

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITY OF PITTSBURGH COMPREHENSIVE
MUNICIPAL PENSION TRUST FUND,
Individually and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

BENEFITFOCUS, INC., THE GOLDMAN SACHS
GROUP, INC., GS CAPITAL PARTNERS VI
PARALLEL, L.P., GS CAPITAL PARTNERS VI
OFFSHORE FUND, L.P., GS CAPITAL PARTNERS
VI FUND, L.P., GS CAPITAL PARTNERS VI
GMBH & CO. KG, MERCER LLC, MARSH &
MCLENNAN COMPANIES, INC., MERCER
CONSULTING GROUP, INC., MASON R.
HOLLAND, JR., RAYMOND A. AUGUST,
JONATHON E. DUSSAULT, DOUGLAS A.
DENNERLINE, JOSEPH P. DISABATO, A.
LANHAM NAPIER, FRANCIS J. PELZER V,
STEPHEN M. SWAD, ANA M. WHITE, J.P.
MORGAN SECURITIES LLC, GOLDMAN SACHS
& CO. LLC, MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED, PIPER JAFFRAY &
CO., RAYMOND JAMES & ASSOCIATES, INC.,
WEDBUSH SECURITIES, INC., AND FIRST
ANALYSIS SECURITIES CORPORATION,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

**AFFIRMATION OF ALFRED L. FATALE III IN SUPPORT OF
(I) LEAD 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, ALFRED L. FATALE III, affirm as follows, under penalty of perjury:

1. I am a partner in the law firm of Labaton Sucharow LLP (“Labaton Sucharow”).¹ Labaton Sucharow represents Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Pittsburgh CMPTF” or “Lead Plaintiff”) and serves as provisionally Court-appointed Lead Counsel for the proposed Settlement Class in the above-captioned litigation (the “Action”).

2. 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 all material aspects of the case.

3. I submit this Affirmation in support of Lead 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 Lead Plaintiff. *See* Affidavit of Jennifer Gula on behalf of Pittsburgh CMPTF, attached hereto as Exhibit 1.²

I. PRELIMINARY STATEMENT

4. Following extensive arm’s-length negotiations, discussions facilitated by mediator Michelle Yoshida, Esq. (“Mediator Yoshida”), and a formal mediation process, Lead Plaintiff has agreed to settle all claims asserted in the Action against Defendants,³ or that could have been

¹ All capitalized terms not otherwise defined herein have the same meaning as that set forth in the Stipulation and Agreement of Settlement, dated April 11, 2022 (the “Stipulation”), previously filed with the Court as Exhibit 1 to the Affirmation of Alfred L. Fatale III in Support of Lead Plaintiff’s Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and Authorization to Notify Settlement Class, on April 13, 2022. *See* NYSCEF Nos. [187](#), [188](#).

² Citations to “Exhibit” or “Ex. ___” herein refer to the exhibits to this affirmation. 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.

³ “Defendants” are: (i) Benefitfocus, Inc. (“Benefitfocus” or the “Company”); (ii) Mason R. Holland, Jr., Raymond A. August, Jonathon E. Dussault, Douglas A. Dennerline, Joseph P. (... continued)

asserted, arising out of the Company's March 1, 2019 secondary public offering of 6.5 million shares of its common stock (the "SPO"), in exchange for the payment of \$11,000,000 (the "Settlement Amount"), for the benefit of the Settlement Class.

5. The Action has been vigorously and efficiently litigated for nearly the past two years. The Settlement was achieved only after Lead Plaintiff, through Lead Counsel, as detailed herein: (i) conducted a thorough investigation concerning the allegedly material false and misleading statements and omissions in the Offering Documents⁴ issued in connection with the Company's SPO; (ii) initiated this Action with the filing of an initial complaint, (iii) drafted a thorough and detailed Amended Complaint; (iv) opposed Defendants' three motions to dismiss the Amended Complaint, which were denied in substantial part by the Court; (v) moved for class certification; (vi) opposed Defendants' consolidated appeals of the Court's orders substantially denying Defendants' motions to dismiss; (vii) interviewed former Benefitfocus employees and other persons with relevant knowledge; (viii) consulted with experts on damages and causation

DiSabato, A. Lanham Napier, Francis J. Pelzer V, Stephen M. Swad, and Ana M. White (the "Individual Defendants" and together with Benefitfocus, the "Benefitfocus Defendants"); (iii) The Goldman Sachs Group, Inc., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI Fund, L.P., and GS Capital Partners VI GMBH & Co. KG (the "Goldman Funds Defendants"); (iv) Mercer LLC, Marsh & McLennan Companies, Inc., and Mercer Consulting Group, Inc. (the "Mercer Defendants," and together with the Goldman Funds Defendants, the "Selling Stockholder Defendants"); and (v) J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC ("GS&Co."), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation (the "Underwriter Defendants," and together with the Benefitfocus Defendants, Goldman Funds Defendants, and Mercer Defendants, the "Defendants").

⁴ Benefitfocus' common stock, issued in the Company's SPO, was registered with the U.S. Securities and Exchange Commission (the "SEC") pursuant to a shelf registration statement filed with the SEC on Form S-3ASR (the "Registration Statement") on February 26, 2019. On March 1, 2019, Benefitfocus filed with the SEC its final prospectus supplement for the SPO on Form 424B7, which forms part of the Registration Statement. The Registration Statement and the Prospectus are referred to collectively herein as the "Offering Documents."

issues; (ix) successfully negotiated a discovery protocol and case schedule; (x) engaged in discovery, including propounding document requests and interrogatories and analysis of highly relevant documents produced by Benefitfocus prior to the mediation; and (xi) engaged in settlement discussions, including the exchange of detailed written mediation statements, under the guidance of a highly regarded and experienced mediator. At the time the Settlement was reached, Lead Plaintiff and Lead Counsel had a deep understanding of the strengths and weaknesses of the claims and defenses in the Action.

6. In deciding to settle, Lead Plaintiff and Lead Counsel took into consideration the significant risks associated with advancing the claims alleged in the Action, as well as the duration and complexity of future legal proceedings, including continued briefing on class certification, fact and expert discovery, summary judgment motions, and trial, all of which are either pending or remained ahead. The Settlement was achieved in the face of staunch opposition by Defendants who would have continued to raise serious arguments concerning, among other things: whether there were any false and misleading statements in the Offering Documents; whether, at the time of the SPO, the Offering Documents omitted material information; whether Lead Plaintiff's claims were time-barred under the applicable statute of limitations; whether the Selling Stockholder Defendants were statutory sellers under Section 12(a)(2) of the Securities Act of 1933 (the "Securities Act") and/or controlled the contents of the Offering Documents; whether Lead Plaintiff could trace its purchases to the Company's SPO; negative causation; and damages. Moreover, Defendants filed four appeals, which were consolidated, seeking to overturn the Court's decisions denying Defendants' three motions to dismiss in substantial part. In the absence of a settlement, there was a real risk that the Settlement Class could have recovered an amount significantly less than the negotiated Settlement or nothing at all.

7. In addition to seeking approval of the Settlement, Lead Plaintiff is seeking approval of the proposed plan for allocating the proceeds of the Settlement among eligible claimants (the “Plan of Allocation”). As discussed below, and in the Memorandum of Law in Support of Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation (“Approval Brief”), the proposed Plan was developed by Lead Plaintiff’s consulting damages expert, and provides for the fair and equitable distribution of the Net Settlement Fund to Settlement Class Members who submit Claim Forms that are approved for payment.

8. With respect to Lead Counsel’s Fee and Expense Application, the requested fee of 33% of the Settlement Fund would be fair to both the Settlement Class and Lead Counsel, and it warrants the Court’s approval. The fee request is within the range of fee percentages regularly awarded in this type of class action. Lead Counsel also seeks litigation expenses totaling \$69,485.46, plus a service award to Lead Plaintiff for the time it dedicated to the case in the amount of \$5,000.

II. SUMMARY OF LEAD PLAINTIFF’S CLAIMS

9. As set forth in the Amended Complaint, Benefitfocus, headquartered in South Carolina, is a cloud-based benefits management platform and services provider. *See* NYSCEF No. [8 ¶¶56](#).⁵ Lead Plaintiff alleges that since 2013, Mercer Health was one of Benefitfocus’ most important customers. Through a long-term commercial agreement (the “Mercer Health Agreement”), Mercer Health paid Benefitfocus to provide software and a platform to power its private health insurance exchange. ¶5. In 2015, Mercer Health announced an expanded commercial relationship with Benefitfocus and acquired more than 10% of Benefitfocus’ shares outstanding. ¶6. During the time period at issue, the Company had both “reseller” customers (like

⁵ All citations to “¶” are to the Amended Complaint, filed on April 23, 2021, unless otherwise noted.

Mercer Health) that resell Benefitfocus platforms and products to their own customers as well as “broker” customers that may refer clients, but do not sell Benefitfocus products or services. ¶32.

10. Pursuant to the Offering Documents, Benefitfocus commenced, on or about March 1, 2019, a secondary public offering of up to 6,560,472 shares of common stock, including an underwriters’ overallotment of 855,714 shares, at a price of \$48.25 per share (the “SPO” or the “Offering”). All SPO shares sold belonged to the Mercer Defendants and the Goldman Funds Defendants.

11. The Action arises out of allegedly false and misleading representations and omissions made in the Offering Documents issued in connection with Benefitfocus’ SPO.

12. As discussed below, the Amended Complaint alleges that the Offering Documents for the SPO contained the following categories of misleading statements and omissions: (i) the Offering Documents misrepresented and omitted material facts regarding the status of the Company’s commercial relationship with Mercer Health (¶¶21-25, 27, 29, 31, 33-35, 43, 152); (ii) the Offering Documents misrepresented and omitted material facts regarding the Company’s broker channel (¶¶11, 13, 25, 32, 37-38); and (iii) the Offering Documents omitted material facts about the Company’s financial condition (¶¶14-15, 31, 37-38).

13. The Amended Complaint alleges that these misrepresentations and omissions caused the class to suffer losses in violation of the Securities Act. The Amended Complaint asserts claims for violations of Section 11 of the Securities Act against Defendant Benefitfocus, the Individual Defendants, and the Underwriter Defendants; violations of Section 12 of the Securities Act against all Defendants; and violations of Section 15 of the Securities Act against the Selling Stockholder Defendants and the Individual Defendants.

III. RELEVANT PROCEDURAL HISTORY

A. Commencement of the Action in this Court

14. The Action was commenced on March 2, 2021, when Lead Plaintiff Pittsburgh CMPTF, through its counsel Labaton Sucharow, filed a putative securities class action complaint in the Court captioned *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc., et al.*, No. 651425/2021 (the “Action”). See NYSCEF No. [1](#).

B. The Amended Complaint

15. On April 23, 2021, Lead Plaintiff Pittsburgh CMPTF filed the Amended Complaint, alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act on behalf of a class of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents, and who were damaged thereby. The Amended Complaint alleges that the Offering Documents were false and misleading for several reasons, including: (i) the alleged termination of the agreement with Mercer Health was falsely portrayed as an amendment in the Offering Documents; (ii) purported “broker” opportunities arising from the change in relationship with Mercer Health were allegedly nonexistent; and (iii) the Company’s financial condition was allegedly worse than the Offering Documents portrayed.

16. As an initial matter, the Amended Complaint alleges that the Offering Documents misrepresented that that Benefitfocus “amended [its] commercial relationship with Mercer Health & Benefits LLC to better align with our strategic priorities and current trends in the marketplace.” ¶121(a). The Amended Complaint alleges that this representation was misleading for two reasons: First, the commercial relationship was not “amended” but terminated and replaced with a temporary, 2-year “runoff” agreement to transition clients off Benefitfocus’ platforms entirely, concluding the relationship. ¶¶21-25, 43, 152. Second, because Benefitfocus’ leadership neither expected nor desired such termination (¶¶ 22-23), it was not Benefitfocus’ decision “to better align

with [] strategic priorities” or “current trends,” as represented (§121(a)). Similarly, the Amended Complaint alleges that the Offering Documents misrepresented that that Benefitfocus had “established strong relationships with key participants in the benefits market, including Mercer Health” (§122(a)), which was allegedly false and misleading for the same reasons.

17. Second, the Amended Complaint alleges that the Offering Documents made false and misleading statements and omissions regarding Benefitfocus’ broker channel. The Offering Documents represented there would be “long-term opportunities for us to sell more broadly across the broker channel” (§121(b)), among other alleged broker misstatements (*e.g.*, §122(b)). The Amended Complaint alleges, however, that prior to the SPO, internally it was believed there was no value in the broker channel because brokers could only refer clients and could not guarantee actual business. §§11, 13, 25, 32, 37-38. The Amended Complaint further alleges that at the time of the SPO, sales produced from the broker channel were not meeting what Benefitfocus was representing. §34. Therefore, according to the Amended Complaint, the Offering Documents failed to disclose material facts regarding the Company’s broker channel.

18. Third, the Amended Complaint alleges that the Offering Documents made false and misleading statements and omissions regarding Benefitfocus’ financial condition. The Amended Complaint alleges that the Offering Documents falsely stated that the “revised” commercial agreement with Mercer Health would “lead to a reduction in our revenue from the relationship this year” (§121(b)), and accordingly, Benefitfocus did not “believe any such reduction in revenue will be material to our results, and have incorporated it into our 2019 financial plan already” (§121(c)). However, as alleged, Benefitfocus was internally forecasting a materially worse financial impact, including a reduction in revenue to zero over a two-year period and an internal acknowledgement that broker sales would not replace lost Mercer Health revenues. §§14-15, 31, 37-38. Accordingly,

these statements created the false impression that the financial impact of a “revised” relationship with Mercer Health would be limited to 2019.

19. Fourth, the Amended Complaint alleges that the Offering Documents contained materially misleading “Risk Factor” warnings that inaccurately described certain risks related to the Company’s relationship with Mercer Health and broker channel as potential, rather than disclosing the actual events that had already manifested. For example, they warned that Benefitfocus “will continue to depend on our relationships with third parties including resellers such as Mercer Health” (¶125(b)) and that if Benefitfocus was “unsuccessful in establishing or maintaining our relationships with third parties, our ability to compete in the marketplace or to grow our revenue could be impaired and our operating results may suffer” (¶125(c)), among other purported warnings (*e.g.*, ¶126(a)). These “Risk Factor” statements were alleged to be misleading by merely warning of something that had already occurred, namely, Mercer Health’s termination of its reseller relationship. The Amended Complaint also alleges that the Offering Documents contained materially misleading “Risk Factor” warnings regarding its broker channel (*e.g.*, ¶125(a), ¶127(a)). Therefore, according to the Amended Complaint, the Offering Documents failed to disclose and misrepresented significant risks that made the SPO more speculative and risky.

20. Finally, the Amended Complaint alleges that the Registration Statement omitted to disclose known trends pursuant to the disclosure obligations imposed by SEC Item 303. For example, the Amended Complaint alleges that it was well-known within Benefitfocus by the time of the SPO that Mercer Health was terminating its reseller relationship and would lose all revenue therefrom over a two-year period. ¶¶ 11, 25, 33.

21. The Amended Complaint claims that as a result of these allegedly undisclosed facts and the false and misleading statements contained in the Offering Documents, as of the date of the filing the Action, Benefitfocus common stock traded at \$14.90 per share, approximately 70% less than the \$48.25 SPO share price. ¶¶44; ¶153.

22. The Amended Complaint alleges that following the SPO, the impact of the allegedly misstated and omitted information began to manifest as weaker-than-expected financial results. For example, just two months after the SPO on May 1, 2019, Benefitfocus announced financial results for the first quarter ended March 31, 2019, as well as forecasts for the second quarter ending June 30, 2019, which disappointed investors and failed to meet consensus expectations. ¶¶128-139. Similarly, the Amended Complaint alleges that at the end of its fiscal year, on March 3, 2020, Benefitfocus again surprised investors by announcing both quarterly and full-year financial results that failed to meet consensus expectations, as well as guidance for the full year 2020 that similarly disappointed expectations. ¶¶140-150.

23. The Amended Complaint alleges that investors did not begin to learn the omitted facts until November 5, 2020, when Benefitfocus announced weaker-than-expected financial results for the third quarter of 2020 and disclosed the sustained deterioration of the Mercer Health relationship. ¶151-52. During the earnings call with investors to discuss the quarterly financial results, the Company's new CFO Wegner allegedly admitted, "Subscription revenue was down 10% compared to the same period last year, primarily due to the runoff of our legacy agreement with Mercer." ¶152; *see also id.* (allegedly admitting gross margins declining to 66% was "a result of reduced high-margin Mercer revenue"). This disclosure was allegedly the first public acknowledgement that the relationship with Mercer Health had not been "amended" but terminated and replaced with a "runoff" agreement.

C. Defendants' Motions to Dismiss the Amended Complaint

24. On June 22, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a motion to dismiss the Amended Complaint (the "Motions to Dismiss") and a memorandum of law in support of each of their respective motions. NYSCEF Nos. [34](#), [48](#), [52](#) (Notices of Motion); NYSCEF Nos. [35](#), [49](#), [53](#) (Memoranda of Law in support of Motions to Dismiss). On the same day, the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the motion to dismiss filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the motion to dismiss filed by the Mercer Defendants (the "Motions to Dismiss Joinder"). NYSCEF No. [54](#).

25. In the Motions to Dismiss, Defendants principally argued that Lead Plaintiff had not alleged facts sufficient to state a claim under the Securities Act because the Amended Complaint did not sufficiently allege the existence of a materially false or misleading statement or omission in the Offering Documents. They also argued that the alleged false and misleading statements and omissions set forth in the Amended Complaint were not actionable.

26. With respect to the Benefitfocus Defendants' Motion to Dismiss, the Benefitfocus Defendants further argued that: (i) the claims in the Amended Complaint were barred by the statute of limitations; (ii) the alleged false and misleading statements were statements of opinion protected by statutory safe harbor; (iii) the alleged false and misleading statements were not false; (iv) the alleged false and misleading statements could not have resulted in any investor losses; (v) the Amended Complaint did not adequately plead standing or Defendants' status as "statutory sellers" under Section 12(a)(2); and (vi) the Amended Complaint did not adequately plead control person liability. *See* NYSCEF No. [35](#).

27. The Mercer Defendants joined the Benefitfocus Defendants' Motion to Dismiss in full. With respect to the Mercer Defendants' Motion to Dismiss, the Mercer Defendants further

argued that: (i) the Amended Complaint did not adequately plead the Mercer Defendants' status as "statutory sellers" under Section 12(a)(2); (ii) the Amended Complaint did not adequately plead that the Mercer Defendants had knowledge the Offering Documents' alleged false or misleading nature; and (iii) the Amended Complaint did not adequately plead control person liability. *See* NYSCEF No. [49](#).

28. The Goldman Defendants also joined the Benefitfocus Defendants' Motion to Dismiss in full. With respect to the Goldman Defendants' Motion to Dismiss, the Goldman Defendants further argued that: (i) the alleged false and misleading statements were forward-looking statements protected by statutory safe harbor; and (ii) the Amended Complaint did not adequately plead that the Goldman Defendants had knowledge the Offering Documents' alleged false or misleading nature. *See* NYSCEF No. [53](#).

29. On August 23, 2021, Lead Plaintiff filed its Omnibus Memorandum of Law in Opposition to the Defendants' Motions to Dismiss and the Underwriter Defendants' Joinder. *See* NYSCEF No. [71](#); *see also* NYSCEF Nos. [72](#) & [73](#) (same). In opposition, Lead Plaintiff argued that the Amended Complaint alleged actionable, materially false and misleading statements and omissions. In particular, Lead Plaintiff argued that the Amended Complaint satisfied the applicable pleading standards by providing specific allegations that the Offering Documents contained materially false and misleading statements and omitted material information about the Mercer Health Agreement's termination, the Company's broker channel, the Company's financial condition, warnings of risks that had already come to pass, and known adverse trends—including corroborating accounts from multiple Former Employees ("FEs") and Defendants' own subsequent admissions. Regarding the statute of limitations argument, Lead Plaintiff argued that it could not have known (and did not know) until after its investigation concluded—within the

limitations period—that the Offering Documents contained material misstatements and omissions when made (and certainly no earlier than Benefitfocus’ November 2020 admissions). Regarding actionability, Lead Plaintiff argued that the allegedly omitted facts were sufficiently alleged to be material at the pleading stage, that neither the statutory safe harbor nor the “Bespeaks Caution” Doctrine applied, and that the challenged opinion statements were actionable non-puffery. Regarding causation, Lead Plaintiff argued that Defendants’ arguments were insufficient to meet their high burden of establishing a negative causation affirmative defense at the pleading stage. Regarding the Section 12(a)(2) claim, Lead Plaintiff argued that all Defendants were statutory sellers and that Lead Plaintiff adequately alleged its standing. Regarding its Section 15 claim, Lead Plaintiff argued that the Amended Complaint adequately pleaded control person liability under the applicable pleading standard.

30. On September 23, 2021, Defendants filed respective reply briefs in further support of their Motions to Dismiss, reiterating their arguments and addressing Lead Plaintiff’s opposition papers. *See* NYSCEF Nos. [78](#), [79](#), [80](#).

D. The Court Substantially Denies Defendants’ Motions to Dismiss the Amended Complaint

31. The Court held oral argument on the Motions to Dismiss via Microsoft Teams on September 27, 2021. *See* NYSCEF No. [82](#) at 2. On October 18, 2021, the Court issued three written opinions denying the Benefitfocus Defendants’ Motion to Dismiss, the Mercer Defendants’ Motion to Dismiss, and the Underwriter Defendants’ Motions to Dismiss Joinder, in whole, and granting in part and denying in part the Goldman Funds Defendants’ Motion to Dismiss. NYSCEF Nos. [82](#), [83](#), [84](#).

32. On October 28, 2021, the Benefitfocus Defendants, the Underwriter Defendants, the Mercer Defendants, and the Goldman Defendants each respectively filed their Answers to the Amended Complaint. *See* NYSCEF Nos. [145](#), [147](#), [148](#), [149](#).

33. On November 8, 2021, the Court entered a stipulation and preliminary conference order. *See* NYSCEF No. [158](#). Following this order, discovery, including requests for production of documents and interrogatories, commenced.

E. Appeals of the Orders Denying the Motions to Dismiss and Motions Seeking Leave to Reargue

34. On October 5, 2021, the Benefitfocus Defendants filed a notice of appeal from the Court's order denying their Motion to Dismiss. NYSCEF No. [87](#). On October 15, 2021, the Mercer Defendants filed notices of appeal from the Court's orders denying their Motion to Dismiss and the Benefitfocus Defendants' Motion to Dismiss. NYSCEF Nos. [120-21](#). On October 19, 2021, the Goldman Funds Defendants filed notices of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Goldman Funds Defendants' Motion to Dismiss. NYSCEF Nos. [122](#), [126-27](#). On October 25, 2021, the Underwriter Defendants filed a notice of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss and GS&Co. filed a notice of appeal from the Court's order denying the Mercer Defendants' Motion to Dismiss. NYSCEF Nos. [143-44](#).

35. Following the filing of the various notices of appeal, briefing commenced, and Defendants' appeals were perfected for the January 2022 term in the Appellate Division of the New York Supreme Court for the First Department and oral argument was scheduled for February 15, 2022.

36. On October 12, 2021, the Goldman Funds Defendants filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof. NYSCEF Nos.

[93-108](#). The Mercer Defendants also filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof. NYSCEF Nos. [109-18](#). On October 18, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Goldman Funds Defendants' and the Mercer Defendants' motions for leave to reargue. NYSCEF No. [123](#). On October 22, 2021, Defendant GS&Co. filed a motion for leave to reargue the motion to dismiss order which found that Lead Plaintiff had adequately stated a Section 15 claim against it, and a memorandum of law in support thereof. NYSCEF Nos. [130-42](#). On October 28, 2021, Lead Plaintiff filed a memorandum of law in opposition to Defendant GS&Co.'s motion to leave to reargue. NYSCEF No. [146](#).

37. On November 3, 2021, the Court issued an order denying each of the motions to reargue filed by the Mercer Defendants, Goldman Funds Defendants, and Defendant GS&Co. NYSCEF No. [160](#); *see also* NYSCEF Nos. [162](#), [164](#) (same).

F. Lead Plaintiff's Motion for Class Certification

38. On January 11, 2022, Lead Plaintiff filed a motion for class certification and a memorandum of law in support thereof requesting that the Court: (i) certify a class consisting of all persons and entities, with certain enumerated exclusions related to Defendants, that purchased or otherwise acquired publicly traded Benefitfocus common stock pursuant and/or traceable to the Offering Documents issued in connection with the Offering; (ii) appointing Lead Plaintiff as class representative; (iii) appoint Lead Counsel, Labaton Sucharow LLP, as class counsel; and (iv) granting such other, further, and different relief as the Court deems just and proper. *See* NYSCEF Nos. [168](#), [169](#).

39. The motion was pending when the Parties agreed to settle.

IV. LEAD PLAINTIFF'S INVESTIGATION AND DISCOVERY

40. From early 2021 through the agreement in principle to settle, Lead Counsel conducted a comprehensive investigation into the facts, circumstances and claims asserted in the Action.

41. This investigation included, among other things, a review and analysis of: (i) press releases, news articles, and other public statements issued by or about Benefitfocus and the Defendants; (ii) research reports issued by financial analysts concerning the Company and its business; (iii) documents filed publicly with the SEC; (iv) news articles, media reports and other publications concerning Benefitfocus and the benefits management industry; (v) other publicly available information and data concerning the Company and its securities; and (vi) interviews with numerous former Benefitfocus employees.

42. Lead Counsel also thoroughly reviewed and analyzed the Offering Documents and reviewed all available research reports issued by financial analysts concerning the Company's business and operations, as well as transcripts of conference calls hosted by Benefitfocus and its executives during which analysts asked questions concerning the Company's operations. These reports and conference calls provided valuable insight into the market's awareness of key trends impacting the Company and the confidence placed on the Company's performance. Lead Counsel also consulted with experts about damages and causation issues.

43. Lead Counsel's investigation, conducted by and through attorneys and in-house investigators at Labaton Sucharow, also included the identification and contacting of 55 former employees of both the Company and Mercer family of companies with potentially relevant knowledge, 17 of whom were interviewed on a confidential basis.

44. On June 1, 2021, Pittsburgh CMPTF served on Defendant Benefitfocus its First Notice for Discovery and Inspection of Documents. Benefitfocus subsequently produced 3,029 pages of highly relevant and targeted documents prior to the mediation.

45. On June 21, 2021, Defendant Benefitfocus filed a motion for the entry of an order staying discovery pending resolution of any motions to dismiss the Action (the “Motion to Stay”) and a memorandum of law, affirmation, and exhibits in support thereof. NYSCEF Nos. [25-30](#). On July 9, 2021, Lead Plaintiff filed a memorandum of law in opposition to the Motion to Stay. NYSCEF Nos. [56-63](#). On July 19, 2021, Defendant Benefitfocus filed a memorandum of law in further support of the Motion to Stay. NYSCEF No. [66](#).

46. On August 25, 2021, the Court held a hearing on the Motion to Stay. At the hearing, the Court orally ruled that discovery would be stayed until the Court ruled on the pending Motions to Dismiss and issued a written order to that effect the same day. NYSCEF No. [74](#).

V. SETTLEMENT NEGOTIATIONS

47. In January 2022, Lead Plaintiff and the Benefitfocus Defendants began discussing the possibility of resolving the claims asserted in the Action through mediation.

48. Lead Plaintiff and the Benefitfocus Defendants engaged Michelle Yoshida, Esq., a well-respected and experienced mediator, to assist them in exploring a potential negotiated resolution of the claims against all Defendants.

49. On February 8, 2022, respective counsel for Lead Plaintiff and the Benefitfocus Defendants met with the Mediator in an attempt to reach a global settlement during an all-day mediation session. The mediation involved an extended effort to settle the claims and was preceded by the exchange of mediation statements and supporting materials, including the Benefitfocus Defendants’ production of documents to Lead Plaintiff.

50. On February 9, 2022, an agreement in principle was reached to settle the claims against all Defendants, subject to the negotiation of a mutually acceptable stipulation of settlement.

51. The Parties thereafter negotiated the terms of a memorandum of understanding and then the Stipulation, which was executed on April 11, 2022 and filed with the Court on April 13, 2022. *See* NYSCEF No. [188](#).

52. On April 13, 2022, Lead Plaintiff filed its Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and Authorization to Notify Settlement Class. *See* NYSCEF No. [185](#). On August 16, 2022, the Court granted Lead Plaintiff's motion, authorizing that notice of the Settlement be sent to Settlement Class Members and scheduling the Settlement Hearing for December 1, 2022, to consider whether to grant final approval to the Settlement. *See* NYSCEF No. [200](#).

VI. RISKS FACED BY LEAD PLAINTIFF IN THE ACTION

53. Based on their experience and close knowledge of the facts, claims and defenses, Lead Counsel and Lead Plaintiff have determined that the 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 Lead Plaintiff with respect to establishing both liability and damages in continued litigation.

54. Surviving a challenge to a pleading is no guarantee of ultimate success. In agreeing to settle, Lead Plaintiff and Lead Counsel weighed, among other things, the substantial and certain cash benefit to the Settlement Class against: (i) the uncertainty surrounding Defendants' pending appeals; (ii) the difficulties involved in proving materiality, falsity, and damages; (iii) the difficulties in overcoming Defendants' negative causation defenses in order to establish damages; (iv) the difficulties in overcoming Defendants' statute of limitations defenses; (v) the difficulties in overcoming Defendants' standing defenses; (vi) the difficulties and challenges involved in

certifying a litigation class, and the delays involved in the inevitable appeals of certification; (vii) the fact that, even if Lead Plaintiff prevailed at summary judgment and trial, any monetary recovery could have been less than the Settlement Amount; and (viii) the delays that would follow even a favorable final judgment, including appeals.

A. Risks Concerning Liability

55. In order for Lead Plaintiff to ultimately prevail on its Sections 11, 12, and 15 claims at summary judgment and at trial, Lead Plaintiff would have to marshal evidence and prove that the Offering Documents contained a material omission or misrepresentation. Defendants would of course argue, as they have throughout the litigation, that the Offering Documents did not contain materially false or misleading statements or omissions.

56. For example, with respect to the Amended Complaint's allegations that the Offering Documents were materially false and misleading for failing to disclose the termination of the Mercer Health Agreement prior to the time of the SPO, Defendants would have argued, as a matter of law and to the jury, that they had no duty to disclose the development because it was immaterial. Specifically, Defendants would have argued that when taken in context of the Offering Documents and Benefitfocus' business as a whole, and because Mercer Health was only one customer of many, no reasonable investor would have considered the termination important enough to have been disclosed. Defendants would have marshalled evidence that the Mercer Health Agreement was quantitatively immaterial as any financial impacts potentially represented less than 10% of the Company's revenues on an annualized basis, highlighting the two-year runoff period to draw out any impacts. Defendants would also have argued that the truth regarding the waning of the Mercer Health relationship was known to the market at the time of the SPO, owing to partial announcements that the business was declining. Defendants would have additionally argued that the generalized misstatements concerning Benefitfocus' business lacked the requisite

specificity to be deemed actionable at summary judgment or trial. Finally, Defendants would have argued that the relevant risk disclosures in the Offering Documents accurately and adequately informed investors that the Company could not guarantee maintenance of strategic relationships, among other risk disclosures.

57. With respect to the Amended Complaint's allegations concerning Benefitfocus' broker channel, Defendants would have similarly argued that the statements and omissions were not actionable. Defendants would have argued that the economics of Benefitfocus' broker channel were well-known to the investing public at the time of the SPO, and that the Offering Document's risk disclosures explicitly warned that the Company lacked certainty about achieving sales through brokers.

58. With respect to the Amended Complaint's allegations concerning Benefitfocus' financial condition, Defendants would have argued, as a matter of law and to the jury, that the alleged false and misleading statements were inactionable forward-looking statements and genuinely held opinions. In addition, Defendants would also have argued that the truth regarding the financial impacts of changes to the Mercer Health relationship was known to the market at the time of the SPO.

59. Furthermore, Defendants would also have argued and sought to present evidence that Lead Plaintiff could not establish that the "trends" alleged in the Amended Complaint had materialized at the time of the SPO, such that they should have been disclosed pursuant to Item 303 or any other legal doctrine. And even if Lead Plaintiff could establish that the trends existed at the time of the SPO, Defendants would likely have argued, that they were not sufficiently known within the company by sufficiently high-level personnel at the time of the SPO to mandate disclosure under Item 303. While Lead Plaintiff would be prepared to counter Defendants'

arguments and evidence by asserting, for example, that many employees within the Company knew about the trends being caused by the decline in relationship with Mercer Health and lack of replacement from the broker channel, there is no guarantee that the Court at summary judgment, or a jury, would find in favor of Lead Plaintiff on these issues—particularly given the legal and factual challenges with proving corporate knowledge. Defendants would also likely seek to establish that at the time of the SPO, Defendants did not reasonably expect that the issues alleged by Lead Plaintiff would have a material impact on the Company’s net sales, revenues, or income, as required under Item 303. Among other things, Defendants would likely put forth evidence that they expected the trends to be temporary and reasonably expected to make up any shortfalls through other relationships or in other business segments.

60. The Underwriter Defendants and the Individual Defendants would have raised additional arguments at summary judgment, and trial, including that they conducted robust and thorough due diligence during the offering process to confirm the accuracy and truthfulness of the Offering Documents’ disclosures, including participating in extensive meetings with key management at the Company and reviewing relevant documents.

61. Defendants would have also vigorously pursued their appeals of the Court’s orders on the Motions to Dismiss, to the extent they sustained the Amended Complaint’s claims. While Lead Plaintiff had opposed Defendants’ appeals, there was considerable uncertainty about how the Appellate Division would view the Parties’ competing arguments, particularly on pure matters of law presented by the appeals.

62. Though Lead Plaintiff believes it had strong counterarguments to Defendants’ likely liability defenses, there is no guarantee that the Court at summary judgment, or a jury at trial, would find in Lead Plaintiff’s favor on these issues. Moreover, even if Lead Plaintiff

succeeded in proving all elements of its claims at trial and had obtained a jury verdict, Defendants would almost certainly appeal, again. Such an appeal not only would have renewed all the risks overcome by Lead Plaintiff and the Settlement Class at trial, as Defendants would undoubtedly reassert all their arguments summarized above, but also would likely engender significant additional delay and costs before Settlement Class Members could receive any recovery from this case.

B. Risks Related to Negative Causation, Statute of Limitations, and Damages

63. Although the Securities Act provides a statutory formula for damages, Defendants would have raised and pressed a “negative causation” defense, arguing that the alleged materially misleading statements and omissions in the Offering Documents did not cause a substantial portion (or all) of the damages Lead Plaintiff claimed, because most of the declines in the stock price after the SPO were caused by other factors. Indeed, Defendants advanced precisely this argument in their Motions to Dismiss, though the issue is generally reserved for expert discovery and summary judgment.

64. Defendants’ negative causation and statute of limitations defenses would focus on four relevant dates: (i) May 1, 2019; (ii) November 6, 2019; (iii) March 3, 2020; and (iv) November 5, 2020.

65. With respect to May 1, 2019 (the day on which Benefitfocus held its first post-SPO earnings call and discussed weaker-than-expected financial performance) Defendants would argue that Benefitfocus’ public disclosures on that date put a reasonably diligent plaintiff on notice of a possible Securities Act claim, thereby triggering the running of the Securities Act’s one-year limitations period and barring Lead Plaintiff’s claim (first filed on March 2, 2021). Specifically, Defendants would likely highlight how Benefitfocus informed investors that its quarterly financial results did not meet consensus investor expectations and/or the Company’s prior guidance,

including low operating cash flow and a sizeable net loss, as well as weaker-than-expected future guidance, related to “lower Mercer Health revenues.” While Lead Plaintiff would continue to counter by asserting there is a material difference between merely “lower” revenues and revenues that would runoff to zero over a two-year period, Defendants would have the opportunity to adduce evidence and argue at summary judgment and trial that this disclosure was sufficient to trigger the relevant limitations period.

66. With respect to November 6, 2019 (the day on which Benefitfocus announced quarterly financial results and discussed weaker-than-expected financial performance) Defendants would argue that Benefitfocus’ additional public disclosures on that date put a reasonably diligent plaintiff on notice of a possible Securities Act claim, thereby triggering the running of the Securities Act’s one-year limitations period and barring Lead Plaintiff’s claim (first filed on March 2, 2021). Specifically, Defendants would highlight how Benefitfocus discussed “revenue pressure” from “renegotiation of the Mercer contract” during its November 6, 2019 earnings call, sixteen months before Lead Plaintiff instituted the Action, specifying it expected “a continued decline in our revenue over time” given a “strategy shift” away from the “legacy Mercer business.” While Lead Plaintiff would continue to counter by asserting there is a material difference between revenue declining and disappearing, as well as a difference between a mere “strategy shift” away from the Mercer relationship and Mercer’s decision to terminate that relationship, Defendants would have the opportunity to adduce evidence and argue at summary judgment and trial that these disclosures were sufficient to trigger the relevant limitations period.

67. Defendants would be able to continue advancing their argument through trial that, even if the limitations period were not triggered until March 3, 2020, or later, the additional time before the truth began to emerge creates potential support for their negative causation defense.

68. With respect to March 3, 2020 (the day on which Benefitfocus announced disappointing quarterly financial results and disclosed, for the first time, that “Mercer headwinds are going to continue, and in fact strengthen” (§146)), Defendants may be able to develop an argument that, even though this date was within the limitations period, it fully informed investors regarding the full financial impact of the Mercer Health Agreement, hence investors would not be entitled to any damages suffered thereafter. Defendants would also argue that there was no statistically significant single-day decline in Benefitfocus’ share price on this date as a result of these revelations. Defendants will argue that the Company’s share price actually increased for the 24-hour period following the March 3, 2020 disclosures, and hence, the alleged SPO misstatements could not have resulted in any investor losses. Lead Plaintiff would continue to counter this negative causation defense by asserting that there remains a material difference between the vague information released on March 3, 2020 (“Mercer headwinds are going to continue, and in fact strengthen” (§146)) and the truth (that the full Mercer Health reseller relationship was well on its way to ending), hence it was not a true “corrective disclosure” necessary to establish a negative causation defense.

69. Similarly, with respect to November 5, 2020 (the day on which Benefitfocus announced disappointing quarterly financial results and disclosed, for the first time, that the Mercer Health Agreement would “runoff” to zero and negatively impact Benefitfocus’ financial condition for 2020 and beyond (§152)), Defendants would argue that the Company’s share price rose between this date and the date Plaintiff filed suit, and hence, the alleged SPO misstatements could not have resulted in any further investor losses. Lead Plaintiff would continue to counter this negative causation defense by arguing that share price movements in interregnum periods between disclosure-related events and the filing of a complaint are not properly excluded from damages,

which are to be computed by a Congressionally set statutory damages formula under Section 11(e) of the Securities Act, [15 U.S.C. §77k\(e\)](#). Lead Plaintiff would similarly argue that, just because one day's negative news is causally related to false or misleading information in the Offering Documents does not mean that other negative news is unrelated—hence Congress's inclusion of a statutory damages formula for calculating legally cognizable damages in the first place.

70. Overall, Defendants would argue that a large percentage of the total decline in Benefitfocus' share price between the date of the SPO and the filing of the initial complaint occurred before what might be considered the first “corrective disclosure” date, November 5, 2020 (the day new CFO Wegner first described the “runoff” of the Mercer Health relationship), and that any price decline before that date is not recoverable as a matter of law. By putting Lead Plaintiff in a position of arguing that the negative news on all the above dates was corrective for causation purposes, but did not trigger the running of the statute of limitations (so far as they did not put investors on notice that Offering Document statements were false or misleading when made), Defendants may be able to pare down damages during expert discovery, summary judgment, and trial. While the burden would ultimately be on Defendants to establish either the limitations or negative causation affirmative defenses, marshaling these competing facts to a jury through expert discovery would be an inherently expensive and risk-laden proposition, hence Lead Plaintiff could not guarantee that class-wide damages would emerge undiminished.

71. To put these arguments into context, using the damages formula under Section 11(e) of the Securities Act, and based on the 6,560,472 shares of Benefitfocus common stock issued at \$48.25 per share in the SPO and the \$14.90 closing stock price on March 2, 2021 (the date the Action was filed), a standard proportional two trader model, and constant dollar inflation, Lead Plaintiff's consulting damages expert has estimated that statutory class wide damages amount

to approximately \$138 million. As such, the Settlement Amount of \$11 million represents a recovery of 8.0% of the maximum damages estimated by Lead Plaintiff's expert. This maximum estimation is, of course, contingent on Lead Plaintiff's ability to establish liability and gives no credit to Defendants' negative causation arguments. Thus, the estimate assumes that 100% of the stock price declines from the SPO to the date of suit is attributable to the allegedly false statements and omissions.

72. However, Defendants would likely argue that the vast majority of the relevant declines in Benefitfocus' share price occurred prior to the November 5, 2020 disclosures and are therefore not recoverable as a matter of law. Taking into consideration these negative causation defenses, Lead Plaintiff's consulting damages expert estimates realistically recoverable damages based only on the May 1, 2019 and November 5, 2020 disclosures to be approximately \$20.8 million. Further, Defendants may also argue the share price declines on the May 1, 2019 and November 5, 2020 disclosure date are partially attributable to news unrelated to the allegations in the Amended Complaint, potentially further limiting the class's potential recovery. Likewise, Defendants would argue that price increases after that date were indicative of the lack of a causal relationship between post-SPO share price declines and the alleged misstatements and omissions identified in the Amended Complaint, to support an argument that investors were not damaged by false and misleading misstatements and omissions in the Offering Documents at all.

73. Even assuming Defendants were to succeed in their arguments that the stock price declines other than those occurring on May 1, 2019 and November 5, 2020 are not recoverable, then a settlement of \$11 million would represent a recovery of 52.9% of the adjusted total damages estimated by Lead Plaintiff's expert. Further, this estimate assumes that the entire stock drop on the two proffered corrective disclosure dates related to the issues Lead Plaintiff claimed were false

and misleading in the Offering Documents. Again, Defendants would have further argued that some of the price drops were attributable to other factors. If successful, such arguments would have decreased damages even further, or potentially precluded recovery altogether.

74. Though Lead Plaintiff believes that Defendants' arguments take too narrow a view of the connection between the allegations and the price declines, there was no certainty that Lead Plaintiff would prevail in its arguments. As the case proceeded, the Parties' respective damages experts would strongly disagree with each other's assumptions and their respective methodologies, presenting contradictory and complex information to the Court and jury. The risk that the jury, or the Court, would credit Defendants' damages positions over those of Lead Plaintiff had considerable consequences in terms of the amount of recovery for the Settlement Class, even assuming liability were proven.

75. Thus, the recovery here of between 8.0% and 52.9% of the class's estimated damages, provides an excellent result that is well within the range of reasonableness, particularly in light of the countervailing legal and factual arguments tenaciously pursued by Defendants and other attendant litigation risks.

VII. LEAD PLAINTIFF'S COMPLIANCE WITH THE NOTICE ORDER AND REACTION OF THE SETTLEMENT CLASS TO DATE

76. Pursuant to the Notice Order, *see* NYSCEF No. [198](#), 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.

77. The Notice, attached as Exhibit A to the Affidavit of Adam D. Walter Regarding: (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date (“Mailing Affidavit”), *see* Exhibit 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) 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; (iii) the manner for submitting a Claim Form in order to be eligible for a payment from the net proceeds of the Settlement; and (iv) the terms of the proposed Plan of Allocation for distributing the 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 33% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed \$100,000.

78. As detailed in the Mailing Affidavit, on August 29, 2022, the Claims Administrator began mailing Notice Packets to potential Settlement Class Members, as well as to banks, brokerage firms, and other third-party nominees whose clients may be Settlement Class Members. Ex. 2 at ¶¶2-5. To disseminate the Notice, the Claims Administrator obtained the names and addresses of potential Settlement Class Members using information provided by Benefitfocus’ transfer agent, banks, brokers, and other nominees whose clients may be Settlement Class Members. *Id.* at ¶¶3-7. In total, to date, the Claims Administrator has mailed 21,548 Notice Packets to potential nominees and Settlement Class Members by first-class mail, postage prepaid. *Id.* at ¶8.

