Committee, 7<sup>th</sup> Circuit Bar Association



## Education

- The John Marshall Law School, Juris Doctor (J.D.), *magna cum laude*, 1995; Editor-In-Chief, *The John Marshall Law Review*
- St. Norbert College, Bachelor of Arts (B.A.), *cum laude*, 1991

## Admissions

- Illinois
- Wisconsin
- United States Supreme Court
- United States Court of Appeals, Federal Circuit
- United States Court of Appeals, Seventh Circuit
- United States District Court, Eastern District of Wisconsin
- United States District Court, Northern District of Illinois
- United States District Court, Western District of Wisconsin

## Related News

### PUBLICATION

January 30, 2020

Top Issues in 2020: Litigation Avoidance

### NEWS

October 7, 2019

Six Michael Best Partners Again Recognized by Benchmark Litigation

### NEWS

August 15, 2019

Michael Best Attorneys Named The Best Lawyers in America© 2020

### PUBLICATION

May 23, 2019

Rejection of a Trademark License Agreement under the Bankruptcy Code does not Result in Rescission of the License

### NEWS

September 28, 2018

Six Michael Best Attorneys Recognized by Benchmark Litigation

### NEWS

August 15, 2018

88 Michael Best Attorneys Named The Best Lawyers in America© 2019



## Firm Overview

Businesses need more from a law firm than skilled advice and representation alone — they need a long-term strategic partner like Michael Best.

We've earned many loyal clients by understanding each one's unique goals, opportunities, and challenges and by delivering results, year after year. Our focus is on your entire organization, not just on the legal matters we're involved in.

Michael Best is a full service firm with more than 250 lawyers who provide our clients with the exceptional legal service and business acumen that have defined our firm for generations. Our practice is broadly organized into the following areas, each with its own sub-practices:

- Corporate
- Government Relations, Political Law & Public Policy
- Intellectual Property
- Labor & Employment Relations
- Litigation
- Privacy & Cybersecurity
- Regulatory
- Real Estate
- Tax
- Wealth Planning

We serve regional, national, and international corporations, as well as municipalities, trade associations, nonprofits, family trusts, and individuals. Our clients range in size from small start-up ventures to global Fortune 500 companies, in many different industries. Michael Best has a long history of serving clients in the consumer and industrial products sectors. As those sectors evolve, our practice has grown to encompass a diverse range of technology and software clients.

Additionally, we have deep experience in a number of industries that are subject to unique regulatory schemes or rapidly changing market conditions, such as:

- Advanced Manufacturing
- Agribusiness
- Banking & Financial Services
- Digital Technology
- Energy
- Food & Beverage
- Higher Education



- Life Sciences
- Water

We work in collaborative, cross-practice teams that focus not only on legal and regulatory matters, but also on operational issues, market opportunities, and competitive advantage. We always strive to provide excellent service within a highly competitive cost structure, and clients consistently praise our responsiveness and value.

We look forward to serving you next.

# **Exhibit 5**



*Plymouth Country Retirement Association v. Spectrum Brands Holdings, Inc. et al.,*  
Case No. 2019-CV-000982

**SUMMARY OF LODESTARS AND EXPENSES**

<b>FIRM</b>	<b>HOURS</b>	<b>LODESTAR</b>	<b>EXPENSES</b>
Labaton Sucharow LLP	2,036.70	\$1,222,184.50	\$45,565.65
Michael Best & Friedrich LLP	32.90	\$14,112.00	\$515.88
<b>TOTALS</b>	<b>2,069.60</b>	<b>\$1,236,296.50</b>	<b>\$46,081.53</b>

# **Exhibit 6**

Count	Low	25th Percentile	Median	75th Percentile	High
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## Partners

1) Davis Polk & Wardwell LLP	6	\$1,445	\$1,585	\$1,645	\$1,695	\$1,695
2) Skadden, Arps, Slate, Meagher, & Flom LLP	20	\$613	\$743	\$1,300	\$1,485	\$1,695
3) Weil, Gotshal & Manges LLP	54	\$765	\$1,200	\$1,350	\$1,525	\$1,600
4) Willkie Farr & Gallagher LLP	23	\$1,100	\$1,350	\$1,450	\$1,500	\$1,600
5) Kirkland & Ellis LLP	91	\$980	\$1,135	\$1,240	\$1,495	\$1,595
6) Wilmer Cutler Pickering Hale and Dorr LLP	5	\$995	\$1,028	\$1,050	\$1,238	\$1,570
7) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	13	\$1,125	\$1,255	\$1,455	\$1,560	\$1,560
8) Akin Gump Strauss Hauer & Feld LLP	71	\$855	\$1,040	\$1,180	\$1,305	\$1,550
9) Milbank LLP	11	\$1,155	\$1,390	\$1,540	\$1,540	\$1,540
10) Morrison & Foerster LLP	13	\$925	\$1,075	\$1,125	\$1,225	\$1,500
11) Latham & Watkins LLP	24	\$1,050	\$1,147	\$1,305	\$1,370	\$1,495
12) Proskauer Rose LLP	4	\$1,025	\$1,115	\$1,295	\$1,445	\$1,445
13) Sidley Austin LLP	27	\$875	\$931	\$1,050	\$1,181	\$1,425
14) Paul Hastings LLP	8	\$1,050	\$1,094	\$1,163	\$1,263	\$1,375
15) Jones Day	30	\$837	\$975	\$975	\$1,100	\$1,350
16) Kramer Levin Naftalis & Frankel	9	\$995	\$1,100	\$1,175	\$1,225	\$1,350

## Of Counsel

1) Willkie Farr & Gallagher LLP	7	\$1,070	\$1,070	\$1,070	\$1,070	\$1,998
2) Kirkland & Ellis LLP	4	\$1,055	\$1,255	\$1,315	\$1,325	\$1,390
3) Latham & Watkins LLP	7	\$785	\$1,039	\$1,040	\$1,040	\$1,305
4) Davis Polk & Wardwell LLP	2	\$1,225	\$1,225	\$1,225	\$1,225	\$1,225
5) Weil, Gotshal & Manges LLP	11	\$1,050	\$1,050	\$1,050	\$1,075	\$1,215
6) Paul Hastings LLP	3	\$795	\$960	\$1,125	\$1,163	\$1,200
7) Akin Gump Strauss Hauer & Feld LLP	74	\$495	\$825	\$905	\$940	\$1,170
8) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	3	\$1,125	\$1,143	\$1,160	\$1,160	\$1,160
9) Morrison & Foerster LLP	8	\$750	\$878	\$925	\$990	\$1,150
10) Skadden, Arps, Slate, Meagher, & Flom LLP	9	\$600	\$1,050	\$1,140	\$1,140	\$1,140
11) Milbank LLP	4	\$1,080	\$1,110	\$1,120	\$1,120	\$1,120
12) Jones Day	5	\$746	\$775	\$950	\$950	\$1,075
13) Kramer Levin Naftalis & Frankel	3	\$980	\$980	\$980	\$980	\$980
14) Sidley Austin LLP	1	\$925	\$925	\$925	\$925	\$925

## Associates

1) Kirkland & Ellis LLP	164	\$270	\$595	\$783	\$920	\$1,362
2) Jones Day	48	\$400	\$450	\$550	\$706	\$1,240
3) Davis Polk & Wardwell LLP	37	\$645	\$735	\$1,010	\$1,040	\$1,075

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	Count	Low	25th Percentile	Median	75th Percentile	High
4) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	9	\$640	\$835	\$835	\$1,030	\$1,065
5) Skadden, Arps, Slate, Meagher, & Flom LLP	30	\$448	\$507	\$660	\$873	\$1,050
6) Willkie Farr & Gallagher LLP	40	\$370	\$690	\$890	\$995	\$1,050
7) Latham & Watkins LLP	43	\$565	\$655	\$809	\$1,015	\$1,035
8) Milbank LLP	17	\$595	\$595	\$830	\$920	\$995
9) Weil, Gotshal & Manges LLP	139	\$410	\$690	\$790	\$950	\$995
10) Paul Hastings LLP	15	\$570	\$645	\$710	\$863	\$980
11) Akin Gump Strauss Hauer & Feld LLP	123	\$350	\$544	\$660	\$760	\$975
12) Kramer Levin Naftalis & Frankel	12	\$550	\$699	\$785	\$925	\$970
13) Proskauer Rose LLP	4	\$770	\$770	\$823	\$891	\$940
14) Morrison & Foerster LLP	17	\$460	\$525	\$713	\$804	\$895
15) Sidley Austin LLP	33	\$475	\$590	\$675	\$795	\$890
16) Wilmer Cutler Pickering Hale and Dorr LLP	2	\$730	\$751	\$773	\$794	\$815

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# **Exhibit 7**

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

# Securities Class Action Settlements

2019 Review and Analysis

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

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Analyses in this report are based on 1,849 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2019. See page 17 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.



# Highlights

Historically high median settlement amounts persisted in 2019, driven primarily by an increase in the overall percentage of mid-sized cases in the \$5 million to \$25 million range as well as a decrease in the number of smaller settlements.

- There were 74 settlements totaling \$2 billion in 2019. [\(page 3\)](#)
- The median settlement in 2019 of \$11.5 million was unchanged from 2018 (adjusted for inflation) and was 34 percent higher than the prior nine-year median. [\(page 3\)](#)
- The average settlement amount in 2019 was \$27.4 million, which was 43 percent lower than the prior nine-year average. [\(page 4\)](#)
- There were four mega settlements (settlements equal to or greater than \$100 million) in 2019. [\(page 20\)](#)
- The number of small settlements (amounts less than \$5 million) declined by 36 percent to 16 cases in 2019, the fewest such settlements in the past decade. [\(page 4\)](#)
- The proportion of settlements in 2019 with a public pension plan as lead plaintiff reached its lowest level in the prior 10 years. [\(page 12\)](#)
- In 2019, 53 percent of settled cases involved an accompanying derivative action, the second-highest rate over the past decade. [\(page 10\)](#)
- Companies that settled cases after a ruling on a motion to dismiss (MTD) were, on average, 50 percent larger (measured by total assets) than companies that settled while the MTD was pending. [\(page 14\)](#)

## Figure 1: Settlement Statistics

(Dollars in millions)

	1996–2018	2018	2019
Number of Settlements	1,775	78	74
Total Amount	\$103,955.6	\$5,154.8	\$2,029.9
Minimum	\$0.2	\$0.4	\$0.5
Median	\$8.8	\$11.5	\$11.5
Average	\$58.8	\$66.1	\$27.4
Maximum	\$9,172.1	\$3,054.4	\$389.6

Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. Figure 1 includes all post-Reform Act settlements. Settlements in prior years have included 14 cases exceeding \$1 billion. Adjusted for inflation, these settlements drive up the average settlement amount.

# Author Commentary

## 2019 Findings

The size of issuer defendant firms (measured by total assets) continued to grow in 2019, increasing by 59 percent over 2018 and 117 percent above the median over the last 10 years. This may be due at least in part to prolonged changes in the population of public companies. In particular, as has been widely observed, the number of publicly traded firms continued to decline in recent years—with the result that remaining public firms are larger.<sup>1</sup>

As discussed by other commentators, large issuer defendants may cause plaintiff counsel to pursue potential claims more vigorously.<sup>2</sup> As in our prior research, we examine the number of docket entries as a proxy for the time and effort by plaintiff counsel and/or case complexity. In 2019, average docket entries were the highest in the last 10 years, primarily driven by cases with relatively large damages, as measured by our simplified proxy for plaintiff-style damages (i.e., “simplified tiered damages” exceeding \$500 million).

Overall, our simplified proxy for plaintiff-style damages remained at elevated levels in 2019 compared to earlier years in the decade, in part reflecting the relatively high market capitalization losses associated with cases filed over the last three years.<sup>3</sup>

Another driver of higher plaintiff-style damages is class period length. Indeed, plaintiffs often amend their initial complaints to capture longer alleged class periods. In 2019, the median class period length per the operative complaint as of the time of settlement was 1.7 years—the longest over the last 10 years. In comparison, the median class period alleged in first identified complaints during 2015–2018 (the period during which most of the 2019 settlements were filed) was just under one year. This indicates that between the time of filing and settlement plaintiffs substantially expanded the period over which they claim the alleged fraud occurred.

Despite the large size of cases settled in 2019, public pension plans served as lead plaintiffs less frequently, with their involvement reaching the lowest level over the last 10 years. Prior literature has discussed possible reasons for institutions choosing not to serve as lead plaintiffs, including an imbalance in the cost/benefit of doing so.<sup>4</sup>

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*One finding that is particularly striking is the decrease in public pension plan lead plaintiffs despite an increase in larger issuer firms with potentially sizable damages exposure.*

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

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Other contributors to the reduction in public pension plan involvement may include changes in the mix of plaintiff law firms serving as lead counsel, and possibly the recent increase in the propensity of plaintiffs to opt out of class actions, including in larger cases (see *Opt-Out Cases in Securities Class Action Settlements: 2014–2018 Update*, Cornerstone Research).

## Looking Ahead

Recent trends in securities case filings can inform expectations for developments in settlements in upcoming years.

The number of filings alleging Rule 10b-5 and/or Section 11 claims reached record levels in 2019. In addition, for the second year in a row, median Disclosure Dollar Loss (DDL) for case filings reached unusually high levels (see *Securities Class Action Filings—2019 Year in Review*, Cornerstone Research).

Absent changes in dismissal rates, these results suggest that the volume of securities case settlements, as well as their value, is likely to continue at relatively high levels in upcoming years.

—Laarni T. Bulan and Laura E. Simmons

# Total Settlement Dollars

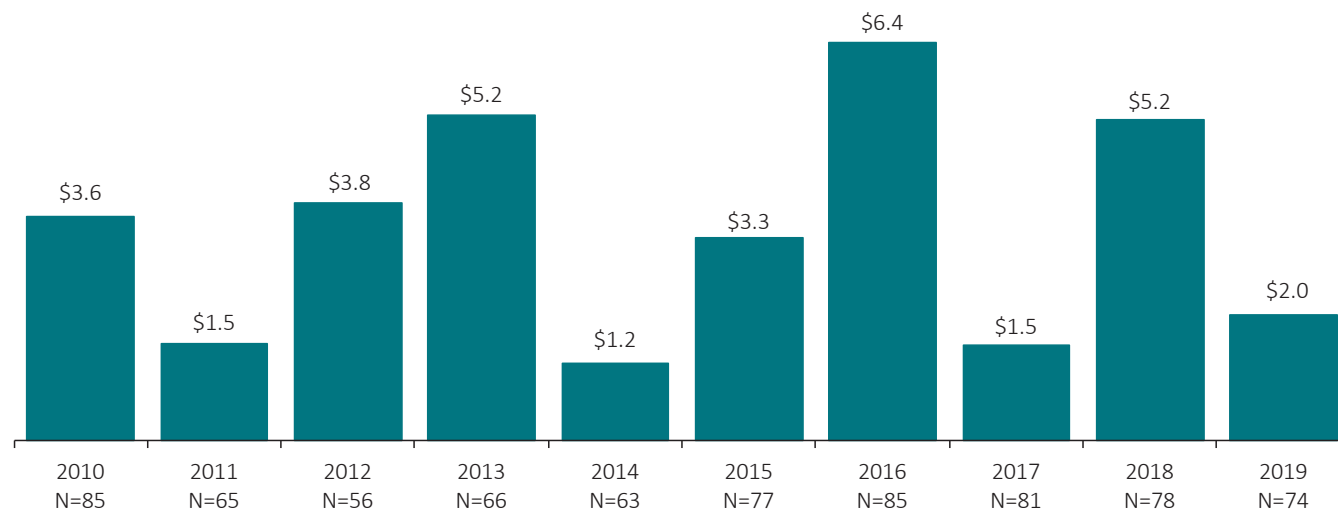
- The total value of settlements approved by courts in 2019 declined dramatically from 2018 due to the absence of very large settlements. Excluding 2018 settlements over \$1 billion, however, total settlement dollars declined by a modest 3 percent in 2019 (adjusted for inflation).
- The median settlement amount in 2019 of \$11.5 million was unchanged from the prior year (adjusted for inflation).
- Compared to the prior nine years, larger median settlement amounts in 2019 were accompanied by higher levels in the proxy for plaintiff-style damages. (See page 5 for a discussion of damages estimates.)