79. On September 12, 2022, A.B. Data caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire* for dissemination across the internet. *Id.* at ¶9 and Exhibits B & C attached thereto.

80. A.B. Data also maintains and posts information regarding the Settlement on a dedicated website established for the Settlement, www.BenefitfocusSecuritiesSettlement.com, to provide Settlement Class Members with information, including downloadable copies of the Notice Packet and the Stipulation, and an online claim portal. *Id.* at ¶11.

81. Pursuant to the terms of the Notice 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 November 10, 2022. To date, no objections or requests for exclusion have been received.

82. Lead Plaintiff will address any objections and requests for exclusion in its reply papers, which are due to be filed with the Court on November 23, 2022.

VIII. PLAN OF ALLOCATION FOR DISTRIBUTING SETTLEMENT PROCEEDS TO ELIGIBLE CLAIMANTS

83. Pursuant to the Notice Order, and as set forth in the Notice, all members of the Settlement Class who want 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 awarded by the Court) must submit valid Claim Forms no later than December 27, 2022. As set forth in the Notice, the Claims Administrator will calculate claimants' "Recognized Losses" using the transactional information provided by claimants in their Claim Forms, which can be mailed to the Claims Administrator, submitted online using the settlement website, or, for large investors with hundreds of transactions, via e-mail to the Claims Administrator's electronic filing team. Because most securities are held in "street name"

by the brokers that buy them on behalf of clients, the Claims Administrator, Lead Counsel, and Defendants do not have Settlement Class Members' transactional data and a claims process is required. 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. The Plan of Allocation is set forth in full at pages 10 to 12 of the Notice. *See* Ex. 2-A.

84. The proposed Plan of Allocation was developed with the assistance of Lead 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 alleged wrongdoing. The Plan is intended to be generally consistent with an assessment of damages that Lead Plaintiff and Lead Counsel believe were recoverable in the Action. In general, the Recognized Loss Amounts calculated under the Plan are based principally on the statutory formula for damages under Section 11(e) of the Securities Act, [15 U.S.C. §77k\(e\)](#). Recognized Loss Amounts for purchases after the SPO but during the Class Period are based on trading losses, and are discounted given the unique traceability and liability risks for these claims.

85. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on the "Recognized Loss" formulas. Using the Plan of Allocation, the Claims Administrator will calculate a Recognized Loss Amount for each purchase of Benefitfocus common stock from March 1, 2019 through November 5, 2020 that is listed in the Claim Form and for which adequate documentation is provided.

86. Once the Claims Administrator has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, distributions will be made to eligible claimants in the form of checks and wire transfers. After an

initial distribution of the Net 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, the Claims Administrator will, if feasible and economical, after payment of Notice and Administration Expenses and Taxes, if any, re-distribute the balance among eligible claimants who have cashed their checks. These re-distributions will be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute. *See* Stipulation at ¶26; Ex. 2-A at ¶26. 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 any outstanding Notice and Administration Expenses or Taxes, will be donated to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, or as otherwise approved by the Court.

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

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

IX. LEAD COUNSEL'S FEE AND EXPENSE APPLICATION

89. For its 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 and Expense Application, consistent with the Notice to the Settlement Class, Lead Counsel seeks a fee award of 33% 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 \$69,485.46, plus accrued interest at the same rate as is earned by the Settlement Fund, and an award of \$5,000.00 to Lead Plaintiff in connection with its representation of the class. Lead Counsel

submits that, for the reasons discussed below and in the accompanying memorandum of law, such awards would be reasonable and appropriate under the circumstances before the Court.

A. The Time and Labor of Lead Counsel

90. The work undertaken by Lead Counsel to investigate and prosecute this case and arrive at the present Settlement has been time-consuming and challenging. As more fully set forth above, the Action settled only after counsel overcame multiple legal and factual challenges. Among other efforts, Lead Counsel conducted a comprehensive investigation into the class's claims; researched and prepared an initial complaint and the Amended Complaint; briefed a through omnibus opposition to Defendants' three Motions to Dismiss; briefed four interlocutory appeals; moved for class certification; consulted with experts on damages and causation issues; engaged in discovery; and engaged in a hard-fought settlement process with experienced defense counsel and an experienced Mediator.

91. 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.

92. Attached hereto is an affirmation focused on Labaton Sucharow's fees and expenses, which is submitted in support of the Fee and Expense Application. *See* Affirmation on Behalf of Labaton Sucharow LLP (attached as Exhibit 3 hereto). Included with this affirmation is a schedule that summarizes Labaton Sucharow's time, as well as the expenses incurred by category (the "Fee and Expense Schedules"). The attached affirmation and the Fee and Expense Schedules report the amount of time spent by each attorney and professional support staff employed by Lead Counsel and the "lodestar" calculations, *i.e.*, their hours multiplied by their current hourly rates. *See* Ex. 3-A. As explained in the affirmation, the reported time was prepared using daily time records regularly prepared and maintained by the firm.

93. The hourly rates of Lead Counsel here range from \$925 to \$1,250 for partners, \$625 to \$850 for of counsels, and \$500 for associates. *See* Ex. 3-A. It is respectfully submitted that the hourly rates for the attorneys and professional support staff included in the schedule are reasonable and customary. Exhibit 4, 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 2021. The analysis shows that across all types of attorneys, Lead Counsel's rates here are consistent with, or lower than, the firms surveyed.

94. Lead Counsel has expended 2,563.9 hours in the prosecution and investigation of the Action. *See* Ex. 3-A. The resulting lodestar is \$1,561,114.50. *Id.* Pursuant to a lodestar "cross-check," the requested fee of 33% of the Settlement Amount (\$3,630,000) results in a "multiplier" of approximately 2.3 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.

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

95. This Action presented substantial challenges from the outset of the case. The specific risks Lead 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.

96. 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 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, Lead Counsel has received no compensation during the litigation but has incurred more than 2,500 hours of time for a total lodestar of \$1,561,114.50 and has incurred \$69,485.46 in expenses in prosecuting the Action for the benefit of the Settlement Class.

97. 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.

98. 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.

99. The many appellate decisions affirming summary judgments and directed verdicts for defendants in securities cases show that surviving a request for dismissal 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).

100. 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.

101. Even plaintiffs who succeed at trial may find their verdict overturned on appeal. See, e.g., [Glickenhous & 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 Cap. 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)).

102. 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.

103. 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 counsel, taking into account the enormous risks undertaken with a clear view of the economics of a securities class action.

C. The Skill Required and Quality of the Work

104. The expertise and experience of Lead Counsel are described in its firm's resume, annexed to its affirmation. *See* Ex. 3-C.

105. Lead Counsel 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 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.

D. Request for Litigation Expenses

106. Lead Counsel seeks payment of \$69,485.46 from the Settlement Fund 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 \$100,000, plus interest at the same rate earned by the Settlement Fund. *See* Ex. 2-A. The amounts requested herein are well below this cap.

107. As set forth in the Fee and Expense Schedules, Lead Counsel has incurred a total of \$69,485.46 in litigation expenses in connection with the prosecution of the Action. *See* Ex. 3-B. As attested to, these expenses are reflected on the books and records maintained by Labaton Sucharow. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. The requested expenses are detailed in Lead Counsel's affirmation, which identifies the specific category of expense—*e.g.*, computer research, experts' fees, costs related to mediation, duplicating, court and service fees, and postage expenses.

108. A significant component of Lead Counsel's expenses is the cost of Lead Plaintiff's consulting damages and causation experts, which totals \$40,651.25, or approximately 59% of total expenses. *See* Ex. 3 ¶7(d). The services of Lead Plaintiff's damages and causation experts were necessary for preparing estimates of damages, analyzing causation issues, and assisting with the preparation of the Plan of Allocation.

109. Computerized research totals \$13,862.00, or approximately 20% of total expenses. *See* Ex. 3 ¶7(b). These are the charges for computerized factual and legal research services, such

as Pacer, Westlaw, Thomson Research, and LexisNexis. These services allowed counsel to perform media searches on the Company, obtain analysts' reports and financial data for the Company, and conduct legal research.

110. Lead Counsel also paid \$7,500.00 in mediation fees assessed by the Mediator in this matter (approximately 11% of total expenses). *See* Ex. 3-B.

111. Lead Counsel retained counsel for a confidential witnesses cited in the Amended Complaint (\$795.00) and also paid the legal fees of outside fund counsel to Lead Plaintiff, Frank, Gale, Bails, Murcko & Pocrass, P.C., which provided advice to the Trust Fund in furtherance of its duties as a proposed class representative and to ensure that Lead Plaintiff's efforts with respect to the litigation were consistent with its fiduciary and other obligations to its members, which totaled \$3,014.00 or 4% of expenses.

112. The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation. These expenses include, among others, duplicating costs, service and filing fees, and e-discovery costs.

113. All of the litigation expenses incurred, which total \$69,485.46, were necessary to the successful prosecution and resolution of the claims against Defendants.

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

X. A SERVICE AWARD TO LEAD PLAINTIFF WOULD BE FAIR AND REASONABLE

115. Additionally, Lead Plaintiff seeks an award in the amount of \$5,000, 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 Pittsburgh CMPTF is detailed in its accompanying affidavit, attached hereto as Exhibit 1.

116. As described in Lead Plaintiff's affidavit, it consulted with counsel regarding the litigation, including pleadings, motions, and discovery, which included numerous meetings dating back to prior to the filing of the initial complaint, and discussed with counsel the potential for settlement and ultimately the agreed-to terms. *See* Ex. 1. These efforts required Lead Plaintiff to dedicate time to the Action that it would have otherwise devoted to the management of the Fund.

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

117. As mentioned above, consistent with the Notice Order, to date a total of 21,548 Notice Packets have been mailed to potential Settlement Class Members and their nominees advising them that Lead Counsel would seek an award of attorneys' fees not to exceed 33% of the Settlement Fund, and payment of expenses in an amount not greater than \$100,000. *See* 2-A. Additionally, the Summary Notice was published in *The Wall Street Journal* and transmitted over *PR Newswire*. Ex. 2- B & C. The Notice and the Stipulation have also been available on the settlement website maintained by the Claims Administrator. Ex. 2 ¶11.⁶ While the deadline set by the Court for Settlement Class Members to object to the requested fees and expenses has not yet passed, to date no objections to the Fee and Expense Application have been received. Lead Counsel will respond to any objections received in its reply papers, which are due no later than November 23, 2022.

⁶ Lead Counsel's Fee and Expense Application will also be posted on the Settlement website.

XII. MISCELLANEOUS EXHIBITS

118. Attached hereto as Exhibit 5 is a true and correct copy of Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2021 Review and Analysis* (Cornerstone Research 2022).

119. Attached hereto as Exhibit 6 is a true and correct copy of Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review* (NERA 2022).

XIII. CONCLUSION

120. In view of the significant recovery for the Settlement Class and the substantial risks of this litigation, as described above and in the accompanying memorandum of law, Lead 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 memorandum of law, Lead Counsel respectfully submits that a fee in the amount of 33% of the Settlement Fund be awarded, that litigation expenses in the amount of \$69,485.46 be paid, and that the Lead Plaintiff be awarded \$5,000.

I hereby affirm under the penalty of perjury that the foregoing is true and correct. Executed this 27th day of October, 2022.

/s/ Alfred L. Fatale III

ALFRED L. FATALE III

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITY OF PITTSBURGH COMPREHENSIVE
MUNICIPAL PENSION TRUST FUND,
Individually and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

BENEFITFOCUS, INC., THE GOLDMAN SACHS
GROUP, INC., GS CAPITAL PARTNERS VI
PARALLEL, L.P., GS CAPITAL PARTNERS VI
OFFSHORE FUND, L.P., GS CAPITAL
PARTNERS VI FUND, L.P., GS CAPITAL
PARTNERS VI GMBH & CO. KG, MERCER LLC,
MARSH & MCLENNAN COMPANIES, INC.,
MERCER CONSULTING GROUP, INC., MASON
R. HOLLAND, JR., RAYMOND A. AUGUST,
JONATHON E. DUSSAULT, DOUGLAS A.
DENNERLINE, JOSEPH P. DISABATO, A.
LANHAM NAPIER, FRANCIS J. PELZER V,
STEPHEN M. SWAD, ANA M. WHITE, J.P.
MORGAN SECURITIES LLC, GOLDMAN SACHS
& CO. LLC, MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED, PIPER JAFFRAY &
CO., RAYMOND JAMES & ASSOCIATES, INC.,
WEDBUSH SECURITIES, INC., AND FIRST
ANALYSIS SECURITIES CORPORATION,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

AFFIDAVIT OF JENNIFER GULA ON BEHALF OF CITY OF PITTSBURGH
COMPREHENSIVE MUNICIPAL PENSION TRUST FUND IN SUPPORT OF
APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND
REQUEST FOR ATTORNEYS' FEES AND EXPENSES

COMMONWEALTH OF PENNSYLVANIA)
) ss.:
COUNTY OF ALLEGHENY)

I, Jennifer Gula, being duly sworn, depose and say:

1. I am the Acting Executive Director of the City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Pittsburgh CMPTF” or the “Fund”), and am authorized to submit this statement on its behalf. Pittsburgh CMPTF is the Plaintiff in the above-captioned proposed securities class action (the “Action”).¹

2. I respectfully submit this affidavit in support of final approval of the proposed settlement of the Action for \$11,000,000 (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 affidavit in support of Pittsburgh CMPTF’s request for a service award in recognition of the time that Pittsburgh CMPTF 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. Pittsburgh CMPTF initiated this Action by filing a class action complaint on March 2, 2021. Since that time, Pittsburgh CMPTF has actively monitored and assisted counsel with the litigation. In that regard, Pittsburgh CMPTF has regularly consulted with counsel regarding the litigation, including pleadings, motions, and discovery, and the proposed Settlement. Pittsburgh CMPTF’s involvement has included numerous meetings dating back to prior to the filing of the initial complaint.

¹ Unless otherwise indicated, capitalized terms have those meanings contained in the Stipulation and Agreement of Settlement, filed with the Court on April 13, 2022.

4. Pittsburgh CMPTF consulted with counsel concerning the mediation efforts and authorized them to settle the Action. In making the determination that the Settlement represented a fair, reasonable, and adequate result for the class, Pittsburgh CMPTF weighed the substantial benefits to the class against the significant risks and uncertainties of continued litigation. After doing so, Pittsburgh CMPTF believes that the Settlement represents a favorable recovery, and believes that final approval of the Settlement is in the best interests of the Settlement Class.

5. Pittsburgh CMPTF also believes that Lead Counsel's request for an award of attorneys' fees in the amount of 33% of the Settlement Fund is fair and reasonable under the circumstances of this case. Pittsburgh CMPTF 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 Settlement Class. Pittsburgh CMPTF understands that Lead Counsel will also devote additional time in the future to administering the Settlement. Pittsburgh CMPTF further believes 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, Pittsburgh CMPTF fully supports Lead Counsel's motion for attorneys' fees and payment of litigation expenses.

6. Pittsburgh CMPTF understands the Court may make an award relating to its representation of the class. Accordingly, Pittsburgh CMPTF is requesting the amount of \$5,000 in connection with its efforts in the Action. This request is based on an estimate of the time that Pittsburgh CMPTF devoted to the litigation related activities described above. The time spent on this case was time that Pittsburgh CMPTF would have otherwise devoted to the management of the Fund.

I hereby state that the facts set forth above are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that, if called as a witness, I could

competently testify thereto. I understand that the statements herein are made subject to the penalties of N.Y. Penal Law § 210.45. Executed this 26th day of October, 2022.

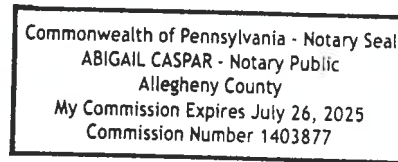


Jennifer Gula
Acting Executive Director
Pittsburgh CMPTF

Sworn to and subscribed before me this

26th day of October, 2022

Abigail Caspar
Notary Public




CERTIFICATE OF CONFORMITY

COMMONWEALTH OF PENNSYLVANIA)
) ss.:
COUNTY OF ALLEGHENY)

Frederick N. Frank, being duly sworn, deposes and says:

I hereby certify that I am an attorney-at-law duly admitted to practice in the Commonwealth of Pennsylvania; and that the acknowledgement of the affidavit of Jennifer Gula, sworn to on October 26, 2022, taken before Abigail Caspar, a Notary Public of Allegheny County in the Commonwealth of Pennsylvania, being the state in which it was taken, based upon my review thereof, to the best of my knowledge conforms to the laws of the Commonwealth of Pennsylvania.



Sworn to and subscribed before me this

26 day of October, 2022

Abigail Caspar
Notary Public

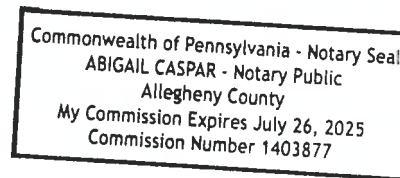


Exhibit 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITY OF PITTSBURGH COMPREHENSIVE
MUNICIPAL PENSION TRUST FUND,
Individually and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

BENEFITFOCUS, INC., THE GOLDMAN SACHS
GROUP, INC., GS CAPITAL PARTNERS VI
PARALLEL, L.P., GS CAPITAL PARTNERS VI
OFFSHORE FUND, L.P., GS CAPITAL
PARTNERS VI FUND, L.P., GS CAPITAL
PARTNERS VI GMBH & CO. KG, MERCER LLC,
MARSH & MCLENNAN COMPANIES, INC.,
MERCER CONSULTING GROUP, INC., MASON
R. HOLLAND, JR., RAYMOND A. AUGUST,
JONATHON E. DUSSAULT, DOUGLAS A.
DENNERLINE, JOSEPH P. DISABATO, A.
LANHAM NAPIER, FRANCIS J. PELZER V,
STEPHEN M. SWAD, ANA M. WHITE, J.P.
MORGAN SECURITIES LLC, GOLDMAN SACHS
& CO. LLC, MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED, PIPER JAFFRAY &
CO., RAYMOND JAMES & ASSOCIATES, INC.,
WEDBUSH SECURITIES, INC., AND FIRST
ANALYSIS SECURITIES CORPORATION,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

**AFFIDAVIT OF ADAM D. WALTER REGARDING: (A) MAILING OF NOTICE AND
CLAIM FORM; (B) PUBLICATION OF SUMMARY NOTICE; AND
(C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

STATE OF FLORIDA)
) ss.:
COUNTY OF PALM BEACH)

I, Adam D. Walter, being duly sworn, depose and say:

1. I am a Senior Project Manager of A.B. Data, Ltd.’s Class Action Administration Company (“A.B. Data”), whose Corporate Office is located in Milwaukee, Wisconsin.¹ Pursuant to the Court’s Order Preliminarily Approving Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered on August 15, 2022 (NYSCEF No. 198), the “Notice Order”), A.B. Data was appointed to act as the Claims Administrator in connection with the Settlement of the above-captioned action (the “Action”). I submit this affidavit in order to provide the Court and the Parties to the Action information regarding the mailing of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and Proof of Claim and Release (the “Claim Form,” and together with the Notice, the “Notice Packet”), the publication of the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), as well as updates concerning other aspects of the settlement administration process. The following statements are based on my personal knowledge and, if called as a witness, I could and would testify competently thereto.

MAILING OF THE NOTICE PACKET

2. Pursuant to the Notice Order, A.B. Data mailed the Notice Packet to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated April 11, 2022 (NYSCEF No. 188, the “Stipulation”).

3. On August 8, 2022, A.B. Data received from Lead Counsel a list containing the names and addresses of record holders (“Record Holder List”) who purchased or otherwise acquired Benefitfocus publicly traded common stock during the Class Period.

4. Additionally, as in most securities class actions of this nature, the large majority of potential Settlement Class Members are expected to be beneficial purchasers whose securities are held in “street name” – *i.e.*, the securities are purchased by brokerage firms, banks, institutions, and other third-party nominees in the name of the respective nominees, on behalf of the beneficial purchasers. A.B. Data maintains a proprietary database with the names and addresses of the largest and most common banks, brokers, and other nominees (the “Broker Mailing Database”).

5. On August 29, 2022, A.B. Data caused Notice Packets to be sent by First-Class Mail to 5,038 mailing records contained in the Record Holder List and the Broker Mailing Database.

6. The Notice directed those who purchased or otherwise acquired Benefitfocus common stock for the beneficial interest of a person or organization other than themselves to either: (a) within ten (10) calendar days of receipt of the Notice, request from A.B. Data sufficient copies of the Notice Packet to forward to all such beneficial owners and within ten (10) calendar days of receipt of those Notice Packets, forward them to all such beneficial owners; or (b) within ten (10) calendar days of receipt of the Notice, provide to A.B. Data a list of names and addresses, as well as email addresses to the extent available, of all such beneficial owners.

7. As of the date of this affidavit, A.B. Data has received an additional 3,715 names and addresses of potential Settlement Class Members from individuals or brokerage firms, banks, institutes, and other nominees. A.B. Data also received requests from brokers and other nominee holders for 12,795 Notice Packets to be mailed to the nominees for forwarding to their customers.

All such requests have been, and will continue to be, complied with and addressed in a timely manner.

8. As of the date of this affidavit, a total of 21,548 Notice Packets have been mailed to potential Settlement Class Members and their nominees. In addition, A.B. Data re-mailed 576 Notice Packets to persons whose original mailings were returned by the U.S. Postal Service (“USPS”) and for whom updated addresses were either provided to A.B. Data by the USPS or ascertained through a third-party information provider.

PUBLICATION OF THE SUMMARY NOTICE

9. In accordance with paragraph 15(c) of the Notice Order, A.B. Data caused the Summary Notice to be published in the *Wall Street Journal* (“*WSJ*”) and released via *PR Newswire* on September 12, 2022. Copies of proof of publication of the Summary Notice in the *WSJ* and over *PR Newswire* are attached hereto as Exhibits B and C, respectively.

TELEPHONE HELPLINE

10. On August 30, 2022, A.B. Data established a case-specific, toll-free telephone helpline, 877-869-0224, with an interactive voice response system and live operators, to accommodate potential Settlement Class Members with questions about the Action and the Settlement and/or request a Notice Packet. The automated attendant answers the calls and presents callers with a series of choices to respond to basic questions. Callers requiring further help have the option to be transferred to a live operator during business hours. A.B. Data continues to maintain the telephone helpline and will update the interactive voice response system as necessary throughout the administration of the Settlement.

SETTLEMENT WEBSITE

11. In accordance with paragraph 15(d) of the Notice Order, A.B. Data designed, implemented, and currently maintains a case-specific website, www.BenefitfocusSecuritiesSettlement.com, dedicated to the Settlement (the “Settlement Website”). The Settlement Website was operational beginning on August 29, 2022 and is accessible 24 hours a day, 7 days a week. Among other things, the Settlement Website includes general information about the Settlement, including the exclusion, objection, and claim-filing deadlines, as well as the date and time of the Court’s Settlement Hearing. In addition, A.B. Data posted copies of the Stipulation, Notice Order, Notice Packet, and other relevant Court documents related to the Action, which are also available for download.

12. In addition, the Settlement Website allows potential Settlement Class Members to file claims online and provides instructions and a claim filing template for institutional investors.

13. The Settlement Website will continue to be updated with relevant case information and Court Documents.

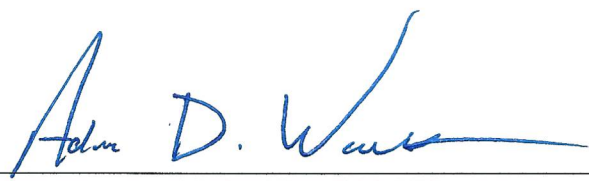
REPORT ON REQUESTS FOR EXCLUSION AND OBJECTIONS

14. The Notice informed potential Settlement Class Members that requests for exclusion are to be sent to the Claims Administrator, such that they are received no later than November 10, 2022. The Notice also sets forth the information that must be included in each request for exclusion. As of the date of this affidavit, A.B. Data has not received any requests for exclusion. A.B. Data will submit a supplemental affidavit after the November 10, 2022 deadline addressing any requests for exclusion received.

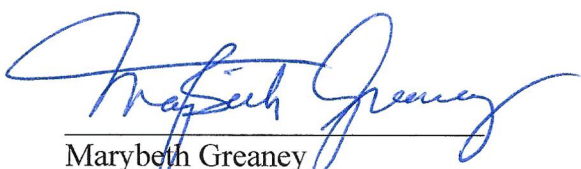
15. According to the Notice, Settlement Class Members wishing to object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or

Lead Counsel's Fee and Expense Application, were required to submit their objection in writing to the Court and mail copies to Lead Counsel and Defendants' Counsel such that the papers were received on or before November 10, 2022. As of the date of this affidavit, A.B. Data has not received any misdirected objections.

I hereby state that the facts set forth above are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that, if called as a witness, I could competently testify thereto. I understand that the statements herein are made subject to the penalties of N.Y. Penal Law § 210.45. Executed this 27th day of October, 2022


ADAM D. WALTER

Sworn to and subscribed before me this 27th day of October, 2022


Marybeth Greaney
Notary Public




 **Marybeth Greaney**
Notary Public
State of Florida
Comm# HH078003
Expires 1/6/2025

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKCITY OF PITTSBURGH COMPREHENSIVE MUNICIPAL
PENSION TRUST FUND, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

BENEFITFOCUS, INC., et al.,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

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

If you purchased or otherwise acquired publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.'s ("Benefitfocus" or the "Company") March 1, 2019 secondary public offering ("SPO") and/or you subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the "Class Period"), and were damaged thereby, you may be entitled to a payment from a class action settlement.

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

- The purpose of this Notice is to inform you of the pendency of this securities class action (the "Action"), the proposed settlement of the Action (the "Settlement"),¹ and a hearing to be held by the Court to consider: (i) whether the Settlement should be approved; (ii) whether the proposed plan for allocating the proceeds of the Settlement (the "Plan of Allocation") should be approved; and (iii) Lead Counsel's application for attorneys' fees and expenses. This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement, wish to object, or wish to be excluded from the Settlement Class.
- If approved by the Court, the Settlement will create a \$11,000,000 cash fund, plus any earned interest, for the benefit of eligible Settlement Class Members, before the deduction of attorneys' fees and expenses awarded by the Court, Notice and Administration Expenses, and Taxes. This is an average recovery of approximately \$0.14 per allegedly damaged share, before these deductions.
- The Settlement resolves claims by (i) Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund ("Lead Plaintiff" or "Plaintiff"), on behalf of itself and all other members of the Settlement Class (defined below), on the one hand; and, on the other, (ii) Benefitfocus; (iii) Mason R. Holland, Jr., Raymond A. August, Jonathon E. Dussault, Douglas A. Dennerline, Joseph P. DiSabato, A. Lanham Napier, Francis J. Pelzer V, Stephen M. Swad, and Ana M. White (the "Individual Defendants" and together with Benefitfocus, the "Benefitfocus Defendants"); (iv) The Goldman Sachs Group, Inc., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI Fund, L.P., and GS Capital Partners VI GMBH & Co. KG (the "Goldman Funds Defendants"); (v) Mercer LLC, Marsh & McLennan Companies, Inc., and Mercer Consulting Group, Inc. (the "Mercer Defendants," and together with the Goldman Funds Defendants, the "Selling Stockholder Defendants"); and (vi) J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC ("GS&Co."), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation (the "Underwriter Defendants," and together with the Benefitfocus Defendants, Goldman Funds Defendants, and Mercer Defendants, the "Defendants"). It avoids the costs and risks of continuing the litigation; pays money to eligible investors; and releases the Defendant Releasees (defined below) from liability.

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

¹ The terms of the Settlement are in the Stipulation and Agreement of Settlement, dated as of April 11, 2022 (the "Stipulation"), which can be viewed at www.BenefitfocusSecuritiesSettlement.com. All capitalized terms not defined in this Notice have the same meanings as defined in the Stipulation.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY DECEMBER 27, 2022	The <u>only</u> way to be eligible to receive a payment. <i>See</i> Question 8 below for details.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY NOVEMBER 10, 2022	If you exclude yourself from the Settlement Class, you will receive no payment from the Settlement. This is the only option that will, assuming your claim is timely brought, allow you to seek recovery from the Defendants or the other Defendant Releasees through other litigation, at your own expense. <i>See</i> Question 11 below for details.
OBJECT BY NOVEMBER 10, 2022	Write to the Court and explain why you do not agree with 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 16 below for details.
PARTICIPATE IN A HEARING ON DECEMBER 1, 2022 AND SUBMIT A NOTICE OF INTENTION TO APPEAR BY NOVEMBER 10, 2022	You may participate at the hearing and speak to the Court about the fairness of the Settlement, the proposed Plan of Allocation, and/or Lead Counsel's Fee and Expense Application. You cannot object to the Settlement unless you are a member of the Settlement Class and do not validly exclude yourself. <i>See</i> Question 20 below for details.
DO NOTHING	Receive no payment, remain a Settlement Class Member, give up your rights to seek recovery from the Defendants and the other Defendant Releasees through other litigation, and be bound by the Judgment entered by the Court if it approves the Settlement, including the release of Plaintiff's Released Claims.

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

SUMMARY OF THE NOTICE

Statement of the Settlement Class's Recovery

1. Subject to Court approval, Lead Plaintiff, on behalf of the Settlement Class, has agreed to settle the Action in exchange for a payment of \$11,000,000 in cash (the "Settlement Amount"), which will be deposited into an Escrow Account, which may earn interest (the "Settlement Fund"). Based on Lead Plaintiff's consulting damages expert's estimate of the number of shares of Benefitfocus common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate in the Settlement do so, it is estimated that the average recovery, before deduction of any Court-approved fees and expenses, such as attorneys' fees, litigation expenses, Taxes, and Notice and Administration Expenses, would be approximately \$0.14 per allegedly damaged share. If the Court approves Lead Counsel's Fee and Expense Application (discussed below), the average recovery would be approximately \$0.09 per allegedly damaged share. **These average recovery amounts are only estimates and Settlement Class Members may recover more or less than these estimated amounts.** A Settlement Class Member's actual recovery will depend on, for example: (i) the total number of claims submitted; (ii) the amount of the Net Settlement Fund (after deduction of Court-approved fees and expenses); and (iii) whether and when the Settlement Class Member sold Benefitfocus common stock. *See* the Plan of Allocation beginning on page 10 for information on the calculation of your Recognized Claim, as defined in Question 23, below.

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

2. The Parties disagree about both liability and damages and do not agree about the amount of damages that would be recoverable if Lead Plaintiff were to prevail on each claim alleged. The issues on which the Parties disagree include, for example: (i) whether the Offering Documents contained untrue statements of material fact or omitted material facts necessary to make the statements in the documents not misleading; (ii) Lead Plaintiff's ability to trace its purchases to the Company's SPO; (iii) whether Lead Plaintiff's claims were time-barred under the applicable statute of limitations; (iv) whether the Selling Stockholder Defendants were statutory sellers under Section 12(a)(2) of the Securities Act of 1933 (the "Securities Act") and/or controlled the contents of the Offering Documents; (v) the extent to which external factors, such as general market, economic and industry conditions, influenced the trading prices of Benefitfocus common stock at various times; (vi) the appropriate economic models for measuring damages and causation; and (vii) whether class members suffered any damages.

3. Defendants have denied and continue to deny any wrongdoing or that they have committed any act or omission giving rise to any liability or violation of law, including the U.S. securities laws. Defendants have denied and continue to deny each and every one of the claims that was alleged or could have been alleged by Lead Plaintiff in the Action on behalf of the proposed class, including all claims in the Amended Complaint, as well as any allegations that Lead Plaintiff or any member of the proposed class has suffered damages or were otherwise harmed by the conduct alleged in the Action, and have asserted and continue to assert many defenses thereto. Defendants continue to believe that the claims asserted against them in the Action are without merit and reserve their rights to challenge, among other things, class certification if the Settlement does not become effective as set forth in the Stipulation.

Statement of Attorneys' Fees and Expenses Sought

4. Lead Counsel Labaton Sucharow LLP will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 33% of the Settlement Fund, which includes any accrued interest. Lead Counsel will also apply for payment of litigation expenses incurred in prosecuting the Action in an amount not to exceed \$100,000, which will include reimbursement for the hourly legal fees paid to Frank, Gale, Bails & Pocrass, P.C., Lead Plaintiff's outside pension fund counsel in connection with their representation of Lead Plaintiff in fulfilling its fiduciary obligations to the Settlement Class. Lead Counsel may also seek a service award for Lead Plaintiff of no more than \$5,000 related to its representation of the Settlement Class. If the Court approves Lead Counsel's Fee and Expense Application in full, the average amount of such fees and expenses, assuming claims are filed for all shares eligible to participate in the Settlement, will be approximately \$0.05 per allegedly damaged share of Benefitfocus common stock based on Lead Plaintiff's consulting damages expert's estimate of the number of shares of Benefitfocus common stock eligible to participate in the Settlement. A copy of the Fee and Expense Application will be posted on www.BenefitfocusSecuritiesSettlement.com after it has been filed with the Court.

Reasons for the Settlement

5. For Lead Plaintiff, the principal reason for the Settlement is the guaranteed cash benefit to the Settlement Class. This benefit must be compared to the uncertainty of being able to prove the allegations in the Amended Complaint; the risk of Defendants' appeals of the Court's rulings on their motions to dismiss; the risk that the Court may grant some or all of the anticipated summary judgment motions to be filed by Defendants; the uncertainty of having a class certified; the uncertainty inherent in the Parties' various and competing theories of liability, causation and damages; the uncertainty of a greater recovery after a trial and pending or future appeals; the risks of litigation, especially in complex actions like this; as well as the difficulties and delays inherent in such litigation (including any trial and appeals).

6. Defendants are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

Identification of Attorneys' Representatives

7. Lead Plaintiff and the Settlement Class are represented by Lead Counsel, Alfred L. Fatale III, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-6877, www.labaton.com, settlementquestions@labaton.com.

8. Further information regarding the Action, the Settlement, and this Notice may be obtained by contacting the Claims Administrator: *Benefitfocus Securities Settlement*, c/o A.B. Data, Ltd., P.O. Box 173114, Milwaukee, WI 53217, (877) 869-0224, www.BenefitfocusSecuritiesSettlement.com; or Lead Counsel.

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

BASIC INFORMATION

1. Why did I get this Notice?

9. You or someone in your family may have purchased or acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Company's Offering Documents for its March 1, 2019 SPO of common stock and/or purchased or acquired shares thereafter during the Class Period (March 1, 2019 through November 5, 2020, inclusive).² **Receipt of this Notice does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment. If you wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice. See Question 8 below.**

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

11. The Court in charge of the Action is the Supreme Court of the State of New York, New York County, and the case is known as *City of Pittsburgh Comprehensive Municipal Pension Trust Fund, et al. v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.) (the "Action"). The Action is assigned to the Honorable Andrew Borrok.

² Given the difficulty of tracing newly issued shares to a secondary offering, solely for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO.

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

12. The Action arises from the secondary public offering of the common stock of cloud-based benefits management platform and services provider Benefitfocus, commenced on or about March 1, 2019, and alleged misstatements and omissions of material fact made to investors in the Offering Documents issued in connection with the SPO. More specifically, the Action concerns Defendants' alleged failure to disclose that prior to the SPO, non-party Mercer Health & Benefits, LLC ("Mercer Health"), allegedly one of Benefitfocus's most important customers, was purportedly terminating its contract with the Company and would be transitioning off the Benefitfocus platform. (Defendants deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever.)

13. As a result, Lead Plaintiff alleged that the Offering Documents were false and misleading for several reasons, including: (i) the alleged termination of the agreement with Mercer Health was falsely portrayed as an amendment in the Offering Documents; (ii) purported opportunities arising from the change in relationship with Mercer Health were allegedly non-existent; and (iii) the Company's financial condition was allegedly worse than the Offering Documents portrayed.

14. Following the SPO and throughout 2019, Benefitfocus reported disappointing financial results, yet allegedly reaffirmed that "the renegotiation of the Mercer agreement will have a short-term impact on [its] 2019 revenue," and allegedly attributed any financial strain due to the "amended" Mercer Health Agreement as anticipated "headwinds." On March 3, 2020, Benefitfocus stated that Mercer Health was no longer a leading source of revenue in Benefitfocus's 2020 outlook. In November 2020, investors were told that the Mercer Health Agreement had not been "amended" as allegedly portrayed in the Offering Documents but had instead been terminated in such a way that would negatively impact Benefitfocus's financial condition throughout 2020 and beyond.

15. Lead Plaintiff alleges that these undisclosed issues and the impact they had on the Company's business caused the Company's stock price to fall below the SPO price of \$48.25 per share. As provided above, Defendants have denied, and continue to deny, Lead Plaintiff's allegations and that the Offering Documents were materially false or misleading.

16. On March 2, 2021, Lead Plaintiff commenced the Action through the filing of a putative securities class action complaint, in the Supreme Court of the State of New York, New York County, on behalf of a putative class consisting of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents issued in connection with the SPO, asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act for alleged misstatements and omissions in the Offering Documents.

17. On April 23, 2021, Lead Plaintiff filed an Amended Class Action Complaint for Violations of the Securities Act (the "Amended Complaint"). The Amended Complaint alleges violations of Sections 11, 12(a)(2), and 15 of the Securities Act on behalf of a putative class of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents, and who were damaged thereby.

18. On June 1, 2021, Lead Plaintiff served Defendant Benefitfocus with its first notice for discovery and inspection of documents. On June 21, 2021, Defendant Benefitfocus filed a motion for the entry of an order staying discovery pending resolution of any motions to dismiss the Action (the "Motion to Stay") and a memorandum of law, affirmation, and exhibits in support thereof, which Lead Plaintiff opposed.

19. On June 22, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a motion to dismiss the Amended Complaint (the "Motions to Dismiss"), and a memorandum of law in support of each of their respective motions. On the same day, the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the motion to dismiss filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the motion to dismiss filed by the Mercer Defendants (the "Motions to Dismiss Joinder").

20. On August 23, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Motions to Dismiss and the Motions to Dismiss Joinder.

21. On August 25, 2021, the Court held a hearing on the Motion to Stay. At the hearing, the Court orally ruled that discovery would be stayed until the Court ruled on the pending Motions to Dismiss and issued a written order to that effect the same day.

22. On September 23, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a memorandum of law in further support of their respective Motions to Dismiss and the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the reply memorandum of law filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the reply memorandum of law filed by the Mercer Defendants. On September 27, 2021, the Court held a hearing on the Motions to Dismiss and the Motions to Dismiss Joinder.

23. On September 28, 2021, the Court issued three written opinions denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Underwriter Defendants' Motions to Dismiss Joinder, in whole, and granting in part and denying in part the Goldman Funds Defendants' Motion to Dismiss.

24. On October 5, 2021, the Benefitfocus Defendants filed a notice of appeal from the Court's order denying their Motion to Dismiss. On October 15, 2021, the Mercer Defendants filed notices of appeal from the Court's orders denying their Motion to Dismiss and the Benefitfocus Defendants' Motion to Dismiss. On October 19, 2021, the Goldman Funds Defendants filed notices of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Goldman

Funds Defendants' Motion to Dismiss. On October 25, 2021, the Underwriter Defendants filed a notice of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss and GS&Co. filed a notice of appeal from the Court's order denying the Mercer Defendants' Motion to Dismiss. Following the filing of the various notices of appeal, briefing commenced and Defendants' appeals were perfected for the January 2022 term in the Appellate Division of the New York Supreme Court for the First Department and oral argument was scheduled for February 15, 2022.

25. On October 12, 2021, the Goldman Funds Defendants filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof, and the Mercer Defendants also filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof. On October 18, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Goldman Funds Defendants' and the Mercer Defendants' motions for leave to reargue.

26. On October 22, 2021, Defendant GS&Co. filed a motion for leave to reargue the motion to dismiss order which found that Lead Plaintiff had adequately stated a Section 15 claim against it, and a memorandum of law in support thereof. On October 28, 2021, Lead Plaintiff filed a memorandum of law in opposition to Defendant GS&Co.'s motion for leave to reargue.

27. Also on October 28, 2021, each of the Defendants filed answers to the Amended Complaint and asserted numerous affirmative defenses thereto.

28. On November 3, 2021, the Court issued an order denying each of the motions to reargue filed by the Mercer Defendants, Goldman Funds Defendants, and Defendant GS&Co.

29. On November 8, 2021, the Court entered a stipulation and preliminary conference order. Following entry of the preliminary conference order, discovery, including requests for production of documents and interrogatories, commenced.

30. On January 11, 2022, Lead Plaintiff filed a motion for class certification and a memorandum of law in support thereof requesting that the Court: (i) certify a class; (ii) appoint Lead Plaintiff as class representative; (iii) appoint Lead Counsel, Labaton Sucharow, as class counsel; and (iv) grant such other, further, and different relief as the Court deems just and proper.

31. In January 2022, Lead Plaintiff and the Benefitfocus Defendants began discussing the possibility of resolving the claims asserted in the Action through mediation. Lead Plaintiff and the Benefitfocus Defendants engaged Michelle Yoshida, Esq. (the "Mediator"), a well-respected and experienced mediator, to assist them in exploring a potential negotiated resolution of the claims against all Defendants. On February 8, 2022, respective counsel for Lead Plaintiff and the Benefitfocus Defendants met with the Mediator in an attempt to reach a global settlement during an all-day mediation session. The mediation involved an extended effort to settle the claims and was preceded by the exchange of mediation statements and supporting materials, including the Benefitfocus Defendants' production of documents to Lead Plaintiff. On February 9, 2022, an agreement in principle was reached to settle the claims against all Defendants, subject to the negotiation of a mutually acceptable stipulation of settlement.

3. Why is this a class action?

32. In a class action, one or more persons or entities (in this case, Lead Plaintiff), sue on behalf of people and entities who have similar claims. Together, these people and entities are a "class," and each is a "class member." Class actions allow the adjudication of many individuals' similar claims that might be too small economically to bring efficiently as individual 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. In this Action, the Court has appointed Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund to serve as Class Representative for purposes of the Settlement, and has appointed Labaton Sucharow LLP to serve as Class Counsel for purposes of the Settlement.

4. What are the reasons for the Settlement?

33. The Court did not finally decide in favor of Lead Plaintiff or Defendants. Instead, both sides agreed to a settlement. Lead Plaintiff and Lead Counsel believe that the claims asserted in the Action are strong. They recognize, however, the expense and length of continued proceedings needed to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. For example, Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial) countering Lead Plaintiff's allegations that the Offering Documents failed to disclose material adverse facts in existence at the time of the SPO. For example, Defendants have argued that the Mercer Health Agreement was never terminated and is still in existence and the Company disclosed prior to the SPO that it was pivoting away from its historical relationship with Mercer Health. Defendants would also continue to argue that many of their purported misstatements were inactionable statements of sincerely held opinions or corporate optimism. Defendants also would continue to seek to have the Court's rulings on Defendants' Motions to Dismiss reversed on appeal, in particular on the grounds that Lead Plaintiff's claims were brought outside of the applicable statute of limitations, and Lead Plaintiff would face substantial risk of further delay and motion and appellate practice.

34. Even assuming Lead Plaintiff could establish liability, the amount of damages that could be attributed to the allegedly false and misleading statements would also be hotly contested. Defendants likely would argue that any drop in Benefitfocus's stock price resulted from factors other than the alleged misstatements or omissions in the Offering Documents. 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 Lead Plaintiff and the Settlement Class. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

35. As provided above, Defendants have denied and continue to deny any wrongdoing or that they committed any act giving rise to any liability or violation of any law including the U.S. securities laws. Defendants deny each and every one of the claims alleged by Lead Plaintiff in the Action, including all claims in the Amended Complaint.

WHO IS IN THE SETTLEMENT CLASS

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

36. The Court 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 Benefitfocus publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with the March 1, 2019 SPO and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock during the Class Period, and who were damaged thereby.

37. You are a Settlement Class Member if you (i) purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Company's SPO, which occurred on or about March 1, 2019 and/or (ii) subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive. Given the difficulty of tracing newly issued shares to a secondary offering, for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019 were purchased or otherwise acquired in the SPO. 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?