*The median settlement amount in 2019 was 34 percent higher than the prior nine-year median.*

- Mediators continue to play a central role in the resolution of securities class action settlements. In 2019, nearly all cases in the sample involved a mediator.

Figure 2: Total Settlement Dollars  
2010–2019

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. N refers to the number of observations.

# Settlement Size

As discussed above, the median settlement amount was unchanged from 2018. Generally, the median is more stable from year to year than the average, since the average can be affected by the presence of even a small number of large settlements.

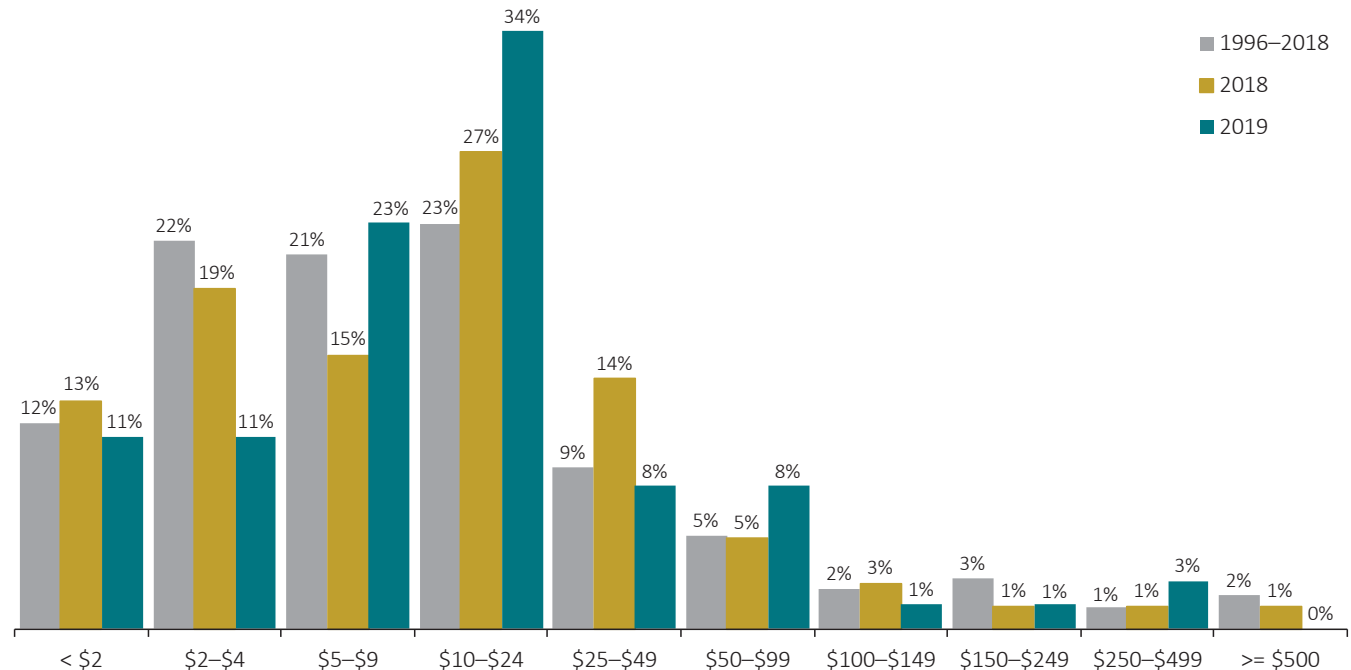
- The average settlement amount in 2019 was \$27.4 million, 43 percent lower than the average over the prior nine years. (See Appendix 1 for an analysis of settlements by percentiles.)
- If settlements exceeding \$1 billion are excluded from the prior nine-year average, the decline in 2019 was 16 percent.
- There were four mega settlements (equal to or greater than \$100 million) in 2019, with settlements ranging from \$110 million to \$389.6 million. (See Appendix 4 for additional information on mega settlements.)

- Despite a decline in the average settlement amount from 2018, the number of small settlements (less than \$5 million) also declined by 36 percent to 16 cases in 2019, the fewest such settlements in the past decade. Cases that result in settlement funds less than \$5 million may be viewed as “nuisance” suits, a shift upwards from a threshold of \$2 million prevalent in early post-Reform Act years.<sup>5</sup>

*57 percent of cases settled for between \$5 million and \$25 million.*

**Figure 3: Distribution of Post-Reform Act Settlements 1996–2019**

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. Percentages may not sum to 100 percent due to rounding.

# Damages Estimates

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

“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.<sup>6</sup>

Cornerstone Research’s prediction model finds this measure to be the most important factor in predicting settlement amounts.<sup>7</sup> However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

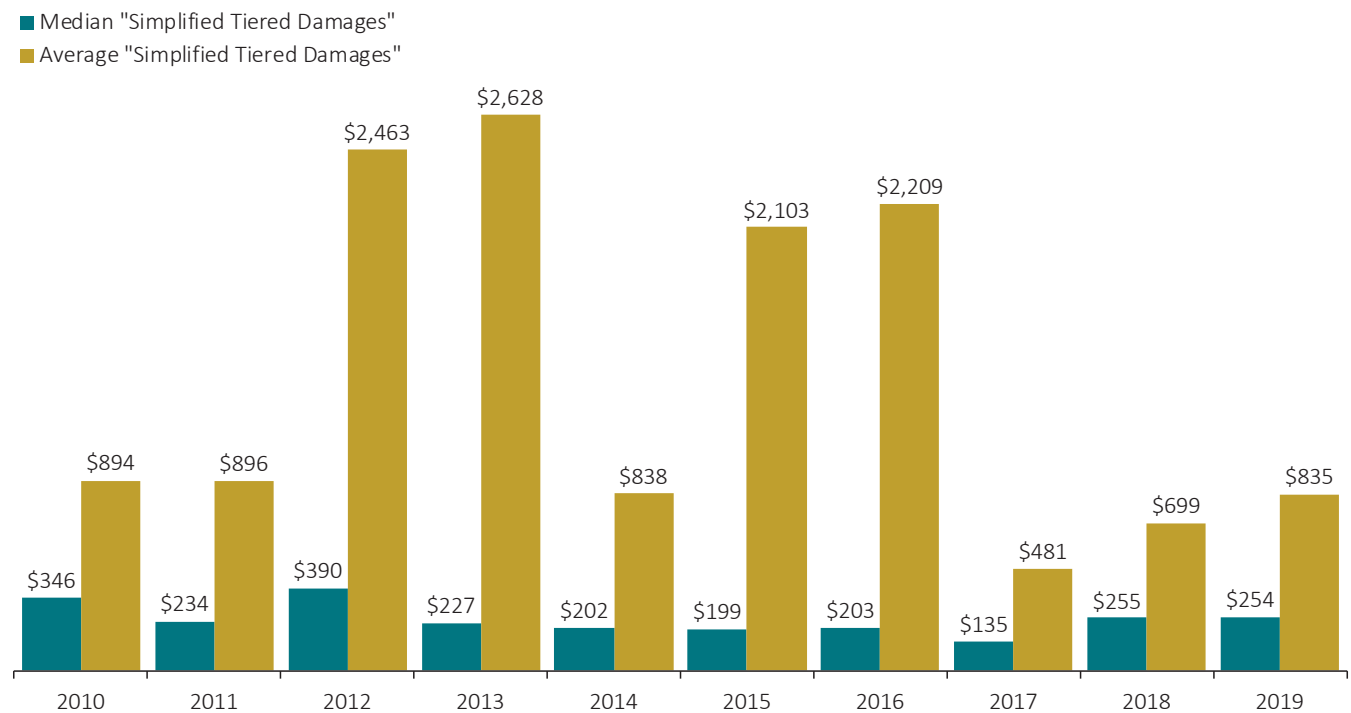
- Median “simplified tiered damages” was largely unchanged from the prior year. (See Appendix 5 for additional information on the median and average settlements as a percentage of “simplified tiered damages.”)

*While median “simplified tiered damages” remained largely unchanged in 2019, average “simplified tiered damages” increased for the third year in a row.*

- “Simplified tiered damages” is generally correlated with the length of the class period. Among cases with Rule 10b-5 claims, the median class period length in 2019 was at its highest level in the last 10 years.
- “Simplified tiered damages” is also typically correlated with larger issuer defendants (measured by total assets or market capitalization of the issuer). However, despite the lack of change in median “simplified tiered damages” compared to 2018, median total assets of issuer defendants increased by over 67 percent in 2019.

Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases 2010–2019

(Dollars in millions)



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

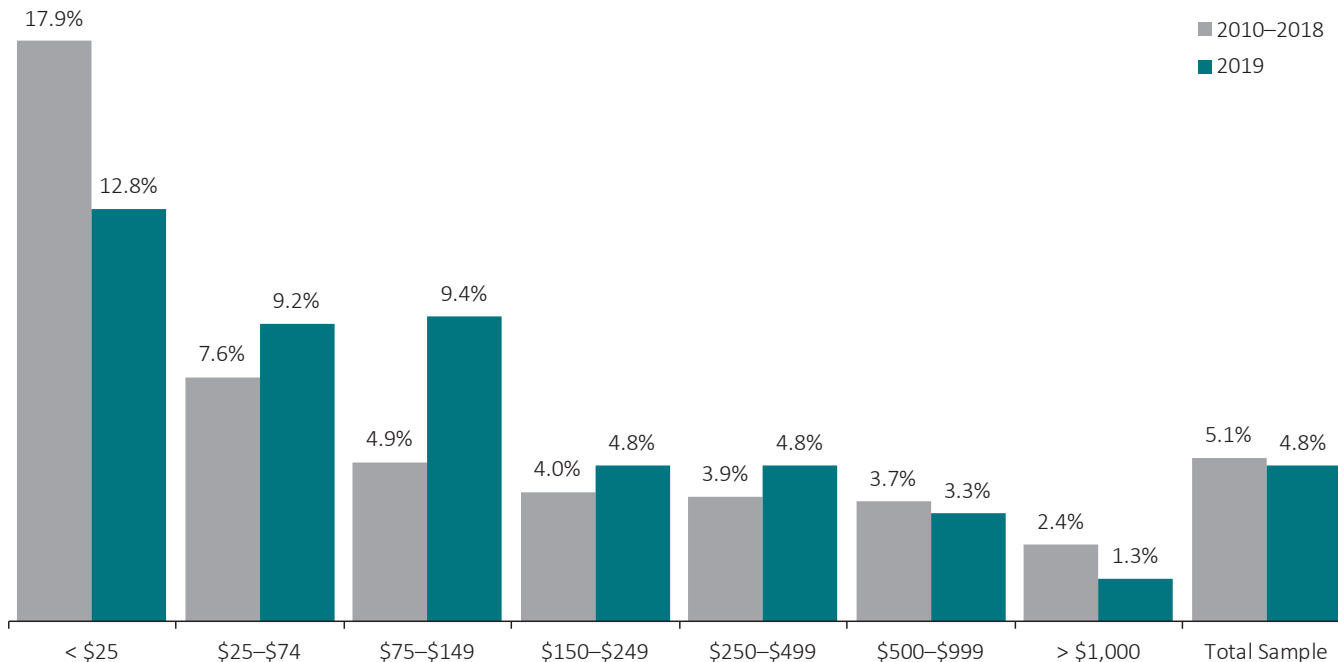
- Larger cases, as measured by “simplified tiered damages,” typically settle for a smaller percentage of damages.
- Smaller cases (less than \$25 million in “simplified tiered damages”) are less likely to include factors related to institutional lead plaintiffs and/or related actions by the Securities and Exchange Commission (SEC) or criminal charges.
- Among cases in the sample, smaller cases typically settle more quickly. In 2019, cases with less than \$25 million in “simplified tiered damages” settled within 2.0 years on average, compared to 3.5 years for cases with “simplified tiered damages” greater than \$500 million.

*At 9.4 percent in 2019, median settlements as a percentage of “simplified tiered damages” for mid-sized cases reached a five-year high.*

- The steadily increasing median settlement as a percentage of “simplified tiered damages” observed from 2016 to 2018 reversed in 2019. Appendix 5 shows a substantial increase in 2019 in average settlements as a percentage of “simplified tiered damages.” However, this result is driven by a few outlier cases. Excluding these cases, the average percentage for 2019 is not unusual compared to recent years.

Figure 5: Median Settlements as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases 2010–2019

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

## '33 Act Claims: "Simplified Statutory Damages"

For cases involving only Section 11 and/or Section 12(a)(2) claims ('33 Act claims), shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages."<sup>8</sup> Only the offered shares are assumed to be eligible for damages.

"Simplified statutory damages" are typically smaller than "simplified tiered damages," reflecting differences in the methodologies used to estimate alleged inflation per share, as well as differences in the shares eligible to be damaged (i.e., only offered shares are included).

*Median "simplified statutory damages" for '33 Act claim cases in 2019 was more than 65 percent higher than the prior five-year median.*

- Cases with only '33 Act claims tend to settle for smaller median amounts than cases that include Rule 10b-5 claims.
- In 2019, among settlements involving '33 Act claims only, the median time to settlement was only slightly longer than cases involving Rule 10b-5 claims only, 3.2 years and 2.9 years, respectively. When compared to the prior year, however, '33 Act claim cases took more than 36 percent longer to resolve in 2019 (3.2 years compared to 2.3 years).

**Figure 6: Settlements by Nature of Claims  
2010–2019**

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	77	\$7.2	\$118.8	7.4%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	115	\$15.1	\$390.0	5.8%
Rule 10b-5 Only	524	\$8.5	\$212.5	4.6%

Note: Settlement dollars and damages are adjusted for inflation; 2019 dollar equivalent figures are used. Damages are adjusted for inflation based on class period end dates.

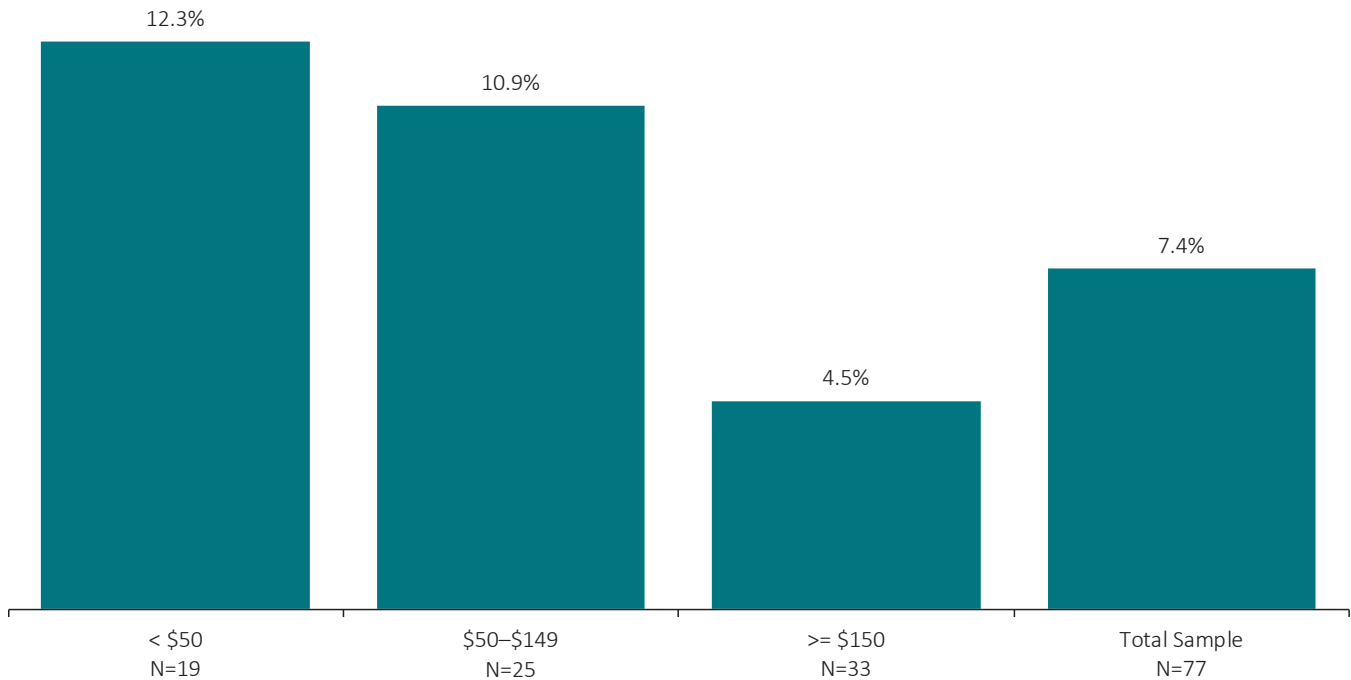
- Settlements as a percentage of “simplified statutory damages” are smaller for cases that have larger estimated damages. This finding holds for cases with ’33 Act claims only, as well as those with Rule 10b-5 claims.

*90 percent of cases with only ’33 Act claims involved an underwriter as a codefendant.*

- Over the period 2010–2019, the median size of issuer defendants (measured by total assets) was 68 percent smaller for cases with only ’33 Act claims relative to those that included Rule 10b-5 claims.
- The smaller size of issuer defendants in ’33 Act cases is consistent with the vast majority of these cases involving initial public offerings (IPOs). From 2010 through 2019, 83 percent of all cases with only ’33 Act claims have involved IPOs.

Figure 7: Median Settlements as a Percentage of “Simplified Statutory Damages” by Damages Ranges in ’33 Act Cases 2010–2019

(Dollars in millions)



Note: N refers to the number of observations.



# Analysis of Settlement Characteristics

## Accounting Allegations

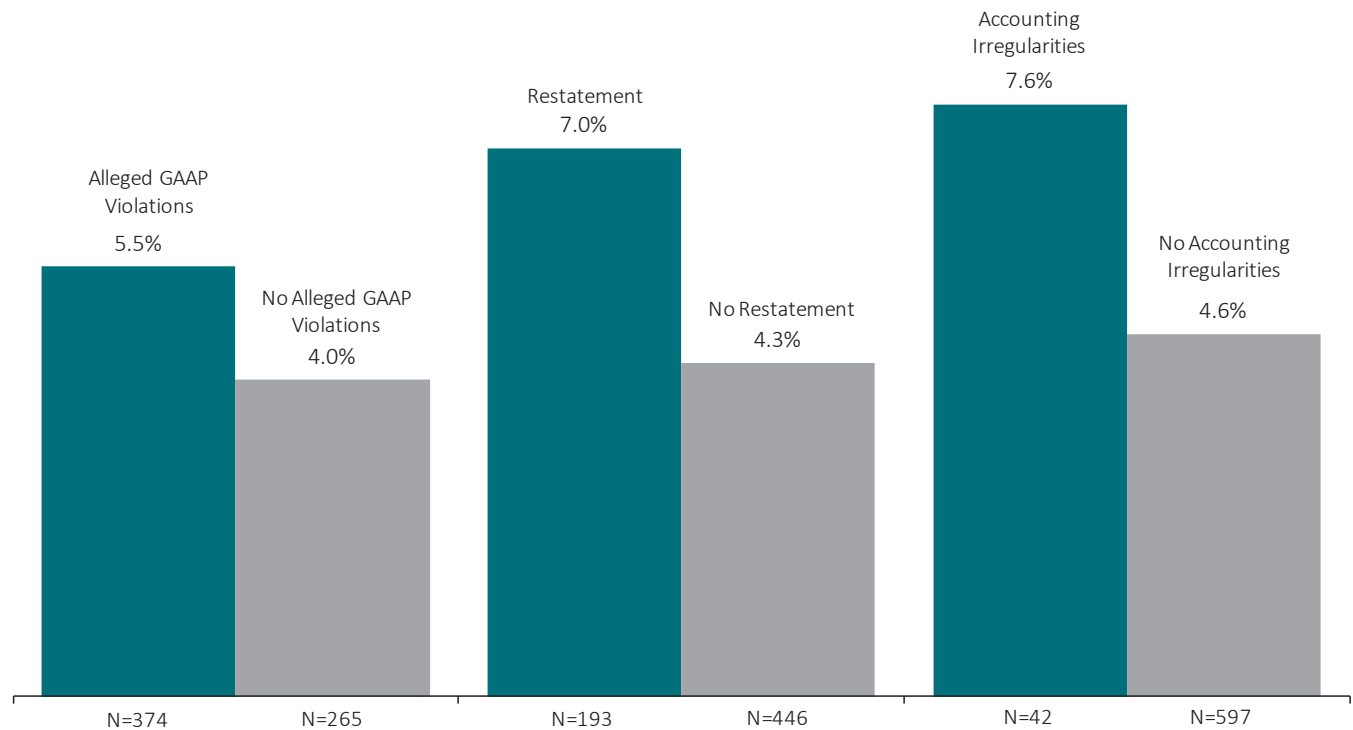
This analysis examines accounting allegations related to issues among securities class actions involving Rule 10b-5 claims: alleged Generally Accepted Accounting Principles (GAAP) violations, violations of other reporting standards, auditing violations, or weaknesses in internal controls over financial reporting.<sup>9</sup> For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.<sup>10</sup>

- The proportion of settled cases alleging GAAP violations in 2019 was 44 percent, continuing a five-year decline from a high of 67 percent in 2014.
- Settled cases with restatements are generally associated with higher settlements as a percentage of “simplified tiered damages” compared to cases without restatements. In 2019, the median settlement as a percentage of “simplified tiered damages” for cases with restatements was 5.2 percent, compared to 4.1 percent for cases without restatements.

- Among cases settled in 2019 with accounting-related allegations, only 6 percent involved a named auditor codefendant. This was the lowest rate in the past decade and a decline from a high of 24 percent in 2015.
- The proportion of cases with accounting-related allegations that also involved associated criminal charges was 27 percent in 2019, well above the rate of 11 percent among cases settled during 2010–2018.

*The frequency of reported accounting irregularities increased among settled cases in 2019 to 9 percent, compared to an average of less than 2 percent from 2015 to 2018.*

Figure 8: Median Settlements as a Percentage of “Simplified Tiered Damages” and Accounting Allegations 2010–2019



Note: N refers to the number of observations.

## Derivative Actions

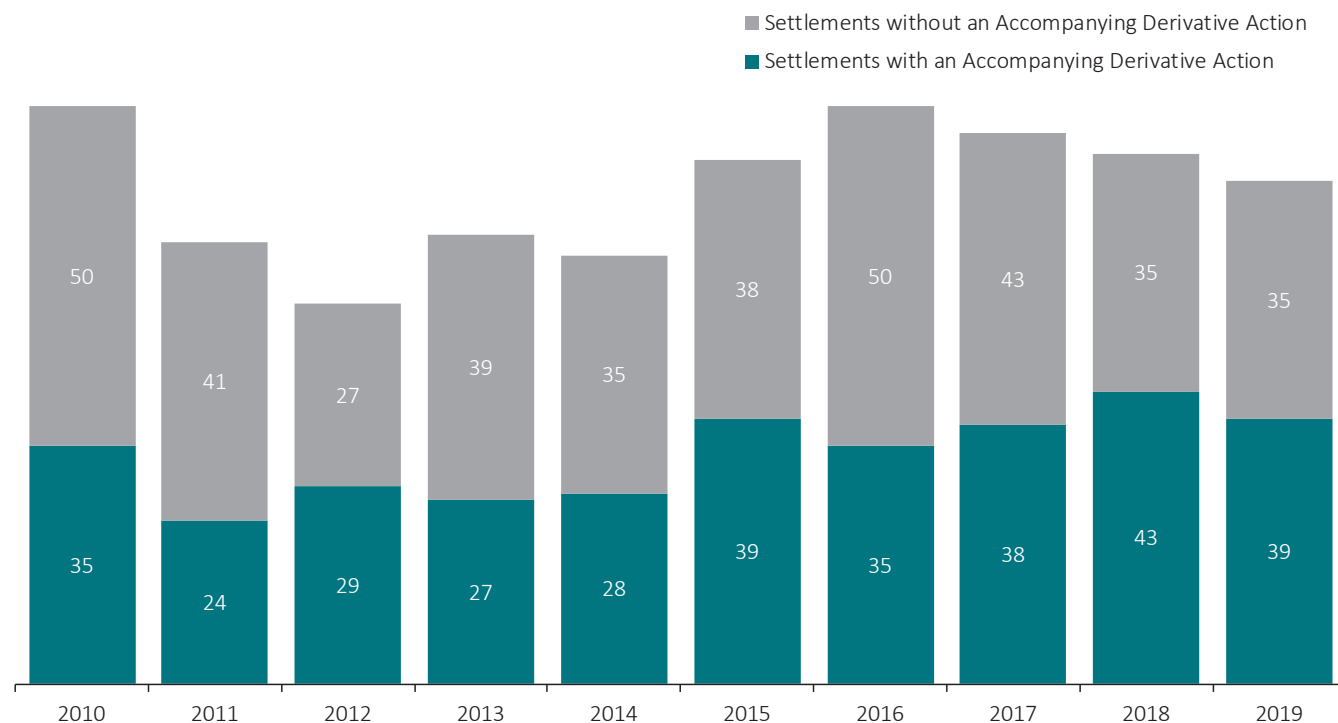
While settled cases involving an accompanying derivative action are typically associated with both larger cases (measured by “simplified tiered damages”) and larger settlement amounts, this was not true in 2019.

- The median settlement among cases with an accompanying derivative action was \$10 million compared to \$14.8 million for cases without a derivative action.
- This may be due at least in part to a substantial increase in derivative actions involving smaller issuers. In 2019, 70 percent of cases involving issuers with less than \$250 million in total assets also had an accompanying derivative action, compared to only 46 percent over the prior nine years.

*53 percent of settled cases involved an accompanying derivative action, the second-highest rate over the last 10 years.*

- Many larger settlements in 2019 involved non-U.S. issuers (44 percent of settlements above \$25 million), which have been associated with derivative actions far less frequently than cases involving U.S. issuers. During 2010–2019, only 22 percent of cases involving non-U.S. issuers had accompanying derivative actions.
- In 2019, 36 percent of derivative actions were filed in Delaware, the highest proportion in the past decade. The second most common filing state for derivative suits was California.

Figure 9: Frequency of Derivative Actions  
2010–2019



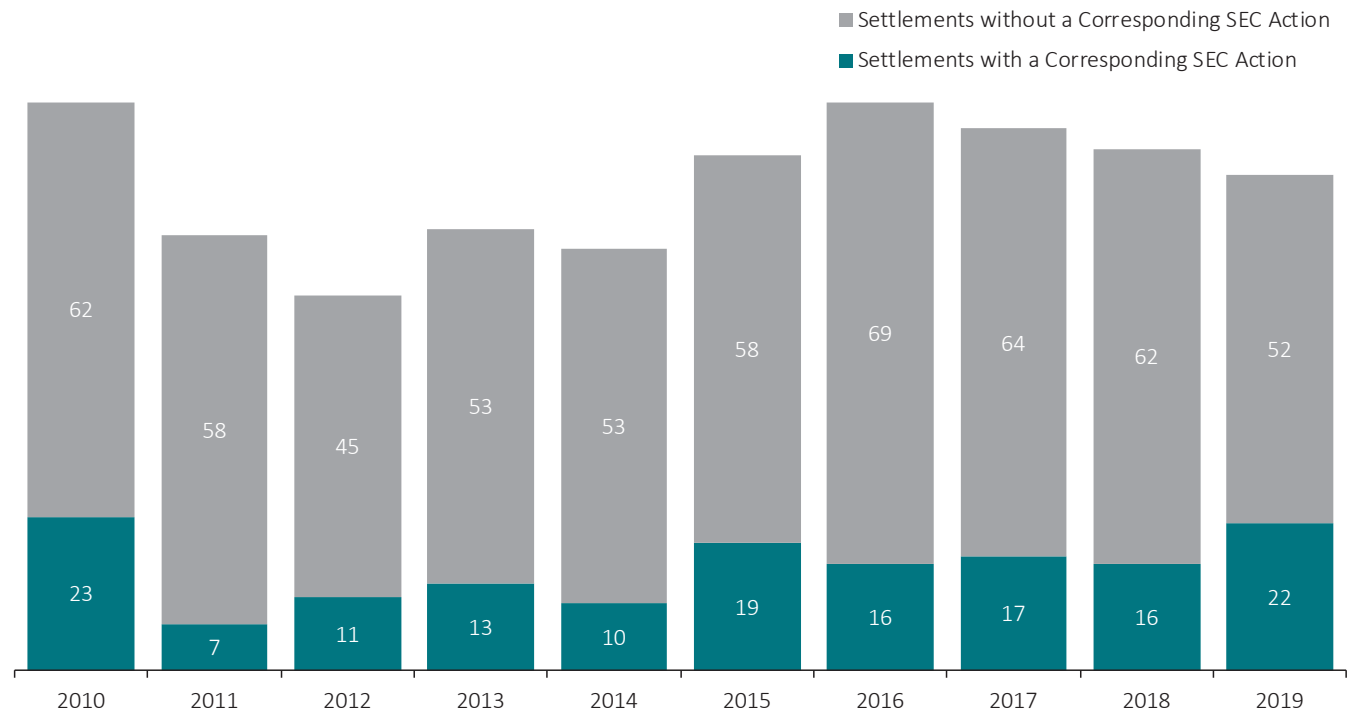
## Corresponding SEC Actions

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

- In 2019, the median total assets of issuer defendant firms at the time of settlement was \$1.3 billion for cases with corresponding SEC actions compared to \$1.5 billion for cases without a corresponding SEC action. This was consistent with the overall increase in the asset size of issuers.
- For cases settled during 2015–2019, 42 percent of cases with a corresponding SEC action involved issuer defendants that had either declared bankruptcy or were delisted from a major U.S. exchange prior to settlement.
- Cases with corresponding SEC actions have involved accounting-related allegations less frequently in recent years. From 2010 to 2016, 88 percent of settled cases involved accounting-related allegations, compared to 75 percent from 2017 to 2019.
- Cases involving corresponding SEC actions may also include allegations of criminal activity in connection with the time period covered by the underlying class action. In 2019, more than 40 percent of cases with an SEC action had related criminal charges.