38. Yes. There are some individuals and entities who are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: (i) Defendants; (ii) the Individual Defendants' immediate family members; (iii) the officers, directors, and affiliates of Benefitfocus; (iv) the Selling Stockholder Defendants and the Underwriter Defendants at all relevant times; (v) any entity in which a Defendant has or had a majority ownership interest; (vi) the legal representatives, heirs, successors or assigns of any excluded person or entity; and (vii) any persons or entities who or which exclude themselves by submitting a timely and valid request for exclusion that is accepted by the Court. *See* Question 11 below.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

39. In exchange for the Settlement and the release of Plaintiff's Released Claims against the Defendant Releasees (*see* Question 10 below), Benefitfocus (on behalf of itself and all Defendants) has agreed to cause an \$11,000,000 cash payment to be made, which, along with any interest earned, will be distributed to Settlement Class Members who send in valid and timely Claim Forms, 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").

8. How can I receive a payment?

40. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. You also may obtain one from the website dedicated to the Settlement: www.BenefitfocusSecuritiesSettlement.com. You also can request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at (877) 869-0224.

41. 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 either mail it to the Claims Administrator using the address listed in the Claim Form or submit it online at www.BenefitfocusSecuritiesSettlement.com. Claim Forms must be **postmarked (if mailed) or received no later than December 27, 2022**.

9. When will I receive my payment?

42. The Court will hold a Settlement Hearing on **December 1, 2022** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

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

43. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the "Effective Date" of the Settlement, you will release all "Plaintiff's Released Claims" against the "Defendant Releasees."

- (a) **“Plaintiff’s Released Claims”** means any and all claims, demands, rights, liabilities, and causes of action of every nature and description, whether known or Unknown Claims, contingent or absolute, mature or not mature, liquidated or unliquidated, accrued or not accrued, concealed or hidden, whether direct, representative, class, or individual in nature, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that were: (i) asserted in the Action; or (ii) could have been asserted by Plaintiff Releasers in the Action or any other court or forum that arise out of, are based upon, or relate to both: (a) the allegations, transactions, facts, matters or occurrences, or representations or omissions involved, set forth, or referred to in the complaints filed in the Action; and (b) the purchase, acquisition, holding, sale, or disposition of Benefitfocus publicly traded common stock in connection with the SPO or during the Class Period. Plaintiff’s Released Claims shall not include claims relating to the enforcement of the Settlement or any claims against any Person who submits a request for exclusion that is accepted by the Court.
- (b) **“Defendant Releasees”** means: (i) each Defendant, (ii) each of their respective immediate family members (for individuals) and each of their direct or indirect parent entities, subsidiaries, related entities, and affiliates, and any trust of which any Individual Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or her family, and (iii) for any of the entities listed in parts (i) or (ii), their respective past and present general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such, and any entity in which a Defendant has a controlling interest.
- (c) **“Unknown Claims”** means any and all of Plaintiff’s Released Claims that any Plaintiff Releaser does not know or suspect to exist in his, her, or its favor at the time of the release of the Defendant Releasees, and any and all Defendants’ Released Claims that any Defendant Releaser does not know or suspect to exist in his, her, or its favor at the time of the release of the Plaintiff Releasees, 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 of Plaintiff’s Released Claims and Defendants’ Released Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and Defendants shall expressly, and each other Plaintiff Releaser and Defendant Releaser shall be deemed to have, and by operation of the 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.

Lead 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 or believes to be true with respect to the subject matter of the Plaintiff’s Released Claims or the Defendants’ Released Claims, but Lead Plaintiff and Defendants shall expressly, fully, finally, and forever settle and release, and each Plaintiff Releaser and Defendant Releaser shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all of Plaintiff’s Released Claims and Defendants’ Released Claims, as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Lead Plaintiff and Defendants acknowledge, and other Plaintiff Releasers and Defendant Releasers by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Plaintiff’s Released Claims and Defendants’ Released Claims was separately bargained for and was a material element of the Settlement.

44. The “Effective Date” means the date on which the Settlement has become effective, as set forth in paragraph 41 of the Stipulation. If you remain a member of the Settlement Class, all of the Court’s orders, whether favorable or unfavorable, will apply to you and legally bind you.

45. Upon the “Effective Date,” the Defendant Releasers also will provide a release of any claims against Lead Plaintiff and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action, as described in the Stipulation.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

46. If you want to keep any right you may have to sue or continue to sue Defendants and/or the other Defendant Releasees on your own concerning the Plaintiff’s Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or “opting out.” **Please note:** If you decide to exclude yourself, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, including because the suit was not filed within the applicable time periods required for filing suit. Also, Benefitfocus may terminate the Settlement if more than a certain number of exclusion requests are received.

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

47. 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 *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)” You cannot exclude yourself by telephone or email. Each request for exclusion must also: (i) state the name, address, telephone number, and email address of the person or entity requesting exclusion; (ii) state the number of shares of Benefitfocus common stock the person or entity purchased, acquired, and sold from March 1, 2019 through November 5, 2020, as well as the dates and prices of each such purchase, acquisition and sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. Only members of the Settlement Class may request exclusion. A request for exclusion must be mailed so that it is **received no later than November 10, 2022** at:

Benefitfocus Securities Settlement
EXCLUSIONS
c/o A.B Data, Ltd.
P.O. Box 173001
Milwaukee, WI 53217

48. The information above is needed to determine whether you are a member of the Settlement Class. Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, if you ask to be excluded, 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 Defendant Releasees in the future.

12. If I do not exclude myself, can I sue Defendants and the other Defendant Releasees for the same thing later?

49. No. If you are a member of the Settlement Class, unless you properly exclude yourself, you will give up any rights to sue Defendants and the other Defendant Releasees for any and all Plaintiff’s Released Claims. If you have a pending lawsuit against any of the Defendant Releasees, **speak to your lawyer in that case immediately**. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **November 10, 2022**.

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

50. No, only Settlement Class Members are eligible to recover money from the Settlement.

THE LAWYERS REPRESENTING YOU**14. Do I have a lawyer in this case?**

51. Labaton Sucharow LLP is Lead Counsel in the Action. You will not be separately charged for these lawyers. The Court will determine the amount of attorneys’ 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.

15. How will the lawyers be paid?

52. Lead Counsel has been prosecuting the Action on a contingent basis and has not been paid for any of its work. Lead Counsel will seek an attorneys’ fee award of no more than 33% of the Settlement Fund, which will include accrued interest. Lead Counsel also will seek payment of expenses incurred in the prosecution of this Action of no more than \$100,000, plus accrued interest, which will include reimbursement for the hourly legal fees paid to Lead Plaintiff’s outside pension fund counsel in connection with their representation of Lead Plaintiff in fulfilling its fiduciary obligations to the Settlement Class. Lead Counsel also may seek a service award for Lead Plaintiff of no more than \$5,000 related to its representation of the Settlement Class. Any attorneys’ fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

OBJECTING TO THE SETTLEMENT, THE PLAN OF ALLOCATION, OR THE FEE AND EXPENSE APPLICATION**16. How do I tell the Court that I do not like something about the proposed Settlement?**

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

54. To object, you must send a signed letter stating that you object to the proposed Settlement, the Plan of Allocation, and/or the Fee and Expense Application in “*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)” The objection must also include: (i) your name, address, telephone number, email address and signature; (ii) your objection(s) and the specific reasons for each objection, including any legal and evidentiary support, and copies of any papers, briefs or other documents upon which the objection is based and/or witnesses you wish to bring to the Court’s attention; and

(iii) documents sufficient to prove your membership in the Settlement Class, such as brokerage trade confirmation receipts or other competent documentary evidence, showing the number of shares of Benefitfocus common stock that you purchased, acquired, and sold during the Class Period, as well as the dates, quantities and prices of each such purchase, acquisition, and sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to any aspect of the Settlement, the Plan of Allocation, and/or the application by Lead Counsel for an award of attorneys' fees and expenses, but nevertheless shall be bound by all the terms of the Stipulation, and by all proceedings, orders and judgments in the Action, including the Judgment to be entered and the releases to be given. Your objection must be mailed or delivered to each of the following addresses so that it is **received no later than November 10, 2022**:

<u>The Court</u>	<u>Lead Counsel for Lead Plaintiff</u>	<u>Defendants' Counsel Representative</u>
<p>Clerk of the Court Supreme Court of the State of New York County of New York Commercial Division, 60 Centre Street New York, NY 10007</p>	<p>Labaton Sucharow LLP Alfred L. Fatale III, Esq. 140 Broadway New York, NY 10005</p>	<p>Wilson Sonsini Goodrich & Rosati, P.C. Sheryl Shapiro Bassin, Esq. 1301 Ave. of the Americas, 40th Floor New York, New York 10019</p>

55. You do not need to participate in the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has complied with the procedures described in this Question 16 and below in Question 20 may participate at the Settlement Hearing and be heard, to the extent allowed by the Court. An objector may appear themselves or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

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

56. 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. In contrast, 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

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

57. The Settlement Hearing will be held on **December 1, 2022 at 11:30 a.m. EST**, before the Court, either in person at the Supreme Court, New York County, Courtroom 238, 60 Centre Street, New York, NY 10007, or remotely using directions that will be posted in advance on the Settlement website, in the Court's discretion.

58. At this hearing, the Honorable Andrew Borrok will (i) consider whether the Court should grant final certification of the Action as a class action for purposes of the Settlement and confirm the appointment of Lead Plaintiff and Lead Counsel as Class Representative and Class Counsel, respectively; (ii) consider whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (iii) consider whether a Judgment, substantially in the form attached as Exhibit B to the Stipulation, should be entered dismissing and releasing the Plaintiff's Released Claims and Defendants' Released Claims (as those terms are defined in the Stipulation) with prejudice; (iv) consider whether the Plan of Allocation for the distribution of the Net Settlement Fund is reasonable and should be approved; (v) consider Lead Counsel's application for an award of attorneys' fees and payment of litigation expenses (which may include a service award for Lead Plaintiff in connection with its representation of the Settlement Class); (vi) consider any objections or requests for exclusion received by the Court; and (vii) consider any other matters that may properly be brought before the Court in connection with the Settlement, as the Court may deem appropriate.

59. You should be aware that the Court may change the date and time of the Settlement Hearing, or hold the hearing remotely, without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel or visit the Settlement website, www.BenefitfocusSecuritiesSettlement.com, beforehand to be sure that the hearing date and/or time has not changed.

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

60. 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 participate in the Settlement Hearing 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 submit and serve a Notice of Appearance in the manner described in the answer to Question 20 below **no later than November 10, 2022**.

20. May I speak at the Settlement Hearing?

61. If you are a member of the Settlement Class, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must, **no later than November 10, 2022**, submit a statement to Lead Counsel and Defendants' Counsel that you, or your attorney, intend to appear in "*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)." 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 16 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 from the Settlement Class or if you have not provided written notice of your intention to speak at the Settlement Hearing in accordance with the procedures described in this Question 20 and Question 16 above.

IF YOU DO NOTHING**21. What happens if I do nothing at all?**

62. 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/or the other Defendant Releasees concerning the Plaintiff's Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (see Question 8 above). To start, continue, or be a part of any other lawsuit against Defendants and/or the other Defendant Releasees concerning the Plaintiff's Released Claims, you must exclude yourself from the Settlement Class (see Question 11 above).

GETTING MORE INFORMATION**22. Are there more details about the Settlement?**

63. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation. You may review the Stipulation filed with the Court or other documents in the case by visiting www.BenefitfocusSecuritiesSettlement.com or the Court's website at <https://iapps.courts.state.ny.us/nyscef/Login>.

64. You can also get a copy of documents related to the Settlement, as well as additional information, by visiting the website dedicated to the Settlement, www.BenefitfocusSecuritiesSettlement.com. You may also call the Claims Administrator toll free at (877) 869-0224 or write to the Claims Administrator at *Benefitfocus Securities Settlement, c/o A.B. Data, Ltd., P.O. Box 173114, Milwaukee, WI 53217*. **Please do not call or write the Court with questions about the Settlement.**

PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND**23. How will my claim be calculated?**

65. The Plan of Allocation (the "Plan of Allocation" or "Plan") set forth below is the plan that is being proposed by Lead Plaintiff and Lead Counsel to the Court for approval. The Court may approve this 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 at: www.BenefitfocusSecuritiesSettlement.com.

66. The Settlement Amount and the interest it earns is the "Settlement Fund." The Settlement Fund, after deduction of (i) Court-approved attorneys' fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court is the "Net Settlement Fund." The Net Settlement Fund will be distributed to members of the Settlement Class who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of Allocation approved by the Court.

67. The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who allegedly suffered economic losses as a result of the misstatements and omissions allegedly made by Defendants in violation of the federal securities laws with respect to shares of Benefitfocus common stock purchased or otherwise acquired during the Class Period, March 1, 2019 (the date of the Company's SPO) through November 5, 2020, inclusive. The Plan of Allocation, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. An individual Settlement Class Member's recovery will depend on, for example: (i) the total number and value of claims submitted; and (ii) whether and when the Claimant sold his, her, or its shares of Benefitfocus common stock. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

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

69. The Action's claims asserted under Section 11 of the Securities Act serve as the basis for the calculation of each "Recognized Loss Amount" under the Plan of Allocation. Section 11 of the Securities Act provides a statutory formula for the calculation of damages under that provision. The formulas stated below, which were developed by Lead Plaintiff's damages expert, generally track the statutory formula.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

70. For purposes of determining whether a Claimant has a “Recognized Claim,” purchases, acquisitions, and sales of Benefitfocus common stock will first be matched on a First In/First Out (“FIFO”) basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

71. A “Recognized Loss Amount” will be calculated as set forth below for each share of Benefitfocus common stock purchased or otherwise acquired from March 1, 2019 through November 5, 2020, inclusive, that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant’s Recognized Loss Amount results in a negative number, that number shall be set to zero. The sum of a Claimant’s Recognized Loss Amounts will be his, her, or its “Recognized Claim.”

72. Generally, the Action asserted claims on behalf of investors who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the SPO, *e.g.*, those who purchased newly issued shares “in” the SPO and not historical Benefitfocus shares on the open market. Given the difficulty of tracing newly issued shares to a secondary offering, the Plan of Allocation presumes that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO. Claimants who meet these conditions are being allocated a greater proportion of the Net Settlement Fund than purchases or acquisitions during the Class Period that do not meet either of these conditions and would have faced great difficulty in “tracing” their shares to the SPO. Claimants must provide adequate documentation of these conditions.

73. For each share of Benefitfocus common stock purchased or otherwise acquired in the SPO,³ and:

- A. Sold before March 2, 2021,⁴ the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share.
- B. Sold from March 2, 2021 through the close of trading on June 2, 2021,⁵ the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share (not to be less than \$14.90 per share, the closing price on March 2, 2021).
- C. Retained after the close of trading on June 2, 2021, the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* \$14.90 per share, the closing price on March 2, 2021.

74. For each share of Benefitfocus common stock purchased or otherwise acquired from March 1, 2019 through and including November 5, 2020, both dates inclusive, but not purchased or otherwise acquired in the SPO,⁶ and:

- A. Sold before March 2, 2021,⁷ the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share, (ii) multiplied by 0.25.⁸
- B. Sold from March 2, 2021 through the close of trading on June 2, 2021,⁹ the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share (not to be less than \$14.90 per share, the closing price on March 2, 2021), (ii) multiplied by 0.25.

³ As stated above, the Plan of Allocation presumes that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share or from an Underwriter Defendant from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO. Claimants must provide adequate documentation of these conditions.

⁴ For purposes of the statutory calculations, March 2, 2021, the date the initial complaint in the Action was filed, is the date of suit.

⁵ For purposes of the statutory calculations, June 2, 2021 is being treated as the date of judgment because, as of the date of this Notice, there has been no recorded trading price for Benefitfocus common stock after June 2, 2021 that is greater than the \$14.90 per share closing price on the date of suit.

⁶ As discussed above, shares are presumed to have been purchased or otherwise acquired in the SPO if they were purchased at the Offering price of \$48.25 per share or from an Underwriter Defendant from March 1, 2019 through and including April 1, 2019.

⁷ For purposes of the statutory calculations, March 2, 2021, the date the initial complaint in the Action was filed, is the date of suit.

⁸ The Plan of Allocation applies a seventy-five percent (75%) discount to the claims of Settlement Class Members that purchased or otherwise acquired Benefitfocus common stock on the open market from March 1, 2019 through November 5, 2020, inclusive, rather than in the SPO. The discount reflects the difficulty that Settlement Class Members would have in “tracing” their shares to the SPO, but nevertheless allocates a portion of the Net Settlement Fund for these claims given the release of Securities Exchange Act of 1934 claims that were not asserted in the Action.

⁹ For purposes of the statutory calculations, June 2, 2021 is being treated as the date of judgment because, as of the date of this Notice, there has been no recorded trading price for Benefitfocus common stock after June 2, 2021 that is greater than the \$14.90 per share closing price on the date of suit.

- C. Retained after the close of trading on June 2, 2021, the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) minus \$14.90 per share, the closing price on March 2, 2021, (ii) multiplied by 0.25.

ADDITIONAL PROVISIONS

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

76. The Recognized Loss Amount on a “short sale” that is not covered by a purchase or acquisition is zero.

77. In the event that a Claimant has an opening short position in Benefitfocus common stock at the start of the Class Period, the earliest Class Period purchase or acquisition shall be matched against such opening short position in accordance with the FIFO matching described above, and any portion of such purchase or acquisition that covers such short sales will not be entitled to recovery. In the event that a Claimant newly establishes a short position during the Class Period, the earliest subsequent Class Period purchase or acquisition shall be matched against such short position on a FIFO basis and will not be entitled to a recovery.

78. Benefitfocus common stock is the only security eligible for recovery under the Plan of Allocation. With respect to Benefitfocus common stock purchased or sold through the exercise of an option, the purchase/sale date of the Benefitfocus common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

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

80. 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.

81. 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 in an equitable and economic fashion among Authorized Claimants who have received distributions from the Net Settlement Fund. Redistributions, after payment of Notice and Administration Expenses, Taxes, and attorneys’ fees and expenses, if any, shall continue to Authorized Claimants who have received distributions from the Net Settlement Fund until it is no longer feasible or economical to do so. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys’ fees and expenses, if any, shall be donated to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, or shall be distributed as otherwise approved by the Court.

82. Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Claimants. No Person shall have any claim against the Defendant Releasees, the Plaintiff Releasees, or the Claims Administrator based on determinations or distributions made substantially in accordance with the Stipulation, the Settlement, the Plan of Allocation approved by the Court, or further order(s) of the Court.

83. Defendants, Defendants’ Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the selection of the Claims Administrator, the administration of the Settlement, or the actions or decisions of the Claims Administrator and shall have no liability whatsoever to the Plaintiff Releasees in connection with such administration, including, but not limited to: (i) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement, Escrow Account, or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any Tax Returns (as defined in paragraph 11(a) of the Stipulation). No Person, including Lead Plaintiff, Settlement Class Members, and Lead Counsel, shall have any claim of any kind against Defendants, Defendants’ Counsel, or Defendant Releasees with respect to the matters set forth in this paragraph.

84. Each Claimant is deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its claim.

SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES

85. If you purchased or acquired Benefitfocus common stock during the period from March 1, 2019 through November 5, 2020, inclusive, (the Class Period) 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) request from the Claims Administrator sufficient copies of the Notice to forward to all beneficial owners for whom or which you purchased or otherwise acquired Benefitfocus common stock during the Class Period and WITHIN TEN (10) CALENDAR DAYS of receipt of those Notices from the Claims Administrator forward them to all those beneficial owners; or (b) provide a list of the names and addresses of all those beneficial owners to the Claims Administrator, who shall send the Notice promptly to the identified beneficial owners. If you choose to follow procedure (a), the Court has also directed that you shall also send a statement to the Claims Administrator confirming that the mailing was made and shall retain your mailing records for use in connection with any further notices that may be provided in the Action. Upon full and timely compliance with these directions, you may seek reimbursement from the Settlement Fund of your reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Those expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above directives. All communications concerning the foregoing should be addressed to the Claims Administrator:

Benefitfocus Securities Settlement
c/o A.B. Data, Ltd.
P.O. Box 173114
Milwaukee, WI 53217

Dated: August 29, 2022

BY ORDER OF THE SUPREME COURT OF THE
STATE OF NEW YORK, NEW YORK COUNTY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKCITY OF PITTSBURGH COMPREHENSIVE MUNICIPAL
PENSION TRUST FUND, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

BENEFITFOCUS, INC., et al.,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

PROOF OF CLAIM AND RELEASE FORM**I. GENERAL INSTRUCTIONS**

1. To recover as a member of the Settlement Class based on your claims in the class action entitled *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.) (the “Action”), you must complete and, on page 5 below, sign this Proof of Claim and Release form (“Claim Form”). If you fail to submit a timely and properly addressed (as explained in paragraph 2 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. Submission of this Claim Form, however, does not assure that you will share in the proceeds of the Settlement of the Action.

2. THIS CLAIM FORM MUST BE SUBMITTED ONLINE THROUGH THE SETTLEMENT WEBSITE AT WWW.BENEFITFOCUSSECURITIESSETTLEMENT.COM NO LATER THAN DECEMBER 27, 2022 OR, IF MAILED, BE POSTMARKED NO LATER THAN DECEMBER 27, 2022, ADDRESSED AS FOLLOWS:

Benefitfocus Securities Settlement
c/o A.B. Data, Ltd.
P.O. Box 173114
Milwaukee, WI 53217

3. 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.

4. If you are a member of the Settlement Class and you do not timely request exclusion in response to the Notice dated August 29, 2022, you are bound by and subject to the terms of any judgment entered in the Action, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A CLAIM FORM OR RECEIVE A PAYMENT.

II. CLAIMANT IDENTIFICATION

5. If you purchased or otherwise acquired publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.’s (“Benefitfocus”) March 1, 2019 secondary public offering (“SPO”) and/or you subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the “Class Period”), and held the stock in your name, you are the beneficial owner as well as the record owner. If, however, you purchased or otherwise acquired Benefitfocus’s publicly traded common stock through a third party, such as a brokerage firm, you are the beneficial owner and the third party is the record owner.

6. Use **Part I** of this form entitled “Claimant Identification” to identify each beneficial owner of Benefitfocus publicly traded common stock that forms the basis of this claim, as well as the owner of record if different. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL OWNERS OR THE LEGAL REPRESENTATIVE OF SUCH OWNERS.**

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

III. IDENTIFICATION OF TRANSACTIONS

8. Use **Part II** of this form entitled “Schedule of Transactions in Benefitfocus Publicly Traded Common Stock” to supply all required details of your transaction(s) in Benefitfocus publicly traded 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.

9. Given the difficulty of tracing newly issued shares to a secondary offering, for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019 were purchased or otherwise acquired in the SPO.¹

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

11. The date of covering a “short sale” is deemed to be the date of purchase of Benefitfocus publicly traded common stock. The date of a “short sale” is deemed to be the date of sale of Benefitfocus publicly traded common stock.

12. Copies of broker confirmations or other documentation of your transactions must be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. **THE PARTIES DO NOT HAVE INFORMATION ABOUT YOUR TRANSACTIONS IN BENEFITFOCUS PUBLICLY TRADED COMMON STOCK.**

13. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may, or may be requested to, submit information regarding their transactions in electronic files. (This is different from the online claim portal on the Settlement website.) All such claimants MUST submit a manually signed paper Claim Form whether or not they also submit electronic copies. If you wish to submit your claim electronically, you must contact the Claims Administrator at (877) 869-0224 to obtain the required file layout or obtain it from the Settlement website. 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.

¹ The Underwriter Defendants are J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation.

PART I – CLAIMANT IDENTIFICATION

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

First Name

Last Name

Joint Beneficial Owner's (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

Last 4 digits of 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 (email 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 BENEFITFOCUS PUBLICLY TRADED COMMON STOCK

1. BEGINNING HOLDINGS - State the total number of shares of Benefitfocus common stock held at the opening of trading on March 1, 2019. If none, write "0" or "Zero." (Must submit documentation.) _____

2. PURCHASES/ACQUISITIONS OF BENEFITFOCUS COMMON STOCK – Separately list each and every purchase/acquisition of Benefitfocus common stock from the opening of trading on March 1, 2019 through and including the close of trading on November 5, 2020. (Must submit documentation.)

Date of Purchase/Acquisition (List Chronologically) (MM/DD/YY)	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)	Purchased/Acquired from an Underwriter Defendant ² Y/N
/ /		\$	\$	
/ /		\$	\$	
/ /		\$	\$	
/ /		\$	\$	
/ /		\$	\$	

3. PURCHASES/ACQUISITIONS AFTER CLASS PERIOD – State the total number of shares of Benefitfocus common stock purchased/acquired from the opening of trading on November 6, 2020 through and including the close of trading on June 2, 2021.³ (Must submit documentation.) _____

4. SALES OF BENEFITFOCUS COMMON STOCK – Separately list each and every sale of Benefitfocus common stock from the opening of trading on March 1, 2019 through the close of trading on June 2, 2021. (Must submit documentation.)

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

5. ENDING HOLDINGS – State the total number of shares of Benefitfocus common stock held after the close of trading on June 2, 2021. If none, write "0" or "Zero." (Must submit documentation.) _____

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

² The Underwriter Defendants are J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation.

³ Information requested in this Claim Form with respect to your purchases/acquisitions of Benefitfocus common stock from the opening of trading on November 6, 2020 through and including the close of trading on June 2, 2021 is needed only in order for the Claims Administrator to confirm that you have reported all relevant transactions. Purchases/acquisitions during this period, however, are not eligible for a recovery because these purchases/acquisitions are outside the Class Period. They will not be used for purposes of calculating your Recognized Claim pursuant to the Plan of Allocation.

IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

14. By signing and submitting this Claim Form, the claimant(s) or the person(s) acting on behalf of the claimant(s) certify(ies) that: I (We) submit this Claim Form under the terms of the Plan of Allocation described in the accompanying Notice. I (We) also submit to the jurisdiction of the Supreme Court of the State of New York, New York County (the "Court") with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the releases set forth herein. I (We) further acknowledge that I (we) will be bound by and subject to the terms of any judgment entered in connection with the Settlement in the Action, including the releases set forth therein. I (We) agree to furnish additional information to the Claims Administrator to support this claim, such as additional documentation for transactions in Benefitfocus publicly traded common stock, if required to do so. I (We) have not submitted any other claim covering the same transactions in Benefitfocus publicly traded common stock during the Class Period and know of no other person having done so on my (our) behalf.

V. RELEASES, WARRANTIES, AND CERTIFICATION

15. I (We) hereby warrant and represent that I am (we are) a Settlement Class Member as defined in the Notice, that I am (we are) not excluded from the Settlement Class, that I am (we are) not one of the "Defendant Releasees" as defined in the accompanying Notice.

16. As a Settlement Class Member, I (we), on behalf of myself (ourselves) and each of my (our) respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever compromise, settle, release, resolve, relinquish, waive, discharge, and dismiss with prejudice, and without costs, each and every one of the Plaintiff's Released Claims against each and every one of the Defendant Releasees (as these terms are defined in the accompanying Notice). I (we) further acknowledge that I (we) shall forever be barred and enjoined from directly or indirectly commencing, instituting, participating in, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting any or all of the Plaintiff's Released Claims against the Defendant Releasees. This release shall be of no force or effect unless and until the Court approves the Settlement and it becomes effective on the Effective Date.

17. 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 or claim released pursuant to this release or any other part or portion thereof.

18. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases/acquisitions and sales of Benefitfocus publicly traded common stock that occurred during the time periods above and the number of shares held by me (us), to the extent requested.

19. I (We) certify that I am (we are) NOT subject to backup tax withholding. (If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the prior sentence.)

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

Executed this _____ day of _____, 2022

Signature of Claimant

Type or print name of Claimant

Signature of Joint Claimant, if any

Type or print name of Joint Claimant, if any

Signature of person signing on behalf of Claimant

Type or print name of person signing on behalf of Claimant

Capacity of person signing on behalf of Claimant, if other than an individual (e.g., Administrator, Executor, Trustee, President, Custodian, Power of Attorney, etc.)

REMINDER CHECKLIST:

1. Please sign this Claim Form. If this claim is being made on behalf of Joint Claimants, then both must sign.
2. DO NOT USE RED PEN OR HIGHLIGHT THE CLAIM FORM OR YOUR SUPPORTING DOCUMENTATION.
3. Attach only copies of supporting documentation as these documents will not be returned to you.
4. Keep a copy of your Claim Form and all supporting documentation for your records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. **Your claim is not deemed submitted until you receive an acknowledgment postcard.** If you do not receive an acknowledgment postcard within 60 days, please call the Claims Administrator toll free at 877-869-0224.
6. If you move after submitting this Claim Form please notify the Claims Administrator of the change in your address, otherwise you may not receive additional notices or payment.

EXHIBIT B

TECHNOLOGY & FINANCE

India Edtech Startups Retool

Companies are cutting costs and investing in brick-and-mortar tutoring centers

By SHEFALI ANAND AND KRISHNA POKHAREL

NEW DELHI—The hottest thing in India's online-education industry is going offline. After two years of blistering growth, sparked by one of the world's longest Covid-19 school shutdowns, India hosts a crowded field of education-technology unicorns.

But the revival of in-person teaching as schools reopen and the drying up of cheap capital as monetary authorities move to curb inflation have forced a change of course. Byju's, operated by Think and Learn Pvt., and other Indian edtech companies are cutting jobs and marketing costs—and, in their search for growth, investing in brick-and-mortar centers.

Byju's has opened about 200 tutoring centers catering to schoolchildren in recent months, and plans up to 500 in all. Unacademy, Vedantu Innovations Pvt. and Physics Wallah Pvt., all valued at \$1 billion or more, have also ventured into offline teaching.

global pool of venture-capital funding for the sector.

Byju's recently had seven million paid subscriptions, and says it has around 150 million registered users worldwide.

Byju's recently fired 500 employees. The company is coming off a two-year acquisition spree during which it spent over \$2 billion on more than a dozen companies, according to Venture Intelligence. Byju's declined to comment.

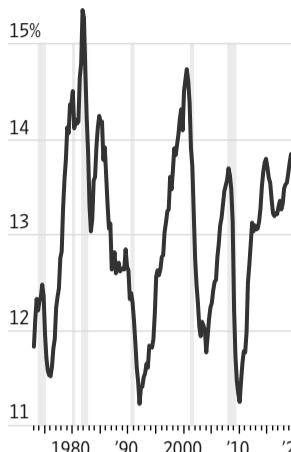
Unacademy, operated by Sorting Hat Technologies Pvt. and the world's No. 3 edtech startup by value at \$6 billion, according to PitchBook, has axed staff and next year will stop sponsoring the Indian Premier League cricket tournament. It opened its first offline center in June, and plans more.

It didn't respond to requests for comment.

Inflation-adjusted trade-weighted dollar*



Private non-residential fixed investment share of GDP



Research and development spending, share of GDP



*Fed real broad dollar index until 1994, then Bank for International Settlements index; through July Source: Federal Reserve Bank of St. Louis

Innovation Fuels the Greenback

Continued from page B1 The U.S. sucked in capital even after losing its competitive advantage—so the dollar had to make it attractive to foreign money.

The story is a nice one, and helps explain how the dollar's long-run trends can carry on even through the temporary interruption of recessions.

As evidence, Mr. Barth studied the length of cycles for various economic variables by using a frequency-analysis technique from engineering.

The cycle for the share of capital spending in gross domestic product matches that of the dollar, at about 17 years, while things important in the short term, such as monetary policy, have little influence at such a long horizon.

There's nothing magical about past cycles having been 17 years long, and no reason to think future ones will be the same length. This latest dollar uptrend already has run longer than each of the periods of multi-year gains since the greenback was taken off the gold standard by President Richard Nixon in the early 1970s.

Mr. Barth thinks it could run much longer still, because something interesting has happened with capital spending. U.S. private fixed investment, excluding housing, has stabilized at a

fairly high share of GDP, avoiding the boom-and-bust of past dollar cycles. Despite frequent complaints that the private sector doesn't invest enough, the 10-year average is now the highest since Ronald Reagan left office.

Research-and-development spending is also at all-time highs as a share of GDP.

Also potentially extending the cycle is deglobalization, which will both require more capital to be deployed domestically to replace international supply chains and hinder the spread of new inventions.

Even investors who don't buy the innovation story can't deny that the U.S. has done a far better job than the rest of the developed world in rebuilding its economy since the financial crisis. It now has the advantage of being an energy powerhouse too, thanks to

The U.S. now has the advantage of being an energy powerhouse too.

another U.S.-led innovation, fracking.

"This cycle is very much about U.S. economic supremacy," says Kit Juckes, head of FX strategy at Société Générale, who thinks it might be nearing its top.

In the short term, the usual issues of interest rates and recession fears will swing the dollar around.

But if the U.S. can maintain its economic vitality relative to the rest of the world, the dollar could stay high for a long time yet.

Singapore Reins In Crypto Ads at Formula One Race

By ELAINE YU

Crypto.com paid millions to sponsor Formula One. When the event comes to Singapore later this month, that could mean a lot of empty space.

The company has been part of a drive by cryptocurrency firms to plaster their logos across F1, a high-octane sport whose audience has grown in recent years.

Crypto mogul Sam Bankman-Fried's FTX Trading Ltd. has a deal with Mercedes, Binance has signed on with Alpine, and Bybit has teamed up with Red Bull.

But Crypto.com appears to have taken pole position. The Singapore-based company is a sponsor of Aston Martin, the title sponsor of the new Miami Grand Prix and a global partner of F1.

That spending spree won't mean as much when F1 comes to Crypto.com's hometown. The Singapore Grand Prix is returning over the Sep. 30 weekend after a two-year pandemic-related break. Although Singapore has become a popular destination for crypto and blockchain firms, wild price swings and a series of brutal selloffs over the past year have made the city's financial regulator increasingly skeptical.

At the F1 Grand Prix, that ban won't apply to cars or to drivers' uniforms but it will apply to advertising around the venue. The blue and white Crypto.com ads typically lining the track as cars whiz past won't be visible in Singapore.

The city's rationale is that the teams' equipment is used around the world and logos on it are seen as advertising to F1 fans globally, while branding on the track itself is more directly aimed at locals, and so in breach of the rules.

While a single race represents just a fraction of Crypto.com's sponsorship costs—the company paid \$700 million to rename the arena formerly known as the Staples Center in Los Angeles and \$100 million to sponsor the new F1 Sprint races—the ban shows the uncertainties around ad spending for an industry facing increasing regulatory pressure.

The current guideline is the same as that given in March by the Monetary Authority of Singapore, the city-state's central bank and financial regulator, said Chia Hock Lai, co-chairman of Blockchain Association Singapore. But the March clarification came before the worst of a crypto rout that included the implosion of sister tokens TerraUSD and Luna and the collapse of crypto hedge fund Three Arrows Capital, which both had links to Singapore. Ravi Menon, managing director of the MAS, has since used more aggressive language about cryptocurrencies, calling them "highly hazardous."

That led to uncertainty among F1 teams and their crypto sponsors, which range from some of the world's largest exchanges to a meme coin named after Elon Musk's dog. The MAS hasn't made a public statement on how the ban applies to the race—although it

did tell the F1's organizers—and with weeks to go, some teams don't seem sure about the rules.

France adopted advertising restrictions on crypto firms, but while some F1 teams removed their crypto sponsors' logos for the French Grand Prix in July, others kept them. Crypto.com said it adjusted its branding at the race after considering local requirements.

The crypto-ad issues are reminiscent of those that arose when governments and global



The Miami Grand Prix in May was a showcase for Crypto.com.

sports organizations, including F1, imposed restrictions on tobacco marketing. Marlboro was one of F1's most prominent sponsors for decades. Over the years, to work around the tobacco ad ban in various countries, F1 teams came up with ways to hide the cigarette

sponsors on their cars.

In Singapore, crypto companies can advertise only to professional investors, and their ads are outlawed in areas such as public transportation, shopping malls, websites, or third-party platforms that could target retail customers.

ADVERTISEMENT

The Marketplace

To advertise: 800-366-3975 or WSJ.com/classifieds

CLASS ACTION

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

CITY OF PITTSBURGH COMPREHENSIVE MUNICIPAL PENSION TRUST FUND, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. BENEFITFOCUS, INC., et al., Defendants.

Index No. 651425/2021 IAS Commercial Part 53 Hon. Andrew Borrok

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 publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.'s ("Benefitfocus" or the "Company") March 1, 2019 secondary public offering and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the "Class Period"), and who were damaged thereby.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Supreme Court of the State of New York, New York County, that Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund, on behalf of itself and the proposed Settlement Class, and Benefitfocus and the other Defendants in the Action, have reached a proposed settlement of the above-captioned securities class action (the "Action") in the amount of \$11,000,000 that, if approved, will resolve the Action in its entirety (the "Settlement").

A hearing will be held before the Honorable Andrew Borrok, on December 1, 2022, at 11:30 a.m. EST, before the Court, either in person at the Supreme Court, New York County, Courtroom 238, 60 Centre Street, New York, NY 10007, or remotely using directions that will be posted in advance on the Settlement website, in the Court's discretion (the "Settlement Hearing") to, among other things, determine whether the Court should: (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 April 11, 2022; (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 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.BenefitfocusSecuritiesSettlement.com, or by contacting the Claims Administrator at:

Benefitfocus Securities Settlement c/o A.B. Data, Ltd. P.O. Box 173114 Milwaukee, WI 53217

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 www.labaton.com settlementquestions@labaton.com (888) 219-6877

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 December 27, 2022. If you are a Settlement Class Member and you 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 the Settlement and 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 November 10, 2022. 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. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the Effective Date of the Settlement, you will release all Plaintiff's Released Claims against the Defendant Released.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's Fee and Expense Application must be mailed to the Court and counsel for the Parties in accordance with the instructions in the Notice, such that they are received no later than November 10, 2022.

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

DATED: SEPTEMBER 12, 2022

BY ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY

All terms not defined herein shall have the definition assigned to them in the Stipulation and Agreement of Settlement, dated April 11, 2022.

THE TICKER |

MARKET EVENTS COMING THIS WEEK

Monday

Short-selling reports Ratio, days of trading volume of current position, at Aug 15 NYSE 3.6 Nasdaq 2.4

Earnings expected

Oracle 1.08/1.03

Tuesday

Consumer price index All items, July up 8.5% Aug., expected up 8.0% Core, July up 5.9% Aug., expected up 6.0%

Treasury budget

Aug., '21 \$171 bil. deficit Aug., '22 exp \$220 bil. deficit

Wednesday

EIA status report Previous change in stocks in millions of barrels Crude-oil stocks up 8.8 Gasoline stocks up 0.3 Distillates up 0.1

* FactSet Estimates earnings-per-share estimates don't include extraordinary items (Losses in parentheses) ♦ Adjusted for stock split Note: Forecasts are from Dow Jones weekly survey of economists

Mort. bankers indexes

Purch., previous down 1.0% Refinan., previous down 1.0%

Producer price index

All items, July down 0.5% Aug., expected down 0.1%

Thursday

Business inventories

Jun., previous up 1.4% July, expected up 0.7%

Capacity utilization

July, previous 80.3% Aug., expected 80.3%

EIA report: natural-gas

Previous change in stocks in billions of cubic feet up 54

Friday

U.Mich. consumer index Aug., final 58.2 Sep., prelim 59.3

Industrial production

July, previous up 0.6% Aug., expected up 0.0%

Initial jobless claims

Previous 225,000 Expected 225,000

Philadelphia Fed survey

Aug., previous 6.2 Sep., expected 2.0

Retail sales, ex. autos

July, previous up 0.4% Aug., expected up 0.0%

Retail sales

July, previous up 0.0% Aug., expected down 0.1%

Earnings expected

Adobe 3.34/3.11

EXHIBIT C

Labaton Sucharow Announces Proposed Class Action Settlement on Behalf of Persons and Entities that Purchased Publicly Traded Common Stock Pursuant and/or Traceable to the Offering Documents Issued in Connection with Benefitfocus, Inc's March 1, 2019 Secondary Public Offering

NEWS PROVIDED BY

Labaton Sucharow LLP →

Sep 12, 2022, 10:00 ET

NEW YORK, Sept. 12, 2022 /PRNewswire/ --

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

CITY OF PITTSBURGH COMPREHENSIVE MUNICIPAL
PENSION TRUST FUND, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

BENEFITFOCUS, INC., et al.,

Defendants.



FOR ATTORNEYS' FEES AND EXPENSES

To: All persons and entities that purchased or otherwise acquired publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.'s ("Benefitfocus" or the "Company") March 1, 2019 secondary public offering and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the "Class Period"), and who were damaged thereby.

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A hearing will be held before the Honorable Andrew Borrok, on **December 1, 2022, at 11:30 a.m. EST**, before the Court, either in person at the Supreme Court, New York County, Courtroom 238, 60 Centre Street, New York, NY 10007, or remotely using directions that will be posted in advance on the Settlement website, in the Court's discretion (the "Settlement Hearing") to, among other things, determine whether the Court should: (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 April 11, 2022; (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 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.BenefitfocusSecuritiesSettlement.com, or by contacting the Claims Administrator at:

c/o A.B. Data, Ltd.
P.O. Box 173114
Milwaukee, WI 53217

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

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 December 27, 2022**. If you are a Settlement Class Member and you 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 the Settlement and 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 November 10, 2022**. 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. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the Effective Date of the Settlement, you will release all Plaintiff's Released Claims against the Defendant Releasees.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or lead

Counsel's Fee and Expense Application must be mailed to the Court and counsel for the Parties in accordance with the instructions in the Notice, such that they are **received no later than November 10, 2022**.

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

DATED: SEPTEMBER 12, 2022 BY ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY

¹ All terms not defined herein shall have the definition assigned to them in the Stipulation and Agreement of Settlement, dated April 11, 2022.

SOURCE Labaton Sucharow LLP

Exhibit 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITY OF PITTSBURGH COMPREHENSIVE
MUNICIPAL PENSION TRUST FUND,
Individually and on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

BENEFITFOCUS, INC., THE GOLDMAN SACHS
GROUP, INC., GS CAPITAL PARTNERS VI
PARALLEL, L.P., GS CAPITAL PARTNERS VI
OFFSHORE FUND, L.P., GS CAPITAL PARTNERS
VI FUND, L.P., GS CAPITAL PARTNERS VI
GMBH & CO. KG, MERCER LLC, MARSH &
MCLENNAN COMPANIES, INC., MERCER
CONSULTING GROUP, INC., MASON R.
HOLLAND, JR., RAYMOND A. AUGUST,
JONATHON E. DUSSAULT, DOUGLAS A.
DENNERLINE, JOSEPH P. DISABATO, A.
LANHAM NAPIER, FRANCIS J. PELZER V,
STEPHEN M. SWAD, ANA M. WHITE, J.P.
MORGAN SECURITIES LLC, GOLDMAN SACHS
& CO. LLC, MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED, PIPER JAFFRAY &
CO., RAYMOND JAMES & ASSOCIATES, INC.,
WEDBUSH SECURITIES, INC., AND FIRST
ANALYSIS SECURITIES CORPORATION,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

**AFFIRMATION OF ALFRED L. FATALE III ON BEHALF OF
LABATON SUCHAROW LLP IN SUPPORT OF APPLICATION
FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, Alfred L. Fatale III, affirm as follows, under penalty of perjury:

1. I am a member of the Bar of the State of New York and a partner in the law firm of Labaton Sucharow LLP, counsel of record for Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund in the above-captioned action (the "Action"). I submit this affirmation in

support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the Action from its inception through October 15, 2022 (the "Time Period").

2. My firm is provisionally Court-appointed Lead Counsel for the proposed class and oversaw all aspects of the prosecution and settlement of the Action, which are described in detail in my accompanying Affirmation in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, filed herewith.

3. The information in this affirmation regarding my firm's time and expenses is taken from time and expense records prepared and maintained by the firm in the ordinary course of business. These records (and backup documentation where necessary) were reviewed by me and others at my firm, under my direction, to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses committed to the Action. As a result of this review, 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. The total number of reported hours spent on this Action by my firm during the Time Period is 2,563.9. The total lodestar amount for reported attorney/professional staff time based on the firm's current rates is \$1,561,114.50.

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 contingent securities class action litigations. My firm's lodestar figures are based upon the firm's hourly rates, which do not include 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 \$69,485.46 in expenses in connection with the prosecution of the Action. The following is additional information regarding certain of these expenses:

(a) Court/Service Fees: \$698.70. These expenses have been paid to an attorney service firm in connection with serving summons and to courts for filing fees and admission fees.

(b) Computer Research Fees: \$13,862.00. This category includes vendors such as Pacer, Westlaw, LexisNexis, and Thomson Research. These resources were used to obtain access to SEC filings, court filings, and factual and financial information. The costs for these vendors vary depending upon the type of services requested and usage is tracked using a case or administrative client-matter code.

(c) Litigation Support: \$605.90. These are the fees of the e-discovery vendor that stored and hosted electronic documents produced in the Action.

(d) Expert/Consultant Fees: \$40,651.25. Lead Counsel retained economic experts to provide advice and expertise in connection with evaluating damages and negative causation

issues, as well as to assist with the preparation of the proposed Plan of Allocation for the distribution of the proceeds of the Settlement.

(e) Mediation Fees: \$7,500.00. This is Lead Plaintiff's share of the fees of Phillips ADR Enterprises. Mediator Michelle Yoshida oversaw the formal mediation session that the Parties participated in, and she facilitated negotiations between the Parties, which ultimately resulted in the settlement of the litigation.

(f) Professional Fees: \$3,809.00.

(i) Counsel for Confidential Witness - \$795.00. My Firm paid the legal fees of counsel for a confidential witness in the case, who was a former employee of Benefitfocus.

(ii) Fund Counsel for Lead Plaintiff - \$3,014.00. My Firm paid the legal fees of the law firm of Frank, Gale, Bails, Murcko & Pocrass, P.C., which, among other things, advises Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund in connection with outside litigation. In connection with the Action, Fund Counsel provided advice to the Trust Fund in furtherance of its duties as a proposed class representative and to ensure that the Trust Fund's efforts with respect to litigation were consistent with its fiduciary and other obligations to its members.

8. The expenses pertaining to this case 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.

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 hereby affirm under the penalty of perjury that the foregoing is true and correct. Executed
this 26th day of October, 2022.



ALFRED L. FATALE III

Exhibit A

*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v.
Benefitfocus, Inc., et al., Index No. 651425/2021*

EXHIBIT A

LODESTAR REPORT

FIRM: LABATON SUCHAROW LLP

REPORTING PERIOD: INCEPTION THROUGH OCTOBER 15, 2022

PROFESSIONAL	STATUS	HOURLY RATE	HOURS	LODESTAR
Gardner, J.	(P)	53.9	\$1,250	\$67,375.00
Zeiss, N.	(P)	68.0	\$1,050	\$71,400.00
Fatale, A.	(P)	425.2	\$925	\$393,310.00
Minerva, D.	(P)	11.0	\$925	\$10,175.00
Rosenberg, E.	(OC)	18.7	\$850	\$15,895.00
Cividini, D.	(OC)	7.6	\$725	\$5,510.00
Dubbin, J.	(OC)	301.7	\$650	\$196,105.00
Schervish II, W.	(OC)	39.3	\$625	\$24,562.50
Wood, C.	(A)	467.0	\$500	\$233,500.00
Duenas, D.	(A)	349.5	\$500	\$174,750.00
Strejlau, L.	(A)	254.3	\$500	\$127,150.00
Salamon, L.	(A)	4.2	\$500	\$2,100.00
Greenbaum, A.	(I)	47.5	\$575	\$27,312.50
Clark, J.	(I)	201.5	\$450	\$90,675.00
Frasca, C.	(PL)	148.4	\$390	\$57,876.00
Manzolillo, S.	(PL)	52.7	\$390	\$20,553.00
Donlon, N.	(PL)	22.7	\$390	\$8,853.00
Pina, E.	(PL)	46.5	\$375	\$17,437.50
Boria, C.	(PL)	39.2	\$375	\$14,700.00
Chan-Lee, E.	(PL)	5.0	\$375	\$1,875.00
TOTAL		2,563.9		\$1,561,114.50

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

Exhibit B

*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v.
Benefitfocus, Inc., et al., Index No. 651425/2021*

EXHIBIT B**EXPENSE REPORT**

FIRM: LABATON SUCHAROW LLP

REPORTING PERIOD: INCEPTION THROUGH OCTOBER 15, 2022

CATEGORY		TOTAL AMOUNT
Duplicating		\$1,350.57
Postage / Overnight Delivery Services		\$637.22
Long-Distance/Conference Calling/Wifi		\$34.07
Court / Service Fees		\$698.70
Court Transcripts		\$336.75
Computer Research Fees		\$13,862.00
Litigation Support		\$605.90
Expert/Consultant Fees (Damages/Negative Causation)		\$40,651.25
Mediation Fees		\$7,500.00
Professional Fees		\$3,809.00
Counsel for Confidential Witness	\$795.00	
Fund Counsel to Lead Plaintiff	\$3,014.00	
TOTAL		\$69,485.46

Exhibit C

**Labaton
Sucharow**

Labaton Sucharow Credentials

2022



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The logo for Labaton Sucharow, featuring the firm's name in white serif font on a dark blue rectangular background.

ABOUT THE FIRM

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

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

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

Our Firm provides global securities portfolio monitoring and advisory services to more than 250 institutional investors, including public pension funds, asset managers, hedge funds, mutual funds, banks, sovereign wealth funds, and multi-employer plans—with collective assets under management (AUM) in excess of \$2.5 trillion. We are equipped to deliver results due to our robust infrastructure of more than 70 full-time attorneys, a dynamic professional staff, and innovative technological resources. Labaton Sucharow attorneys are skilled in every stage of business litigation and have challenged corporations from every sector of the financial market. Our professional staff includes financial analysts, paralegals, e-discovery specialists, certified public accountants, certified fraud examiners, and a forensic accountant. We have one of the largest in-house investigative teams in the securities bar.





SECURITIES LITIGATION: As a leader in the securities litigation field, the Firm is a trusted advisor to more than 250 institutional investors with collective assets under management in excess of \$2.5 trillion. Our practice focuses on portfolio monitoring and domestic and international securities litigation for sophisticated institutional investors. Since the passage of the Private Securities Litigation Reform Act of 1995, we have recovered more than \$18 billion in the aggregate. Our success is driven by the Firm's robust infrastructure, which includes one of the largest in-house investigative teams in the plaintiffs' bar.

CORPORATE GOVERNANCE AND SHAREHOLDER RIGHTS LITIGATION: Our breadth of experience in shareholder advocacy has also taken us to Delaware, where we press for corporate reform through our Wilmington office. These efforts have already earned us a string of enviable successes, including one of the largest derivative settlements ever achieved in the Court of Chancery, a \$153.75 million settlement on behalf of shareholders in *In re Freeport-McMoRan Copper & Gold Inc. Derivative Litigation*.

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

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

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

– The Legal 500



SECURITIES CLASS ACTION LITIGATION

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

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

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

NOTABLE SUCCESSES

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

Labaton Sucharow secured a \$285 million class action settlement against the El Paso Corporation on behalf of the co-lead plaintiff, an individual. The case involved a securities fraud stemming from



the company's inflated earnings statements, which cost shareholders hundreds of millions of dollars during a four-year span. On March 6, 2007, the court approved the settlement and also commended the efficiency with which the case had been prosecuted, particularly in light of the complexity of the allegations and the legal issues.

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

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

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

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

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

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

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

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

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Board. The action alleges that for a period of two years, the company and certain of its executives made a series of misstatements and omissions regarding the progress, schedule, costs, and oversight of a key nuclear reactor project in South Carolina. Labaton Sucharow conducted an extensive investigation into the alleged fraud, including by interviewing 69 former SCANA employees and other individuals who worked on the nuclear project. In addition, Labaton Sucharow obtained more than 1,500 documents from South Carolina regulatory agencies, SCANA's state-owned junior partner on the nuclear project, and a South Carolina newspaper, among others, pursuant to the South Carolina Freedom of Information Act (FOIA). This information ultimately provided the foundation for our amended complaint and was relied upon by the Court extensively in its opinion denying defendants' motion dismiss. In late 2019, we secured a \$192.5 million recovery for investors—the largest securities fraud settlement in the history of the District of South Carolina.

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

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

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

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

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

Labaton Sucharow served as lead counsel on behalf of lead plaintiff New Mexico State Investment Council in a case stemming from Broadcom Corp.'s \$2.2 billion restatement of its historic financial statements for 1998-2005. In August 2010, the court granted final approval of a \$160.5 million settlement with Broadcom and two individual defendants to resolve this matter. It is the second largest up-front cash settlement ever recovered from a company accused of options backdating.



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

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

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

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

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

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

As U.S. lead counsel, Labaton Sucharow represents lead plaintiffs Granite Point Master Fund, LP; Granite Point Capital; and Scorpion Focused Ideas Fund in this action against CannTrust Holdings Inc., a cannabis company primarily traded on the Toronto Stock Exchange and the New York Stock Exchange. Class actions against the company were commenced in both the U.S. and Canada. The U.S. class action asserts CannTrust made materially false and misleading statements and omissions concerning its compliance with relevant cannabis regulations and an alleged scheme to increase its cannabis production. The parties reached a landmark settlement totaling CA\$129.5 million to resolve claims in both countries. The U.S. settlement was approved on December 2, 2021.

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

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



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

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

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

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

As lead counsel representing Public Employees' Retirement System of Mississippi, Labaton Sucharow achieved a \$73 million settlement (pending court approval) in a securities class action against the data analytics company Nielsen Holdings PLC over allegations the company misrepresented the strength and resiliency of its business and the impact of the European Union's General Data Protection Regulation (GDPR). On January 4, 2021, the Firm overcame defendants' motion to dismiss, and the case advanced into discovery. We mediated and ultimately reached an agreement to settle the matter for \$73 million in February 2022. The settlement was preliminarily approved by the court on April 4, 2022.

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

The Firm serves as co-lead counsel representing Naya Capital Management in an action alleging Resideo failed to disclose the negative effects of a spin-off on the company's product sales, supply chain, and gross margins, and misrepresented the strength of its financial forecasts. On March 30, 2021, the Firm overcame defendants' motion to dismiss in its entirety, and discovery in the action commenced promptly. Discussion of resolving the claims began in January 2021, resulting in an agreement in principle to settle the action for \$55 million July 2021. The \$55 million settlement was granted final approval on March 24, 2022.

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

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



failed to disclose adverse trends facing its generic drugs division in advance of a secondary public offering that raised \$2 billion to finance the acquisition of Par Pharmaceuticals in 2015. The Firm overcame several procedural hurdles to reach this historic settlement, including successfully opposing defendants' attempts to remove the case to federal court and to dismiss the class complaint in state court. The court approved the settlement on December 5, 2019.

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

Representing Public Employees' Retirement System of Mississippi, Labaton Sucharow is court-appointed co-lead counsel in a securities class action lawsuit against JELD-WEN Holding, Inc. and certain of its executives related to allegedly false and misleading statements and omissions concerning JELD-WEN's allegedly anticompetitive conduct and financial results in the doorskins and interior molded door markets and the merit of a lawsuit filed against JELD-WEN by an interior door manufacturer. The parties reached an agreement to settle the action for \$40 million in April 2021. The court granted final approval of the settlement on November 22, 2021.

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

Labaton Sucharow served as court-appointed lead counsel in a securities class action against World Wrestling Entertainment, Inc. (WWE). The Firm represented Firefighters Pension System of the City of Kansas City Missouri Trust in the action alleging WWE defrauded investors by making false and misleading statements in connection with certain of its key overseas businesses in the Middle East North Africa region (MENA) from February 7, 2019, through February 5, 2020. The lead plaintiff further alleged that the price of WWE publicly traded common stock was artificially inflated as a result of the company's allegedly false and misleading statements and omissions, and that the price declined when the truth was allegedly revealed through a series of partial revelations. The parties reached an agreement to settle the action for in November 2020, and on June 30, 2021, the court granted final approval of the \$39 million settlement.

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

In a case that underscores the skill of our in-house investigative team, Labaton Sucharow secured a \$27.5 million recovery in an action alleging that DeVry Education Group, Inc. issued false statements to investors about employment and salary statistics for DeVry University graduates. The Firm took over as lead counsel after a consolidated class action complaint and an amended complaint were both dismissed. Labaton Sucharow filed a third amended complaint on January 29, 2018, which included additional allegations based on internal documents obtained from government entities through the Freedom of Information Act and allegations from 13 new confidential witnesses who worked for DeVry. In denying defendants' motion to dismiss, the court concluded that the "additional allegations . . . alter[ed] the alleged picture with respect to scienter" and showed "with a degree of particularity . . . that the problems with DeVry's [representations] . . . were broad in scope and magnitude."



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

Serving as lead counsel on behalf of Public School Retirement System of Kansas City, Missouri, Labaton Sucharow secured a \$19 million settlement in a class action against automaker Daimler AG. The action arose out of Daimler's misstatements and omissions touting its Mercedes-Benz diesel vehicles as "green" when independent tests showed that under normal driving conditions the vehicles exceeded the nitrous oxide emissions levels set by U.S. and E.U. regulators. Defendants lodged two motions to dismiss the case. However, the *Daimler* litigation team was able to overcome both challenges, and on May 31, 2017, the court granted in part and denied in part Defendants' motions and allowed the case to proceed to discovery. The court then stayed the action after the U.S. Department of Justice intervened. The *Daimler* litigation team worked with the DOJ and defendants to partially lift the stay in order to allow lead plaintiffs to seek limited discovery. Thereafter, in December 2019, the parties agreed to settle the action for \$19 million.

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

As co-lead counsel representing Oklahoma Police Pension and Retirement System and Oklahoma Firefighters Pension and Retirement System, the Firm secured a \$20 million settlement in a securities class action against LifeLock. The action alleged that LifeLock misrepresented the capabilities of its identity theft alerts to investors. While LifeLock repeatedly touted the "proactive," "near real-time" nature of its alerts, in reality the timeliness of such alerts to customers did not resemble a near real-time basis. The LifeLock litigation team played a critical role in securing the \$20 million settlement. After being dismissed by the District Court twice, the LifeLock team was able to successfully appeal the case to the Ninth Circuit and secured a reversal of the District Court's dismissals. The case settled shortly after being remanded to the District Court. On July 22, 2020, the court issued an order granting final approval of the settlement.

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

Labaton Sucharow, as co-lead counsel, secured a \$15.75 million recovery in a securities class action against development-stage biotechnology company, Prothena Corp. The action alleged that Prothena and certain of its senior executives misleadingly cited the results of an ongoing clinical study of NEOD001—a drug designed to treat amyloid light chain amyloidosis and one of Prothena's principal assets. Despite telling investors that early phases of testing were successful, Defendants later revealed that the drug was "substantially less effective than a placebo." Upon this news, Prothena's stock price dropped nearly 70 percent. On August 26, 2019, the parties executed a Stipulation and Agreement of Settlement for \$15.75 million. Final Judgment was entered on December 4, 2019.

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

Labaton Sucharow serves as co-lead counsel representing Public Employees' Retirement System of Mississippi in a securities class action lawsuit against Acuity Brands, Inc., a leading provider of lighting solutions for commercial, institutional industrial, infrastructure, and residential applications throughout North America and select international markets. The suit alleges that Acuity misled investors about the impact of increased competition on its business, including its relationship with its largest retail customer, Home Depot. Despite defendants' efforts, the court denied their motion



to dismiss in significant part in August 2019 and granted class certification in August 2020, rejecting their arguments in full. Defendants appealed the class certification order to the Eleventh Circuit Court of Appeals, which the Firm vigorously opposed. Subsequently, the parties mediated and agreed on a \$15.75 million settlement-in-principle in October 2021. In light of the settlement-in-principle, the Eleventh Circuit stayed the appeal and removed the case from the docket. The court preliminarily approved the settlement on December 23, 2021.

LEAD COUNSEL APPOINTMENTS IN ONGOING LITIGATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Labaton Sucharow serves as lead counsel representing the Carpenters Pension Trust Fund for Northern California, the Carpenters Annuity Trust Fund for Northern California, and the City of Providence Employee Retirement System in a securities case against The Allstate Corporation, the company's CEO Thomas J. Wilson, and its former President of Allstate Protection Lines Matthew E. Winter.



AWARDS AND ACCOLADES

CONSISTENTLY RANKED AS A LEADING FIRM:



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



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



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



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



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



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



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

The logo for Labaton Sucharow, featuring the firm's name in white serif font on a dark blue rectangular background.

PRO BONO AND COMMUNITY INVOLVEMENT

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

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

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

Immigration Justice Campaign

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

Advocacy for the Mentally Ill

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

Federal Pro Se Legal Assistance Project

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

New York City Bar Association Thurgood Marshall Scholar

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



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

Diversity Fellowship Program

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

Brooklyn Law School Securities Arbitration Clinic

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

Change for Kids

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

Lawyers' Committee for Civil Rights Under Law

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

Sidney Hillman Foundation

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



COMMITMENT TO DIVERSITY, EQUITY, AND INCLUSION

Labaton Sucharow

DEI
DIVERSITY
EQUITY &
INCLUSION

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

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

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

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

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





Labaton Sucharow

WOMEN'S INITIATIVE



Women's Networking and Mentoring Initiative

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

Institutional Investing in Women and Minority-Led Investment Firms

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

MINORITY SCHOLARSHIP AND INTERNSHIP

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

WHAT THE BENCH SAYS ABOUT US

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

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

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PROFESSIONAL PROFILES

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Christopher J. Keller Chairman

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

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

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

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

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

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

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

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

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

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

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

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



Europe's leading pension funds, Deka Investment GmbH and Deka International S.A., Luxembourg, in *In re General Motors Corp. Securities Litigation*, Eric was integral in securing a \$303 million settlement in relation to multiple accounting manipulations and overstatements by General Motors.

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

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

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

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

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Michael P. Canty Partner

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Michael P. Canty is a Partner in the New York office of Labaton Sucharow LLP, where he serves on the Firm's Executive Committee and as its General Counsel. In addition, he leads one of the Firm's Securities Litigation Teams and serves as head of the Firm's Consumer Cybersecurity and Data Privacy Group. Mr. Canty's practice focuses on complex fraud cases on behalf of institutional investors and consumers.

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

Michael has successfully prosecuted a number of high-profile securities matters involving technology companies. Most notably, Michael is part of the litigation team that recently achieved a historic \$650 million settlement in the *In re Facebook Biometric Information Privacy Litigation* matter—the largest consumer data privacy settlement ever and one of the first cases asserting consumers' biometric privacy rights under Illinois' Biometric Information Privacy Act (BIPA). Michael has also led cases against AMD, a multi-national semiconductor company, and Ubiquiti Networks, Inc., a global software company. In both cases, Michael played a pivotal role in securing favorable settlements for investors.

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

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

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

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.

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

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

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James Christie is a Partner in the New York office of Labaton Sucharow LLP. James focuses on prosecuting complex securities fraud cases on behalf of institutional investors. He is currently involved in litigating cases against major U.S. and non-U.S. corporations, such as Alexion Pharmaceuticals, GoGo, 2U, Precision Castparts, Flex, CannTrust Holdings, iQIYI, and Weatherford International. James also serves as Assistant General Counsel of the Firm.

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

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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

Since joining the Firm in 2016, Alfred has lead the investigation and prosecution of several successful cases, including *In re ADT Inc. Securities Litigation*, resulting in a \$30 million recovery; *In re CPI Card Group Inc. Securities Litigation*, resulting in a \$11 million recovery; *In re BrightView Holdings, Inc. Securities Litigation*, resulting in a \$11.5 million recovery; *Plymouth County Retirement Association v. Spectrum Brands Holdings Inc.*, resulting in a \$9 million recovery, *In re SciPlay Corp. Securities Litigation*, resulting in an \$8.275 million recovery; and *In re Livent Corp. Securities Litigation*, resulting in a \$7.4 million recovery.

Prior to joining Labaton Sucharow, Alfred was an Associate at Fried, Frank, Harris, Shriver & Jacobson LLP, where he advised and represented financial institutions, investors, officers, and directors in a broad range of complex disputes and litigations including cases involving violations of federal securities law and business torts.

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

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

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Christine M. Fox is a Partner in the New York office of Labaton Sucharow LLP. With more than 20 years of securities litigation experience, Christine prosecutes complex securities fraud cases on behalf of institutional investors. In addition to her litigation responsibilities, Christine serves as the Chair of the Firm's DEI Committee.

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

Christine is actively involved in litigating matters against FirstCash Holdings, Hain Celestial, Oak Street Health, Peabody Energy, Super Micro Computer, and Uniti Group. She has played a pivotal role in securing favorable settlements for investors in class actions against Barrick Gold Corporation, one of the largest gold mining companies in the world (\$140 million recovery); Nielsen, a data analytics company that provides clients with information about consumer preferences (\$73 million recovery); CVS Caremark, the nation's largest pharmacy retail chain (\$48 million recovery); Nu Skin Enterprises, a multilevel marketing company (\$47 million recovery); and Intuitive Surgical, a manufacturer of robotic-assisted technologies for surgery (\$42.5 million recovery); and World Wrestling Entertainment, a media and entertainment company (\$39 million recovery).

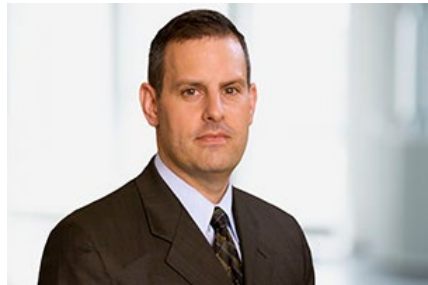
Christine is actively involved in the Firm's pro bono immigration program and reunited a father and child separated at the border. She is currently working on their asylum application.

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

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

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

Christine is conversant in Spanish.

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

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

Jonathan has played an integral role in securing some of the largest class action recoveries against corporate offenders since the global financial crisis. He led the Firm's team in the investigation and prosecution of *In re Barrick Gold Securities Litigation*, which resulted in a \$140 million recovery. He has also served as the lead attorney in several cases resulting in significant recoveries for injured class members, including *In re Hewlett-Packard Company Securities Litigation* (\$57 million recovery); *Public Employees' Retirement System of Mississippi v. Endo International PLC* (\$50 million recovery); *Medoff v. CVS Caremark Corporation* (\$48 million recovery); *In re Nu Skin Enterprises, Inc., Securities Litigation*, (\$47 million recovery); *In re Intuitive Surgical Securities Litigation* (\$42.5 million recovery); *In re Carter's Inc. Securities Litigation* (\$23.3 million recovery against Carter's and certain officers, as well as its auditing firm PricewaterhouseCoopers); *In re Aeropostale Inc. Securities Litigation* (\$15 million recovery); *In re Lender Processing Services Inc.* (\$13.1 million recovery); and *In re K-12, Inc. Securities Litigation* (\$6.75 million recovery).

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



recovery for a class of investors injured by the bank's conduct in connection with certain residential mortgage-backed securities.

Jonathan has also been responsible for prosecuting several of the Firm's options backdating cases, including In re Monster Worldwide, Inc. Securities Litigation (\$47.5 million settlement); In re SafeNet, Inc. Securities Litigation (\$25 million settlement); In re Semtech Securities Litigation (\$20 million settlement); and In re MRV Communications, Inc. Securities Litigation (\$10 million settlement). He also was instrumental in In re Mercury Interactive Corp. Securities Litigation, which settled for \$117.5 million, one of the largest settlements or judgments in a securities fraud litigation based on options backdating. Jonathan also represented the Successor Liquidating Trustee of Lipper Convertibles, a convertible bond hedge fund, in actions against the fund's former independent auditor and a member of the fund's general partner as well as numerous former limited partners who received excess distributions. He successfully recovered over \$5.2 million for the Successor Liquidating Trustee from the limited partners and \$29.9 million from the former auditor.

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

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

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

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

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

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

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

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

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

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

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



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

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

Francis has been named a "Rising Star" of securities litigation in *Law360's* list of attorneys under 40 whose legal accomplishments transcend their age. *Lawdragon* has recognized him as one of the country's "500 Leading Plaintiff Financial Lawyers" and *Benchmark Litigation* also named him to their "40 & Under List."

Francis has played a key role in filing several matters on behalf of the Firm, including *In re PG&E Corporation Securities Litigation*; *In re SCANA Securities Litigation* (\$192.5 million settlement); *Steamfitters Local 449 Pension Plan v. Skechers U.S.A., Inc.*; and *In re Nielsen Holdings PLC Securities Litigation*.

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

Francis currently serves on *Law360's* Securities Editorial Advisory Board.

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

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Domenico “Nico” Minerva is a Partner in the New York office of Labaton Sucharow LLP. A former financial advisor, his work focuses on securities, antitrust, and consumer class actions and shareholder derivative litigation, representing Taft-Hartley and public pension funds across the country. Nico advises leading pension funds and other institutional investors on issues related to corporate fraud in the U.S. securities markets.

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

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

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

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

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



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

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

Mark is recommended by *The Legal 500* for the excellence of his work in the Delaware Court of Chancery. Clients highlighted his team's ability to "generate strong cases and take creative and innovative positions." *Lawdragon* has recognized him as one of the country's "500 Leading Plaintiff Financial Lawyers" and *Benchmark Litigation* also named him to their "40 & Under List."

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

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

In addition to his active caseload, Mark has contributed to numerous publications and is the recipient of *The Burton Awards* Distinguished Legal Writing Award for his article published in the *New York Law Journal*, "Options When a Competitor Raids the Company." Mark also serves on *Law360's* Delaware Editorial Advisory Board.

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

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

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

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

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

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

Mike is proficient in Spanish.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

Irina is fluent in Russian and proficient in Spanish.

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Carol C. Villegas is a Partner in the New York office of Labaton Sucharow LLP. Carol focuses on prosecuting complex securities fraud and consumer cases on behalf of institutional investors and individuals. Leading one of the Firm's litigation teams, she is actively overseeing litigation against AT&T, Nielsen Holdings, Mindbody, Danske Bank, Peabody Energy, Flo Health, Amazon, and Hain. In addition to her litigation responsibilities, Carol holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee, as Chair of the Firm's Women's Networking and Mentoring Initiative, and as the Chief of Compliance. She also leads the Firm's ESG Taskforce, which provides clients with tailored advice regarding corporate responsibility and environmental, social, and corporate governance risks and opportunities.

Carol's development of innovative case theories in complex cases, her skillful handling of discovery work, and her adept ability during oral arguments has earned her accolades from Chambers & Partners USA, The National Law Journal as a Plaintiffs' Trailblazer, and the New York Law Journal as a Top Woman in Law and a New York Trailblazer. The National Law Journal "Elite Trial Lawyers" has repeatedly recognized Carol's superb ability to excel in high-stakes matters on behalf of plaintiffs and selected her to its class of Elite Women of the Plaintiffs Bar. She has also been recognized as a Future Star by Benchmark Litigation and a Next Generation Partner by The Legal 500, where clients praised her for helping them "better understand the process and how to value a case." Lawdragon has named her one of the 500 Leading Lawyers in America, one of the country's top Plaintiff Financial Lawyers, and Leading Plaintiff Consumer Lawyers and Crain's New York Business selected Carol to its list of Notable Women in Law. Euromoney's Women in Business Law Awards has also shortlisted Carol as Securities Litigator of the Year and Chambers and Partners named Carol a finalist for Diversity & Inclusion: Outstanding Contribution. She has also been named a Distinguished Leader honoree by the New York Law Journal.

Carol has played a pivotal role in securing favorable settlements for investors, including DeVry, a for-profit university; AMD, a multi-national semiconductor company; Liquidity Services, an online auction marketplace; Aeropostale, a leader in the international retail apparel industry; Vocera, a healthcare communications provider; Prothena, a biopharmaceutical company; and World Wrestling Entertainment, a media and entertainment company, among others. Carol has also helped revive a securities class action against LifeLock after arguing an appeal before the Ninth Circuit. The case settled shortly thereafter.

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



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

Carol is an active member of the New York State Bar Association's Women in the Law Section and Chair of the Board of Directors of the City Bar Fund, the nonprofit 501(c)(3) arm of the New York City Bar Association. She is also a member of the National Association of Public Pension Attorneys, the National Association of Women Lawyers, and the Hispanic National Bar Association. In addition, Carol previously served on Law360's Securities Editorial Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Nicole was part of the Labaton Sucharow team that successfully litigated the \$185 million settlement in *In re Bristol-Myers Squibb Securities Litigation*. She played a significant role in *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million settlement). Nicole also litigated on behalf of investors who have been damaged by fraud in the telecommunications, hedge fund, and banking industries. Over the past decade, Nicole has been actively involved in finalizing the Firm's securities class action settlements, including in cases against Massey Energy Company (\$265 million), SCANA (\$192.5 million), Fannie Mae (\$170 million), and Schering-Plough (\$473 million), among many others.

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

Nicole is a member of the New York City Bar Association and the New York State Bar Association. Nicole also maintains a commitment to pro bono legal services.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

Prior to joining the firm, Garrett worked as an Assistant District Attorney in the Plymouth County District Attorney's office. He also served in the Massachusetts House of Representatives, representing the Third Plymouth District, for sixteen years.

Garrett is a Fellow of the Litigation Counsel of America, an invitation-only society of trial lawyers comprised of less than 1/2 of 1% of American lawyers. He is also a member of the Public Justice Foundation and the Million Dollar Advocates Forum.

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

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Guillaume Buell is Of Counsel to Labaton Sucharow LLP. His practice focuses on representing investors and consumers in securities and consumer lawsuits pending in state and federal courts across the country. Guillaume's clients include a diverse array of institutional investors and high net worth individual investors in both the United States and throughout the world.

During his lengthy career, Guillaume has provided legal counsel to a wide range of Fortune 500 and other corporate clients in the aviation, construction, energy, financial, consumer, pharmaceutical, and insurance sectors in state and federal litigations, government investigations, and internal investigations.

Guillaume is an active member of the National Association of Public Pension Attorneys (NAPPA), the Canadian Pension & Benefits Institute, the Michigan Association of Public Employee Retirement Systems, the National Association of Shareholder and Consumer Attorneys, and the Georgia Association of Public Pension Trustees. Guillaume also serves as a member of the NAPPA's Fiduciary & Governance Committee and Securities Litigation Committee.

Guillaume received his Juris Doctor from Boston College Law School and was the recipient of the Boston College Law School Award for outstanding contributions to the law school community. He was also a member of the National Environmental Law Moot Court Team, which advanced to the national quarterfinals and received best oralists recognition. While in law school, Guillaume was a Judicial Intern with the Honorable Loretta A. Preska, United States District Court for the Southern District of New York, and an Intern with the Government Bureau of the Attorney General of Massachusetts. He received his Bachelor of Arts, cum laude with departmental honors, from Brandeis University.

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

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

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

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

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

Hui is fluent in Portuguese and proficient in Taiwanese.

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

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

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

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

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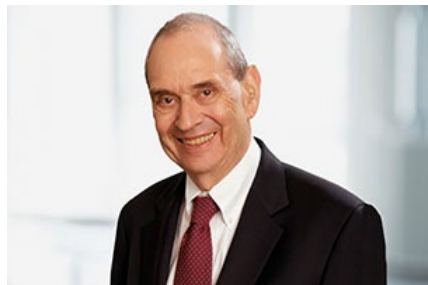
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Jeffrey A. Dubbin is Of Counsel in the New York office of Labaton Sucharow LLP. Jeff focuses on representing institutional investors in complex securities fraud cases. He also advises public and private pension funds and asset managers on disclosure, regulatory, and litigation matters.

Jeff is currently prosecuting In re Goldman Sachs Group, Inc. Securities Litigation; City of Providence, Rhode Island v. BATS Global Markets, Inc. et al (the “High Frequency Trading” securities litigation); In re The Allstate Corporation Securities Litigation; and In re PG&E Corporation Securities Litigation. He was a key member of the litigation team that recovered \$95 million for investors in In re Amgen Inc. 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's degree, magna cum laude, from Harvard University. As a member of Penn Law's Supreme Court Clinic, Jeff drafted portions of successful merits briefs to the U.S. Supreme Court.

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

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

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

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

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

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

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

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

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

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

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Lara Goldstone is Of Counsel in the New York office of Labaton Sucharow LLP. Lara advises leading pension funds and other institutional investors in the United States and Canada on issues related to corporate fraud in the U.S. securities markets. Her work focuses on monitoring the well-being of institutional investments and counseling clients on best practices in securities, antitrust, corporate governance and shareholder rights and consumer class action litigation.

Lara has achieved significant settlements on behalf of clients. She represented investors in high-profile cases against LifeLock, KBR, Fifth Street Finance Corp., NII Holdings, Rent-A-Center, and Castlight Health. Lara has also served as legal adviser to clients who have pursued claims in state court, derivative actions in the form of serving books and records demands, non-U.S. actions and antitrust class actions including pay-for-delay or “product hopping” cases in which pharmaceutical companies allegedly obstructed generic competitors in order to preserve monopoly profits on patented drugs, such as *In re Generic Pharmaceuticals Pricing Antitrust Litigation*.

Before joining Labaton Sucharow, Lara worked as a Legal Intern in the Larimer County District Attorney’s Office and the Jefferson County District Attorney’s Office. She also volunteered at Crossroads Safehouse, which provided legal representation to victims of domestic violence. Prior to her legal career, Lara worked at Industrial Labs where she worked closely with Federal Drug Administration standards and regulations. In addition, she was a teacher in Irvine, California.

She is a member of the Firm’s Women’s Initiative.

Lara earned her Juris Doctor from the University of Denver Sturm College of Law, where she was a judge of the Providence Foundation of Law & Leadership Mock Trial and a competitor of the Daniel S. Hoffman Trial Advocacy Competition. She received her bachelor’s degree from George Washington University, where she was a recipient of a Presidential Scholarship for academic excellence.

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David J. MacIsaac is Of Counsel in the New York office of Labaton Sucharow LLP. David represents shareholders in securities litigation and corporate governance matters.

David has successfully prosecuted cases against Versum Materials, Inc.; Stamps.com Inc.; and Expedia Group, Inc.

Prior to joining Labaton Sucharow, David was an Associate at Bernstein Litowitz Berger & Grossmann, where he focused on analyzing new matters and litigating governance cases, with a focus on breaches of fiduciary duty and transactional litigation. He was also previously an Associate at Kirkland & Ellis, where he worked on a variety of general commercial litigation matters.

David earned his Juris Doctor, *cum laude*, from Georgetown University where he was a member of *The Georgetown Journal of Law and Modern Critical Race Perspective*. He received his bachelor's degree in European History and Government from Franklin and Marshall College.

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

James has worked on a number of significant securities class actions, including *In re Worldcom, Inc. Securities Litigation* (\$6.1 billion recovery), the second-largest securities class action settlement since the passage of the PSLRA; *In re Parmalat Securities Litigation* (\$90 million recovery); *In re American Home Mortgage Securities Litigation* (opt-out client's recovery is confidential); *In re The Bancorp Inc. Securities Litigation* (\$17.5 million recovery); *In re Pozen Securities Litigation* (\$11.2 million recovery); *In re Cabletron Systems, Inc. Securities Litigation* (\$10.5 million settlement); *In re UICI Securities Litigation* (\$6.5 million recovery); and *In re SCANA Securities Litigation* (\$192.5 million recovery).

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

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

Prior to focusing his practice on plaintiffs' securities litigation, James was an attorney at Latham & Watkins where he worked on complex litigation and FIFRA arbitrations, as well as matters relating to corporate bankruptcy and project finance.

James is also an accomplished public speaker and has addressed members of several public pension associations, including the Texas Association of Public Employee Retirement Systems and the Michigan Association of Public Employee Retirement Systems, on how institutional investors can guard their assets against the risks of corporate fraud and poor corporate governance.



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



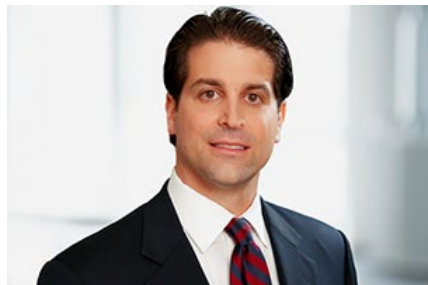
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Elizabeth Rosenberg is Of Counsel in the New York office of Labaton Sucharow LLP. Elizabeth focuses on litigating complex securities fraud cases on behalf of institutional investors, with a focus on obtaining court approval of class action settlements,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

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

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

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William “Bill” Schervish is Of Counsel in the New York office of Labaton Sucharow LLP and serves as the Firm's Director of Financial Research. As a key member of the Firm's Case Development Group, Bill identifies, analyzes, and develops cases alleging securities fraud and other forms of corporate misconduct that expose the Firm's institutional clients to legally recoverable losses. Bill also evaluates and develops cases on behalf of confidential whistleblowers for the Securities and Exchange Commission.

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

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

Bill earned a Juris Doctor, cum laude, from Loyola University and received a Bachelor of Science, cum laude, in Business Administration from Miami University, where he was a member of the Business and Accounting Honor Societies.



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

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

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

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

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John Vielandi is Of Counsel in the New York office of Labaton Sucharow LLP. John researches, analyzes and assesses potential new shareholder litigations with a focus on breaches of fiduciary duty and mergers and acquisitions.

John has successfully prosecuted cases against Versum Materials, Inc.; Stamps.com Inc.; and Expedia Group, Inc.

John joined the Firm from Bernstein Litowitz Berger & Grossmann, where he was a key member of the teams that litigated numerous high profile actions, including *City of Monroe Employees' Retirement System v. Rupert Murdoch et al.* and *In re Vaalco Energy, Inc. Consolidated Stockholder Litigation*. While in law school, John was a legal intern at the New York City Office of Administrative Trials and Hearings and a judicial intern for the Honorable Carolyn E. Demarest of the New York State Supreme Court.

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

Exhibit 4

	Count	Low	25th Percentile	Median	75th Percentile	High
Partners						
1) Akin Gump Strauss Hauer & Feld LLP	18	\$1,075	\$1,320	\$1,388	\$1,595	\$1,655
2) Davis Polk & Wardwell LLP	15	\$1,530	\$1,593	\$1,685	\$1,685	\$1,983
3) Kirkland & Ellis LLP	16	\$1,135	\$1,210	\$1,380	\$1,605	\$1,845
4) Skadden, Arps, Slate, Meagher, & Flom LLP	6	\$1,425	\$1,425	\$1,495	\$1,565	\$1,565
5) Proskauer Rose LLP	25	\$1,150	\$1,325	\$1,375	\$1,575	\$1,675
6) Latham & Watkins LLP	29	\$1,080	\$1,200	\$1,325	\$1,455	\$1,680
7) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	3	\$1,825	\$1,825	\$1,825	\$1,825	\$1,825
8) Jones Day	20	\$875	\$1,019	\$1,100	\$1,156	\$1,575
9) Milbank LLP	18	\$1,215	\$1,379	\$1,615	\$1,615	\$1,695
10) Kramer Levin Naftalis & Frankel	24	\$960	\$1,208	\$1,300	\$1,400	\$1,525
11) Paul Hastings LLP	27	\$1,250	\$1,350	\$1,450	\$1,538	\$1,650
12) Quinn Emanuel Urquhart & Sullivan, LLP	10	\$1,040	\$1,200	\$1,263	\$1,595	\$1,595
13) Morrison & Foerster LLP	15	\$1,050	\$1,225	\$1,350	\$1,500	\$1,600
14) Sidley Austin LLP	12	\$1,025	\$1,144	\$1,225	\$1,350	\$1,425
15) O'Melveny & Meyers LLP	12	\$1,045	\$1,115	\$1,193	\$1,325	\$1,465
16) Kasowitz Benson Torres LLP	3	\$840	\$1,020	\$1,200	\$1,225	\$1,250
Of Counsel						
1) Akin Gump Strauss Hauer & Feld LLP	16	\$960	\$996	\$1,055	\$1,131	\$1,310
2) Skadden, Arps, Slate, Meagher, & Flom LLP	1	\$1,260	\$1,260	\$1,260	\$1,260	\$1,260
3) Davis Polk & Wardwell LLP	4	\$1,295	\$1,295	\$1,295	\$1,295	\$1,295
4) Paul Hastings LLP	11	\$905	\$1,200	\$1,300	\$1,363	\$1,550
5) Kramer Levin Naftalis & Frankel	8	\$1,050	\$1,075	\$1,105	\$1,191	\$1,420
6) Milbank LLP	9	\$1,175	\$1,175	\$1,175	\$1,175	\$1,235
7) Morrison & Foerster LLP	10	\$930	\$980	\$1,038	\$1,238	\$1,560
8) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	1	\$1,400	\$1,400	\$1,400	\$1,400	\$1,400
9) Jones Day	4	\$850	\$869	\$875	\$900	\$975
10) Latham & Watkins LLP	7	\$1,085	\$1,085	\$1,120	\$1,180	\$1,295
11) Quinn Emanuel Urquhart & Sullivan, LLP	2	\$1,015	\$1,015	\$1,016	\$1,016	\$1,016
12) Sidley Austin LLP	3	\$975	\$1,013	\$1,050	\$1,063	\$1,075
13) O'Melveny & Meyers LLP	14	\$850	\$931	\$943	\$991	\$1,480
Associates						
1) Paul Hastings LLP	45	\$690	\$765	\$855	\$955	\$1,125
2) Proskauer Rose LLP	41	\$640	\$850	\$960	\$1,075	\$1,195
3) Akin Gump Strauss Hauer & Feld LLP	16	\$535	\$641	\$775	\$869	\$945
4) Kirkland & Ellis LLP	16	\$610	\$740	\$845	\$990	\$1,105
5) Skadden, Arps, Slate, Meagher, & Flom LLP	5	\$995	\$1,065	\$1,065	\$1,120	\$1,120
6) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	3	\$965	\$965	\$965	\$1,063	\$1,160
7) Davis Polk & Wardwell LLP	43	\$690	\$738	\$990	\$1,080	\$2,017
8) Milbank LLP	24	\$475	\$625	\$870	\$995	\$1,090
9) Latham & Watkins LLP	47	\$580	\$793	\$925	\$1,040	\$1,150
10) Kramer Levin Naftalis & Frankel	32	\$615	\$715	\$893	\$1,010	\$1,090
11) Sidley Austin LLP	13	\$570	\$675	\$775	\$930	\$1,015
12) Morrison & Foerster LLP	26	\$540	\$650	\$793	\$856	\$1,070
13) Jones Day	30	\$450	\$500	\$563	\$669	\$925
14) Quinn Emanuel Urquhart & Sullivan, LLP	12	\$700	\$806	\$900	\$975	\$995
15) O'Melveny & Meyers LLP	12	\$545	\$568	\$720	\$813	\$895
16) Kasowitz Benson Torres LLP	9	\$445	\$445	\$700	\$775	\$950
Paralegals						
1) Kirkland & Ellis LLP	6	\$275	\$291	\$393	\$445	\$445
2) Akin Gump Strauss Hauer & Feld LLP	8	\$300	\$345	\$360	\$396	\$435
3) Skadden, Arps, Slate, Meagher, & Flom LLP	1	\$450	\$450	\$450	\$450	\$450
4) Latham & Watkins LLP	7	\$250	\$265	\$375	\$475	\$505
5) Paul Hastings LLP	9	\$235	\$290	\$460	\$495	\$520
6) Davis Polk & Wardwell LLP	7	\$325	\$388	\$450	\$450	\$450
7) Kramer Levin Naftalis & Frankel LLP	4	\$420	\$428	\$435	\$440	\$440
8) Sidley Austin LLP	3	\$390	\$390	\$390	\$433	\$475
9) Morrison & Foerster LLP	4	\$375	\$409	\$423	\$426	\$430
10) Proskauer Rose LLP	19	\$225	\$268	\$320	\$450	\$505
11) Milbank LLP	10	\$240	\$320	\$353	\$373	\$375
12) Paul, Weiss, Rifkind, Wharton, & Garrison LLP	2	\$350	\$364	\$378	\$391	\$405
13) Jones Day	9	\$250	\$300	\$300	\$350	\$400
14) Quinn Emanuel Urquhart & Sullivan, LLP	5	\$350	\$355	\$355	\$405	\$405
15) Kasowitz Benson Torres LLP	6	\$103	\$224	\$288	\$310	\$315
16) O'Melveny & Meyers LLP	3	\$395	\$395	\$395	\$395	\$395

	Count	Low Rate (%Diff.)	Percentile Rate (%Diff.)	Median Rate (%Diff.)	Percentile Rate (%Diff.)	High Rate (%Diff.)
All Partners						
All Firms Sampled	253	\$840 (+20%)	\$1,215 (+47%)	\$1,355 (+46%)	\$1,565 (+53%)	\$1,983 (+65%)
Labaton Sucharow LLP	25	\$700	\$825	\$925	\$1,025	\$1,200
Senior Partners						
All Firms Sampled	214	\$840 (+2%)	\$1,246 (+38%)	\$1,400 (+44%)	\$1,575 (+48%)	\$1,983 (+65%)
Labaton Sucharow LLP	20	\$825	\$900	\$975	\$1,063	\$1,200
Mid-Level Partners						
All Firms Sampled	21	\$1,025 (+46%)	\$1,125 (+55%)	\$1,215 (+57%)	\$1,360 (+70%)	\$1,655 (+107%)
Labaton Sucharow LLP	5	\$700	\$725	\$775	\$800	\$800
Junior Partners						
All Firms Sampled	18	\$960 #DIV/0!	\$1,120 #DIV/0!	\$1,185 #DIV/0!	\$1,255 #DIV/0!	\$1,595 #DIV/0!
Labaton Sucharow LLP	0	\$0	\$0	\$0	\$0	\$0
Of Counsel						
All Firms Sampled	105	\$850 (+70%)	\$995 (+68%)	\$1,110 (+67%)	\$1,295 (+82%)	\$1,560 (+60%)
Labaton Sucharow LLP	18	\$500	\$594	\$663	\$713	\$975
All Associates						
All Firms Sampled	374	\$445 (+11%)	\$698 (+64%)	\$855 (+80%)	\$995 (+99%)	\$2,017 (+267%)
Labaton Sucharow LLP	21	\$400	\$425	\$475	\$500	\$550
Senior Associates						
All Firms Sampled	120	\$445 (-11%)	\$871 (+64%)	\$995 (+81%)	\$1,076 (+96%)	\$1,195 (+117%)
Labaton Sucharow LLP	6	\$500	\$531	\$550	\$550	\$550
Mid-Level Associates						
All Firms Sampled	107	\$500 (+11%)	\$825 (+83%)	\$925 (+95%)	\$993 (+109%)	\$2,017 (+325%)
Labaton Sucharow LLP	9	\$450	\$450	\$475	\$475	\$475
Junior Associates						
All Firms Sampled	148	\$450 (+13%)	\$610 (+53%)	\$700 (+65%)	\$788 (+85%)	\$1,095 (+158%)
Labaton Sucharow LLP	6	\$400	\$400	\$425	\$425	\$425
Paralegals						
All Firms Sampled	103	\$103 (-44%)	\$300 (-16%)	\$375 (+21%)	\$440 (+26%)	\$520 (+24%)
Labaton Sucharow LLP	19	\$185	\$358	\$310	\$350	\$420

Exhibit 5



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2021 Review and Analysis

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Analyses in this report are based on 2,013 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2021. See page 16 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

2021 Highlights

While the number of settlements increased in 2021 to a 10-year high, several key metrics declined below recent levels. The median total settlement amount decreased to \$8.3 million. And, reversing a trend observed in recent years, median “simplified tiered damages” were 42% below the 2020 median value.