*30 percent of settled cases involved a corresponding SEC action, the highest rate over the last 10 years.*

Figure 10: Frequency of SEC Actions  
 2010–2019



## Institutional Investors

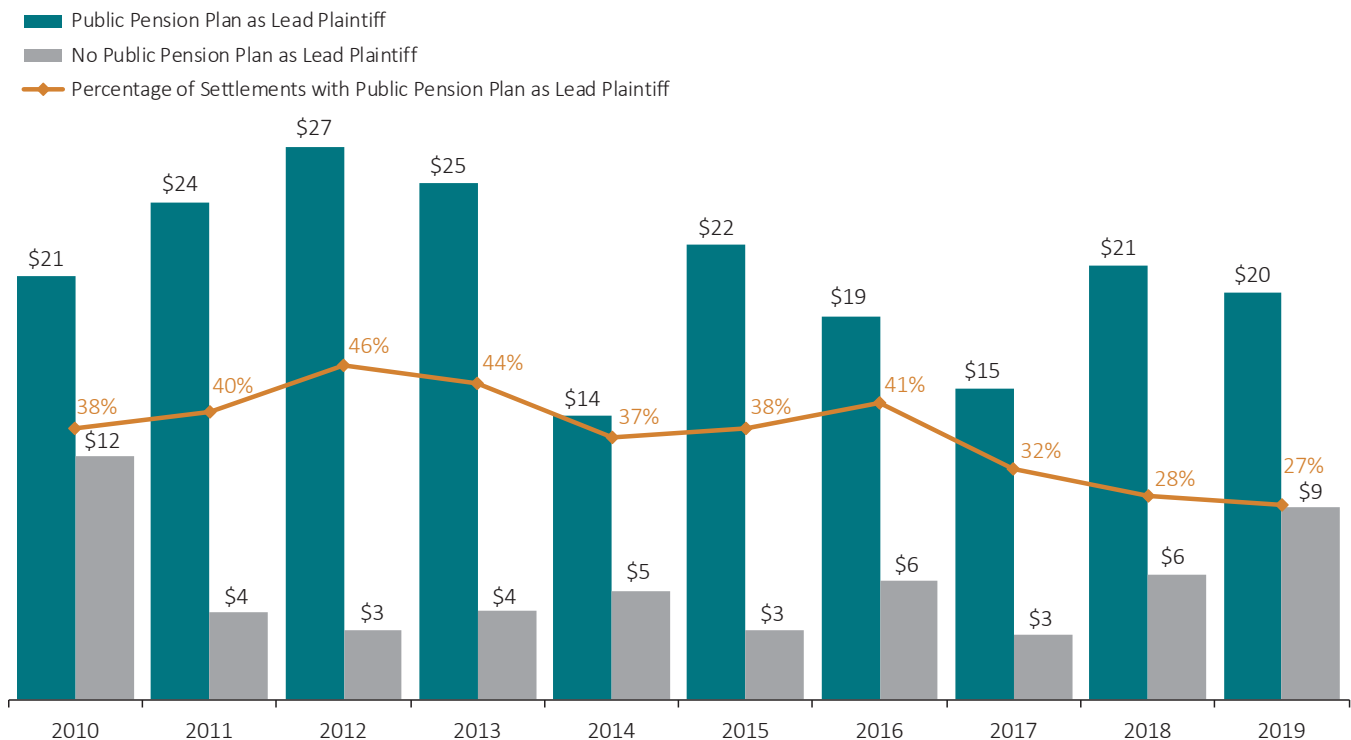
- Institutional investors, including public pension plans (a subset of institutional investors), tend to be involved in larger cases, that is, cases with higher “simplified tiered damages.”
- Median “simplified tiered damages” for cases involving a public pension as a lead plaintiff in 2019 were more than three times higher than for cases without a public pension plan as a lead plaintiff.
- In 2019, median market capitalization (measured prior to the settlement hearing date) for issuer defendants in cases involving an institutional investor as a lead plaintiff was \$1.6 billion compared to \$459.4 million for cases without institutional investor involvement.

*The proportion of settlements with a public pension plan as lead plaintiff reached its lowest level in the decade.*

- Over the last 10 years, institutional investor lead plaintiffs have also been associated with lower attorney fees in relation to “simplified tiered damages.” This may reflect their tendency to be involved in larger cases, in which attorney fees often represent a smaller percentage of the total settlement fund, as well as their potential ability to negotiate lower fees.<sup>12</sup>
- Among 2019 settled cases that do have an institutional investor as a lead plaintiff, 50 percent involved a parallel derivative action and 22 percent involved a corresponding SEC action.

**Figure 11: Median Settlement Amounts and Public Pension Plans 2010–2019**

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used.

# Time to Settlement and Case Complexity

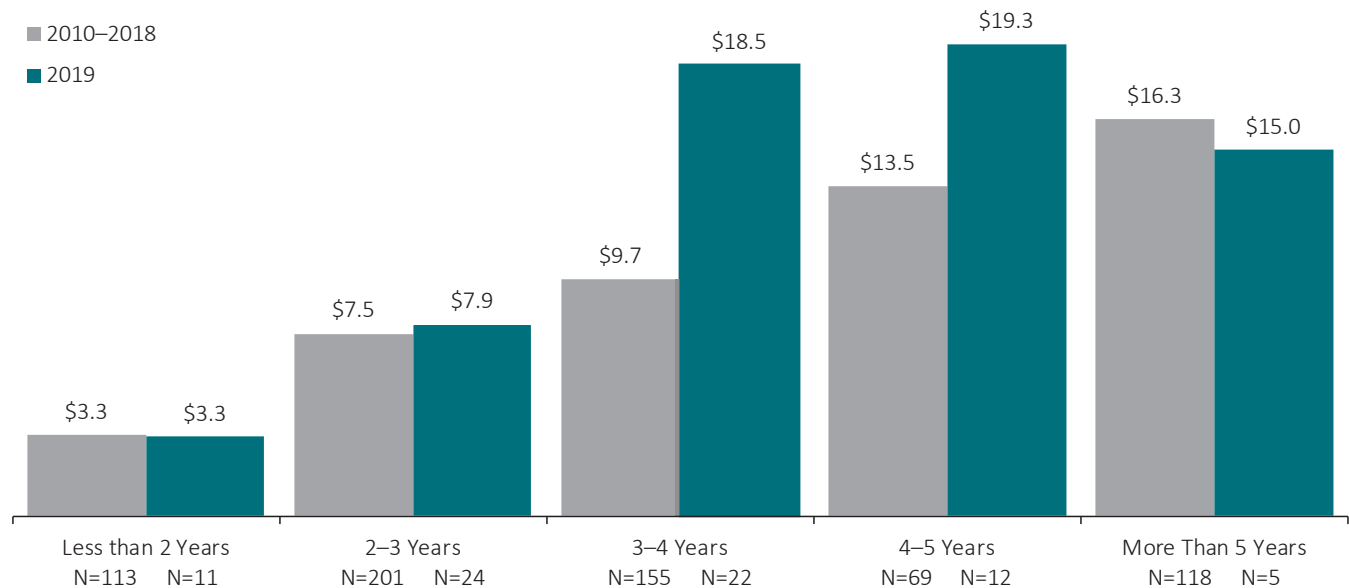
- In 2019, 15 percent of cases settled within two years of filing, consistent with the rate over the last 10 years. The average time from filing to settlement in 2019 was 3.3 years.
- Compared to cases that settled more quickly, cases that required three to five years to settle in 2019 had a higher frequency of factors such as a public pension as a lead plaintiff and/or the presence of a corresponding SEC action.
- Only 7 percent of cases in 2019 took more than five years to settle, the lowest rate in the past decade. Of these, 80 percent involved institutional investors. The median assets of the defendant firms in these cases were also substantially higher at \$68 billion, compared to a median of \$1.2 billion in other cases.
- In 2019, cases that took more than five years to settle had a lower median settlement amount than cases that took three to five years to settle. This is despite the higher median “simplified tiered damages” of \$602 million for cases that took more than five years to settle, compared to \$375 million for cases that took three to five years to settle.

*Median “simplified tiered damages” for Rule 10b-5 cases settling in less than two years were substantially smaller compared to settlements that took longer to resolve.*

- The number of docket entries as of the settlement may reflect case complexity. This factor has also been used in prior research as a proxy for attorney effort.<sup>13</sup> The number of docket entries is highly correlated with the duration from filing to settlement hearing date, issuer size, criminal allegations, accounting allegations, as well as the size of “simplified tiered damages.” Median docket entries for cases settled in 2019 were largely unchanged from prior years, but the average number of docket entries reached its highest level in the past decade.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2010–2019

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. N refers to the number of observations.

# Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),<sup>14</sup> this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

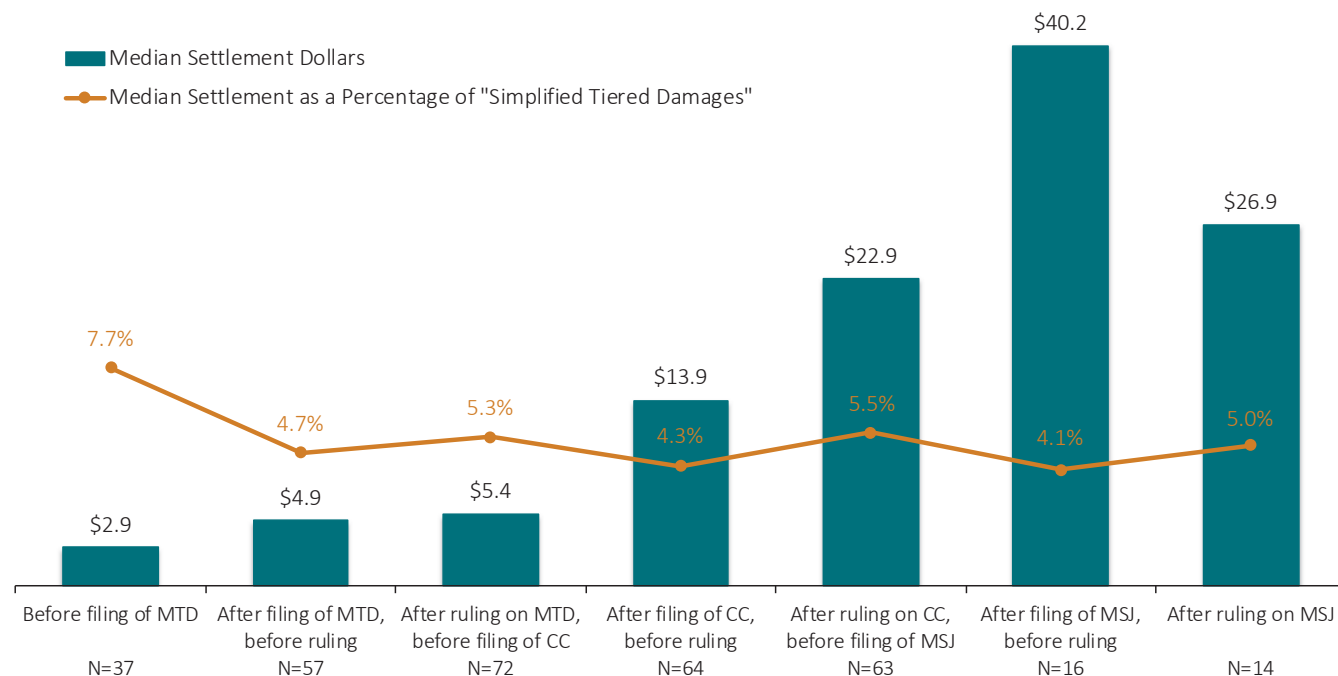
- In 2019, cases settled after a motion to dismiss (MTD) was filed but prior to a ruling on the MTD had a median settlement of \$8.5 million, significantly lower than for cases settled at later stages.
- In addition, among 2019 settlements, median total assets of issuer defendants at the time of settlement were almost 50 percent larger for cases settled following a ruling on a MTD than for cases where the MTD was pending at the time of settlement.

*The average time to reach a ruling on a motion for class certification among settlements was 2.3 years.*

- In the five-year period from 2015 to 2019, median “simplified tiered damages” for cases settled after a filing of a motion for summary judgment (MSJ) was over four times the median for cases settled before a MSJ filing. This contributed to higher settlement amounts but lower settlements as a percentage of “simplified tiered damages” for cases settled at this stage.

**Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement 2015–2019**

(Dollars in millions)



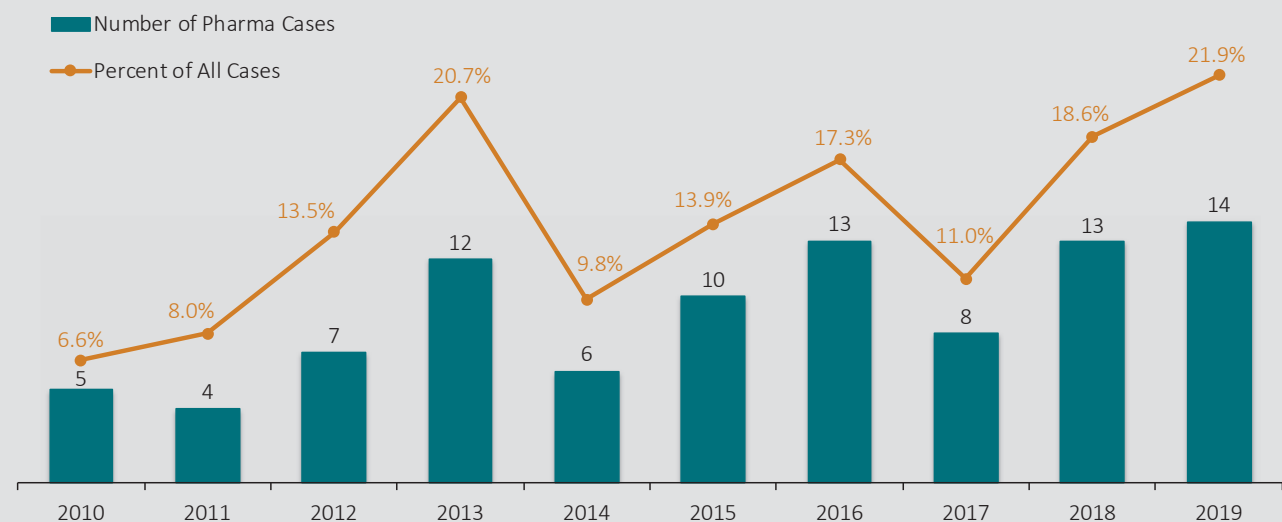
Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. MTD refers to “motion to dismiss,” CC refers to “class certification,” and MSJ refers to “motion for summary judgment.” This analysis is limited to cases alleging Rule 10b-5 claims.

# Spotlight: Settlements in the Pharmaceutical Industry

Cases with issuer defendants in the pharmaceutical industry, as defined by their SIC code (pharma cases), reached an all-time high in 2019, both in the absolute number and percentage of cases. While in prior years pharma cases tended to involve relatively large “simplified tiered damages,” in 2019, the median was \$163 million—36 percent lower than the median for all cases in 2019. Settlements for cases in this sector have a number of characteristics that differ from the overall sample, including several of those that are important determinants of settlement outcomes. (See Appendix 2 for additional information of settlements by industry.)

- Pharma cases are less likely to have a public pension acting as a lead plaintiff. From 2010 to 2019, only 22 percent of pharma cases had a public pension as lead plaintiff compared to 39 percent for non-pharma cases.
- Violations of GAAP are also less likely among pharma cases than non-pharma cases. From 2010 to 2019, only 19 percent of pharma cases alleged violations of GAAP compared to 62 percent of non-pharma cases.
- Restatements of financials were also less common among pharma cases—14 percent—compared to 30 percent in non-pharma cases from 2010 to 2019.
- Pharma cases are less likely to involve '33 Act claims related to an offering. During 2010–2019, only 17 percent of pharma cases involved '33 Act claims, whereas such claims were alleged in 28 percent of non-pharma cases.