- There were 87 settlements, totaling \$1.8 billion, in 2021. [\(page 3\)](#)
- The median settlement of \$8.3 million fell 22% from 2020 (adjusted for inflation). [\(page 4\)](#)
- Almost 60% of cases (51) settled for less than \$10 million, and of these, 14 cases settled for less than \$2 million. [\(page 4\)](#)
- There were three mega settlements (equal to or greater than \$100 million), ranging from \$130 million to \$187.5 million. [\(page 3\)](#)
- Median “simplified tiered damages” (among cases with Rule 10b-5 claims) was the lowest since 2017 and the second lowest in the last decade. [\(page 5\)](#)
- In 2021, the number of settlements in cases with only Section 11 and/or Section 12(a)(2) claims (“33 Act claims”) was nearly double the annual average from 2017 to 2020. [\(page 7\)](#)
- The proportion of settled cases alleging Generally Accepted Accounting Principles (GAAP) violations in Rule 10b-5 cases was 32%, a record low among all post-Reform Act years. [\(page 9\)](#)
- The rate of settled cases involving a corresponding action by the U.S. Securities and Exchange Commission (SEC) was the lowest in the past decade. [\(page 11\)](#)
- The median time from filing to settlement hearing date was 2.6 years, compared to 3.0 years for 2012 to 2020. [\(page 13\)](#)

Figure 1: Settlement Statistics

(Dollars in millions)

	2016–2020	2019	2020	2021
Number of Settlements	395	75	77	87
Total Amount	\$20,486.9	\$2,227.5	\$4,395.2	\$1,787.7
Minimum	\$0.3	\$0.5	\$0.3	\$0.6
Median	\$9.9	\$11.7	\$10.6	\$8.3
Average	\$51.9	\$29.7	\$57.1	\$20.5
Maximum	\$3,237.5	\$413.0	\$1,266.9	\$187.5

Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

Author Commentary

Findings

There was no slowdown in settlement activity in 2021, even with the backdrop of the COVID-19 pandemic, as the number of securities class action settlements increased to a 10-year high. Since the typical duration from case filing to settlement is approximately three years, the uptick in 2021 settlements is consistent with the unprecedented number of case filings in 2017–2019,¹ which is when the majority of these settled cases were filed.

The record number of cases settled in 2021, however, did not translate into higher total settlement dollars. Both total settlement dollars and median settlement amount declined to their lowest levels since 2017, reflecting an increase in the proportion of smaller settlements (i.e., less than \$10 million) compared to prior years.

The decline in settlement sizes can largely be attributed to lower estimates of our proxy for economic losses borne by shareholders, or “simplified tiered damages.” Moreover, median issuer defendant total assets were more than 45% smaller for cases settled in 2021 compared to those settled in 2020.

Weaker cases may have contributed to the reduced settlement values as well. For example, the proportion of settled cases alleging a GAAP violation or involving a related SEC action were at record-low levels. Both of these factors are typically associated with higher settlement amounts and are sometimes considered proxies for stronger cases.² In addition, the frequency of other factors that our research finds are associated with higher settlement amounts, such as the involvement of an institutional investor as lead plaintiff or the presence of a parallel derivative action, were among the lowest observed in the last decade.

The mix of cases that settled in 2021 had smaller estimates of potential shareholder losses and lacked many of the plus factors that often contribute to higher settlement outcomes.

*Dr. Laarni T. Bulan
Principal, Cornerstone Research*

Similarly, our research finds that the number of docket entries—a proxy for the time and effort expended by plaintiff counsel and/or case complexity—is positively associated with settlement amounts. The average number of docket entries for cases settled in 2021 was the lowest in the last five years.

Undeterred by the challenges of the pandemic, securities class action settlements occurred in larger numbers and were resolved more quickly than observed in prior years. The increase in the number of settlements also reflects the unusually high rate of case filings when many of these settled cases were first initiated.

*Dr. Laura E. Simmons
Senior Advisor, Cornerstone Research*

Looking Ahead

We expect heightened settlement activity to continue in upcoming years given the elevated number of case filings in 2018–2020 compared to earlier years,³ assuming no increases in dismissal rates. The higher number of smaller settlements observed in 2021 could also continue due to the decline in the median disclosure dollar loss (another proxy for shareholder losses) among case filings during the same time frame (2018–2020).

Several recent trends in case allegations have been observed in case filings since 2017, such as allegations related to cybersecurity, cryptocurrency, cannabis, COVID-19, and special purpose acquisition companies (SPACs).⁴ We continue to see a small number of these cases settling, but a large portion remains active. In addition, the spike in SPAC filings in 2021, as shown in Cornerstone Research’s *Securities Class Action Filings—2021 Year in Review*, is likely to affect settlement trends in future years.

—Laarni T. Bulan and Laura E. Simmons

Total Settlement Dollars

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

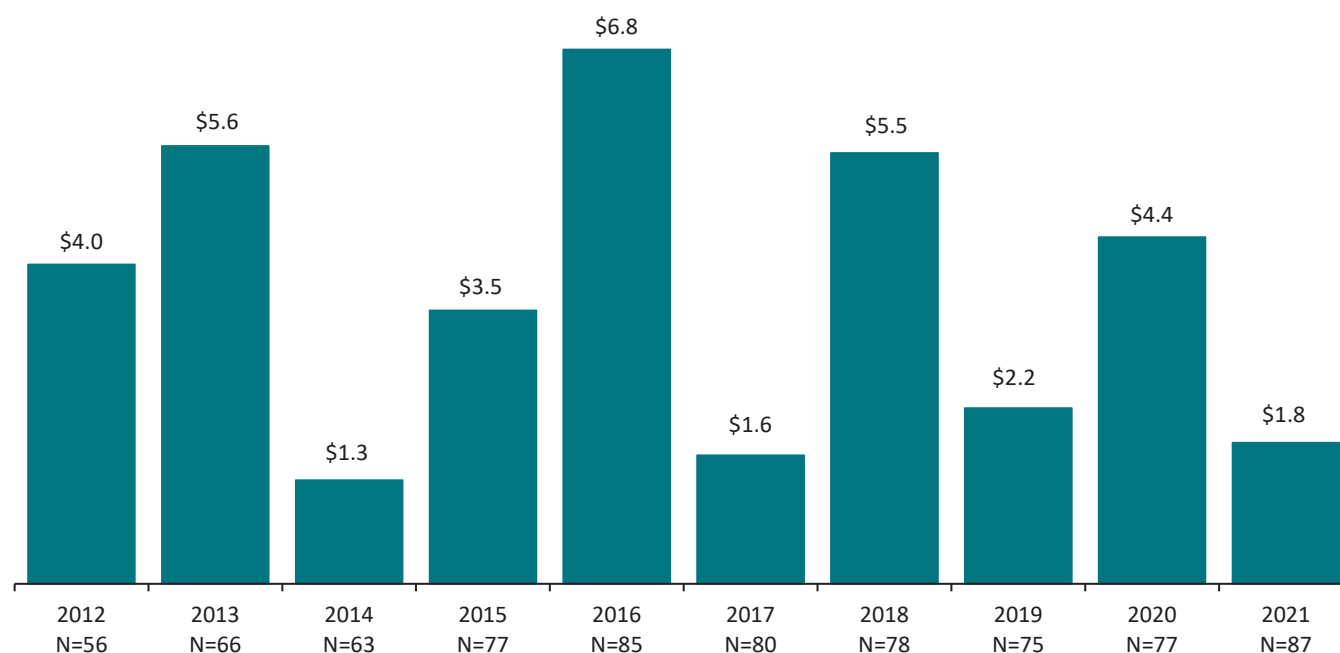
- In 2021, the absence of these very large settlements contributed to a nearly 60% decline in total settlement dollars from the prior year (adjusted for inflation).
- There were three mega settlements (equal to or greater than \$100 million) in 2021, ranging from \$130 million to \$187.5 million. The maximum settlement value of \$187.5 million in 2021 is the lowest maximum value in the last decade.

The number of settlements in 2021 reached a 10-year high.

- Only 25% of total settlement dollars in 2021 came from mega settlements, the lowest percentage in the last decade. (See Appendix 4 for additional information on mega settlements.)
- The number of settlements in 2021 (87 cases) represented a 19% increase from the prior nine-year average (73 cases).

Figure 2: Total Settlement Dollars
2012–2021

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. “N” refers to the number of cases.

Settlement Size

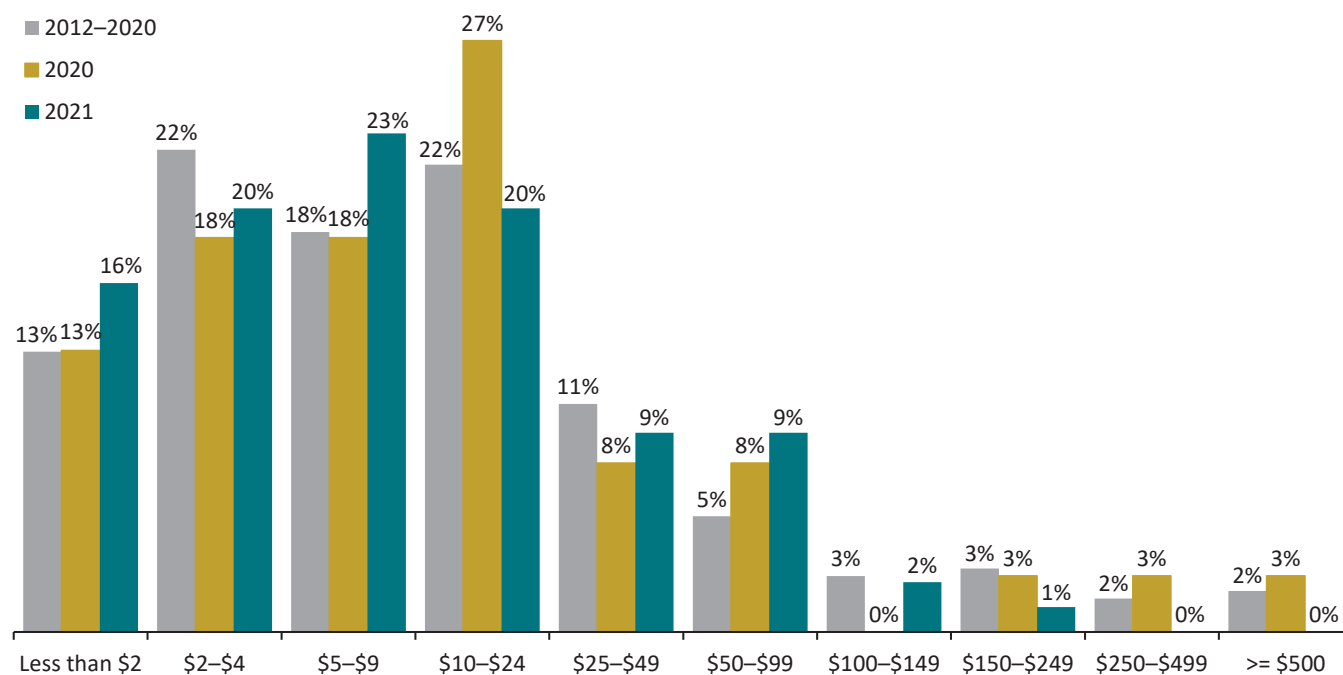
- The median settlement amount in 2021 was \$8.3 million, a 22% decline from 2020 (adjusted for inflation), and a 10% decline from the 2012–2020 median.
- There were 14 cases that settled for less than \$2 million in 2021 (historically referred to by commentators as nuisance suits).⁵ This compares to an annual average of 10 such settlements during the 2012–2020 period.
- Both the average settlement and median settlement amounts in 2021 were the lowest since 2017. (See Appendix 1 for an analysis of settlements by percentiles.)

Nearly 60% of settlements in 2021 were for less than \$10 million.

- As noted in prior research, three law firms (The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray LLP) have accounted for more than half of securities class action filings in recent years, and those filings have been dismissed at a higher rate overall than those with other lead plaintiff counsel.⁶ For cases that progressed to a settlement in 2021 with one or more of these three firms acting as lead counsel, the median settlement amount was 76% lower than the median for cases involving other lead plaintiff counsel. These three firms were involved as lead counsel in 31 settled cases in 2021, compared to 19 in 2020.

Figure 3: Distribution of Settlements 2012–2021

(Dollars in millions)



Type of Claim

Rule 10b-5 Claims and “Simplified Tiered Damages”

“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.⁷

Cornerstone Research’s prediction model finds this measure to be the most important factor in predicting settlement amounts.⁸ However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

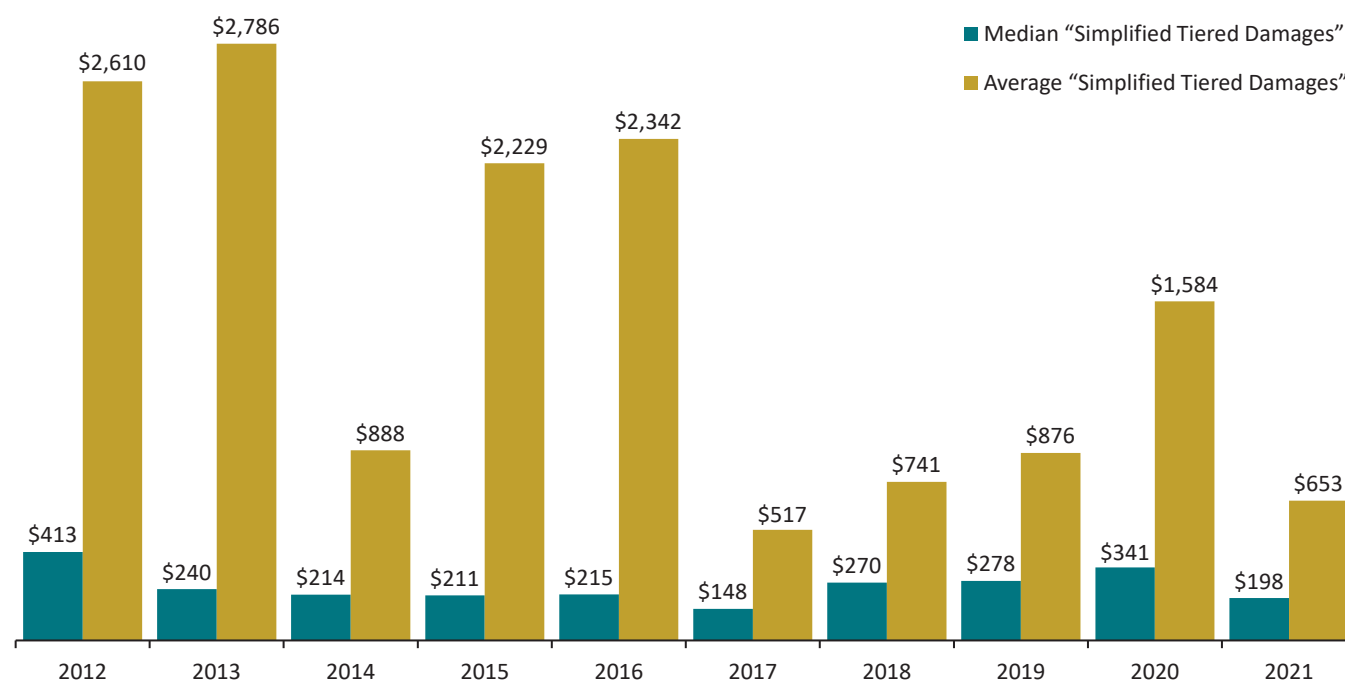
- Similar to settlement amounts, the average “simplified tiered damages” in 2021 declined to the lowest level since 2017. (See Appendix 5 for additional information on median and average settlements as a percentage of “simplified tiered damages.”)

Median “simplified tiered damages” was the lowest since 2017 and the second lowest in the last decade.

- Median values provide the midpoint in a series of observations and are less affected than averages by outlier data. The decrease in median “simplified tiered damages” in 2021 indicates a decline in the number of larger cases relative to 2020 (e.g., cases with “simplified tiered damages” exceeding \$250 million).
- Smaller “simplified tiered damages” are typically associated with smaller issuer defendants (measured by total assets or market capitalization of the issuer). However, the median market capitalization of issuer defendants⁹ in settled cases increased 30% over 2020, in part reflecting the upward market trend through the end of 2021.

Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases 2012–2021

(Dollars in millions)

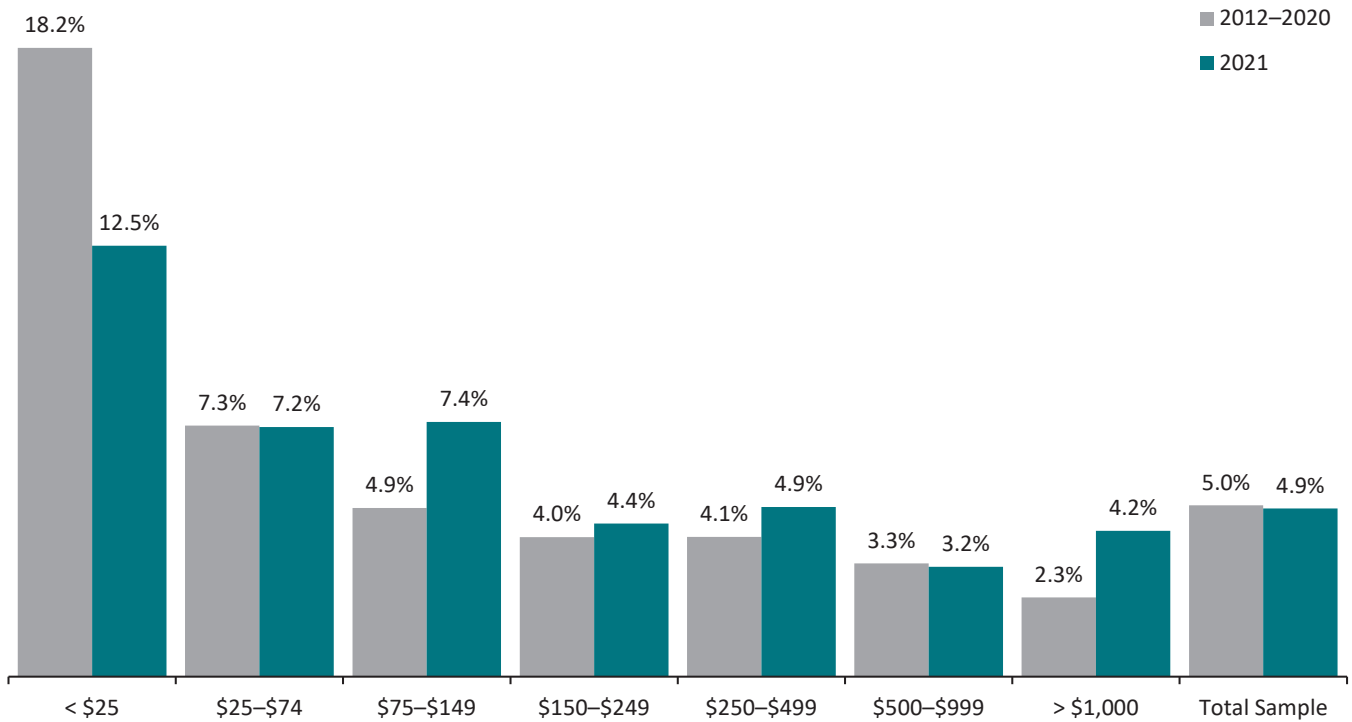


Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates for common stock only; 2021 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Cases with larger “simplified tiered damages” are more likely to be associated with factors such as institutional lead plaintiffs, related SEC actions, or criminal charges. (See *Analysis of Settlement Characteristics on pages 9–12 for additional discussion of these factors.*)
- Among cases with Rule 10b-5 claims, the median class period length declined 20% in 2021 from the median class period length observed in 2020, explaining, in part, the relatively low median “simplified tiered damages.”
- Fourteen settlements in 2021 had “simplified tiered damages” less than \$25 million, the largest proportion of such cases in more than 15 years.
- Cases with less than \$25 million in “simplified tiered damages” typically settle more quickly. In 2021, these cases settled within 2.5 years on average, compared to about four years for cases with “simplified tiered damages” greater than \$500 million.
- Half of the cases settled in 2021 with “simplified tiered damages” of less than \$25 million involved issuers that had been delisted from a major exchange and/or declared bankruptcy prior to settlement.
- Very large cases (more than \$1 billion in “simplified tiered damages”) typically settle for a smaller percentage of such damages. However, compared to cases with “simplified tiered damages” between \$150 million and \$1 billion, this pattern did not hold in 2021.

Figure 5: Median Settlements as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases 2012–2021

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

'33 Act Claims and "Simplified Statutory Damages"

For '33 Act claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages." Only the offered shares are assumed to be eligible for damages.¹⁰

"Simplified statutory damages" are typically smaller than "simplified tiered damages," in part reflecting differences in the methodologies used to estimate alleged damages per share, as well as differences in the shares eligible to be damaged. As such, settlements as a percentage of "simplified statutory damages" may be higher than the percentages observed among Rule 10b-5 settlements.

- However, for the first time since 2014, the median settlement as a percentage of "simplified statutory damages" was lower than the median settlement as a percentage of "simplified tiered damages." In 2021, the median settlement as a percentage of "simplified statutory damages" was 4.4%, 10% lower than the median "simplified tiered damages" of 4.9%. (See Appendix 6 for additional information on median and average settlements as a percentage of "simplified statutory damages.")

The median settlement value for '33 Act claim cases in 2021 was \$8.4 million, largely unchanged from 2020 (\$8.6 million).

- In 2021, the number of settlements in cases with only '33 Act claims was nearly double the annual average from 2017 to 2020.
- Cases involving '33 Act claims typically resolve more quickly than cases involving Rule 10b-5 (Exchange Act) claims. In 2021, however, the median interval from filing date to settlement hearing date for both case types narrowed to within 10%.

Figure 6: Settlements by Nature of Claims
2012–2021

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	77	\$8.9	\$142.2	7.6%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	116	\$16.0	\$406.9	6.1%
Rule 10b-5 Only	543	\$7.9	\$215.2	4.8%

Note: Settlement dollars and damages are adjusted for inflation; 2021 dollar equivalent figures are presented.

- More than 80% of cases with only '33 Act claims involved an initial public offering (IPO).
- In 2021, 88% of the settled '33 Act claim cases involved an underwriter (or underwriters) as a named codefendant.
- Among those cases with identifiable contributions, D&O liability insurance provided, on average, more than 90% of the total settlement fund for '33 Act claim cases from 2012 to 2021.¹¹
- Median “simplified statutory damages” in 2021 was the highest since 2014, and double the median in 2020.

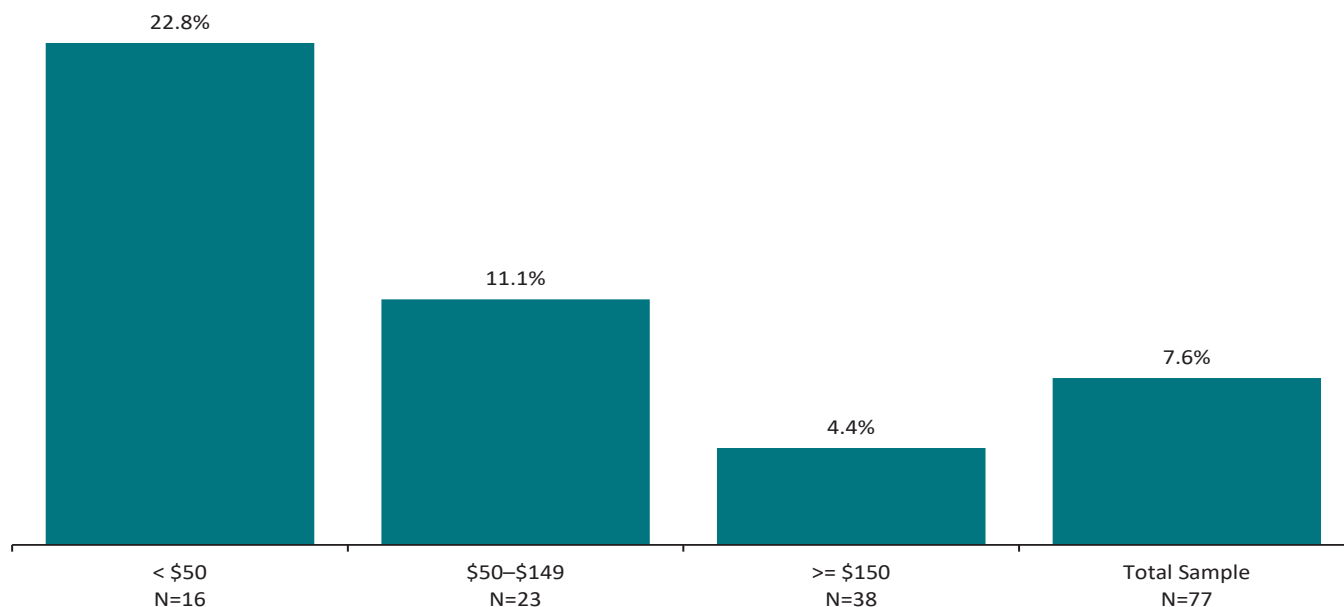
Cyan, filing rates in state courts increased substantially following this ruling. This trend reversed, however, following the March 2020 Delaware Supreme Court decision in *Salzberg v. Sciabacucchi* upholding the validity of federal forum-selection provisions in corporate charters.¹²

- In 2021, among '33 Act claim only cases filed post-*Cyan* but prior to the *Sciabacucchi* ruling, 13 have settled, six of which were filed in state court.¹³
- In the years since the *Cyan* decision, an increase in the number of overlapping or parallel suits has been observed—for example, a '33 Act claim case filed in state court that is related to a Rule 10b-5 claim case filed in federal court.¹⁴ The number of these overlapping suits that settled in 2021 was nearly triple the average from 2017 to 2020.

As noted in previous reports, the March 2018 U.S. Supreme Court decision in *Cyan Inc. v. Beaver County Employees Retirement Fund (Cyan)* held that '33 Act claim securities class actions could be brought in state court. While '33 Act claim cases had often been brought in state courts before

Figure 7: Median Settlements as a Percentage of “Simplified Statutory Damages” by Damages Ranges in '33 Act Claim Cases 2012–2021

(Dollars in millions)



Jurisdictions of Settlements of '33 Act Claim Cases

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
State Court	1	1	0	2	4	5	4	4	7	6
Federal Court	3	7	2	3	6	3	4	5	1	10

Note: “N” refers to the number of cases. Table does not include parallel suits.

Analysis of Settlement Characteristics

GAAP Violations

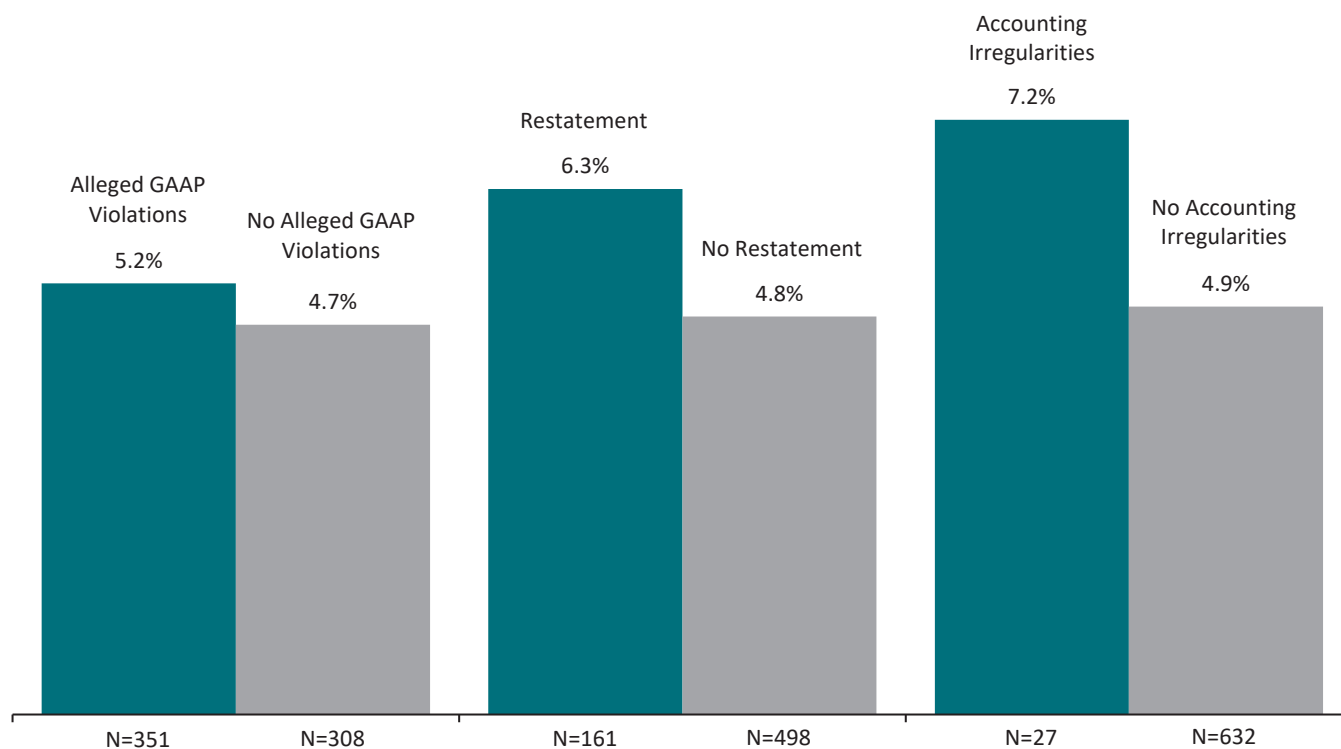
This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.¹⁵ For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.¹⁶

- In 2021, median “simplified tiered damages” for cases involving GAAP allegations were 38% higher than the 2012–2020 median for such cases.
- As this research has observed, settlements as a percentage of “simplified tiered damages” for cases involving GAAP allegations are typically higher than for non-GAAP cases. This is true even as the rate of accounting allegations has declined in recent years. For example, only 14% of settlements in 2021 involved a restatement of financial statements.

- The frequency of an outside auditor codefendant has declined substantially in recent years. In 2021, an outside auditor was a codefendant in just 3% of settlements.
- The frequency of reported accounting irregularities among settlements from 2017 to 2021 was also low, at just 3.5% of cases. Of those cases, more than 50% also involved criminal charges/indictments related to the allegations in the class action.

The proportion of settled cases in 2021 with Rule 10b-5 claims alleging GAAP violations was 32%, an all-time low among all post-Reform Act years.

Figure 8: Median Settlements as a Percentage of “Simplified Tiered Damages” and Allegations of GAAP Violations 2012–2021



Note: “N” refers to the number of cases.

Derivative Actions

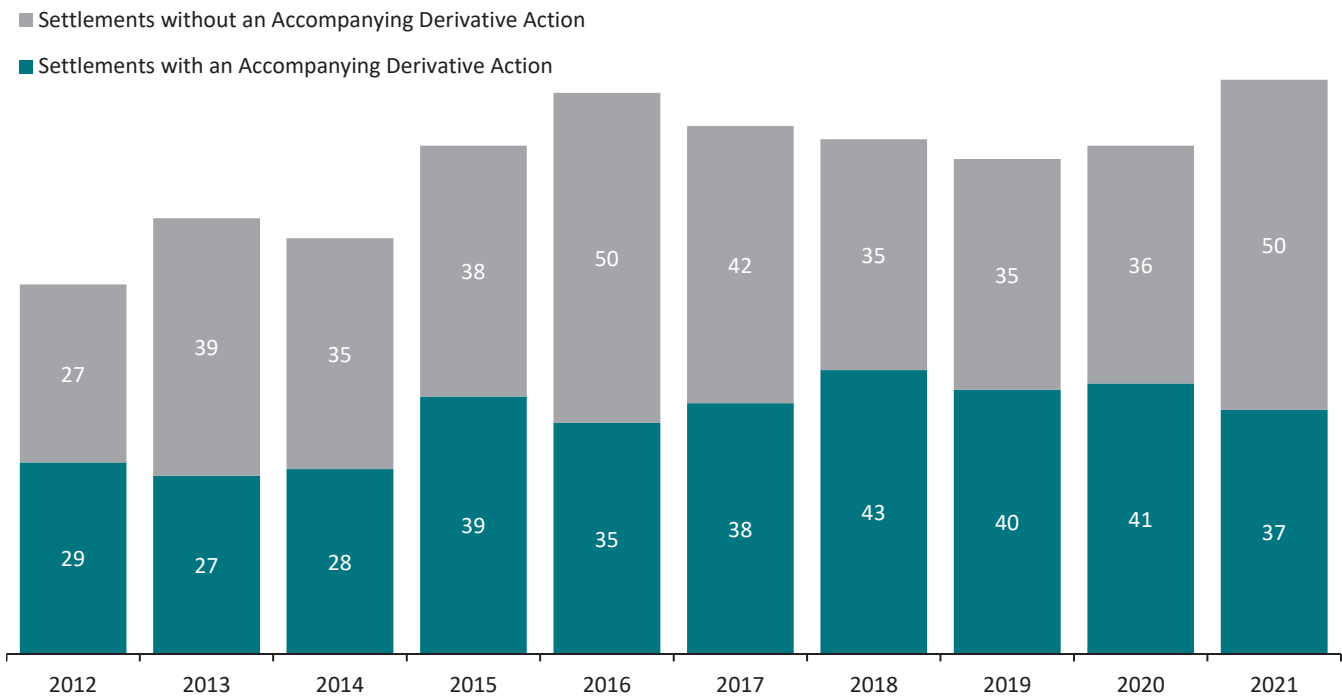
Historically, settled cases involving an accompanying derivative action have been associated with both larger cases (measured by “simplified tiered damages”) and larger settlement amounts. For example, from 2012 to 2020, the median settlement for cases with an accompanying derivative action was nearly 45% higher than for cases without a derivative action.

- However, in 2021, the median settlement for cases with an accompanying derivative action was \$8.5 million compared to \$7.5 million for cases without a derivative action, a difference of 13%.
- In 2021, median “simplified tiered damages” for settled cases with an accompanying derivative action was more than double the median for cases without an accompanying derivative action.

In 2021, 43% of settled cases involved an accompanying derivative action, the lowest rate in the last five years.

- For cases settled during 2017–2021, nearly one-third of parallel derivative suits were filed in Delaware. California and New York were the next most common venues for such actions, representing 22% and 13% of such settlements, respectively.

Figure 9: Frequency of Derivative Actions 2012–2021

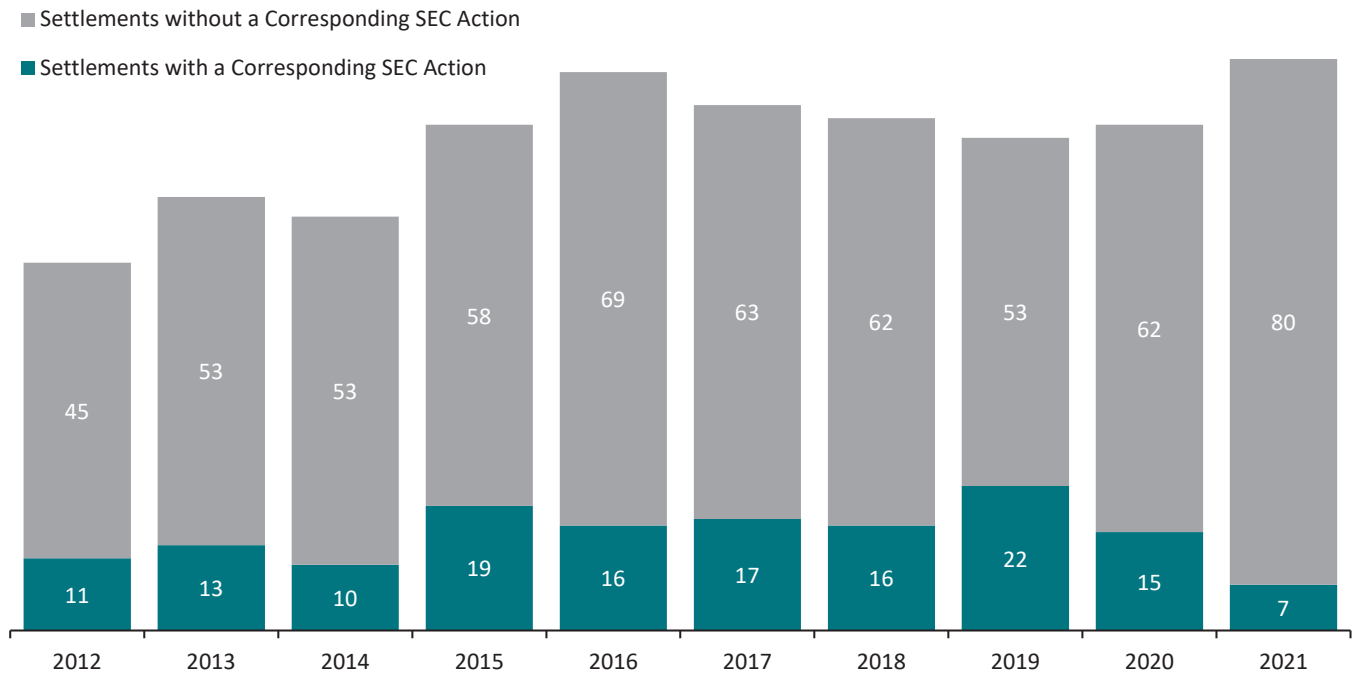


Corresponding SEC Actions

- Cases with an SEC action related to the allegations are typically associated with substantially higher settlement amounts.¹⁷
- In 2021, median settlement amounts for cases that involved a corresponding SEC action were double the median for cases without such an action.
- Settled cases in 2021 with a corresponding SEC action took more than 30% longer to reach settlement compared to cases without such an action. (See page 13 for additional discussion.)
- The dramatic decline in corresponding SEC actions (Figure 10) may reflect, in part, the decline in SEC enforcement activity during the filing date years associated with 2021 settlements. For additional details, see Cornerstone Research’s *SEC Enforcement Activity: Public Company and Subsidiaries—FY 2021 Update*.
- Cases involving corresponding SEC actions may also include related criminal charges in connection with the allegations covered by the underlying class action. From 2017 to 2021, 40% of settled cases with an SEC action had related criminal charges.¹⁸

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

Figure 10: Frequency of SEC Actions
2012–2021



Institutional Investors

As is well known, increasing institutional participation in litigation as lead plaintiffs was a focus of the Reform Act.¹⁹ Institutional investors are often involved in larger cases, that is, cases with higher “simplified tiered damages” and higher total assets.

- In 2021, for cases involving an institutional investor as lead plaintiff, median “simplified tiered damages” and median total assets were six times and 11 times higher, respectively, than the median values for cases without an institutional investor in a lead role.
- The involvement of an institutional investor as a lead plaintiff is correlated with specific law firms serving as lead plaintiff counsel. For example, over the last five years, an institutional investor served as lead plaintiff in 86% of the settled cases in which Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossman LLP served as lead plaintiff counsel. In comparison, an institutional investor served as lead plaintiff in only 15% of cases in which The Rosen Law Firm, Pomerantz, or Glancy served as lead counsel.

Since passage of the Reform Act, public pension plans have been the most frequent type of institutional lead plaintiff, and the presence of a public pension acting as a lead

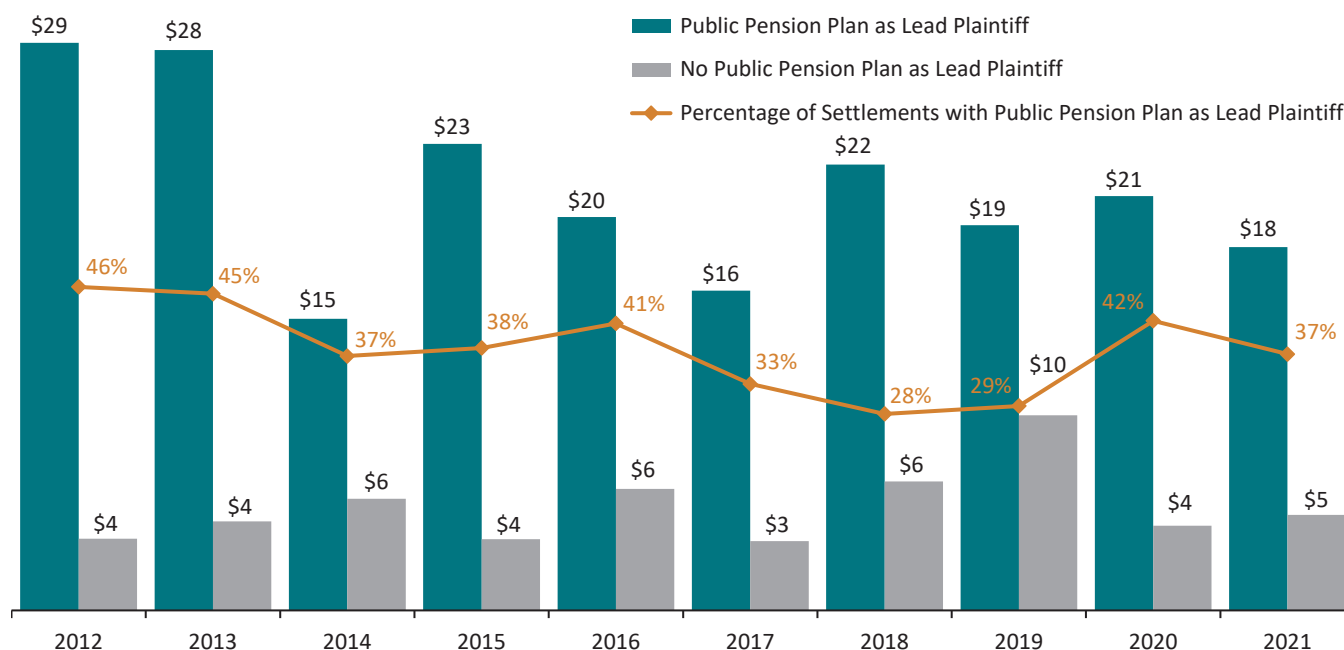
plaintiff is associated with higher settlement amounts. (See page 15 for further discussion of factors that influence settlement outcomes.)

- For example, for cases settled in 2021, public pension plans served as lead plaintiffs in almost 76% of cases involving institutions, while union funds appeared as lead plaintiffs in less than 10% of these cases.
- Public pensions are also more likely to be lead plaintiffs in cases involving more established publicly traded issuers. In 2021 settled cases, the median age from IPO to the filing date for cases with a public pension lead plaintiff was more than 8.5 years compared to a median of 4.3 years for cases without a public pension lead.

Among cases settled in 2021, institutional investor lead plaintiff appointments were among the lowest in more than 15 years.

Figure 11: Median Settlement Amounts and Public Pension Plans 2012–2021

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

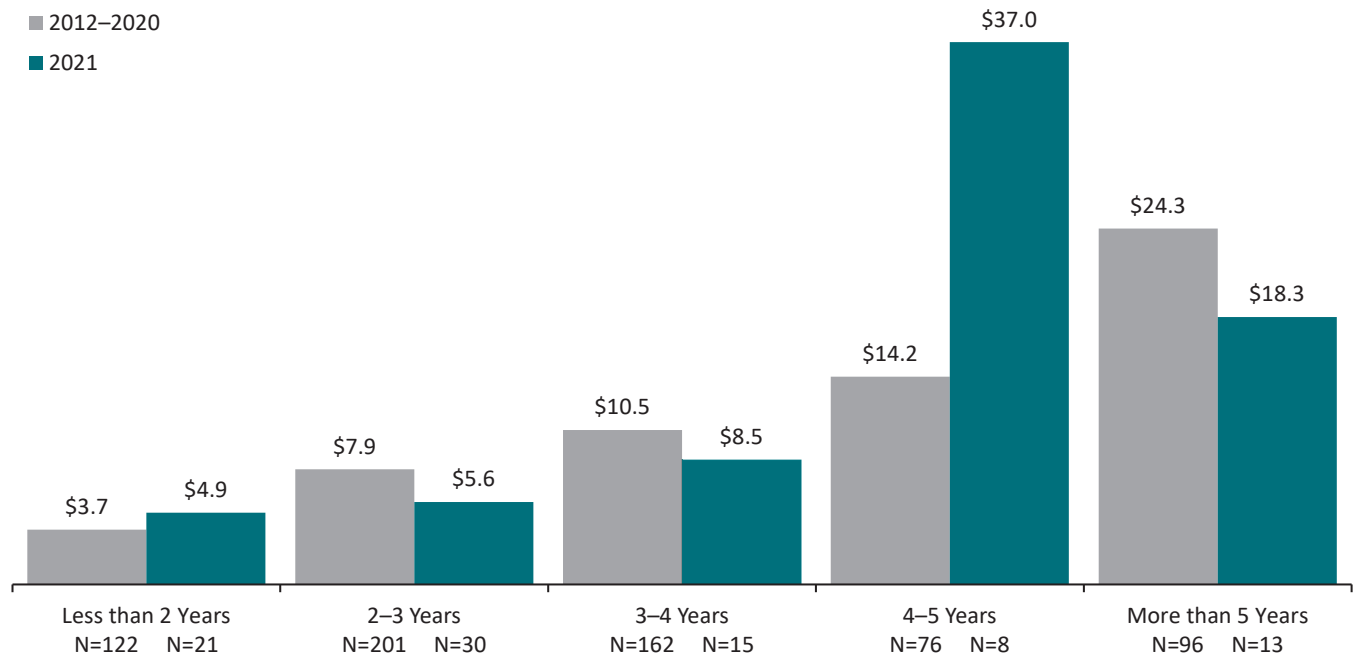
Time to Settlement and Case Complexity

- The median time from filing to settlement hearing date was 2.6 years for 2021 settlements, compared to 3.0 years for 2012–2020 settlements. This decline in the time to reach settlement was largely driven by the Ninth Circuit, where the median time to settlement declined by almost 40% in 2021.
- Larger cases (as measured by “simplified tiered damages”) often take longer to resolve. Consistent with this, in 2021 all three mega settlements took at least three years to reach a settlement hearing date.
- In 2021, for cases that took at least three years to settle, median “simplified tiered damages” were more than five times higher for settlements with an institutional lead plaintiff than for those without an institutional lead plaintiff.
- Reflecting both the smaller dollar amounts and the shorter interval from filing date to settlement hearing date among 2021 settlements, the number of docket entries for these cases declined, on average, 26% from the prior year.²⁰

Over 55% of cases in 2021 reached a settlement hearing date within three years of filing, compared to under 45% in 2020.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2012–2021

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. “N” refers to the number of cases.

Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),²¹ this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

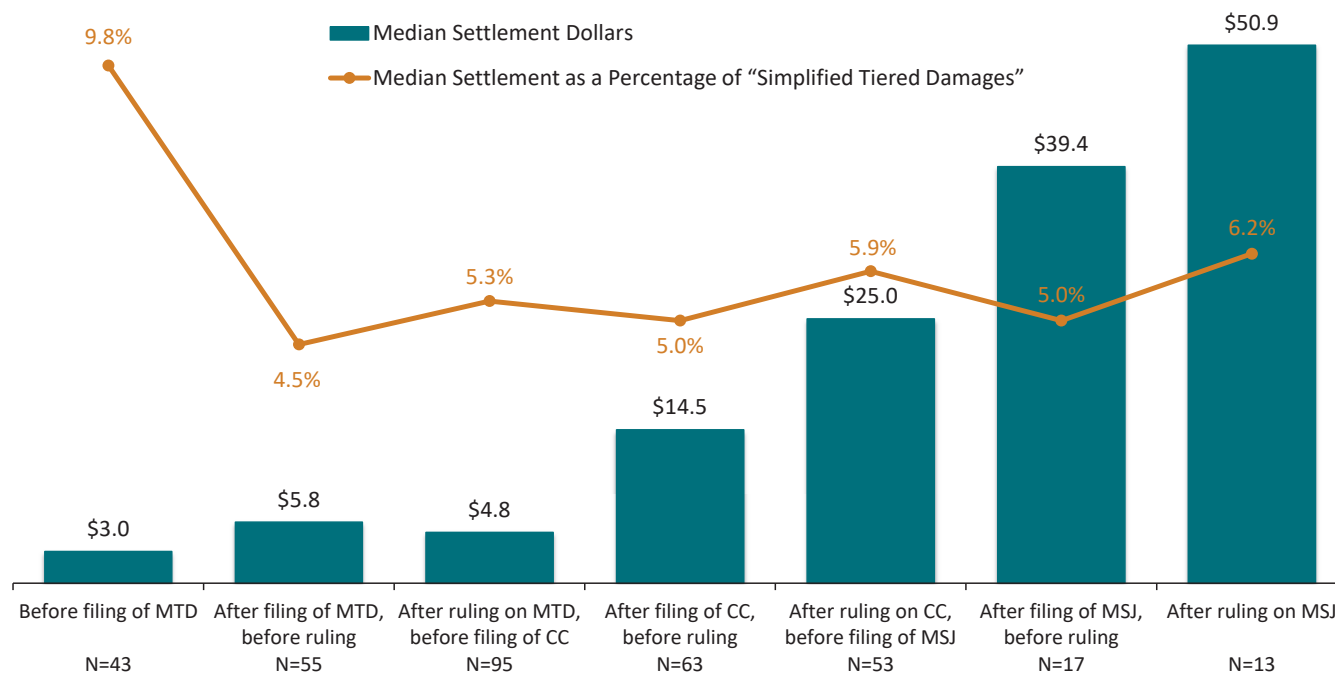
- Despite the overall smaller size of cases settled in 2021 and the shorter time to reach settlement, the stage at which cases settled remained largely unchanged. For example, in 2021, more than 60% of cases were resolved before a motion for class certification was filed, compared to 57% for 2017–2020 settlements.
- Similarly, approximately 20% of settlements in 2021 reached settlement sometime after a ruling on a motion for class certification, compared to 24% for 2017–2020 settlements.

- In 2021, cases that settled after a motion for class certification was filed were substantially larger than cases that settled at earlier stages. In particular, median “simplified tiered damages” for cases settling after a motion for class certification had been filed was more than eight times the median for cases that resolved prior to such a motion.
- Cases settling at later stages in 2021 were also larger in terms of issuer size. Specifically, the median issuer-reported total assets for 2021 cases that settled after the filing of a motion for summary judgment was more than five times the median for cases that settled prior to such a motion being filed.

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

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement 2017–2021

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. “N” refers to the number of cases. MTD refers to “motion to dismiss,” CC refers to “class certification,” and MSJ refers to “motion for summary judgment.” This analysis is limited to cases alleging Rule 10b-5 claims.

Cornerstone Research's Settlement Prediction Analysis

This research applies regression analysis to examine the relationships between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand and predict the total settlement amount, given the characteristics of a particular securities case. Regression analysis can also be applied to estimate the probabilities associated with reaching alternative settlement levels. It can also be helpful in exploring hypothetical scenarios, including how the presence or absence of particular factors affects predicted settlement amounts.

Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2021, the factors that were important determinants of settlement amounts included the following:

- “Simplified tiered damages”
- Maximum Dollar Loss (MDL)—market capitalization change from its class period peak to post-disclosure value
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether there were criminal charges against the issuer, other defendants, or related parties with similar allegations to those included in the underlying class action complaint
- Whether there was an accompanying derivative action
- Whether an outside auditor was named as a codefendant

- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether a public pension was a lead plaintiff
- Whether securities, in addition to common stock, were included in the alleged class

Regression analyses show that settlements were higher when “simplified tiered damages,” MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, a public pension involved as lead plaintiff, an outside auditor named as a codefendant, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 74% of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 2,013 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2021. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).²²
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.²³ Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.²⁴

Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

Endnotes

- ¹ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ² See, for example, Stephen J. Choi, “Do the Merits Matter Less after the Private Securities Litigation Reform Act?,” *Journal of Law, Economics, and Organization* 23, no. 3 (2007).
- ³ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ⁴ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ⁵ See, for example, Stephen J. Choi, Karen K. Nelson, and Adam C. Pritchard, “The Screening Effect of the Private Securities Litigation Reform Act,” Law & Economics Working Paper, University of Michigan Law School (2007).
- ⁶ *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ⁷ The “simplified tiered damages” approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may be overstated relative to damages estimates developed in conjunction with case-specific economic analysis.
- ⁸ Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).
- ⁹ Median market capitalization as of the most recent quarter-end prior to the settlement hearing date.
- ¹⁰ The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.
- ¹¹ Based on data for cases where the amount contributed by the D&O liability insurer was verified in settlement materials and/or the issuer defendant’s SEC filings—approximately 83% of all ‘33 Act claims cases. Data are supplemented with additional observations from the SSLA.
- ¹² *Securities Class Action Filings—2021 Year in Review*, Cornerstone Research (2022).
- ¹³ This calculation excludes settlements with both ‘33 Act claims filed in state court and Rule 10b-5 claims filed in federal court.
- ¹⁴ In some instances, the federal action also includes ‘33 Act claims.
- ¹⁵ The three categories of accounting issues analyzed in Figure 8 of this report are (1) GAAP violations; (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.
- ¹⁶ *Accounting Class Action Filings and Settlements—2021 Review and Analysis*, Cornerstone Research (2022), forthcoming in spring 2022.
- ¹⁷ As noted previously, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.
- ¹⁸ Identification of a criminal charge and/or criminal indictment based on review of SEC filings and public press. For purposes of this research, criminal charges and/or indictments are collectively referred to as “criminal charges.”
- ¹⁹ See, for example, Michael A. Perino, “Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA’s Lead Plaintiff Provision,” St. John’s Legal Studies Research Paper No. 12-0021 (2012).
- ²⁰ Docket entries reflect the number of entries on the court docket for events in the litigation and have been used in prior research as a proxy for the amount of plaintiff attorney effort involved in resolving securities cases. See Laura Simmons, “The Importance of Merit-Based Factors in the Resolution of 10b-5 Litigation,” University of North Carolina at Chapel Hill Doctoral Dissertation (1996); Michael A. Perino, “Institutional Activism through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions,” St. John’s Legal Studies Research Paper No. 06-0055 (2006).
- ²¹ Stanford Securities Litigation Analytics (SSLA) tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice. The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at <https://sla.law.stanford.edu/>.
- ²² Available on a subscription basis. For further details see <https://www.issgovernance.com/securities-class-action-services/>.
- ²³ Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- ²⁴ This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

	Average	10th	25th	Median	75th	90th
2012	\$72.3	\$1.4	\$3.2	\$11.1	\$41.9	\$135.7
2013	\$84.1	\$2.2	\$3.5	\$7.6	\$25.8	\$96.0
2014	\$20.9	\$1.9	\$3.3	\$6.9	\$15.1	\$57.2
2015	\$45.0	\$1.5	\$2.5	\$7.4	\$18.6	\$107.5
2016	\$79.7	\$2.1	\$4.7	\$9.7	\$37.3	\$164.8
2017	\$20.4	\$1.7	\$2.9	\$5.8	\$16.9	\$39.2
2018	\$70.0	\$1.6	\$3.9	\$12.1	\$26.7	\$53.0
2019	\$29.7	\$1.6	\$6.0	\$11.7	\$21.2	\$53.0
2020	\$57.1	\$1.5	\$3.5	\$10.6	\$20.9	\$55.7
2021	\$20.5	\$1.7	\$3.1	\$8.3	\$17.9	\$58.6

Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

Appendix 2: Settlements by Select Industry Sectors 2012–2021

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Financial	99	\$16.2	\$409.5	5.1%
Technology	101	\$8.6	\$228.9	4.7%
Pharmaceuticals	107	\$7.0	\$215.2	4.7%
Retail	37	\$10.5	\$254.7	4.3%
Telecommunications	23	\$9.3	\$278.8	5.4%
Healthcare	19	\$12.3	\$152.8	6.7%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2021 dollar equivalent figures are presented. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims.

Appendix 3: Settlements by Federal Circuit Court 2012–2021

(Dollars in millions)

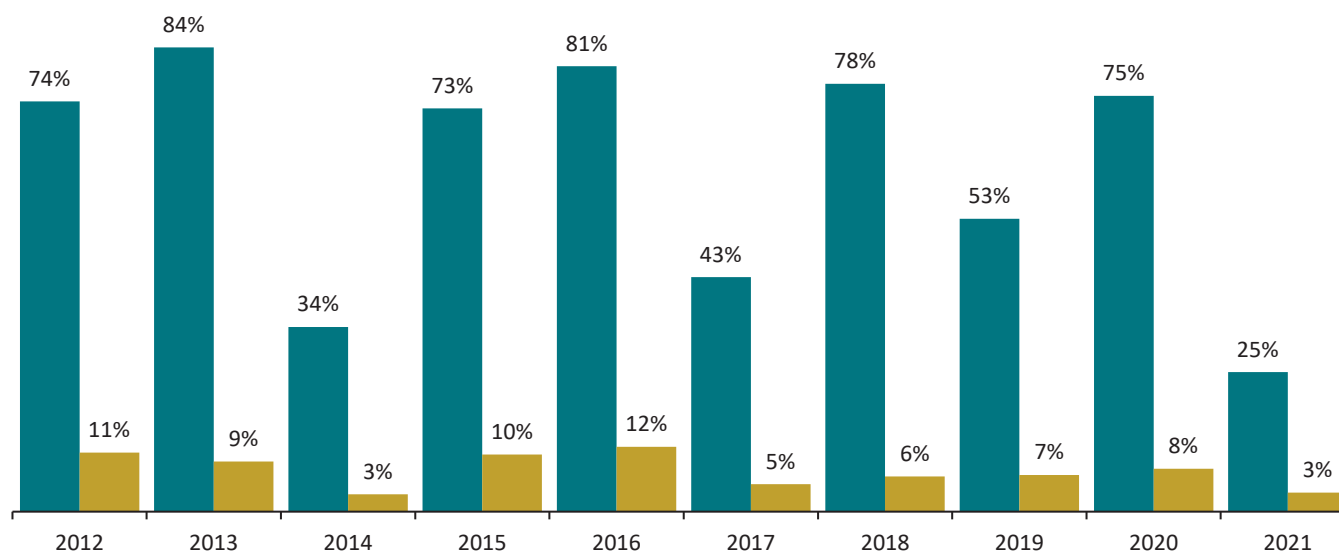
Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	20	\$10.8	3.2%
Second	192	\$9.3	5.1%
Third	65	\$7.0	5.6%
Fourth	24	\$20.1	4.1%
Fifth	36	\$9.9	5.0%
Sixth	30	\$13.3	7.4%
Seventh	35	\$14.2	3.9%
Eighth	13	\$14.7	6.8%
Ninth	183	\$6.9	4.9%
Tenth	17	\$8.5	5.3%
Eleventh	38	\$11.0	4.9%
DC	4	\$24.8	2.2%

Note: Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented. Settlements as a percentage of "simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims.

Appendix 4: Mega Settlements 2012–2021

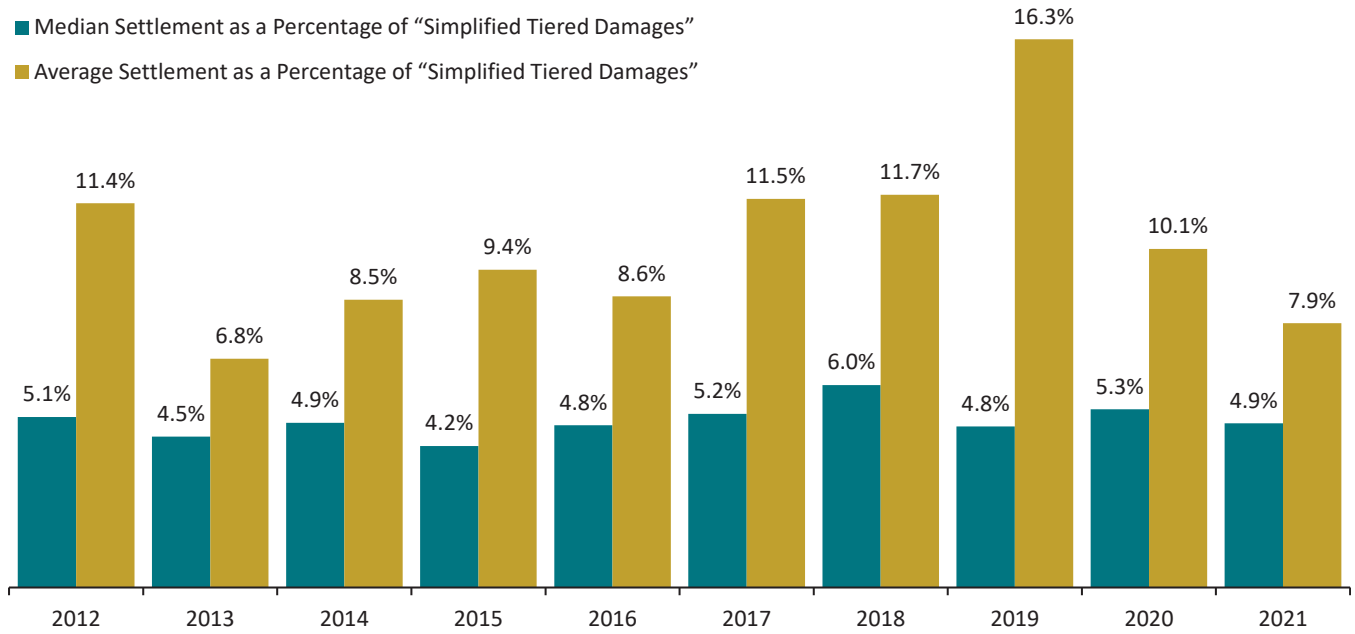
■ Total Mega Settlement Dollars as a Percentage of All Settlement Dollars

■ Number of Mega Settlements as a Percentage of All Settlements



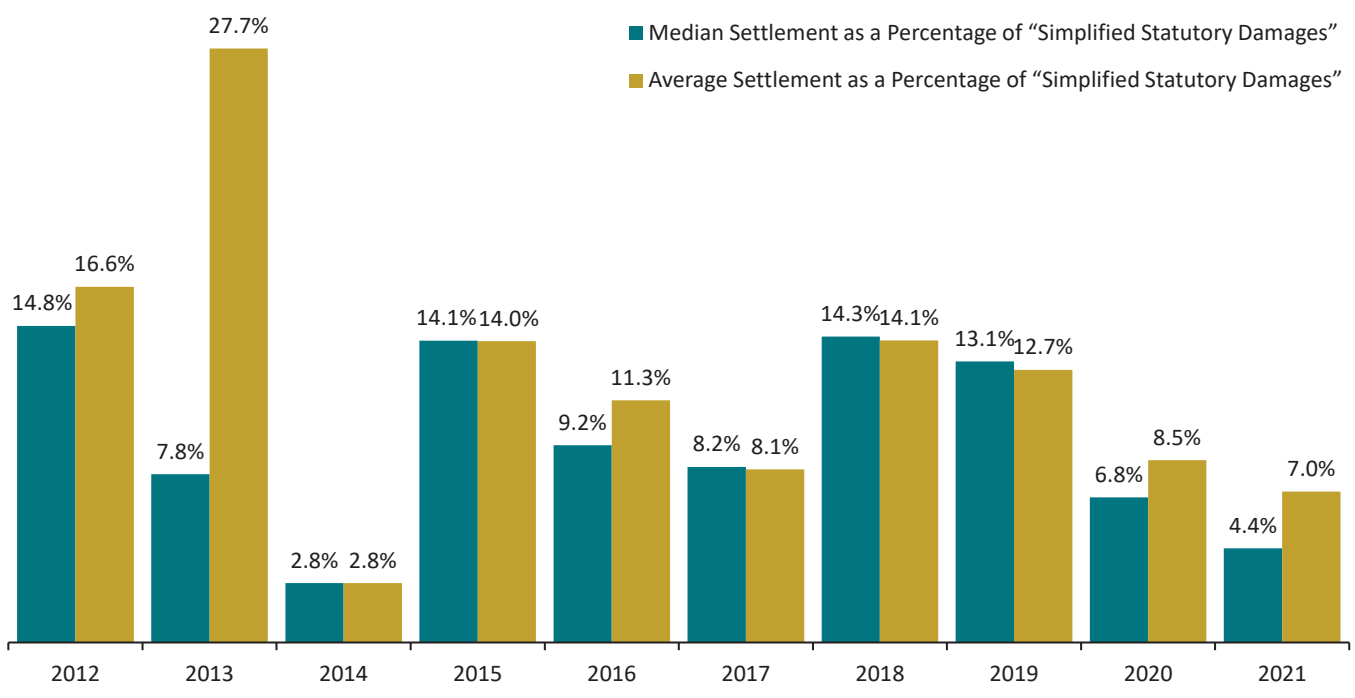
Note: Mega settlements are defined as total settlement funds equal to or greater than \$100 million. Settlement dollars are adjusted for inflation; 2021 dollar equivalent figures are presented.

Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”
2012–2021



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims.

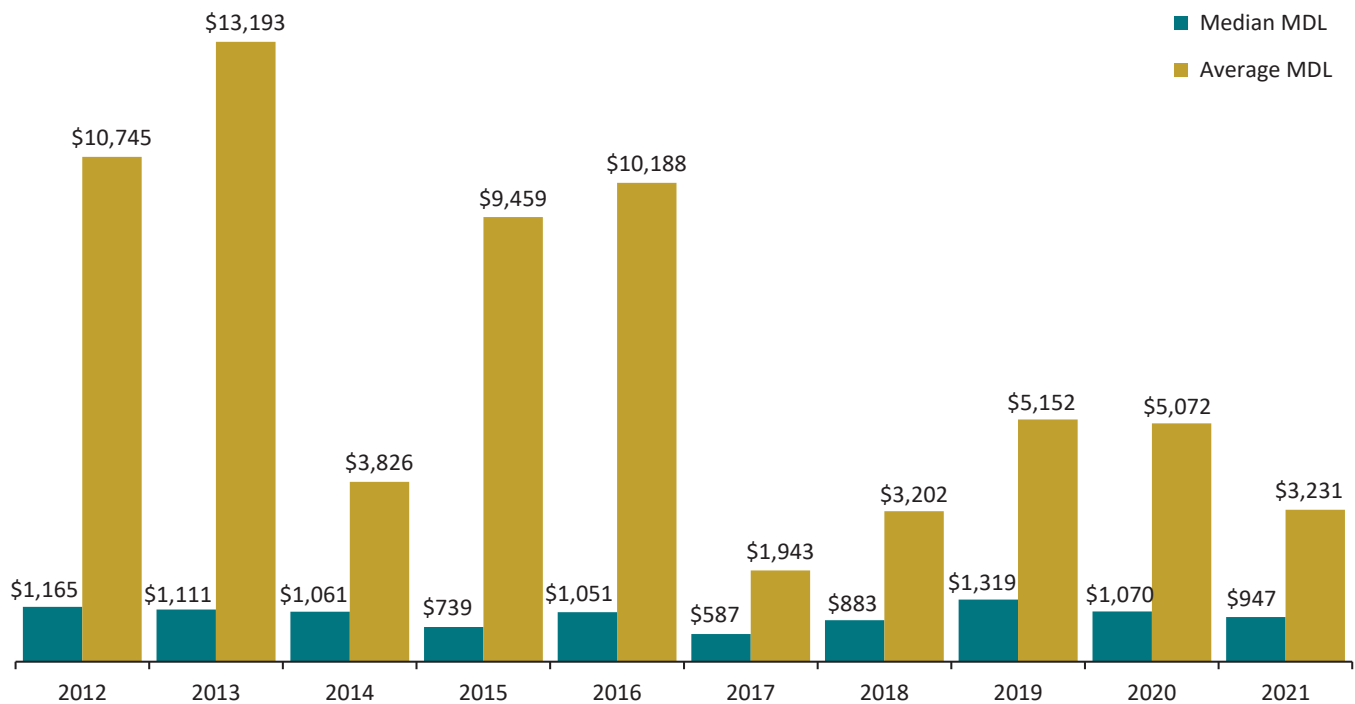
Appendix 6: Median and Average Settlements as a Percentage of “Simplified Statutory Damages”
2012–2021



Note: “Simplified statutory damages” are calculated only for cases alleging Section 11 (’33 Act) claims and no Rule 10b-5 claims.

Appendix 7: Median and Average Maximum Dollar Loss (MDL)
2012–2021

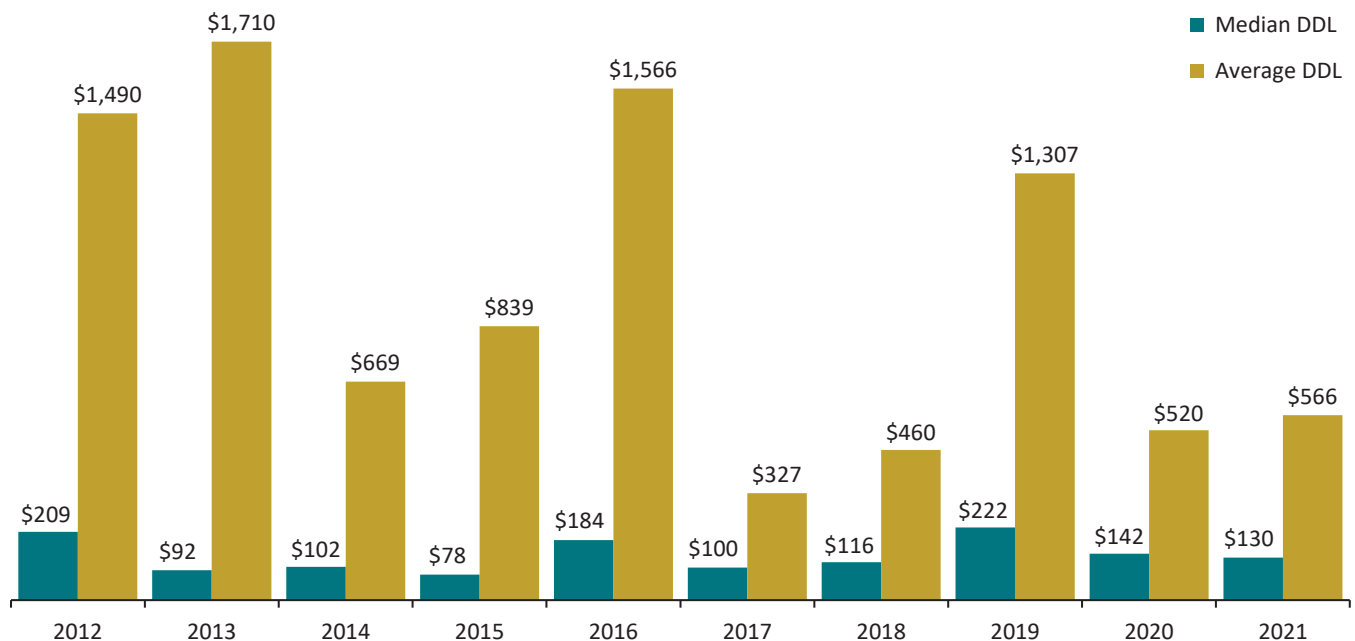
(Dollars in millions)



Note: MDL is adjusted for inflation based on class period end dates; 2021 dollar equivalents are presented. MDL is the dollar value change in the defendant firm’s market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period.

Appendix 8: Median and Average Disclosure Dollar Loss (DDL)
2012–2021

(Dollars in millions)



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

Appendix 9: Median Docket Entries by “Simplified Tiered Damages” Range
2012–2021

(Dollars in millions)



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims.

About the Authors

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Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues, firm valuation, and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published several academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

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Dr. Simmons's research on pre- and post-Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, including research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors gratefully acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update.

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Exhibit 6

25 January 2022



Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review

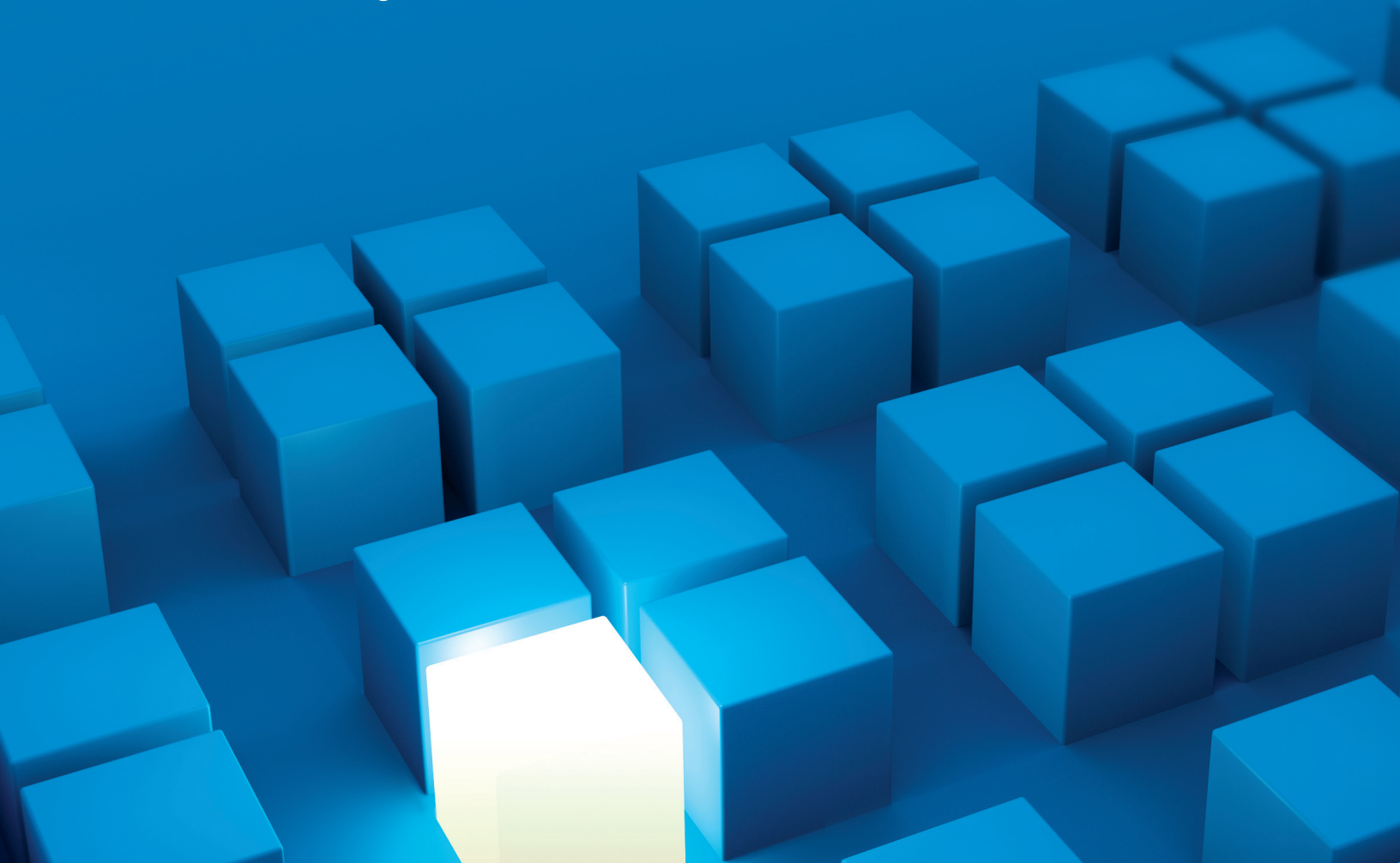
Over 10% of New Federal Filings Were Related to Special Purpose Acquisition Companies
Substantially Fewer Merger Objections Filed, Leading to a Decline in Aggregate New Filings
Total Resolutions, Average and Median Settlement Values Declined

By Janeen McIntosh and Svetlana Starykh

Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review with you. This year's edition builds on work carried out over three decades by many members of NERA's Securities and Finance Practice. This year's report continues our analyses of trends in filings and settlements and presents new analyses related to current topics such as special purpose acquisition companies. Although space does not permit us to present all the analyses the authors have undertaken while working on this year's edition or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our research or our work related to securities litigations. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director



Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review

**Over 10% of New Federal Filings Were Related to Special Purpose Acquisition Companies
Substantially Fewer Merger Objections Filed, Leading to a Decline in Aggregate New Filings
Total Resolutions, Average and Median Settlement Values Declined**

By Janeen McIntosh and Svetlana Starykh¹

25 January 2022

Introduction

For the first time since 2016, fewer than 300 new federal securities class action suits were filed.² There were 205 cases filed in 2021, a decline from the 321 suits filed in 2020. Although substantially lower than the number of cases filed annually between 2017 and 2019, the 2021 level is well within the pre-2017 historical range. The decline in the aggregate number of new cases filed was driven by the notable decrease in the number of merger-objection suits in 2021. More specifically, new merger-objection filings declined by more than 85% between 2020 and 2021. Of the new cases filed in 2021, over 30% were filed against defendants in the electronic technology and services sector and 40% were filed in the Second Circuit. The most common allegation included in the complaints was misled future performance while the proportion of cases with an allegation related to merger-integration issues doubled, driven primarily by the numerous filings related to special purpose acquisition companies. In 2021, there were 20 securities class action cases filed with a COVID-19-related claim alleged in the complaint, a decrease from the 33 suits filed in 2020.

Of the 239 cases resolved in 2021, 153 were dismissed and 86 resolved through a settlement. This is a decline in total dismissed cases and total resolutions relative to 2020. Compared to 2020, there was an increase in both dismissed and settled non-merger-objection cases. There was a substantial decrease in merger-objection cases dismissed and one more such suit settled than in 2020. This decline in the number of dismissed merger-objection cases not only offset the increase in standard case resolutions, but also led to a lower aggregate number of cases resolved in 2021.

An evaluation of securities class action suits filed and resolved between 1 January 2000 and 31 December 2021 reveals the vast majority had a motion to dismiss filed. Of the 96% of cases with a motion to dismiss filed, a decision was reached in 73% of the cases prior to resolution of the case. Of the cases with a decision on a motion to dismiss, approximately 56% were granted. Among the same group of cases, a motion for class certification was filed in only 16% of the securities class actions. Of that 16%, a decision was reached in 56% of the cases prior to the case resolution, with the motion for class certification granted in 83% of the cases with a decision.

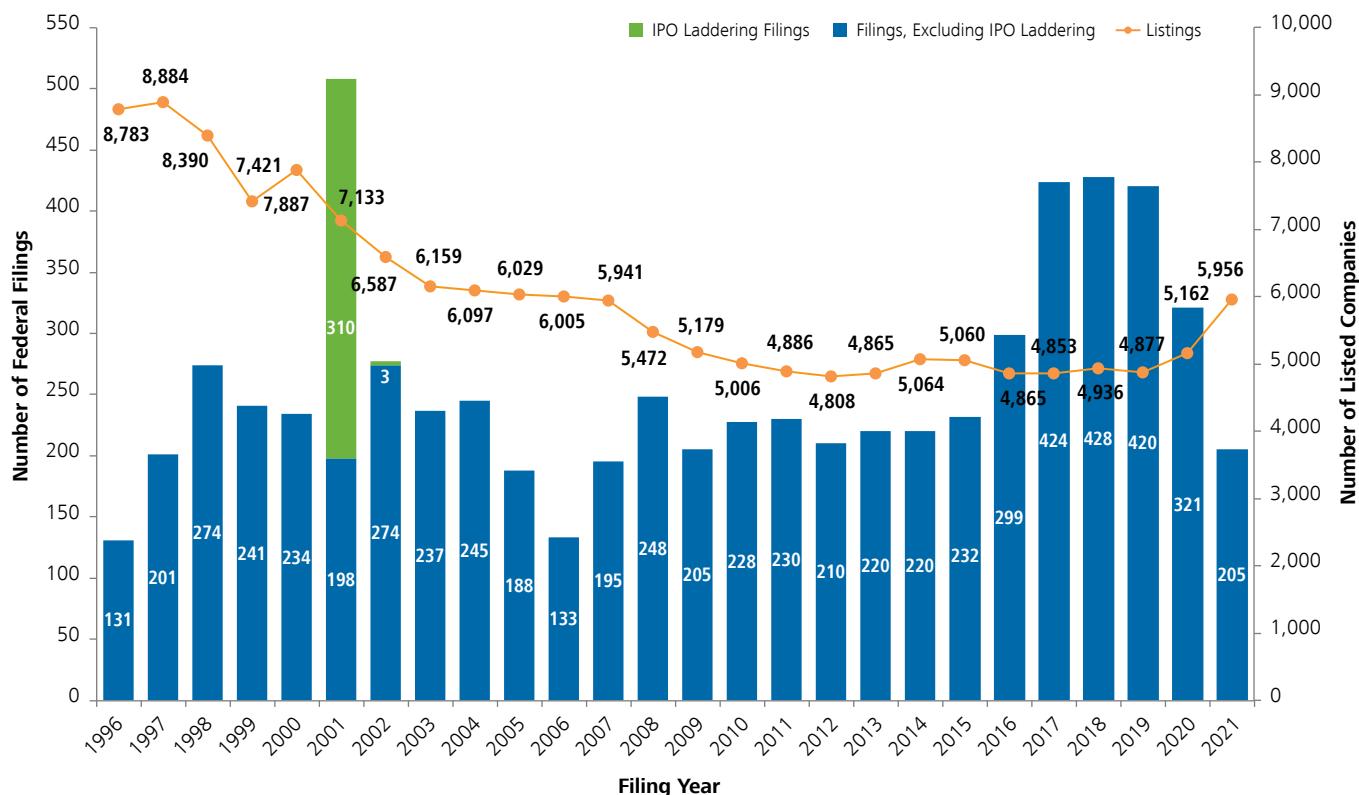
In 2021, aggregate settlements amounted to \$1.8 billion, with more than 50% of this amount associated with the top 10 highest settlements for the year. The average settlement value decreased by over 50% in 2021 to \$21 million, the lowest recorded average in the last 10 years. Given that there were no “mega” settlements (settlements of \$1 billion or greater) in 2021, the average settlement value after excluding “mega” settlements remains unchanged at \$21 million. For 2021, the median settlement value was \$8 million, the lowest recorded median value since 2017. The median annual settlement value for 2021 is approximately 40% lower than the inflation-adjusted median value observed in the prior three years.

Trends in Filings

Following the passage of PSLRA in 1996, there have been over 100 federal securities class action (SCA) suits filed each year. With the exception of 2001, when numerous IPO laddering cases were filed, there were fewer than 300 new cases filed annually between 1996 and 2016. In 2017, there were substantially more new suits filed, with more than 415 annual cases recorded—a trend that continued through 2019. This uptick in filings was mostly due to the considerable increase in merger-objection cases. However, in both 2020 and 2021, this higher annual level of new cases filed did not persist.³

For the second consecutive year, new securities class action filings declined, falling to the lowest level since 2009. In 2021, there were 205 new cases filed, which is more than 50% lower than the annual levels of filings recorded each year between 2017 and 2019. See Figure 1.

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2021

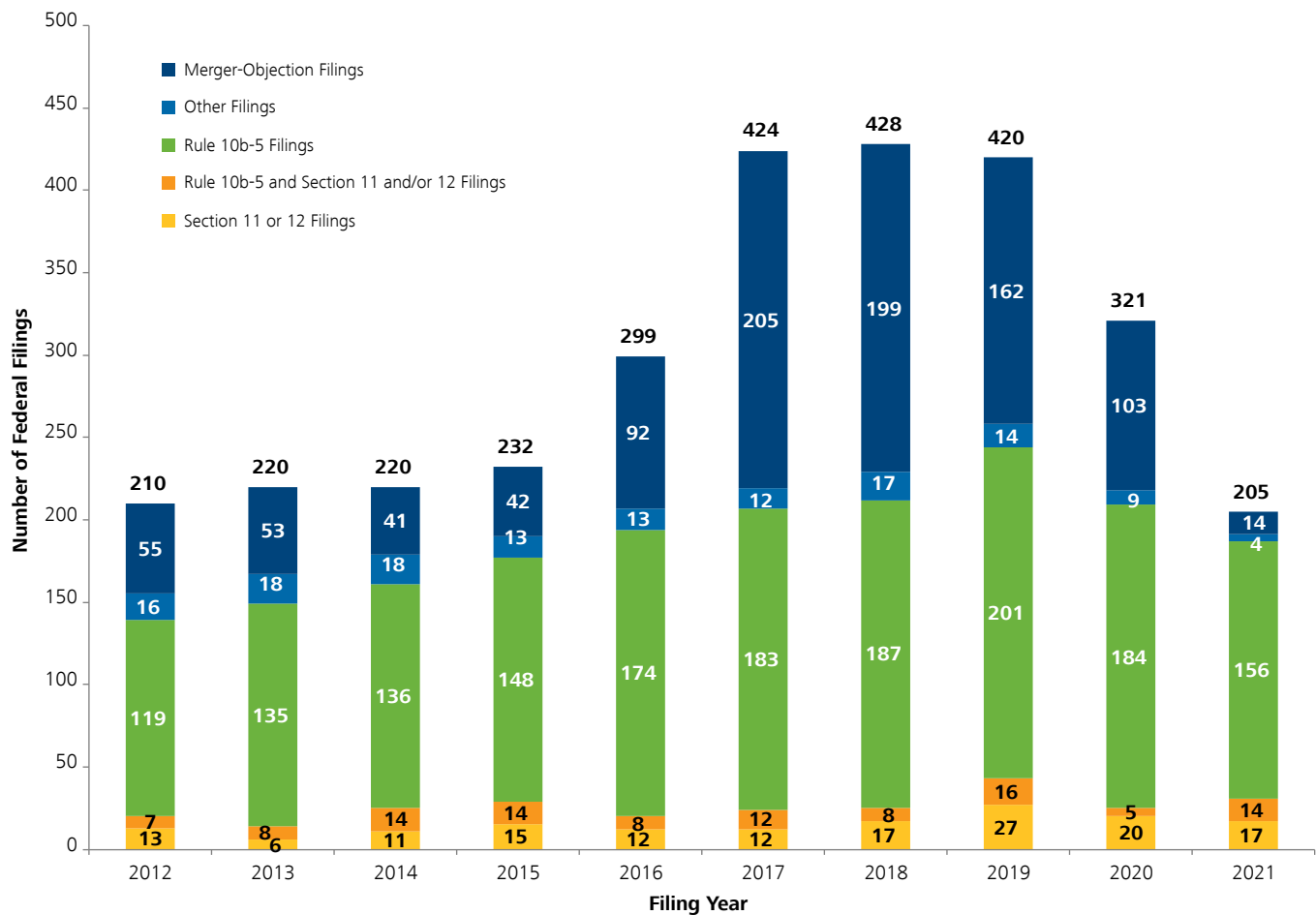


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2021 listings data is as of September 2021.