Figure 14: Settlements in the Pharmaceutical Industry 2010–2019



These differences explain, in part, why pharma cases with Rule 10b-5 allegations tend to settle for smaller percentages of “simplified tiered damages.” The median settlement as a percentage of “simplified tiered damages” for pharma cases over the past 10 years is 3.7 percent while for non-pharma cases that figure is 5.8 percent.<sup>15</sup>

# Cornerstone Research's Settlement Prediction Analysis

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

## Determinants of Settlement Outcomes

Based on the research sample of post-Reform Act cases that settled through December 2019, the factors that were important determinants of settlement amounts included the following:

- “Simplified tiered damages”
  - Maximum Dollar Loss (MDL)—market capitalization change from its peak to post-disclosure value
  - Most recently reported total assets of the issuer defendant firm
  - A measure of how long the issuer defendant has been a public company
  - Number of entries on the lead case docket
  - The year in which the settlement occurred
  - Whether there were accounting allegations related to the alleged class period
  - Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
  - Whether there was a criminal indictment/charge against the issuer, other defendants, or related parties related to similar allegations in the complaint
- Whether an outside auditor or underwriter was named as a codefendant
  - Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
  - Whether the issuer defendant was distressed
  - Whether a public pension was a lead plaintiff
  - Whether the plaintiffs alleged that securities other than common stock were damaged

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

Settlements were also higher in cases involving financial restatements, a corresponding SEC action, a public pension involved as lead plaintiff, a third party such as an outside auditor or underwriter that was named as a codefendant, or securities other than common stock that were alleged to be damaged.

Settlements were lower if the settlement occurred in 2012 or later, or if the issuer was distressed.

More than 70 percent of the variation in settlement amounts can be explained by the factors discussed above.



# Research Sample

- The database used in this report contains cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price and M&A cases).
- The sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 1,849 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2019. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).<sup>16</sup>
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.<sup>17</sup> Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.<sup>18</sup>

# Data Sources

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

# Endnotes

- <sup>1</sup> See, e.g., “Where Have All the Public Companies Gone?,” *Bloomberg Opinion*, April 9, 2018.
- <sup>2</sup> See Stephen J. Choi, Jessica Erickson, and Adam C. Pritchard, “Risk and Reward: The Securities Fraud Class Action Lottery,” U.S. Chamber Institute for Legal Reform, February 2019.
- <sup>3</sup> See *Securities Class Action Filings—2019 Year in Review*, Cornerstone Research (2020).
- <sup>4</sup> See Charles Silver and Sam Dinkin, “Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions,” *DePaul Law Review* 57, no. 2 (2008): 471–508.
- <sup>5</sup> See Stephen J. Choi, Jessica Erickson, and Adam C. Pritchard, “Risk and Reward: The Securities Fraud Class Action Lottery,” U.S. Chamber Institute for Legal Reform, February 2019.
- <sup>6</sup> The “simplified tiered damages” approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may be overstated relative to damages estimates developed in conjunction with case-specific economic analysis.
- <sup>7</sup> See Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).
- <sup>8</sup> The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity. Shares subject to a lock-up period are not added to the float for purposes of this calculation.
- <sup>9</sup> The three categories of accounting issues analyzed in Figure 8 of this report are: (1) GAAP violations; (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.
- <sup>10</sup> See *Accounting Class Action Filings and Settlements—2018 Review and Analysis*, Cornerstone Research (2019). Update forthcoming in March 2020.
- <sup>11</sup> It could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on [www.sec.gov](http://www.sec.gov) involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.
- <sup>12</sup> See, e.g., Lynn A. Baker, Michael A. Perino, and Charles Silver, “Setting Attorneys’ Fees in Securities Class Actions: An Empirical Assessment,” *Vanderbilt Law Review* 66, no. 6 (2013): 1677–1718.
- <sup>13</sup> Docket entries reflect the number of entries on the court docket for events in the litigation and have been used in prior research as a proxy for the amount of plaintiff attorney effort involved in resolving securities cases. See Laura Simmons, “The Importance of Merit-Based Factors in the Resolution of 10b-5 Litigation,” University of North Carolina at Chapel Hill Doctoral Dissertation, 1996; Michael A. Perino, “Institutional Activism through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions,” St. John’s Legal Studies Research Paper No. 06-0055, 2006.
- <sup>14</sup> Stanford Securities Litigation Analytics (SSLA) tracks and collects data on private, shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice. The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at <https://sla.law.stanford.edu/>.
- <sup>15</sup> These results do not hold when looking at pharma cases with only ’33 Act claims from 2010 to 2019, which had a median settlement as a percentage of “simplified statutory damages” of 7.5 percent compared to 7.4 percent for the rest of the sample.
- <sup>16</sup> Available on a subscription basis. For further details see <https://www.issgovernance.com/securities-class-action-services/>.
- <sup>17</sup> Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- <sup>18</sup> This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

# Appendices

## Appendix 1: Settlement Percentiles

(Dollars in millions)

	Average	10th	25th	Median	75th	90th
2010	\$42.4	\$2.3	\$5.0	\$13.2	\$29.3	\$93.3
2011	\$23.8	\$2.1	\$3.0	\$6.5	\$20.5	\$47.5
2012	\$68.2	\$1.3	\$3.0	\$10.5	\$39.5	\$128.0
2013	\$79.4	\$2.1	\$3.3	\$7.1	\$24.3	\$90.5
2014	\$19.7	\$1.8	\$3.1	\$6.5	\$14.2	\$54.0
2015	\$42.5	\$1.4	\$2.3	\$7.0	\$17.5	\$101.4
2016	\$75.2	\$2.0	\$4.5	\$9.1	\$35.2	\$155.5
2017	\$19.0	\$1.6	\$2.7	\$5.2	\$15.6	\$36.0
2018	\$66.1	\$1.5	\$3.7	\$11.5	\$25.2	\$53.0
2019	\$27.4	\$1.5	\$5.6	\$11.5	\$20.0	\$50.0
1996–2019	\$45.5	\$1.8	\$3.7	\$8.9	\$22.3	\$74.4

Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used.

## Appendix 2: Select Industry Sectors 2010–2019

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Financial	103	\$19.8	\$472.5	4.7%
Technology	102	\$8.7	\$212.2	5.3%
Pharmaceuticals	91	\$8.6	\$237.0	3.7%
Retail	37	\$9.1	\$211.7	3.9%
Telecommunications	34	\$9.6	\$270.8	4.4%
Healthcare	15	\$8.5	\$132.8	6.4%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2019 dollar equivalent figures are used. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims.

### Appendix 3: Settlements by Federal Circuit Court 2010–2019

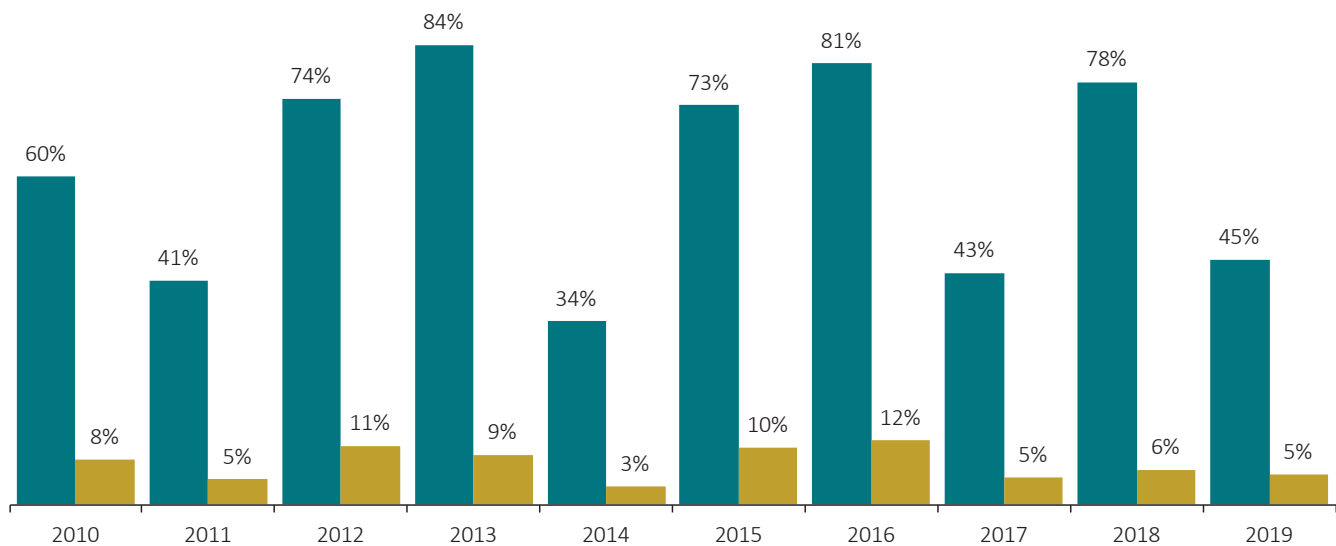
(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	22	\$8.5	3.3%
Second	180	\$10.2	4.8%
Third	49	\$8.6	5.0%
Fourth	27	\$14.5	3.6%
Fifth	34	\$9.9	4.5%
Sixth	29	\$13.2	7.3%
Seventh	39	\$11.3	4.4%
Eighth	13	\$13.8	6.1%
Ninth	189	\$8.0	4.9%
Tenth	16	\$6.7	6.0%
Eleventh	35	\$6.3	5.2%
DC	3	\$29.5	1.9%

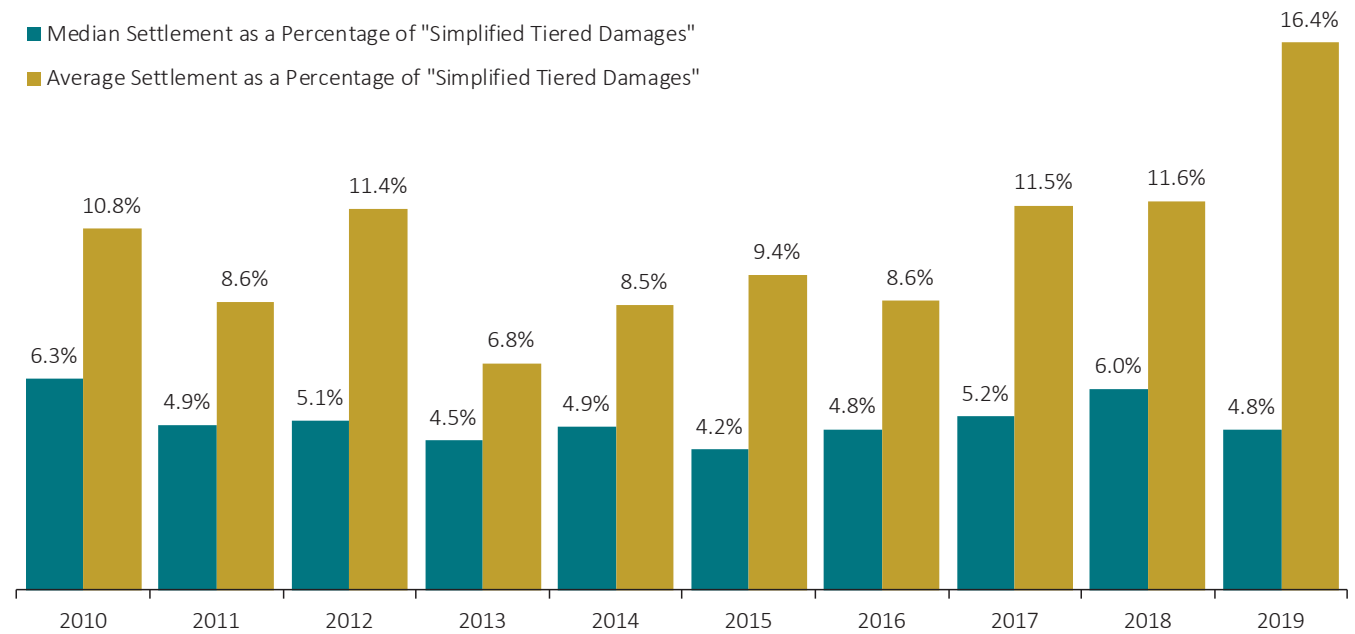
Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. Settlements as a percentage of "simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims.

### Appendix 4: Mega Settlements 2010–2019

- Total Mega Settlement Dollars as a Percentage of All Settlement Dollars
- Number of Mega Settlements as a Percentage of All Settlements



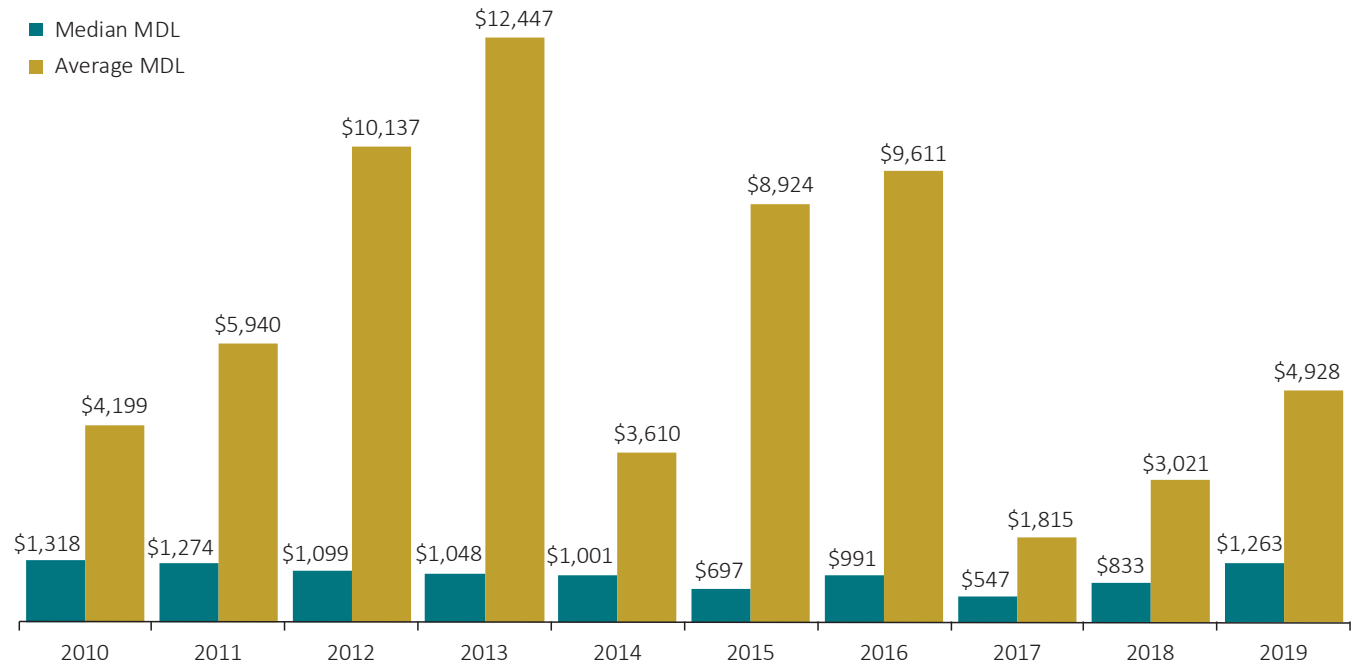
**Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”  
2010–2019**