In addition to analyzing trends in aggregate filings, we also evaluated the number of filings relative to the number of companies listed on the NYSE and Nasdaq exchanges. There were 5,956 listed companies as of September 2021, which represents a 15% increase over the 2020 level and a noteworthy change from the minor year-to-year fluctuations observed between 2016 and 2019.

Even though there was a significant decrease in new federal SCA filings in 2021, the decline was not consistent across all case types. While new filings of Rule 10b-5, Section 11, and/or Section 12 cases (standard cases) increased, new filings of merger objections, Rule 10b-5 only, Section 11 and/or 12 only, and other SCA cases declined. The most notable was the decline in merger-objection filings, which decreased by more than 85% from 103 new filings in 2020 to only 14 new filings in 2021. See Figure 2.

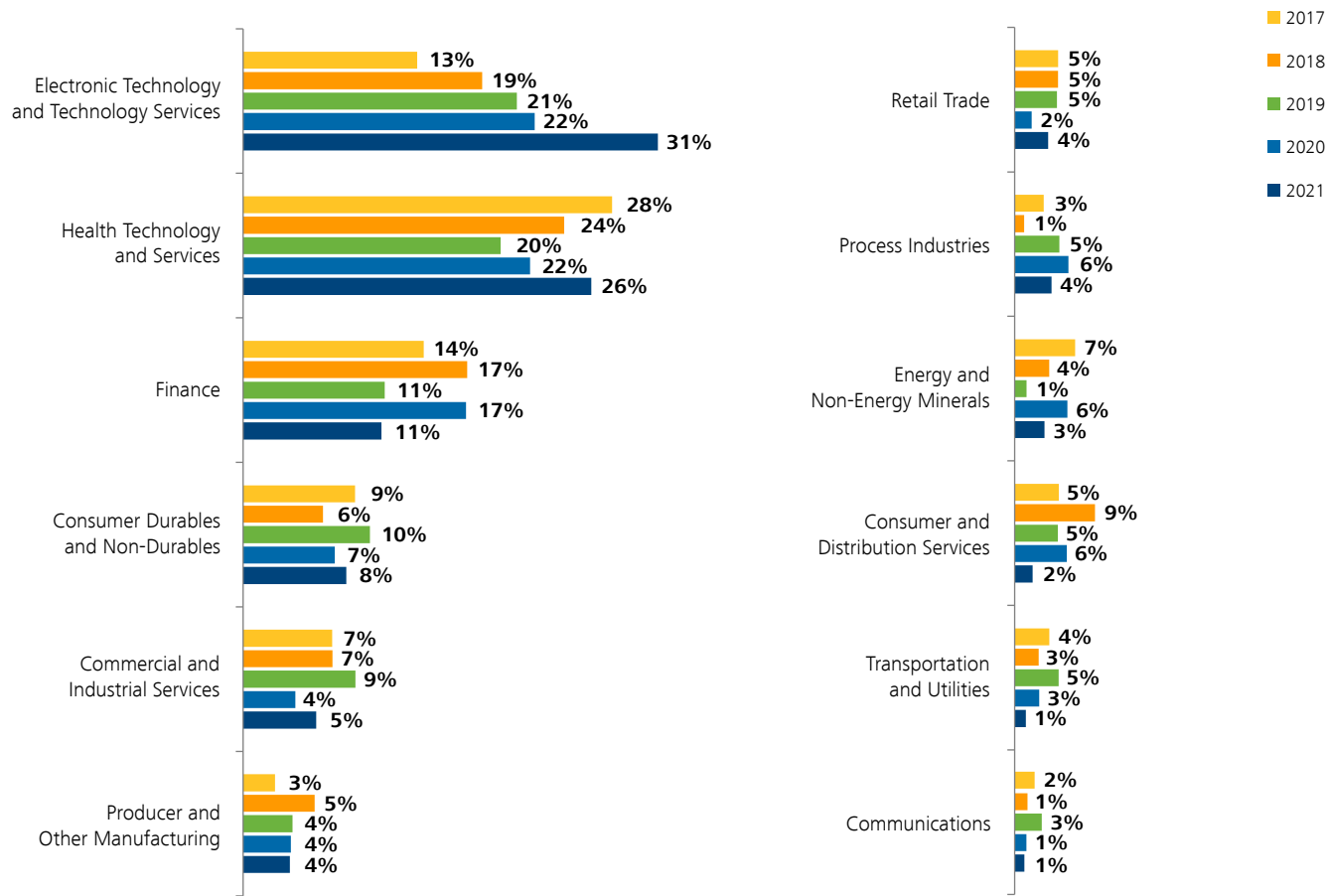
Figure 2. **Federal Filings by Type**
January 2012–December 2021



Since 2018, the percentage of securities class action suits filed against defendants in the electronic technology and services sector has shown steady growth. Of the new cases filed in 2017, less than 15% were filed against defendants in the electronic technology and services sector compared to over 30% against defendants in the same sector in 2021. Between 2019 and 2021, the percentage of securities class action suits filed against defendants in the health technology and services sector also increased from 20% to 26%. See Figure 3.

Figure 3. Percentage of Federal Filings by Sector and Year

Excludes Merger Objections
January 2017–December 2021

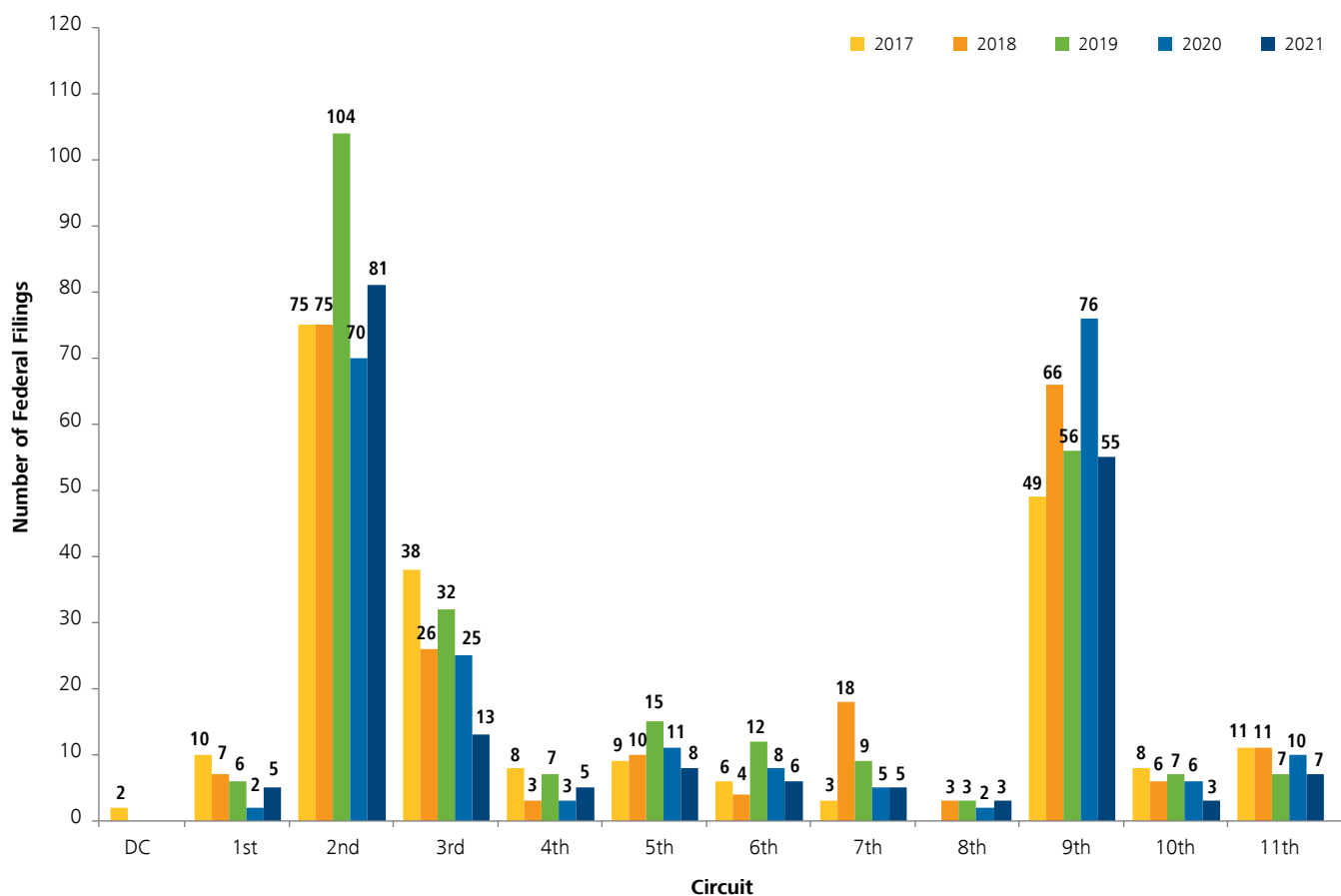


Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

In 2020, we observed a spike in new federal securities class action filings in the Ninth Circuit. This pattern did not persist in 2021. In 2021, the Second Circuit received the highest number of new SCA cases filed while the number of filings in the Ninth Circuit returned to pre-2020 levels. However, the number of new filings in the Third Circuit declined to a five-year low with fewer than 15 cases filed in this circuit in 2021. See Figure 4.

Figure 4. **Federal Filings by Circuit and Year**

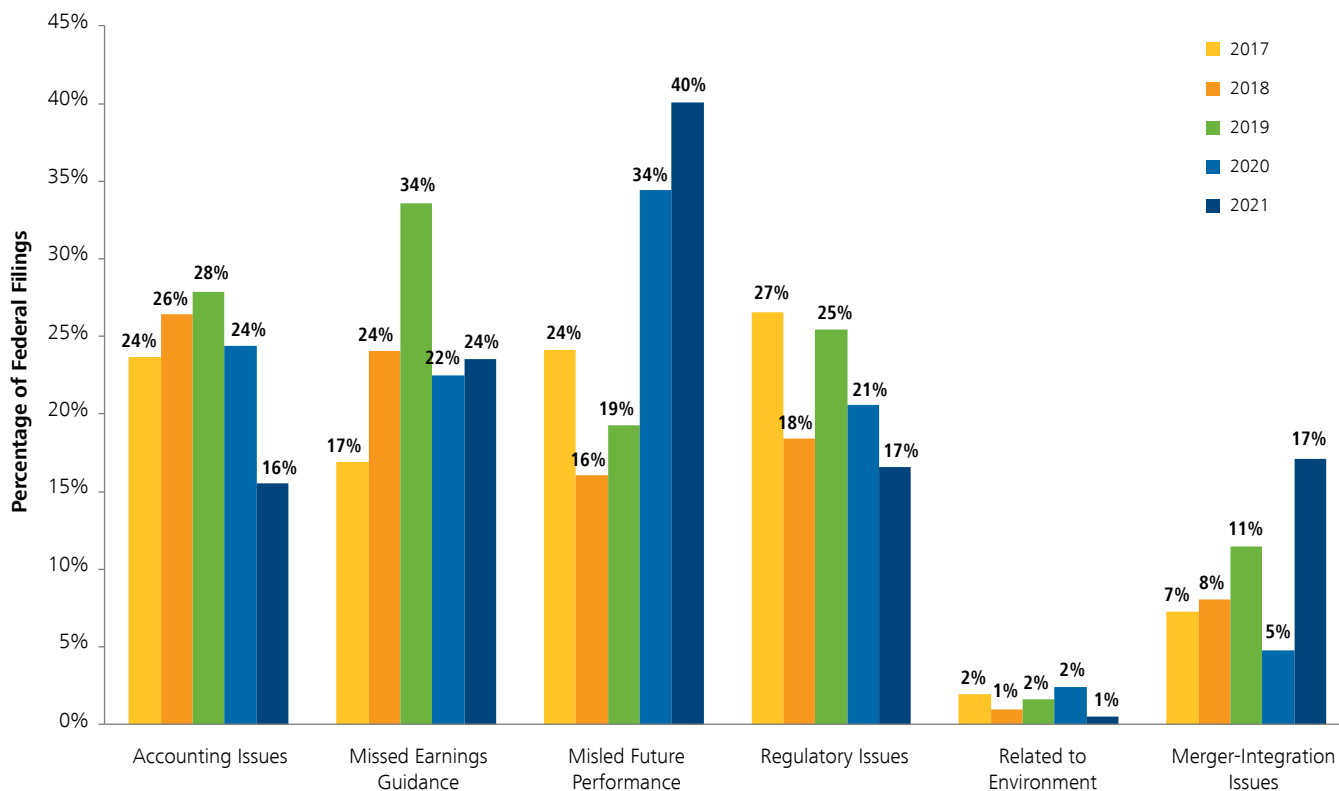
Excludes Merger Objections
January 2017–December 2021



Of the new federal securities class action cases filed in 2021, 40% alleged violations related to misleading future performance, the most common alleged violation for the year.⁴ Allegations of violations related to missed earnings guidance continue to be a common allegation, with 24% of cases involving this claim. The percentage of cases alleging violations of accounting issues and regulatory issues declined in 2021, each occurring in less than 20% of new cases filed. In 2021, there was an uptick in the number of SCA filings with an allegation related to merger-integration issues included in the complaint. This increase was driven by the substantial number of cases involving special purpose acquisition companies (SPAC) filed in 2021. Excluding these SPAC cases, only 5% of cases included an allegation related to merger-integration issues. See Figure 5.

Figure 5. **Allegations**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2017–December 2021



Event-Driven and Special Cases

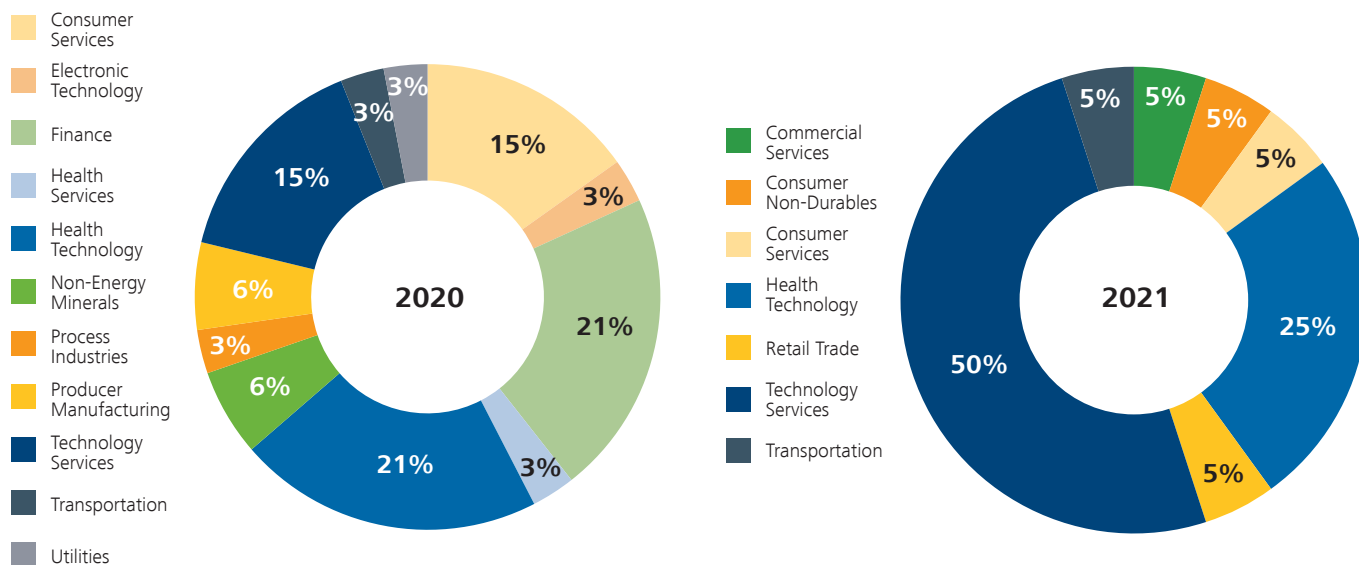
As part of our annual review process, we identify potential development areas for securities class action filings and review any new trends on previously identified areas.⁵ Below, we summarize some of these areas for the last three years.

COVID-19

The first federal securities class action suit with claims related to COVID-19 included in the complaint was filed in March 2020. Since then, there have been a total of 52 additional suits. In 2021, there were 20 securities class action cases filed with a COVID-19-related claim, a decrease from the 33 suits filed in 2020. While the Ninth Circuit was the jurisdiction with the highest percentage of COVID-19-related filings in 2020, the Second Circuit was the most common venue in 2021.

Of the 2021 cases filed with a COVID-19-related claim in the complaint, 50% were against defendants in the technology services economic sector. Among the 2020 cases filed with a COVID-19 claim, only 15% were against defendants within this sector. See Figure 6.

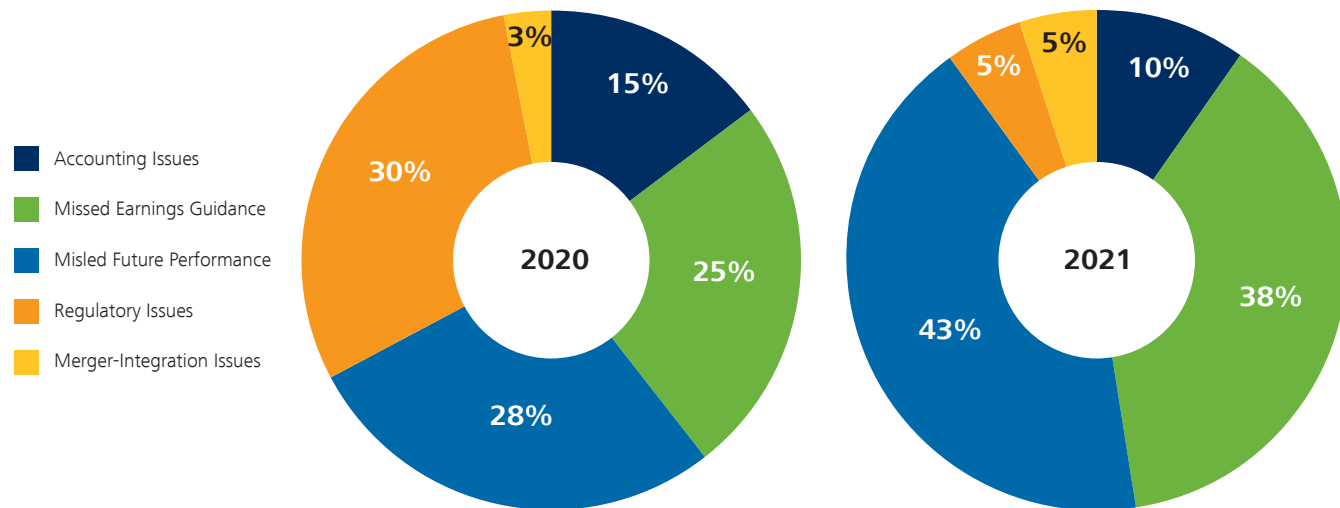
Figure 6. **Percentage of COVID-19-Related Federal Filings by Sector and Year**
March 2020–December 2021



Note: Due to rounding, percentages may not add to 100%.

In 2020, a violation related to regulatory issues was the most common allegation among the COVID-19-related cases. However, in 2021, only one case with a COVID-19 claim included an allegation of regulatory issues. In contrast, the most common allegation included in the COVID-19-related suits filed in 2021 related to future performance. See Figure 7.

Figure 7. **Percentage of COVID-19-Related Federal Filings by Allegation and Year**
March 2020–December 2021



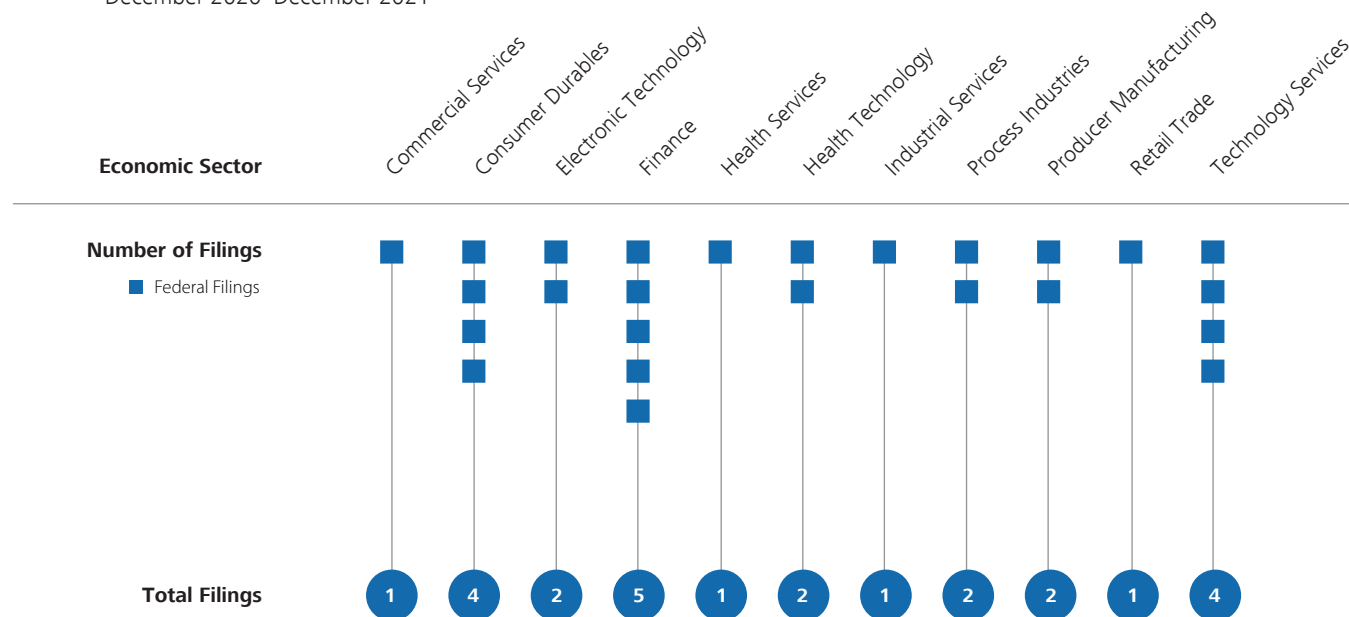
Note: Due to rounding, percentages may not add to 100%.

SPAC

In 2021, numerous federal cases were filed related to special purpose acquisition companies (SPACs). Between January 2021 and December 2021, a total of 24 cases related to SPACs were filed, a substantial increase from the one case filed in 2020.

These suits were filed against defendants in a number of sectors, with defendants in the consumer durables, technology services, and finance sectors being the most frequently targeted in 2020–2021. See Figure 8.

Figure 8. **Number of SPAC-Related Federal Filings by Sector**
December 2020–December 2021



Of the 25 SPAC cases filed in 2020 and 2021, all but one included an allegation related to merger-integration issues. Claims related to misleading earnings guidance were found in 11 of the 25 SPAC cases. In total, these suits included 49 allegations, or an average of approximately two allegations per suit. See Figure 9.

Figure 9. **Number of SPAC-Related Federal Filings by Allegation**
December 2020–December 2021

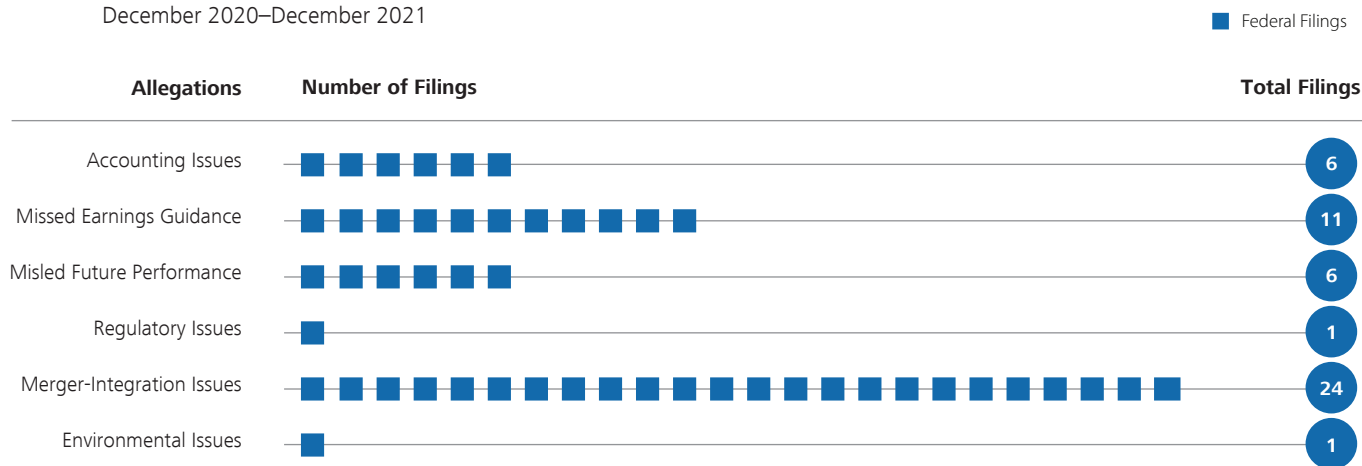
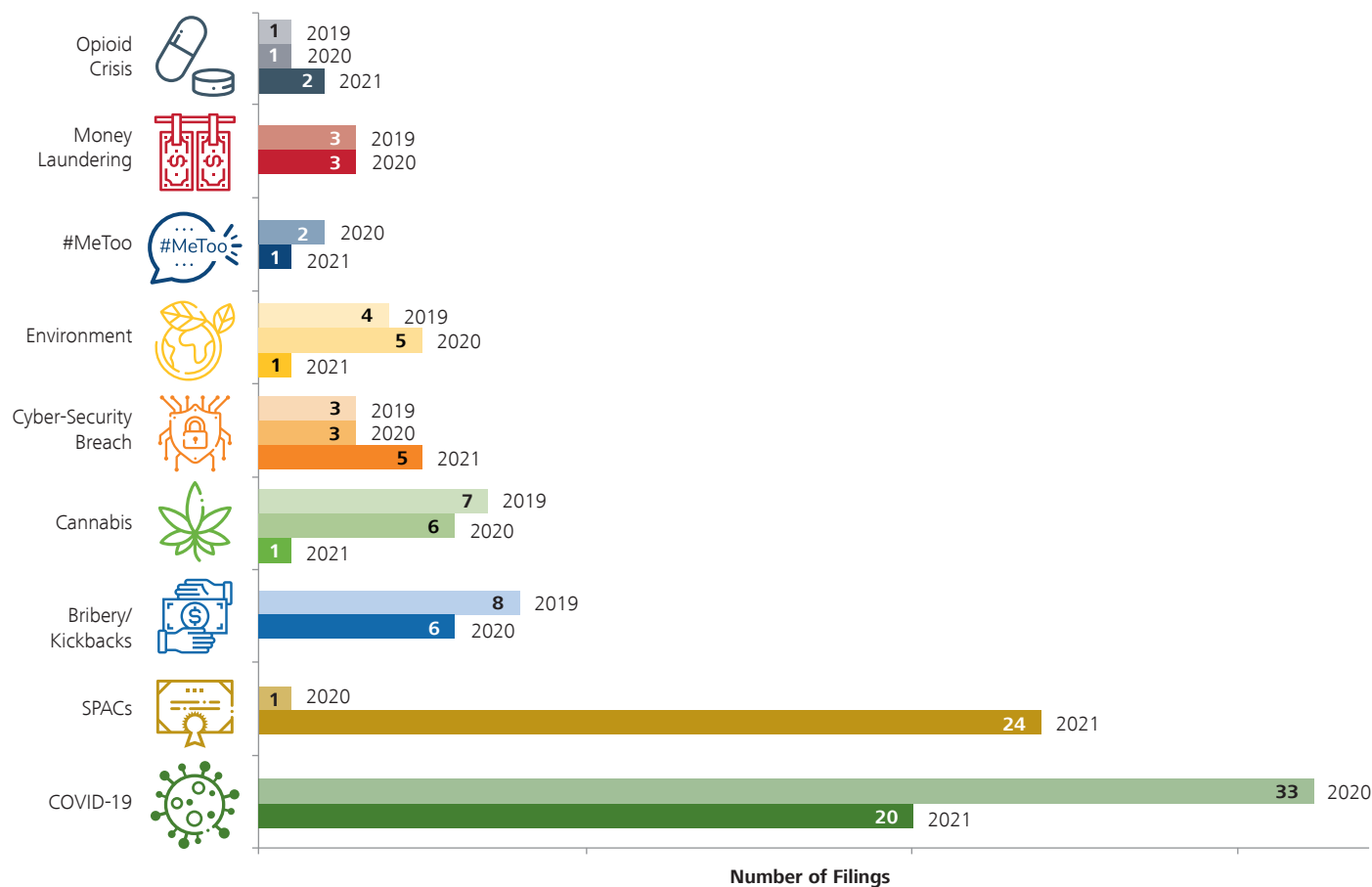


Figure 10. **Event-Driven and Other Special Cases by Filing Year**
January 2019–December 2021



Bribery/Kickbacks

In 2019 and 2020, there were eight and six bribery/kickback-related securities class action cases filed, respectively. However, in 2021, there were no such cases filed. See Figure 10.

Cannabis

Over the 2019–2020 period, 13 cases were filed against defendants in the cannabis industry. In 2021, only one such securities class action case was filed. See Figure 10.

Cybersecurity Breach

Unlike some other development or special interest areas, securities class action filings related to a cybersecurity breach continued to be filed in 2021. In both 2019 and 2020 individually, three cases were filed related to a cybersecurity breach. While still only a handful of cases, there was an increase in 2021 with five such cases filed. See Figure 10.

Environment

In 2021, there was one environment-related case filed. This is a decrease from the five cases filed in 2020 and the four cases filed in 2019. See Figure 10.

Money Laundering

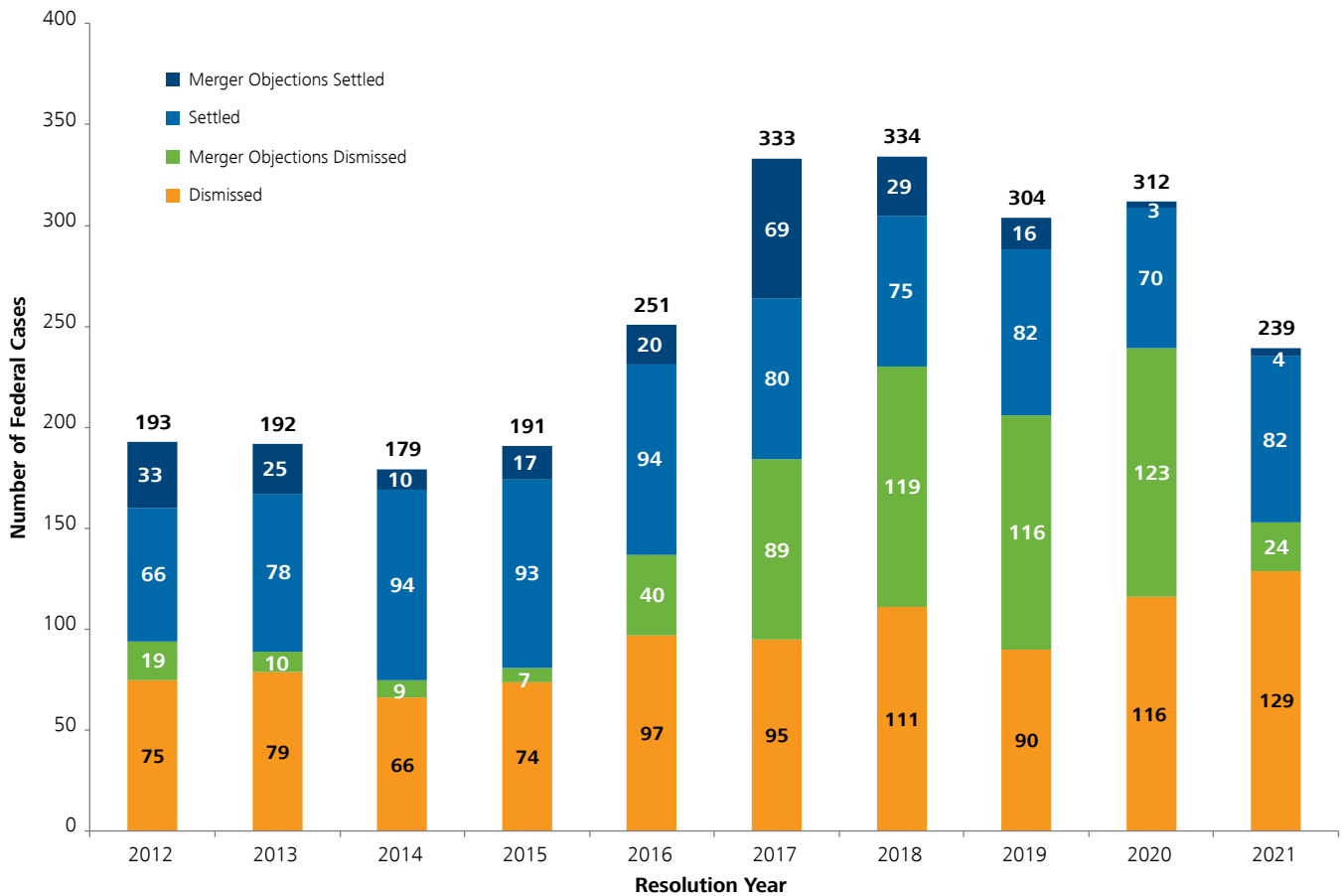
In total, six cases with claims of money laundering were filed in the 2019–2020 period, with three cases filed each year. No cases with money laundering claims were filed in 2021. See Figure 10.

Trends in Resolutions

Resolutions consist of both dismissed and settled cases.⁶ In any one year, the aggregate number of resolutions may be affected by changes in either or both categories. For our analysis, we review changes within these categories as well as the trends for merger objections and non-merger-objection cases separately. In addition, we review the current status of securities class action suits filed in the last 10 years.

In 2021, 239 cases were resolved, the lowest recorded level of resolutions since 2015. Of those, 153 were dismissed and 86 resolved through a settlement. This is a decrease in both aggregate resolutions and dismissals compared to 2020. However, compared to the pre-2017 resolutions, the 239 cases resolved is well within the historical range of annual resolutions. See Figure 11.

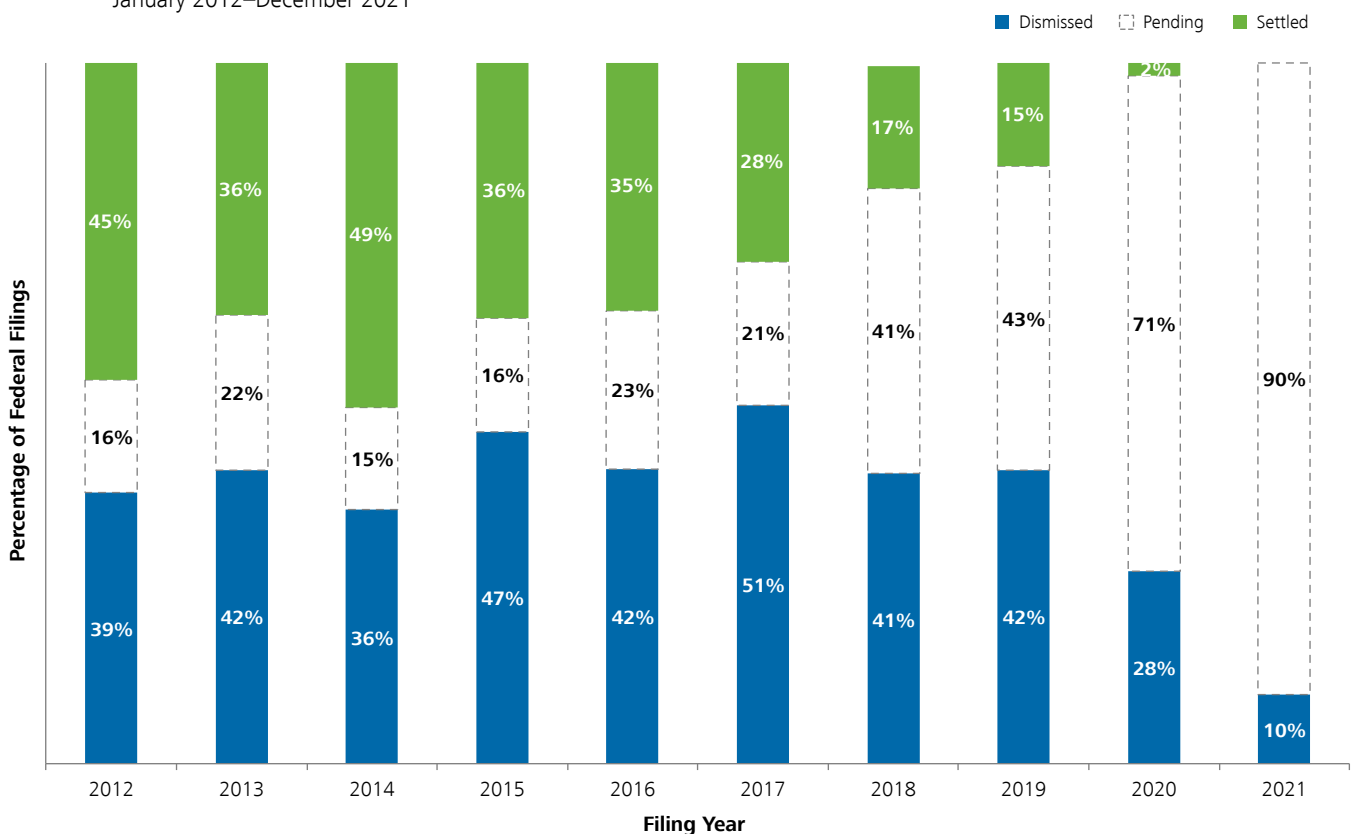
Figure 11. **Number of Resolved Cases: Dismissed or Settled**
January 2012–December 2021



A review of the resolution pattern by type of case reveals differing trends. Although not a substantial increase, the number of non-merger-objection resolutions in 2021 was the highest recorded in the last 10 years. While there was a modest increase in both the number of non-merger-objection suits dismissed and settled relative to 2020, there was a decrease in dismissed merger-objection cases. In fact, the number of merger-objection suits dismissed in 2021 was more than 80% fewer than the number of similar suits dismissed in 2020. This decline in the number of dismissed merger-objection suits was more than sufficient to offset the increase in standard case resolutions, resulting in a lower aggregate number of cases resolved in 2021.

For each filing year since 2015, more cases have been resolved in favor of the defendant than have been settled. This is consistent with historical trends, which have indicated that settlements typically occur later in the litigation process. Reviewing cases filed in 2020, as of December 2020, 6% were dismissed and 94% remained pending.⁷ For the same group of cases, as of December 2021, 28% were dismissed and only 2% were settled. Of the cases filed in 2021, a higher proportion of cases were dismissed in the year of filing than the cases filed in 2020, with 10% dismissed as of year-end 2021. See Figure 12.

Figure 12. **Status of Cases as Percentage of Federal Filings by Filing Year**
 Excludes Merger Objections and Verdicts
 January 2012–December 2021



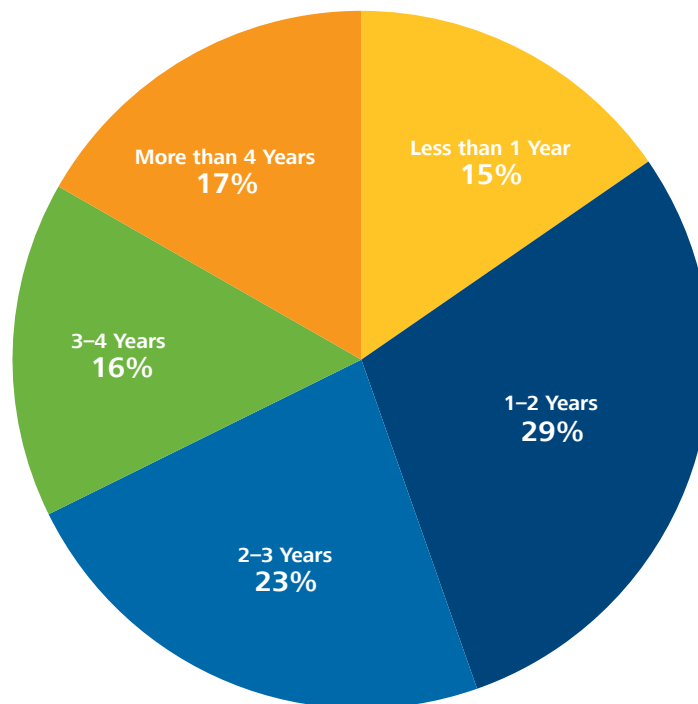
Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

While 83% of cases resolve in four years or less, over half of cases are resolved between one and three years after filing.⁸ See Figure 13.

Figure 13. **Time from First Complaint Filing to Resolution**

Excludes Merger Objections and Laddering Cases

Cases Filed January 2003–December 2017 and Resolved January 2003–December 2021



“The number of merger-objection suits dismissed in 2021 was more than 80% fewer than the number of similar suits dismissed in 2020. This decline in the number of dismissed merger-objection suits was more than sufficient to offset the increase in standard case resolutions, resulting in a lower aggregate number of cases resolved in 2021.”

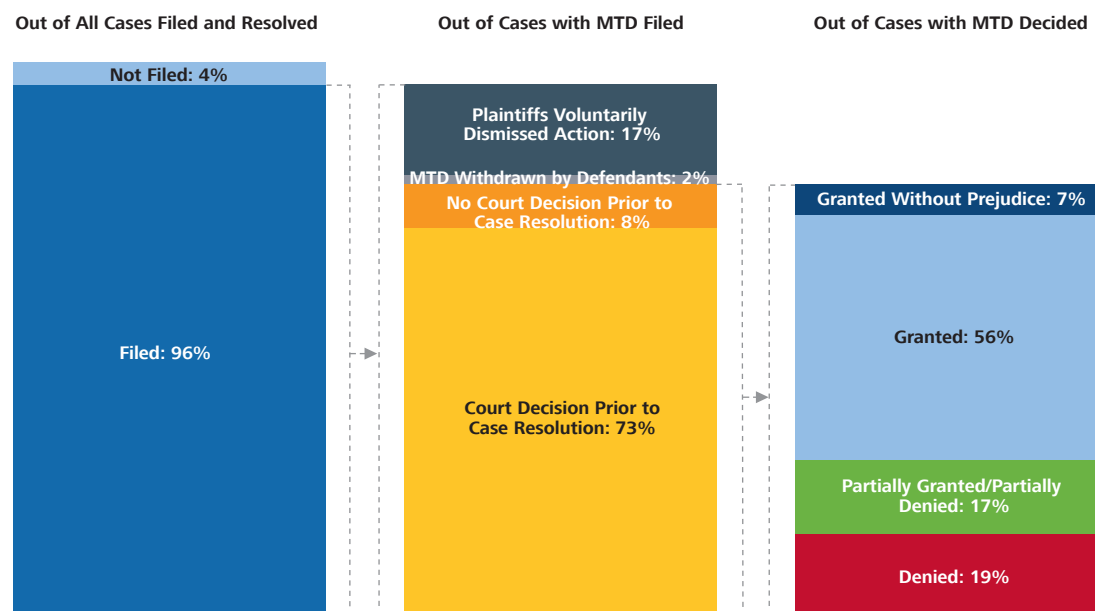
Analysis of Motions

In addition to tracking filing and resolution information for federal securities class actions, NERA also tracks decisions on motions to dismiss and motions for class certification, and the status of any motion as of the resolution of each case.⁹

Motion to Dismiss

Of the securities class action cases filed and resolved between 1 January 2012 and 31 December 2021, a motion to dismiss was filed in 96%. Among those, a decision was reached in 73% of cases. Of the cases with a decision on a motion to dismiss, approximately 56% were granted while only 19% were denied. Lastly, of the 96% of cases with a motion to dismiss filed, plaintiffs voluntarily dismissed the action in 17%, while the motion to dismiss was withdrawn by defendants only in an additional 2%. See Figure 14.