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

**Appendix 6: Median and Average Maximum Dollar Loss (MDL)  
2010–2019**

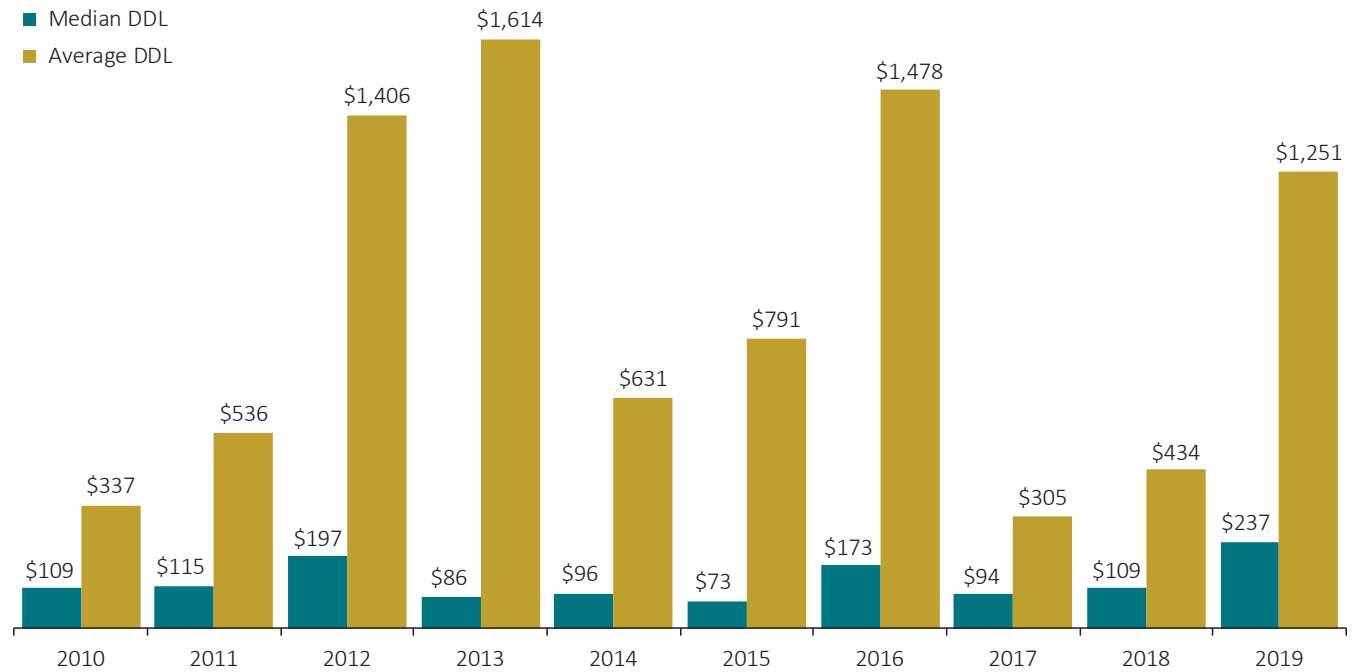
(Dollars in millions)



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

**Appendix 7: Median and Average Disclosure Dollar Loss (DDL)  
2010–2019**

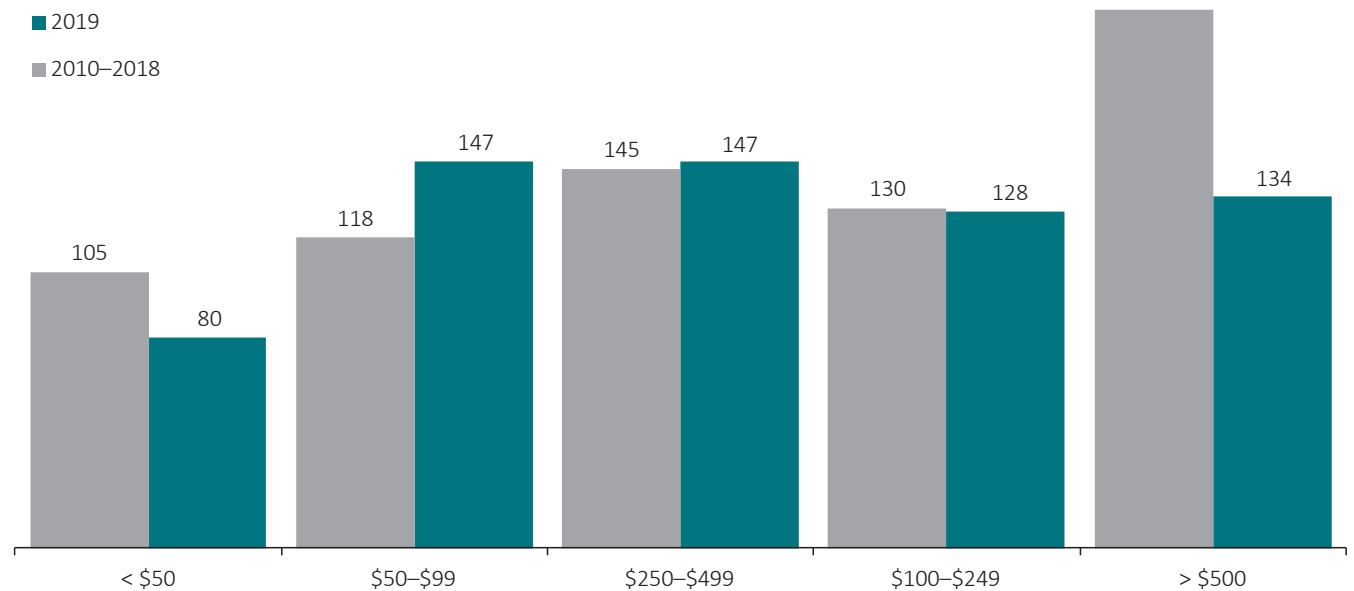
(Dollars in millions)



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

**Appendix 8: Median Docket Entries by “Simplified Tiered Damages” Range  
2010–2019**

(Dollars in millions)



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

# About the Authors

## **Laarni T. Bulan**

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

Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities damages and class certification issues, insider trading, merger valuation, risk management, market manipulation and trading behavior, and real estate markets. She has also consulted on cases related to financial institutions and the credit crisis, municipal bond mutual funds, asset-backed commercial paper conduits, credit default swaps, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published several academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

## **Laura E. Simmons**

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

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

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

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update.

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

Please direct any questions and requests for additional information to the settlement database administrator at [settlementdatabase@cornerstone.com](mailto:settlementdatabase@cornerstone.com).

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**Silicon Valley**

650.853.1660

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# **Exhibit 8**

### Compendium of Unreported Cases

*Gupta v. Power Sols. Int’l Inc.*  
1:16-cv-08253 (N.D. Ill May 13, 2019).....1

*Pension Trust Fund for Operating Eng’rs v. DeVry Educ. Grp. Inc.,*  
No. 1:16-cv-05198 (N.D. Ill Dec. 6, 2019).....2

*Pub. Emps. Ret. Sys. of Miss. v. Endo Int’l PLC,*  
Case No. 2017-02081 (Pa. Com. Pl. Chester Cty. Dec. 5, 2019) .....3

*Pub. Emps. Ret. Sys. of Miss. v. Sprouts Farmers Market Inc.*  
CV2016-050480 (Super Ct. Ariz. Maricopa Cty. May 31, 2019) .....4

*Van Noppen v. Innerworkings Inc.*  
No. 1:14cv-01416 (N.D. Ill. Nov. 2, 2016).....5

**TAB 1**

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

SUMIT GUPTA, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiffs,

v.

POWER SOLUTIONS INTERNATIONAL,  
INC., DANIEL P. GOREY, JAY J.  
HANSEN, ELLEN R. HOFFING,  
KENNETH LANDINI, MICHAEL P.  
LEWIS, MARY E. VOGT, and GARY S.  
WINEMASTER,

Defendants.

Case No. 1:16-cv-08253

Consolidated with:

Case No. 1:16-cv-9599

Judge: Honorable Virginia M. Kendall

**May 13, 2019 Final Approval Hearing**

**~~PROPOSED~~ ORDER AWARDING ATTORNEYS' FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

This matter came on for hearing on May 13, 2019 (the "Final Approval 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 Final Approval Hearing and otherwise; and it appearing that notice of the Final Approval 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 *Investor's Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated January 22, 2019 (ECF No. 135-1) (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. §§ 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 33 1/3 % of the Settlement Fund and \$81,867.58 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 consolidated 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 consisting of \$8,500,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) Copies of the Postcard Notice were mailed to 12,577 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not exceed 33.3% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$175,000. There were no objections to the requested attorneys' fees and Litigation Expenses;

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

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

(e) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(f) Plaintiffs' Counsel devoted over 3,554 hours, with a lodestar value of approximately \$1,822,491 to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff Richard Giunta is hereby awarded \$5,000, and Plaintiff David Leibowitz is awarded \$5,000 from the Settlement Fund as reimbursement for their reasonable costs and expenses directly related to their representation of the Settlement Class.

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

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

9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

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

Dated: May 13, 2019

  
HON. VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

**TAB 2**



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

PENSION TRUST FUND FOR OPERATING  
ENGINEERS, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

DEVRY EDUCATION GROUP, INC., DANIEL  
HAMBURGER, RICHARD M. GUNST,  
PATRICK J. UNZICKER, AND  
TIMOTHY J. WIGGINS,

Defendants.

Case No. 1:16-CV-05198

Hon. Mary M. Rowland

**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES**

This matter came before the Court for hearing on December 6, 2019 (the “Final Approval Hearing”) on Lead Counsel’s motion for an award of attorneys’ fees and payment of expenses. The Court having considered all matters submitted to it at the Final Approval Hearing and otherwise; and it appearing that notice of the Final Approval 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 *The Wall Street Journal* and was transmitted over *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 expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement, dated August 29, 2019 (the “Settlement Agreement”), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.
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 payment of expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”); constituted the best notice practicable under the circumstances; and constituted due, adequate, and sufficient notice to all Persons entitled thereto.

4. Lead Counsel is hereby awarded, on behalf of all Plaintiffs' Counsel, attorneys' fees in the amount of \$7,425,000, plus interest at the same rate earned by the Settlement Fund (which is 27% of the Settlement Fund), and payment of litigation expenses in the amount of \$184,192.69, plus accrued interest, which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. Lead Plaintiff Utah Retirement Systems is hereby awarded \$10,000.00 from the Settlement Fund, pursuant to the PSLRA, as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

6. The award of attorneys' fees and expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Settlement Agreement, which terms, conditions, and obligations are incorporated herein.

7. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has analyzed the factors considered within the Seventh Circuit and found that:

(a) The Settlement has created a fund of \$27,500,000 in cash, pursuant to the terms of the Settlement Agreement, and numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Lead Plaintiff, a sophisticated institutional investor that was directly involved in the prosecution and resolution of the Action and who has a substantial interest in ensuring that any fees paid to counsel are duly earned and not excessive;

(c) The amount of attorneys' fees awarded are fair and reasonable and are consistent with fee awards approved in cases within the Seventh Circuit with similar recoveries;

(d) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy and are highly experienced in the field of securities class action litigation;

(e) Plaintiffs' Counsel devoted more than 6,600 hours, with a lodestar value of \$3,486,985.50, to achieve the Settlement;

(f) Plaintiffs' Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

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

(h) 67,813 copies of the Notice were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 27% of the Settlement Fund and expenses in an amount not to exceed \$225,000, and there were no objections to the requested attorneys' fees and expenses.

8. Any appeal or any challenge affecting this Court's approval regarding any of the attorneys' fees and expense applications shall in no way disturb or affect the finality of the Judgment.

9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Settlement Agreement.

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

DATED this 6th day of December, 2019

BY THE COURT:



---

Honorable Mary M. Rowland  
UNITED STATES DISTRICT JUDGE

**TAB 3**

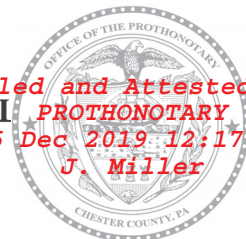
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Filed and Attested by  
PROTHONOTARY  
05 Dec 2019 12:17 PM  
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*Counsel for Plaintiff*

**IN THE COURT OF COMMON PLEAS OF  
CHESTER COUNTY, PENNSYLVANIA**

PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF MISSISSIPPI, Individually and  
on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

ENDO INTERNATIONAL PLC, et al.,

Defendants.

CIVIL ACTION

Case No. 2017-02081-MJ

**FINAL ORDER AND JUDGMENT**

WHEREAS:

A. As of June 27, 2019, plaintiff Public Employees' Retirement System of Mississippi ("Plaintiff" or "Mississippi PERS"), on behalf of itself and all other members of the proposed Settlement Class (defined below), on the one hand, and Endo International plc ("Endo" or the "Company"); Rajiv Kanishka Liyanaarchchie De Silva, Suketu P. Upadhyay, Daniel A. Rudio, Roger H. Kimmel, Shane M. Cooke, John J. Delucca, Arthur J. Higgins, Nancy J. Hutson,

Michael Hyatt, William P. Montague, Jill D. Smith, William F. Spengler (collectively, the “Individual Defendants” and with Endo, the “Endo Defendants”); and Goldman Sachs & Co. LLC (named herein as Goldman, Sachs & Co.), J.P. Morgan Securities LLC, Barclays Capital Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, Citigroup Global Markets Inc. (named herein as Citigroup Global Markets, LLC), Morgan Stanley & Co. LLC, SunTrust Robinson Humphrey, Inc., TD Securities (USA) LLC, and MUFG Securities Americas Inc. (f/k/a Mitsubishi UFJ Securities (USA) Inc.) (collectively, the “Underwriter Defendants,” and with the Endo Defendants, the “Defendants”), on the other, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”), which is subject to review under Rule 1714 of the Pennsylvania Rules of Civil Procedure, and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the Action and the claims alleged in the Amended Class Action Complaint, filed on October 16, 2017, on the merits and with prejudice (the “Settlement”);

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered June 2, 2019 (the “Preliminary Approval Order”), the Court scheduled a hearing for October 21, 2019, at 1:30 p.m. (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule on Class Counsel’s Fee and Expense Application;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and a Proof of Claim



and Release form (“Proof of Claim”), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before ten (10) business days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be published in *The Wall Street Journal* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by September 30, 2019;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On September 16, 2019, Plaintiff moved for final approval of the Settlement, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held before this Court on November 25, 2019, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered Plaintiff’s motion, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates and makes a part hereof: (i) the Stipulation filed with the Court on June 28, 2019; and (ii) the Notice, which was filed with the Court on September 16, 2019. Capitalized terms not defined in this Judgment shall have the meaning set forth in the Stipulation.

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

3. The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for purposes of the Settlement only, pursuant to Pa. R. Civ. P. 1702, 1708 & 1709, the Settlement Class of: all individuals and entities that purchased or otherwise acquired Endo's publicly traded common stock issued in or traceable to the Company's June 5, 2015 Offering of 27,627,628 shares. Excluded from the Settlement Class are: (i) Defendants; (ii) the officers and directors of Endo International plc and of the Underwriter Defendants, at all relevant times; (iii) members of the immediate families of the Individual Defendants and of the excluded officers and directors; (iv) any entity in which Endo has or had a controlling interest; (v) any entity in which an Underwriter Defendant has a majority ownership interest; and (vi) the legal representatives, heirs, successors or assigns of any of the foregoing, in their capacities as such. Notwithstanding the preceding sentence, any investment company, pooled investment fund, or separately managed account, including, but not limited to, mutual fund families, exchange-traded funds, employee benefit plans, trust companies for retirement accounts, fund of funds and hedge funds, in which any Underwriter Defendant has or may have a direct or indirect interest, or as to which its affiliates may act as an investment advisor but of which any Underwriter Defendant or any of its respective affiliates is not a majority owner or does not hold a majority beneficial

interest, shall not be deemed an excluded person or entity. No members of the Settlement Class have requested exclusion.

4. Pursuant to Pa. R. Civ. P. 1709, and for purposes of the Settlement only, the Court hereby re-affirms its determinations in the Preliminary Approval Order and finally certifies plaintiff Public Employees' Retirement System of Mississippi as Class Representative for the Settlement Class; and finally appoints the law firm of Labaton Sucharow LLP as Class Counsel for the Settlement Class and the law firm of Goldman Scarlato & Penny, P.C. as Liaison Counsel for the Settlement Class.

5. The Court finds that the mailing and publication of the Notice, Summary Notice, and Proof of Claim: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Class Counsel's request for an award of attorney's fees and payment of litigation expenses incurred in connection with the prosecution of the Action, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Pa. R. Civ. P. 1712, the United States Constitution (including the Due Process Clause), and Section 27 of the Securities Act of 1933 (to the extent applicable, if at all).

6. There has been one objection to the Settlement, filed on September 30, 2019, by Park Employees' and Retirement Board Employees' Annuity and Benefit Fund of Chicago ("Chicago Park Employees"). Chicago Park Employees states that it is not a member of the Settlement Class. Accordingly, the Court finds that Chicago Park Employees does not have

standing to object to the Settlement through membership in the Settlement Class. With respect to its objection, the Court denies the objection for lack of standing and for the reasons set forth below in paragraph 7. The Court also finds that the release given through the Settlement is fair and appropriate under the law and the circumstances of this case, and that due and sufficient notice of the Settlement was provided to the Settlement Class.

7. In light of the risks of establishing liability and damages; the range of reasonableness of the Settlement in light of the best possible recovery and the attendant risks of litigation; the complexity, expense, and likely duration of the litigation; the state of proceedings and the amount of discovery completed; the recommendations of Class Counsel; and the reaction of the Settlement Class to the Settlement, the Court hereby fully and finally approves the Settlement as set forth in the Stipulation in all respects, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of Plaintiff and the Settlement Class. This Court further finds the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of Plaintiff, the Settlement Class, and Defendants. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation.

8. The Amended Class Action Complaint, filed on October 16, 2017, is **DISMISSED IN ITS ENTIRETY, WITH PREJUDICE** as of the Effective Date and without costs to any Party.

9. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied fully with the Pennsylvania Rules of Civil Procedure in connection with the maintenance, prosecution, defense, and settlement of the Action.

10. The releases set forth in the Stipulation, together with the definitions contained in the Stipulation relating thereto, are expressly incorporated herein in all respects and are effective as of the Effective Date. Each Settlement Class Member, whether or not such Settlement Class Member executes and delivers a Proof of Claim, is bound by this Judgment, including, without limitation, the release of claims as set forth in the Stipulation.

11. Upon the Effective Date, Plaintiff and each and every other Settlement Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

12. Upon the Effective Date, Defendants, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

13. Defendants have denied, and continue to deny, any and all allegations and claims asserted in the Action, and Defendants have represented that they entered into the Settlement solely in order to eliminate the burden, expense, and uncertainties of further litigation. This Judgment and the Stipulation, whether or not consummated, and any discussion, negotiation,

proceeding, or agreement relating to the Stipulation, the Settlement, and/or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Parties with respect to the truth of any allegation by Plaintiff and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or entity whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Parties of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants, or against or to the prejudice of Plaintiff, or any other member of the Settlement Class as evidence of any infirmity in the claims of Plaintiff, or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Parties, Plaintiff, any other member of the Settlement Class, or their respective counsel with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for

any other reason against or to the prejudice of any of the Defendants or any Released Defendant Parties, Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Parties, Plaintiff, or any other member of the Settlement Class, that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial;

(e) do not constitute, and shall not be offered or received against or to the prejudice of Plaintiff as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Plaintiff, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under the Complaint or Amended Complaint would not have exceeded the Settlement Amount; and

(f) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Released Defendant Parties that class certification is appropriate in this Action or any other action, except for the purposes of this Settlement.

14. Notwithstanding the foregoing, this Judgment, including the releases herein, has full preclusive effect on all Parties, including the Settlement Class, and the Parties and other Released Parties may file or refer to this Judgment, the Stipulation, and/or any Proof of Claim:

(i) to effectuate the liability protections granted hereunder, including without limitation, to

support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim; (ii) to enforce any applicable insurance policies and any agreements relating thereto; or (iii) to enforce the terms of the Stipulation and/or this Judgment. The Parties and other Released Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

15. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Judgment shall be rendered null and void and shall be vacated to the extent provided by and in accordance with the Stipulation, and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

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

18. The Settling Parties are hereby authorized, without further approval of the Court, to unanimously agree to and adopt in writing such amendments, modifications, and expansions of the Stipulation, provided that such amendments, modifications, and expansions of the Stipulation are not materially inconsistent with this Judgment, and do not materially limit the rights of the Members of the Class under the Stipulation.



19. Subject to the ability to amend or modify the Stipulation in accordance with paragraph 18 above, the Parties are hereby directed to consummate the Stipulation and to perform its terms.

**APPROVAL OF THE PLAN OF ALLOCATION**

20. Copies of the Notice, which included the proposed Plan of Allocation, were mailed to more than 35,418 potential Settlement Class Members and nominees. No objections to the Plan of Allocation have been received.

21. The Court hereby finds and concludes that the Plan of Allocation for the calculation of the claims of claimants and distribution of the Net Settlement Fund, which was set forth in the Notice disseminated to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the Net Settlement Fund among eligible Settlement Class Members.

22. Pursuant to the Plan of Allocation, distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance among Authorized Claimants who have cashed their initial checks in an equitable and economic fashion. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be donated as follows: 50% of the unclaimed balance

to the Pennsylvania Interest on Lawyers Trust Account Board and 50% of the unclaimed balance to the Mississippi Council for Economic Education, or as otherwise approved by the Court.

23. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the Notice, is, in all respects, fair and reasonable and the Court hereby approves the Plan of Allocation.

24. The Court's approval of the Plan of Allocation is a matter separate and distinct from approval of the Settlement and shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

#### **CLASS COUNSEL'S FEE AND EXPENSE APPLICATION**

25. Class Counsel is hereby awarded, on behalf of all Plaintiff's Counsel, attorneys' fees in the amount of \$3 million, plus interest at the same rate earned by the Settlement Fund, and payment of litigation expenses in the amount of \$251,825.17, which sums the Court finds to be fair and reasonable.

26. The award of attorneys' fees and litigation expenses may be paid to Class Counsel from the Settlement Fund immediately upon entry of this Judgment, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

27. In making this award of attorneys' fees and payment of litigation expenses to be paid from the Settlement Fund, the Court has found that:

(a) The Settlement has created a common fund of \$50 million in cash and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Plaintiff's Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Plaintiff, a sophisticated institutional investor that was directly involved in the prosecution and resolution of the Action and which has a substantial interest in ensuring that any fees paid to Plaintiff's Counsel are duly earned and not excessive;

(c) Plaintiff's Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

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

(e) Plaintiff's Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(f) Plaintiff's Counsel have devoted approximately 7,500 hours, with a lodestar value of \$3,659,960.00 to achieve the Settlement;

(g) The amount of attorneys' fees awarded are fair and reasonable and consistent with fee awards approved in cases with similar recoveries;

(h) Notice was disseminated to putative Settlement Class Members stating that Class Counsel would be submitting an application for attorneys' fees in an amount not to exceed 16% of the Settlement Fund, which includes interest, and payment of litigation expenses incurred in connection with the prosecution of this Action in an amount not to exceed \$400,000, plus interest, and that such application also might include a request for a service award for Plaintiff related to its representation of the Settlement Class; and

(i) There were no objections to the application for attorneys' fees or expenses.

28. The Court hereby awards Plaintiff \$ 21,602.50 for its representation of the Settlement Class.

29. The Court's approval of the Fee and Expense Application is a matter separate and distinct from approval of the Settlement and shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

30. The Parties are to bear their own costs, except as otherwise provided herein or in the Stipulation.

31. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the disposition of the Settlement Fund; (iii) any applications for attorneys' fees, costs, interest and payment of expenses in the Action; (iv) all parties for the purpose of construing, enforcing and administering the Settlement and this Judgment; and (v) other matters related or ancillary to the foregoing. Immediate entry by the Clerk of the Court is expressly directed.

DATED this 5<sup>th</sup> day of DECEMBER, 2019

BY THE COURT:

  
\_\_\_\_\_  
Honorable Edward Griffith

**TAB 4**

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18 *Counsel for Plaintiff Public Employees’*  
19 *Retirement System of Mississippi*

20 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

21 **IN AND FOR THE COUNTY OF MARICOPA**

22 PUBLIC EMPLOYEES’ RETIREMENT )  
23 SYSTEM OF MISSISSIPPI, individually ) **Case No.: CV2016-050480**  
and on behalf of all others similarly situated,) **Final Order and Judgment**  
Plaintiffs )  
v. ) (*Complex case*)  
SPROUTS FARMERS MARKET, INC., et )  
al., ) **(Assigned to the Hon. Roger Brodman)**  
Defendants. )  
\_\_\_\_\_ )

1           WHEREAS:

2           A.     As of December 27, 2018, the Public Employees' Retirement System of  
3 Mississippi ("PERS" or "Lead Plaintiff"), on behalf of itself and all other members of the  
4 proposed Settlement Class (defined below), on the one hand, and Sprouts Farmers  
5 Market, Inc. ("Sprouts" or the "Company"), J. Douglas Sanders, Amin N. Maredia,  
6 Donna Berlinski, Andrew S. Jhawar, Shon Boney, Joseph Fortunato, Lawrence P.  
7 Molloy, and Steven H. Townshend (together, the "Individual Defendants" and with  
8 Sprouts, the "Sprouts Defendants"), AP Sprouts Holdings, LLC, and AP Sprouts  
9 Holdings (Overseas), L.P. (together "AP"), Barclays Capital Inc., and Morgan Stanley &  
10 Co. LLC (the "Underwriter Defendants", and with AP and the Sprouts Defendants, the  
11 "Defendants"), on the other, entered into a Stipulation and Agreement of Settlement (the  
12 "Stipulation") in the above-titled litigation (the "Action");

13           B.     Pursuant to the Order Granting Preliminary Approval of Class Action  
14 Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on  
15 Final Approval of Settlement, entered January 30, 2019 (the "Preliminary Approval  
16 Order"), the Court scheduled a hearing for May 31, 2019, at 9:00 a.m. (the "Settlement  
17 Hearing") to, among other things: (i) determine whether the proposed Settlement of the  
18 Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and  
19 adequate, and should be approved by the Court; (ii) determine whether a judgment as  
20 provided for in the Stipulation should be entered; (iii) determine whether the proposed  
21 Plan of Allocation for the proceeds of the Settlement should be approved; and (iv) rule on  
22 Counsel's Fee and Expense Application;

23

1 C. The Court ordered that the Notice of Pendency of Class Action, Proposed  
2 Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice") and a Proof of  
3 Claim and Release form ("Claim Form"), substantially in the forms attached to the  
4 Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class  
5 mail, postage prepaid, on or before ten (10) business days after the date of entry of the  
6 Preliminary Approval Order ("Notice Date") to all potential Settlement Class Members  
7 who could be identified through reasonable effort, and that a Summary Notice of  
8 Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and  
9 Expenses (the "Summary Notice"), substantially in the form attached to the Preliminary  
10 Approval Order as Exhibit 3, be published in *Investor's Business Daily* and transmitted  
11 over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

12 D. The Notice and the Summary Notice advised potential Settlement Class  
13 Members of the date, time, place, and purpose of the Settlement Hearing. The Notice  
14 further advised that any objections to the Settlement were required to be filed with the  
15 Court and served on counsel for the Parties such that they were received by May 10,  
16 2019;

17 E. The provisions of the Preliminary Approval Order as to notice were  
18 complied with;

19 F. On April 25, 2019, Lead Plaintiff moved for final approval of the  
20 Settlement and the proposed Plan of Allocation, as set forth in the Preliminary Approval  
21 Order, and Lead Counsel moved for approval of the Fee and Expense Application. The  
22 Settlement Hearing was duly held before this Court on May 31, 2019, at which time all  
23 interested Persons were afforded the opportunity to be heard; and



1           G.     This Court has duly considered Lead Plaintiff's motion, Lead Counsel's  
2 motion, the affidavits, declarations, memoranda of law submitted in support thereof, the  
3 Stipulation, and all of the submissions and arguments presented with respect to the  
4 proposed Settlement;

5           NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED  
6 AND DECREED that:

7           1.     This Judgment incorporates and makes a part hereof: (i) the Stipulation  
8 filed with the Court on December 28, 2018; and (ii) the Notice, which was filed with the  
9 Court on April 25, 2019. Capitalized terms not defined in this Judgment shall have the  
10 meaning set forth in the Stipulation.

11           2.     This Court has jurisdiction over the subject matter of the Action and over  
12 all parties to the Action, including all Settlement Class Members.

13           3.     The Court hereby affirms its determinations in the Preliminary Approval  
14 Order and finally certifies, for purposes of the Settlement only, pursuant to Rules 23(a)  
15 and (b)(3) of the Arizona Rules of Civil Procedure, the Settlement Class of: all persons  
16 and entities that purchased or otherwise acquired Sprouts common stock in or traceable to  
17 the Company's secondary public offering of 15,847,800 shares that occurred on or about  
18 March 5, 2015, and who were allegedly damaged thereby. Excluded from the Settlement  
19 Class are: (i) the Defendants; (ii) the officers and directors of Sprouts, AP Sprouts  
20 Holdings LLC, AP Sprouts Holdings (Overseas), L.P., and the Underwriter Defendants at  
21 all relevant times; (iii) members of the immediate families of the Individual Defendants  
22 and of the excluded officers and directors; (iv) any entity in which any of the foregoing,  
23 other than the Underwriter Defendants, has or had a controlling interest (and in the case

1 of the Underwriter Defendants, only such entities in which they have a majority  
2 ownership interest); (v) any affiliates, parents or subsidiaries of Sprouts, including  
3 Sprouts' employee retirement and/or benefit plan(s) and their participants or  
4 beneficiaries, to the extent they made purchases through such plan(s); (vi) affiliates,  
5 parents or subsidiaries of AP Sprouts Holdings LLC, and AP Sprouts Holdings  
6 (Overseas), L.P. (but, for the avoidance of doubt, not excluding Persons that are members  
7 or partners of such affiliates, parents or subsidiaries); (vii) Persons who have no  
8 compensable damages; and (viii) the legal representatives, heirs, successors or assigns of  
9 any of the foregoing, in their capacities as such. Also excluded from the Settlement Class  
10 is the Person listed on Exhibit A hereto, who submitted a request for exclusion from the  
11 Settlement Class.

12 4. Pursuant to Ariz. R. Civ. P. 23, and for purposes of the Settlement only, the  
13 Court hereby re-affirms its determinations in the Preliminary Approval Order and finally  
14 certifies PERS as Class Representative for the Settlement Class; and finally appoints the  
15 law firm of Labaton Sucharow LLP as Class Counsel for the Settlement Class and the  
16 law firm of Christian Anderson PLC as Liaison Counsel for the Settlement Class.

17 5. The Court finds that the mailing and publication of the Notice, Summary  
18 Notice, and Claim Form: (i) complied with the Preliminary Approval Order; (ii)  
19 constituted the best notice practicable under the circumstances; (iii) constituted notice  
20 that was reasonably calculated to apprise Settlement Class Members of the effect of the  
21 Settlement, of the proposed Plan of Allocation, of Lead Counsel's request for an award of  
22 attorney's fees and payment of litigation expenses incurred in connection with the  
23 prosecution of the Action, of Settlement Class Members' right to object or seek exclusion

1 from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv)  
2 constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of  
3 the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the  
4 Arizona Rules of Civil Procedure, the United States Constitution (including the Due  
5 Process Clause), and Section 27 of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), as  
6 amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”).

7         6.       There have been no objections to the Settlement.

8         7.       In light of the benefits to the Settlement Class, the complexity, expense and  
9 possible duration of further litigation against Defendants, the risks of establishing liability  
10 and damages, and the costs of continued litigation, the Court hereby fully and finally  
11 approves the Settlement as set forth in the Stipulation in all respects, and finds that the  
12 Settlement is, in all respects, fair, reasonable and adequate, and in the best interests of  
13 Lead Plaintiff and the Settlement Class. This Court further finds the Settlement set forth  
14 in the Stipulation is the result of arm’s-length negotiations between experienced counsel  
15 representing the interests of Lead Plaintiff, the Settlement Class, and Defendants. The  
16 Settlement shall be consummated in accordance with the terms and provisions of the  
17 Stipulation.

18         8.       The Complaint for Violation of the Securities Act of 1933, filed on March  
19 4, 2016, is dismissed in its entirety, with prejudice, and without costs to any Party, except  
20 as otherwise provided in the Stipulation.

21         9.       The Court finds that during the course of the Action, the Parties and their  
22 respective counsel at all times complied with the requirements of Rule 11 of the Arizona  
23 Rules of Civil Procedure.

1           10.    Upon the Effective Date, Lead Plaintiff and each and every other  
2 Settlement Class Member, on behalf of themselves and each of their respective heirs,  
3 executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed  
4 to have fully, finally, and forever waived, released, discharged, covenanted not to sue  
5 with respect to, and dismissed each and every one of the Released Claims against each  
6 and every one of the Released Defendant Parties and shall forever be barred and  
7 permanently enjoined and restrained from bringing, commencing, instituting,  
8 prosecuting, asserting, or maintaining any and all of the Released Claims against any and  
9 all of the Released Defendant Parties.

10           11.    Upon the Effective Date, Defendants, on behalf of themselves and each of  
11 their respective heirs, executors, trustees, administrators, predecessors, successors, and  
12 assigns, shall be deemed to have fully, finally, and forever waived, released, discharged,  
13 covenanted not to sue with respect to, and dismissed each and every one of the Released  
14 Defendants' Claims against each and every one of the Released Plaintiff Parties and shall  
15 forever be barred, enjoined and restrained from bringing, commencing, instituting,  
16 prosecuting, asserting, or maintaining any and all of the Released Defendants' Claims  
17 against any and all of the Released Plaintiff Parties.

18           12.    Upon the Effective Date, any and all Persons are permanently barred and  
19 enjoined, to the fullest extent permitted by law, from commencing, prosecuting or  
20 asserting any and all claims for contribution, indemnification, or any other claim where  
21 the alleged injury to that Person is that Person's actual or threatened liability to the  
22 Settlement Class or a Settlement Class Member in the Action, arising out of, based upon,  
23 relating to, concerning, or in connection with the Released Claims against each and every

1 one of the Released Defendant Parties, whether arising under state, federal, local,  
2 common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in  
3 the Action or a separate action, in the Court or in any other court, arbitration proceeding,  
4 administration, or other forum in the United States or elsewhere.

5 13. Upon the Effective Date, each and every Released Defendant Party is  
6 permanently barred and enjoined, to the fullest extent permitted by law, from  
7 commencing, prosecuting, or asserting any and all claims for contribution,  
8 indemnification, or any other claim where the alleged injury to that Released Defendant  
9 Party is that Released Defendant Party's actual or threatened liability to the Settlement  
10 Class or a Settlement Class Member in the Action, arising out of, based upon, relating to,  
11 concerning, or in connection with the Released Claims against any and all Persons,  
12 whether arising under state, federal, local, common, or foreign law, as claims, cross-  
13 claims, counterclaims, or third-party claims, in the Action or a separate action, in the  
14 Court or in any other court, arbitration proceeding, administration, or other forum in the  
15 United States or elsewhere.

16 14. Nothing in this Final Judgment shall bar any action to enforce the  
17 Settlement or release, bar or alter the contractual rights, if any, under the terms of any  
18 written agreement (i) between or among the Underwriter Defendants, or (ii) between the  
19 Underwriter Defendants, the Individual Defendants, or AP, on the one hand, and Sprouts,  
20 on the other hand.

21 15. Each Settlement Class Member, whether or not such Settlement Class  
22 Member executes and delivers a Claim Form, is bound by this Judgment, including,  
23 without limitation, the release of claims as set forth in the Stipulation.

1           16.    This Judgment and the Stipulation, whether or not consummated, and any  
2 discussion, negotiation, proceeding, or agreement relating to the Stipulation, the  
3 Settlement, and any matter arising in connection with settlement discussions or  
4 negotiations, proceedings, or agreements, shall not be offered or received against or to the  
5 prejudice of any of the Parties or their respective counsel, for any purpose other than in  
6 an action to enforce the terms hereof, and in particular:

7                   (a)    do not constitute, and shall not be offered or received against or to  
8 the prejudice of any of the Defendants as evidence of, or construed as, or deemed to be  
9 evidence of any presumption, concession, or admission by any of the Defendants with  
10 respect to the truth of any allegation by Lead Plaintiff and the Settlement Class, or the  
11 validity of any claim that has been or could have been asserted in the Action or in any  
12 litigation, including but not limited to the Released Claims, the deficiency of any defense  
13 that has been or could have been asserted by any of the Defendants in this Action or in  
14 any other litigation, or of any liability, damages, negligence, fault or wrongdoing of  
15 Defendants or any person or entity whatsoever;

16                   (b)    do not constitute, and shall not be offered or received against or to  
17 the prejudice of any of the Defendants as evidence of a presumption, concession, or  
18 admission of any fault, misrepresentation, or omission with respect to any statement or  
19 written document approved or made by any of the Defendants, or against or to the  
20 prejudice of Lead Plaintiff, or any other member of the Settlement Class as evidence of  
21 any infirmity in the claims of Lead Plaintiff, or the other members of the Settlement  
22 Class;

23

1 (c) do not constitute, and shall not be offered or received against or to  
2 the prejudice of any of the Defendants, Lead Plaintiff, any other member of the  
3 Settlement Class, or their respective counsel, as evidence of a presumption, concession,  
4 or admission with respect to any liability, damages, negligence, fault, infirmity, or  
5 wrongdoing, or in any way referred to for any other reason against or to the prejudice of  
6 any of the Defendants, Lead Plaintiff, other members of the Settlement Class, or their  
7 respective counsel, in any other civil, criminal, or administrative action or proceeding,  
8 other than such proceedings as may be necessary to effectuate the provisions of the  
9 Stipulation;

10 (d) do not constitute, and shall not be construed against any of the  
11 Defendants, Lead Plaintiff, or any other member of the Settlement Class, as an admission  
12 or concession that the consideration to be given hereunder represents the amount that  
13 could be or would have been recovered after trial; and

14 (e) do not constitute, and shall not be construed as or received in  
15 evidence as an admission, concession, or presumption against Lead Plaintiff, or any other  
16 member of the Settlement Class that any of their claims are without merit or infirm or  
17 that damages recoverable under the Complaint would not have exceeded the Settlement  
18 Amount.

19 17. Notwithstanding the foregoing, the Parties and other Released Parties may  
20 file or refer to this Judgment, the Stipulation, and/or any Proof of Claim: (i) to effectuate  
21 the liability protections granted hereunder, including without limitation, to support a  
22 defense or counterclaim based on principles of res judicata, collateral estoppel, release,  
23 good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or

1 issue preclusion or similar defense or counterclaim; (ii) to enforce any applicable  
2 insurance policies and any agreements relating thereto; or (iii) to enforce the terms of the  
3 Stipulation and/or this Judgment. The Parties and other Released Parties submit to the  
4 jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

5 18. The administration of the Settlement, and the decision of all disputed  
6 questions of law and fact with respect to the validity of any claim or right of any Person  
7 to participate in the distribution of the Net Settlement Fund, shall remain under the  
8 authority of this Court.

9 19. In the event that the Settlement does not become effective in accordance  
10 with the terms of the Stipulation, then this Judgment shall be rendered null and void to  
11 the extent provided by and in accordance with the Stipulation and shall be treated as  
12 vacated, *nunc pro tunc*, and in such event, all orders entered and releases delivered in  
13 connection herewith shall be null and void to the extent provided by and in accordance  
14 with the Stipulation.

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

17 21. The Parties are hereby directed to consummate the Stipulation and to  
18 perform its terms.

19 **Approval of the Plan of Allocation**

20 22. Copies of the Notice, which included the proposed Plan of Allocation, were  
21 mailed to 71,319 potential Settlement Class Members and nominees. No objections to  
22 the Plan of Allocation have been received.

23



1           23.    The Court hereby finds and concludes that the Plan of Allocation for the  
2 calculation of the claims of claimants that is set forth in the Notice disseminated to  
3 Settlement Class Members, provides a fair and reasonable basis upon which to allocate  
4 the Net Settlement Fund among eligible Settlement Class Members.

5           24.    The Court hereby finds and concludes that the Plan of Allocation, as set  
6 forth in the Notice, is, in all respects, fair and reasonable and the Court hereby approves  
7 the Plan of Allocation.

8           25.    The Court's approval of the Plan of Allocation is a matter separate and  
9 distinct from approval of the Settlement and shall in no way disturb or affect the finality  
10 of the Judgment entered with respect to the Settlement.

11    **Lead Counsel's Fee and Expense Application**

12           26.    Lead Counsel is hereby awarded, on behalf of all Plaintiffs' Counsel,  
13 attorneys' fees in the amount of \$1,615,000, plus interest at the same rate earned by the  
14 Settlement Fund, and payment of litigation expenses in the amount of \$98,598.40, which  
15 sums the Court finds to be fair and reasonable.

16           27.    The award of attorneys' fees and litigation expenses may be paid to Lead  
17 Counsel from the Settlement Fund immediately upon entry of this Judgment, subject to  
18 the terms, conditions, and obligations of the Stipulation, which terms, conditions, and  
19 obligations are incorporated herein.

20           28.    In making this award of attorneys' fees and payment of litigation expenses  
21 to be paid from the Settlement Fund, the Court has found that:

1           (a)     The Settlement has created a common fund of \$9.5 million in cash  
2 and that numerous Settlement Class Members who submit acceptable Claim Forms will  
3 benefit from the Settlement created by the efforts of Plaintiffs' Counsel;

4           (b)     The requested attorneys' fees and payment of litigation expenses  
5 have been reviewed and approved as fair and reasonable by Lead Plaintiff, a sophisticated  
6 institutional investor that was directly involved in the prosecution and resolution of the  
7 Action and which has a substantial interest in ensuring that any fees paid to Plaintiffs'  
8 Counsel are duly earned and not excessive;

9           (c)     Plaintiffs' Counsel undertook the Action on a contingent basis, and  
10 have received no compensation during the Action, and any fee and expense award has  
11 been contingent on the result achieved;

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

15           (e)     Plaintiffs' Counsel conducted the Action and achieved the  
16 Settlement with skillful and diligent advocacy;

17           (f)     Plaintiffs' Counsel have devoted approximately 3,233 hours, with a  
18 lodestar value of \$1,876,113.00 to achieve the Settlement;

19           (g)     The amount of attorneys' fees awarded are fair and reasonable and  
20 consistent with fee awards approved in cases with similar recoveries;

21           (h)     Notice was disseminated to putative Settlement Class Members  
22 stating that Lead Counsel would be submitting an application for attorneys' fees in an  
23 amount not to exceed 25% of the Settlement Fund, which includes interest, and payment

1 of litigation expenses incurred in connection with the prosecution of this Action in an  
2 amount not to exceed \$220,000, plus interest, and that such application also might  
3 include a request for a service award for Lead Plaintiff related to its representation of the  
4 Settlement Class; and

5 (i) There were no objections to the application for attorneys' fees or  
6 expenses.

7 29. The Court hereby awards Lead Plaintiff \$25,050 for its representation of  
8 the Settlement Class.

9 30. The Court's approval of the Fee and Expense Application is a matter  
10 separate and distinct from approval of the Settlement and shall in no way disturb or affect  
11 the finality of the Judgment entered with respect to the Settlement.

12 31. Without affecting the finality of this Judgment in any way, this Court  
13 hereby retains continuing jurisdiction over: (i) implementation of the Settlement; (ii) the  
14 allowance, disallowance or adjustment of any Settlement Class Member's claim on  
15 equitable grounds; (iii) all parties for the purpose of construing, enforcing and  
16 administering the Settlement and this Judgment; and (iv) other matters related or ancillary  
17 to the foregoing.

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32. No further matters remain pending and this Judgment is entered under Arizona Rules of Civil Procedure Rule 54(c) and immediate entry by the Clerk of the Court is expressly directed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019

BY THE COURT:

\_\_\_\_\_  
Honorable Roger Brodman  
Maricopa County Superior Court Judge

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**EXHIBIT A**

1. Katherine Watanabe - Campbell, CA

# eSignature Page 1 of 1

Filing ID: 10510744 Case Number: CV2016-050480  
Original Filing ID: 10487170

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**Granted with Modifications**



/S/ Roger Brodman Date: 5/31/2019  
Judicial Officer of Superior Court

**ENDORSEMENT PAGE**

CASE NUMBER: CV2016-050480

SIGNATURE DATE: 5/31/2019

E-FILING ID #: 10510744

FILED DATE: 6/3/2019 8:00:00 AM

HART L ROBINOVITCH

JAMIE L HALAVAIS

MAUREEN BEYERS

**TAB 5**





Order”), the Court scheduled a hearing for October 13, 2016, at 9:45 a.m. (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule on Lead Counsel’s Fee and Expense Application;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and a Proof of Claim and Release form (“Proof of Claim”), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before ten (10) business days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be published in *Investor’s Business Daily* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Fee and Expense Application,

among other things, were required to be filed with the Court and served on counsel for the Parties such that they were received by September 21, 2016;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On September 6, 2016, Lead Plaintiff moved for final approval of the Settlement and Lead Counsel moved for an award of fees and expenses, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held before this Court on October 13, 2016, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered Lead Counsel's motion for an award of attorneys' fees and expenses, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all Settlement Class Members, counsel, and the Claims Administrator.

2. All capitalized terms used herein have the meanings set forth and defined in the Stipulation.

3. Notice of Lead Counsel's application for attorneys' fees and payment of expenses was given to all Settlement Class Members who could be identified with

reasonable effort. The form and method of notifying the Settlement Class of the application for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees in the amount of \$1,807,500, plus interest at the same rate earned by the Settlement Fund, which is 30% of the Settlement Fund, and payment of litigation expenses in the amount of \$124,535.43, plus interest at the same rate earned by the Settlement Fund, which sums the Court finds to be fair and reasonable.

5. The award of attorneys' fees and litigation expenses may be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

6. In making this award of attorneys' fees and payment of litigation expenses to be paid from the Settlement Fund, the Court has analyzed the factors considered within the Seventh Circuit and found that:

(a) The Settlement has created a common fund of \$6,025,000 in cash and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Lead Plaintiff, a sophisticated institutional investor that was directly involved in the prosecution and resolution of the Action and which has a substantial interest in ensuring that any fees paid are duly earned and not excessive;

(c) The amount of attorneys' fees awarded are fair and reasonable and consistent with market-rates and fee awards approved in cases within the Seventh Circuit and other Circuits with similar recoveries;

(d) Lead Counsel is highly experienced in the field of securities class actions and conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(e) Lead Counsel undertook the Action on a contingent basis, and has borne all the ensuing risk, including the risk of no recovery, given, among other things, the risks of succeeding in a case governed by the PSLRA and those presented by Defendants' defenses concerning scienter, loss causation, and damages;

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

(g) Lead and Liaison Counsel have devoted more than 2,400 hours, with a lodestar value of \$1,542,726.00, to achieve the Settlement; and

(h) Notice was disseminated to Settlement Class Members stating that Lead Counsel would be submitting an application for attorneys' fees in an amount not to exceed 30% of the Settlement Fund, plus interest, and payment of litigation expenses incurred in connection with the prosecution of this Action in an amount not to exceed \$225,000, plus interest. No Settlement Class Members have filed an objection to the application for fees and expenses submitted by Lead Counsel.

7. Any appeal or challenge affecting this Court's approval of any attorneys' fee or expense application in the Action shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

Date: November 2, 2016

ENTERED:



John Robert Blakes  
United States District Judge