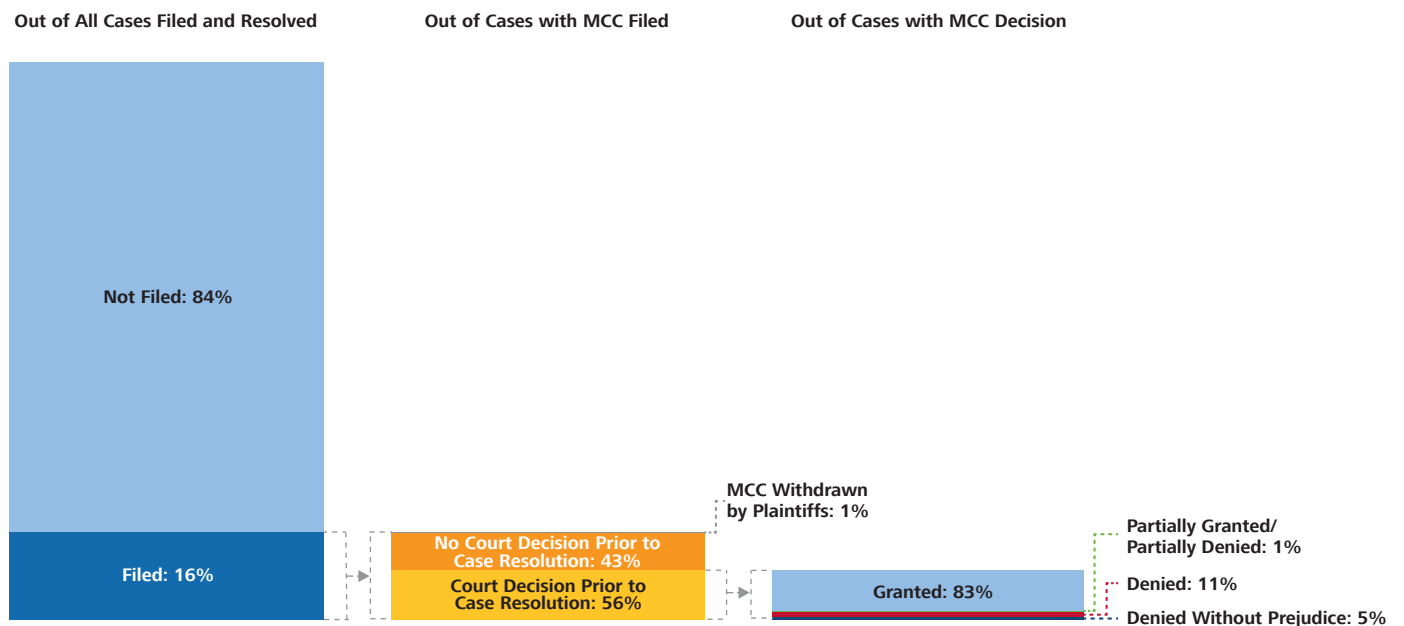
Figure 14. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2012–December 2021



Motion for Class Certification

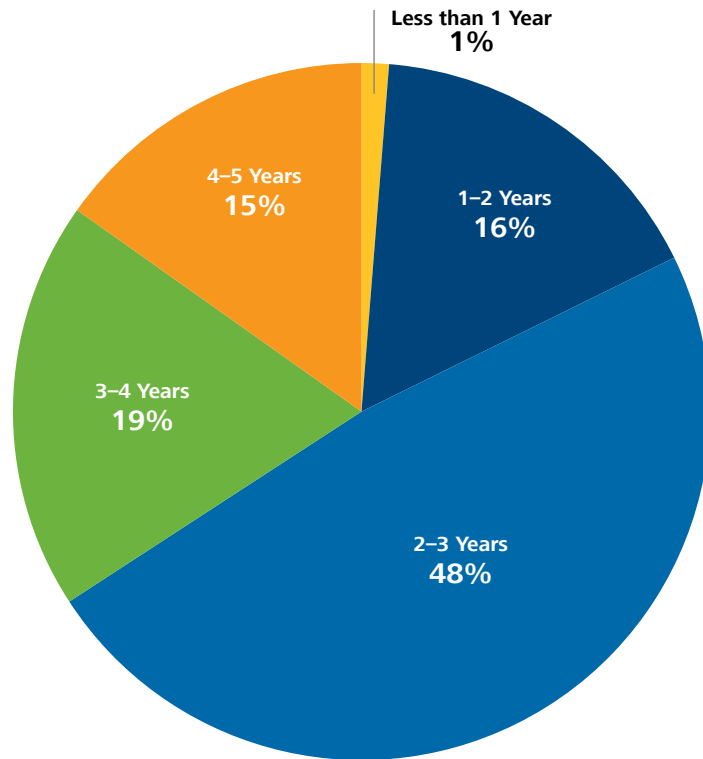
A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021. This is partly due to the fact that a substantial number of cases are either dismissed or settled before the class-certification stage of the case is reached. A decision was reached in 56% of the cases where a motion for class certification was filed, with the motion being withdrawn by plaintiffs in an additional 1% of the cases. Among the cases with a decision, the motion for class certification was granted in 83% and partially granted and partially denied in an additional 1% of cases. See Figure 15.

Figure 15. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2012–December 2021



Approximately half of decisions on motions for class certification occur between two and three years after the filing of the first complaint. See Figure 16.

Figure 16. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2012–December 2021

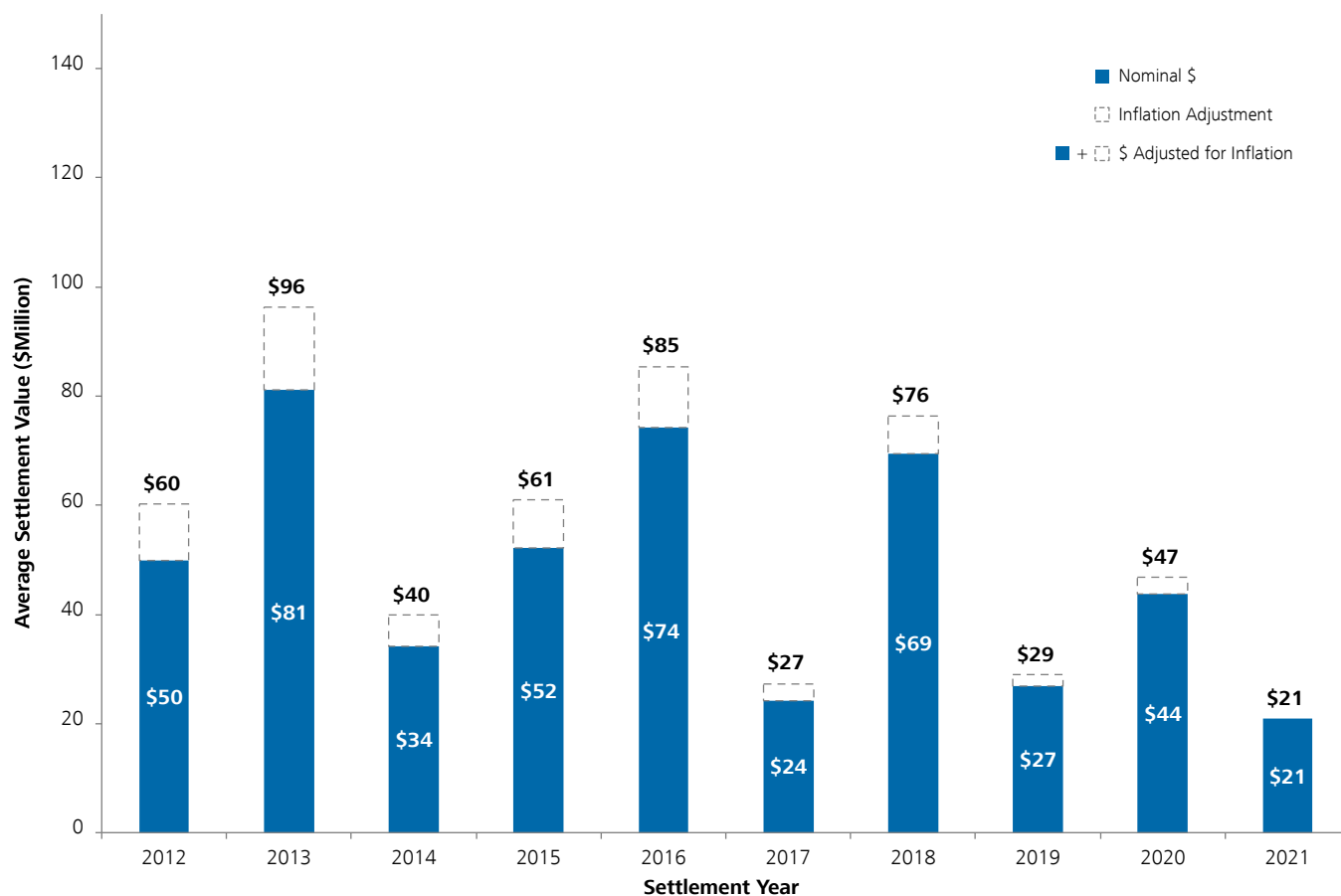


“A motion for class certification was filed in less than 20% of the securities class action suits filed and resolved between 1 January 2012 and 31 December 2021.”

Trends in Settlement Values

In 2021, aggregate settlements amounted to \$1.8 billion. This amount is \$400 million lower than the inflation-adjusted \$2.2 billion aggregate settlement amount in 2019, and considerably lower than the inflation-adjusted amounts of \$3.1 billion and \$5.2 billion in 2020 and 2018, respectively. Trends in settlement values can be evaluated using a variety of metrics, including distributions of settlement values, average settlement values, and median settlement values. While annual average settlement values can be a helpful statistic, these values may be impacted by one or, in some cases, a few very high settlement amounts. Unlike averages, the median settlement value is unaffected by these very high “outlier” settlement amounts and gives insight into the most frequent settlement amounts. To understand what more “typical” cases look like, we also analyze the average and median settlement values for cases with a settlement amount under \$1 billion, thus excluding these “outlier” settlement amounts. For the analysis of settlement values, our data is limited to non-merger-objection cases with positive settlement values.¹⁰

Figure 17. **Average Settlement Value**
Excludes Merger Objections and Settlements for \$0 to the Class
January 2012–December 2021

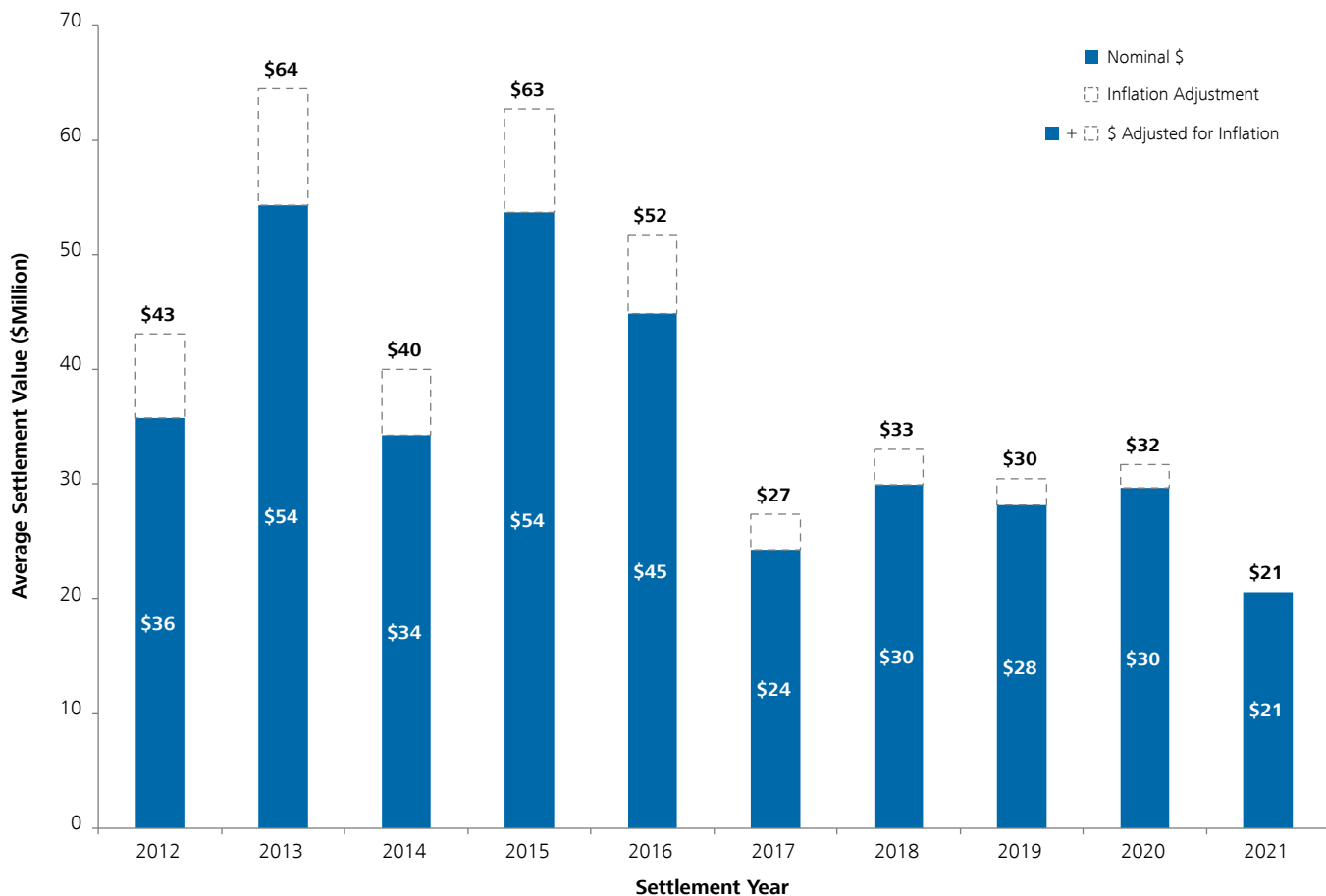


The average settlement value in 2021 was \$21 million, which is more than 50% lower than the 2020 inflation-adjusted average of \$47 million and marks the lowest recorded average in the last 10 years. The inflation-adjusted average settlement value has ranged from a low of \$21 million in 2021 to a high of inflation-adjusted \$96 million in 2013, partly due to the presence or absence of one or two “outlier” or “mega” settlements, which for this purpose are single case settlements of \$1 billion or higher. See Figure 17. Unlike in 2020 when there was one “mega” settlement, there were no cases resolved with a settlement amount above \$1 billion in 2021. In fact, the highest recorded settlement amount in 2021 was \$155 million.

Once settlements greater than \$1 billion are excluded, the inflation-adjusted annual average settlement values trend is more stable, ranging from \$21 million to \$33 million in the last five years. In this group of settlements, the average settlement value for 2021 was \$21 million, still the lowest annual average within the most recent 10 years. See Figure 18.

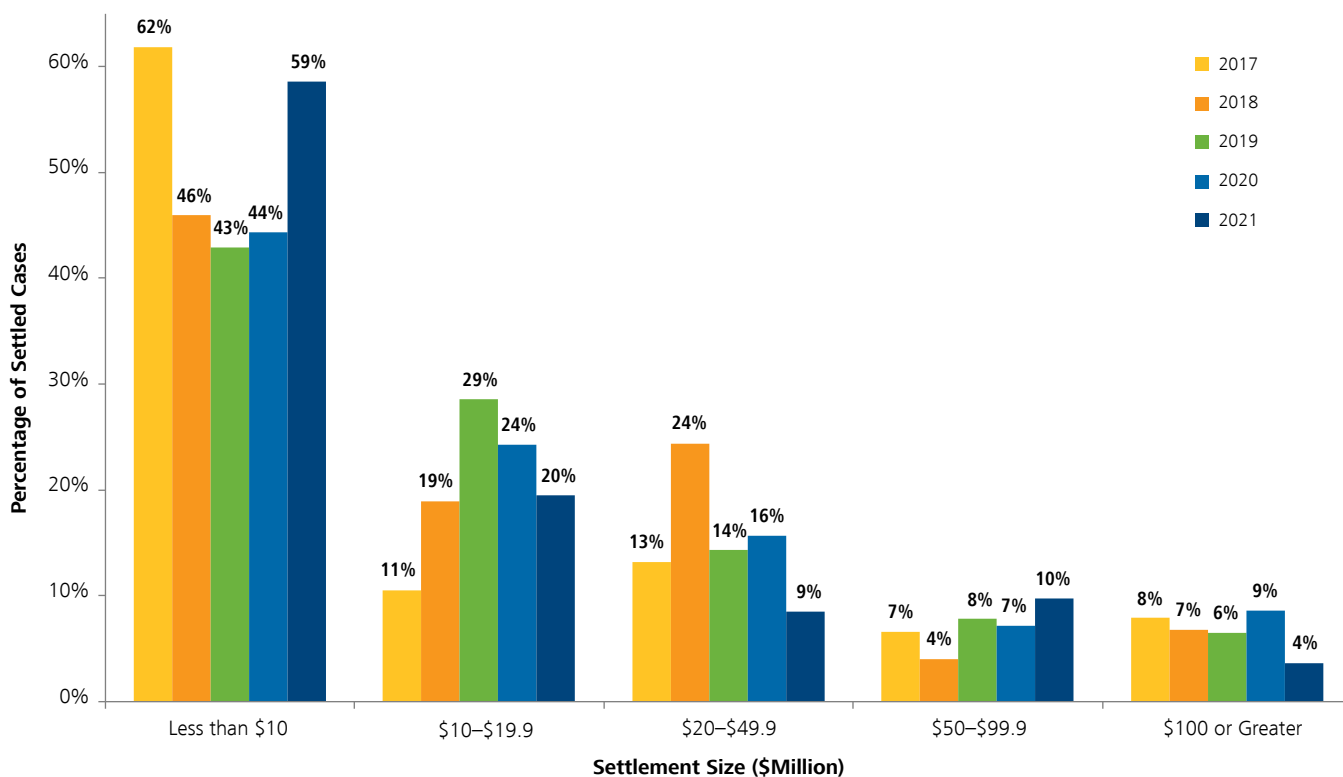
Figure 18. **Average Settlement Value**

Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
January 2012–December 2021



While there was a shift upward in the annual distribution of nominal settlement values between 2017 and 2020, this trend did not persist in 2021. Instead, in 2021, nearly 60% of cases resolved for settlement amounts less than \$10 million. This increase in the proportion of cases settling for lower values in 2021 was accompanied by a decrease in the proportion of cases resolving for \$100 million or greater, with fewer than 5% of settlements falling in this range. See Figure 19.

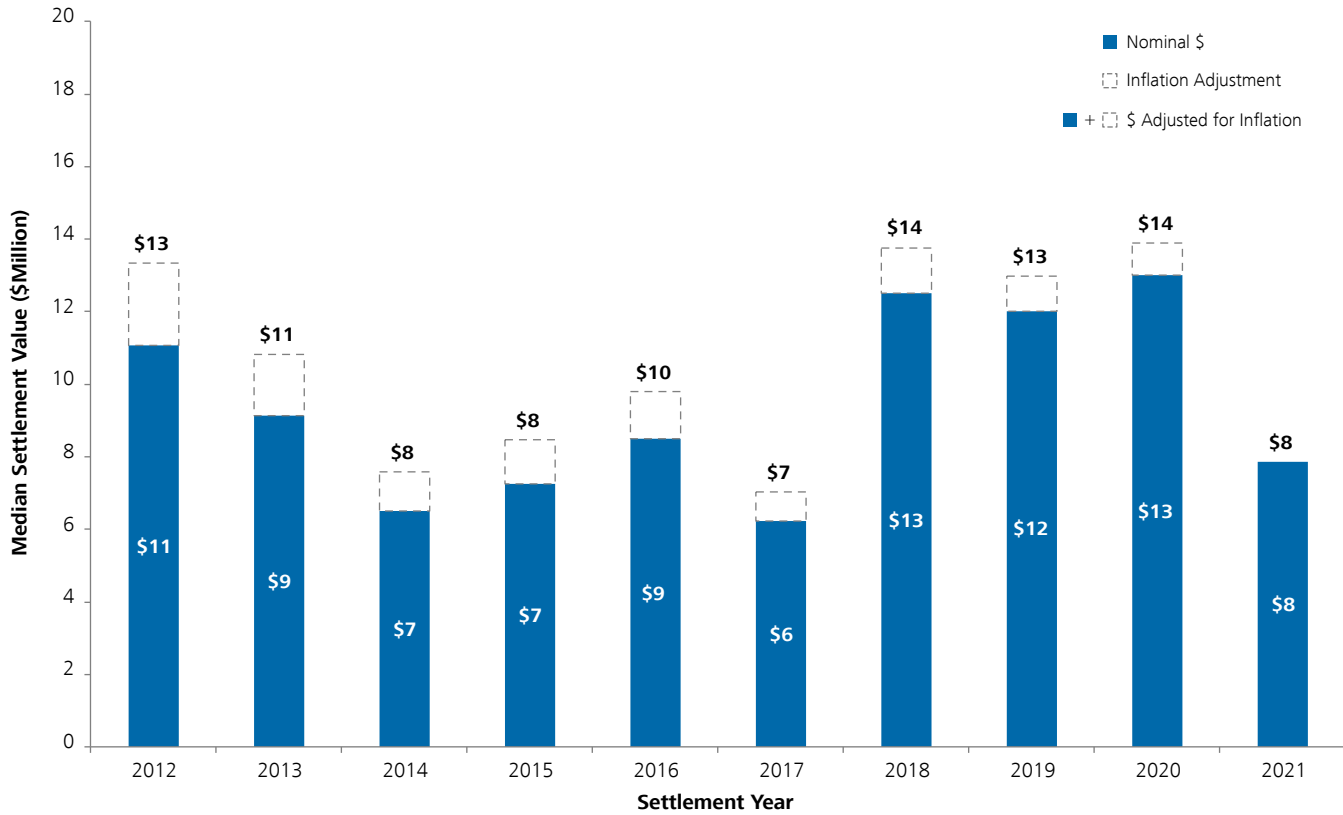
Figure 19. **Distribution of Settlement Values**
 Excludes Merger Objections and Settlements for \$0 to the Class
 January 2017–December 2021



The median annual settlement value for 2021 is approximately 40% lower than the inflation-adjusted median value observed in 2018, 2019, and 2020. For 2021, the median settlement value was \$8 million, the lowest recorded median value since 2017. See Figure 20.

Figure 20. **Median Settlement Value**

Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
January 2012–December 2021



Top Settlements in 2021

Table 1 summarizes the 10 largest settlements reached in securities class action suits between 1 January 2021 and 31 December 2021. In total, the 10 largest settlements accounted for more than 50% of the aggregate settlement amount reached in 2021. Six of the top 10 settlements were reached with defendants in the health technology and services or technology services economic sectors. The Second Circuit was the most common circuit for these cases, accounting for four of the top 10 settlements.

Table 1. **Top 10 2021 Securities Class Action Settlements**

Ranking	Defendant	Filing Date	Settlement Date	Total Settlement Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
1	Snap, Inc.	16 May 17	09 Mar 21	\$154.7	\$41.0	9th	Technology Services
2	DaVita Inc.	1 Feb 17	30 Mar 21	\$135.0	\$41.0	10th	Health Services
3	Allergan plc (f/k/a Actavis plc)	22 Dec 16	17 Nov 21	\$130.0	\$35.2	3rd	Health Technology
4	Tableau Software, Inc.	28 Jul 17	14 Sep 21	\$95.0	\$27.7	2nd	Technology Services
5	Cognizant Technology Solutions Corp.	5 Oct 16	20 Dec 21	\$95.0	\$19.5	3rd	Technology Services
6	The Southern Company	20 Jan 17	05 Feb 21	\$87.5	\$24.9	11th	Utilities
7	MetLife, Inc.	12 Jan 12	14 Apr 21	\$84.0	\$23.5	2nd	Finance
8	Towers Watson & Co.	21 Nov 17	21 May 21	\$75.0	\$13.7	4th	Commercial Services
9	CannTrust Holdings Inc.	10 Jul 19	02 Dec 21	\$66.4	\$0	2nd	Health Technology
10	Chemical and Mining Company of Chile Inc.	19 Mar 15	26 Apr 21	\$62.5	\$12.1	2nd	Process Industries
	Total			\$985.1	\$238.5		

Note: Fees only, expenses are not available yet.

Table 2 summarizes the 10 largest federal securities class action settlements since the passage of PSLRA. Since the Petrobras settlement in 2018, the settlements in this list have all been above \$1 billion, ranging from \$1.1 billion to \$7.2 billion.

Table 2. **Top 10 Federal Securities Class Action Settlements** (As of 31 December 2021)

Ranking	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value (\$Million)	Codefendant Settlements		Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
					Financial Institutions Value (\$Million)	Accounting Firms Value (\$Million)			
1	ENRON Corp.	22 Oct 01	2003–2010	\$7,242	\$6,903	\$73	\$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 02	2004–2005	\$6,196	\$6,004	\$103	\$530	2nd	Communications
3	Cendant Corp.	16 Apr 98	2000	\$3,692	\$342	\$467	\$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 02	2007	\$3,200	No codefendant	\$225	\$493	1st	Producer Manufacturing
5	Petroleo Brasileiro S.A.- Petrobras	8 Dec 14	2018	\$3,000	\$0	\$50	\$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 Jul 02	2006	\$2,650	No codefendant	\$100	\$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 09	2013	\$2,425	No codefendant	No codefendant	\$177	2nd	Finance
8	Household International, Inc.	19 Aug 02	2006–2016	\$1,577	Dismissed	Dismissed	\$427	7th	Finance
9	Nortel Networks	2 Mar 01	2006	\$1,143	No codefendant	\$0	\$94	2nd	Electronic Technology
10	Royal Ahold, NV	25 Feb 03	2006	\$1,100	\$0	\$0	\$170	2nd	Retail trade
Total				\$32,224	\$13,249	\$1,017	\$3,368		

NERA-Defined Investor Losses

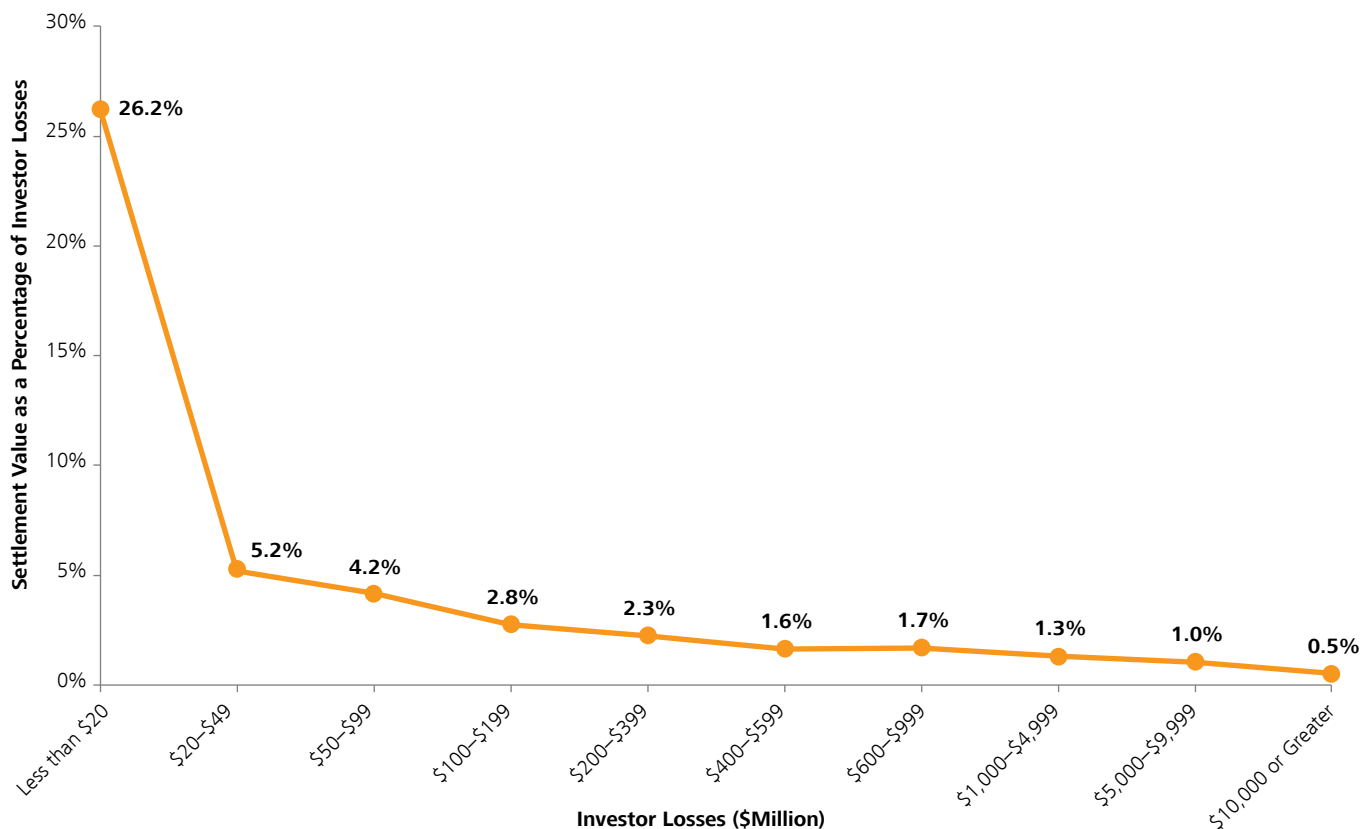
To estimate the potential aggregate loss to investors as a result of purchasing the defendant's stock during the alleged class period, NERA has developed its own proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Losses measure is constructed assuming investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. Over the years, NERA has reviewed and examined more than 2,000 settlements and found, of the variables analyzed, this proprietary variable is the most powerful predictor of settlement amount.¹¹

While settlement values are highly correlated with Investor Losses, the relationship between settlement amount and Investor Losses is not linear. More specifically, the ratio is higher for smaller cases than for cases with larger NERA-Defined Investor Losses. See Figure 21.

Figure 21. **Median Settlement Value as a Percentage of NERA-Defined Investor Losses**

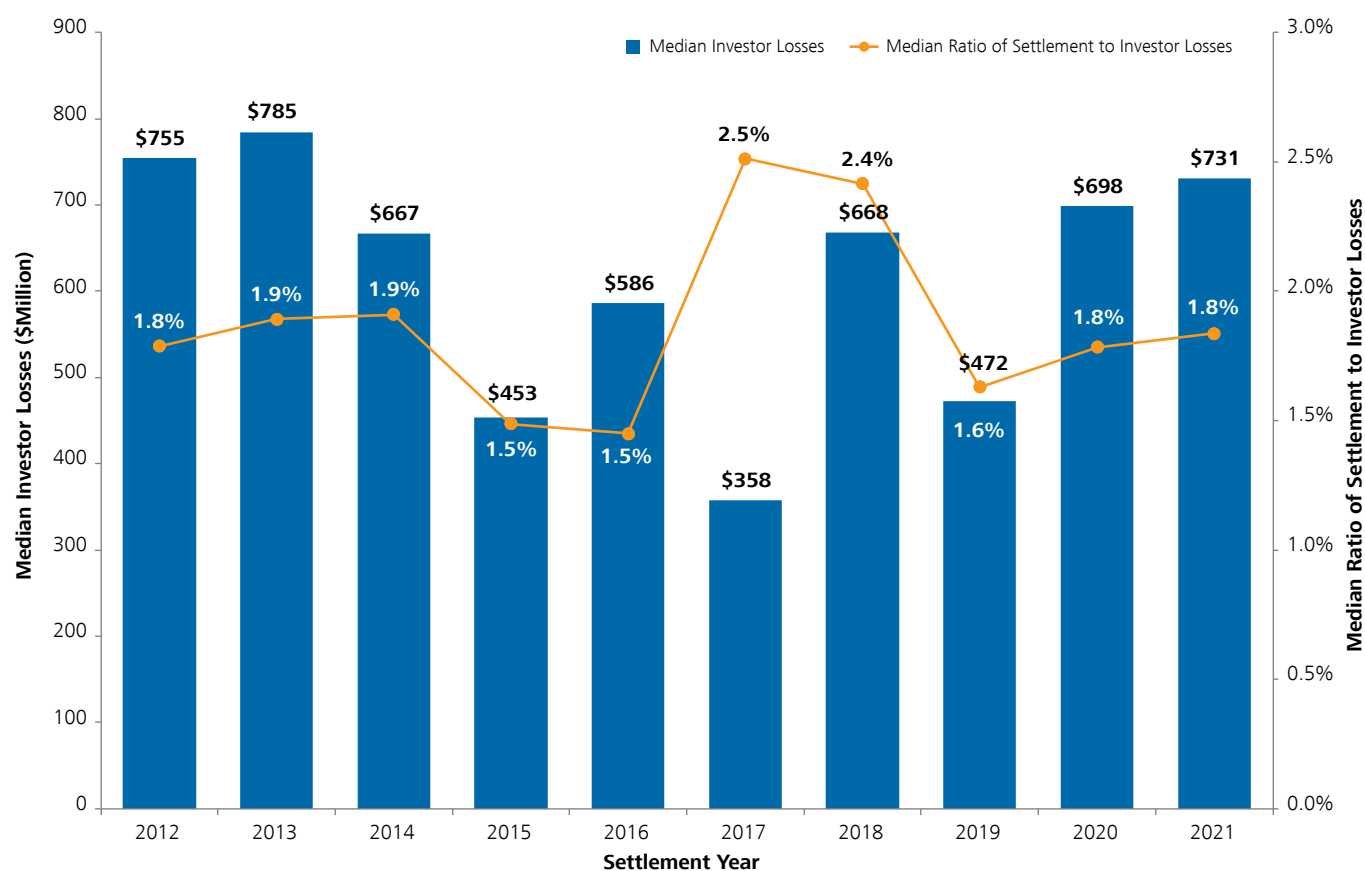
By Investor Losses

Cases Filed and Setted December 2012–December 2021



The median Investor Losses for cases settled in 2021 was \$731 million, the highest recorded value since 2013, but less than 5% higher than the 2020 value. Over the last 10 years, the annual median Investor Losses have ranged from a high of \$785 million to a low of \$358 million. Following an uptick in the median ratio of settlement amount to Investor Losses in 2017 to 2.5%, the ratio declined through 2019, with only modest increases in both 2020 and 2021. See Figure 22.

Figure 22. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2012–December 2021

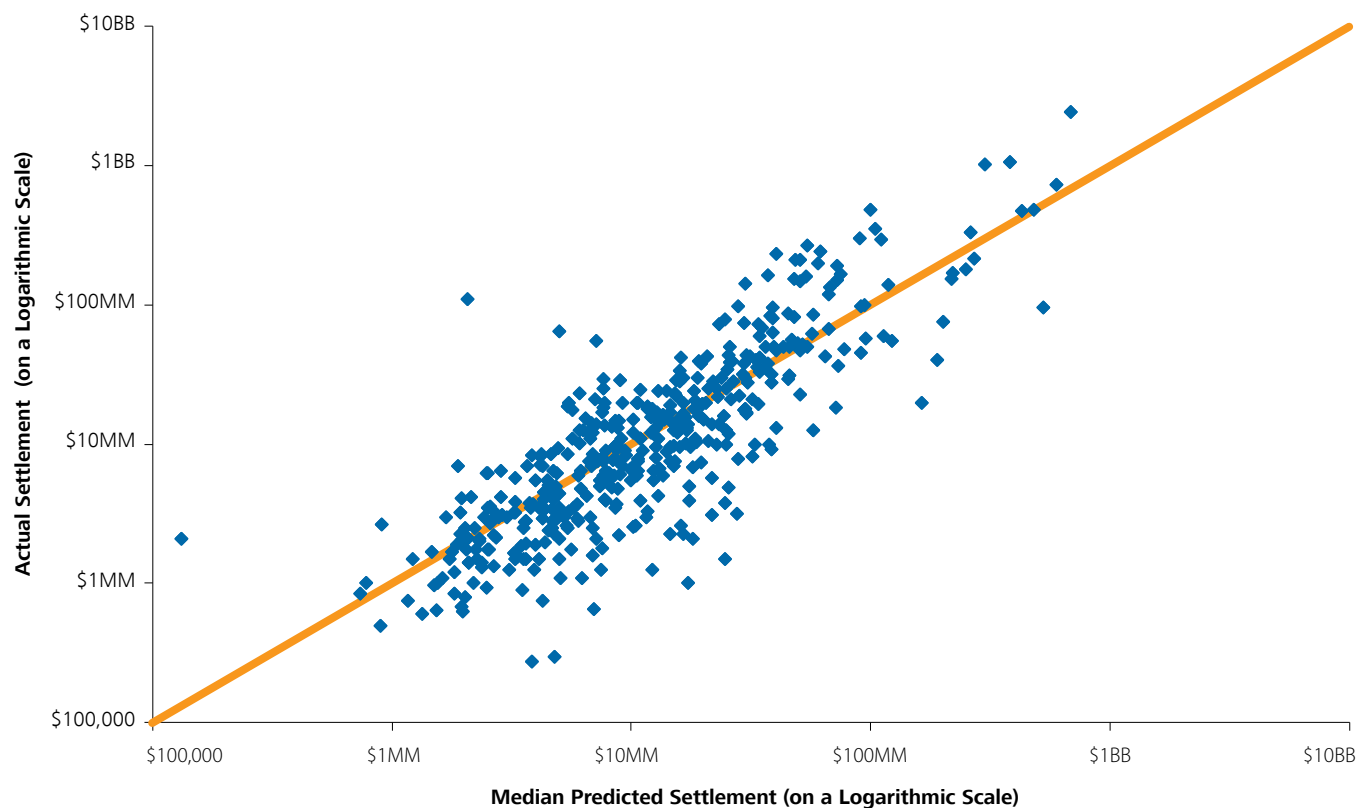


In analyzing drivers of settlement amounts, NERA has identified the following key factors:

- NERA-Defined Investor Losses, as defined above;
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities, in addition to common stock, alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- The stage of litigation at the time of settlement; and
- Whether an institution or public pension fund is lead or named plaintiff.

Among cases settled between December 2012 and September 2021, these factors account for a substantial fraction of the variation observed in actual settlements. See Figure 23.

Figure 23. **Predicted vs. Actual Settlements**
Investor Losses Using S&P 500 Index
Cases Settled December 2012–September 2021

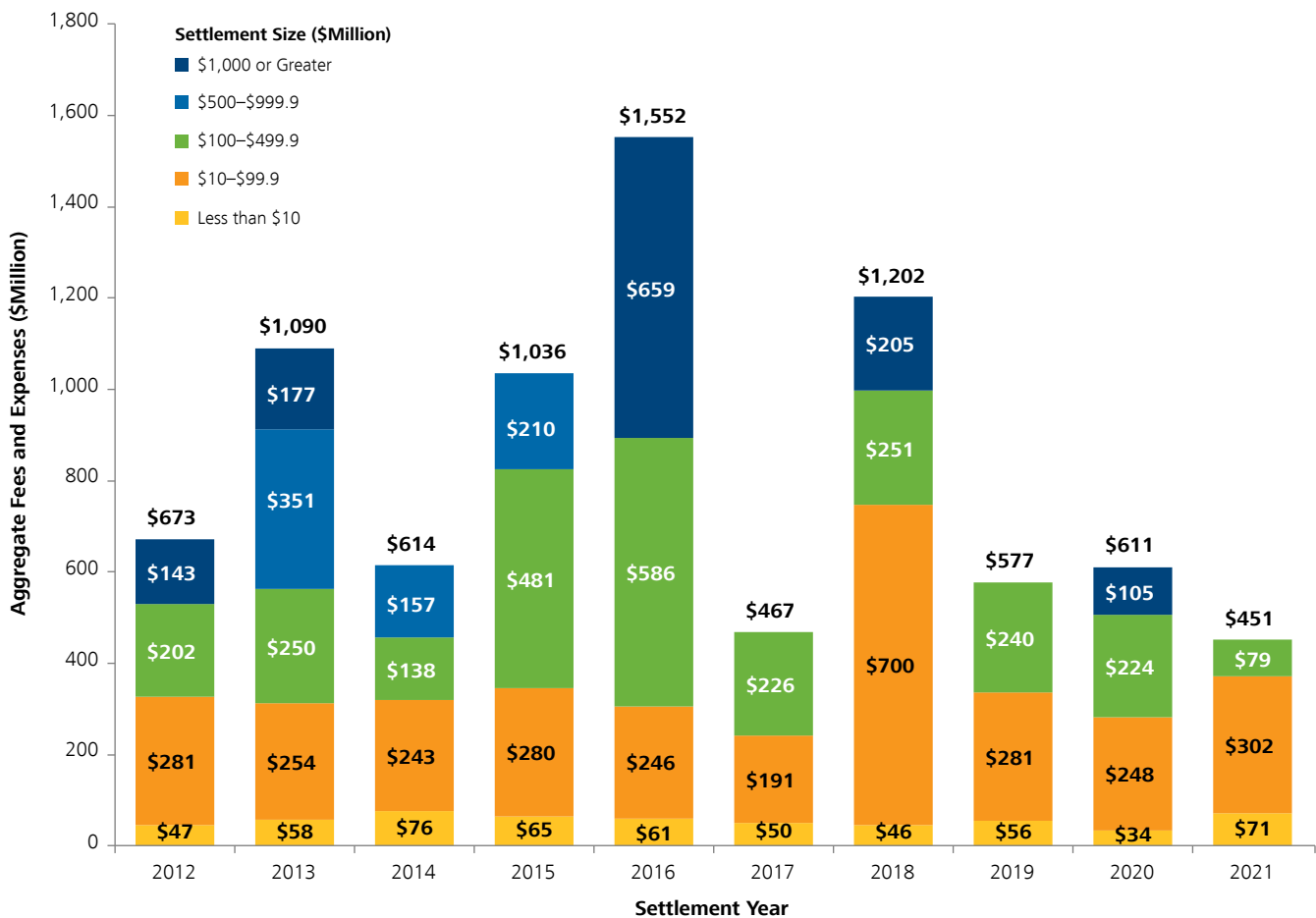


Trends in Plaintiffs' Attorneys' Fees and Expenses

Plaintiffs' attorneys' fees and expenses related to work on securities class action suits have varied substantially over time by settlement size. However, the median of plaintiffs' attorneys' fees and expenses as a percentage of settlement amount has been fairly consistent since 1996.

Between 2012 and 2020, the annual aggregate plaintiffs’ attorneys’ fees and expenses ranged from a low of \$467 million in 2017 to a high of \$1.6 billion in 2016. For 2021, the aggregate plaintiffs’ attorneys’ fees and expenses associated with settled cases was \$451 million. Given the absence of any settlements above \$500 million in 2021, similar to 2019, there were no plaintiffs’ attorneys’ fees and expenses associated with settlements of \$500 million or higher. And while there was an increase in the aggregate fees and expenses for settlements under \$100 million, there was an offsetting decrease in the aggregate fees and expenses for settlements between \$100 million and \$500 million. See Figure 24.

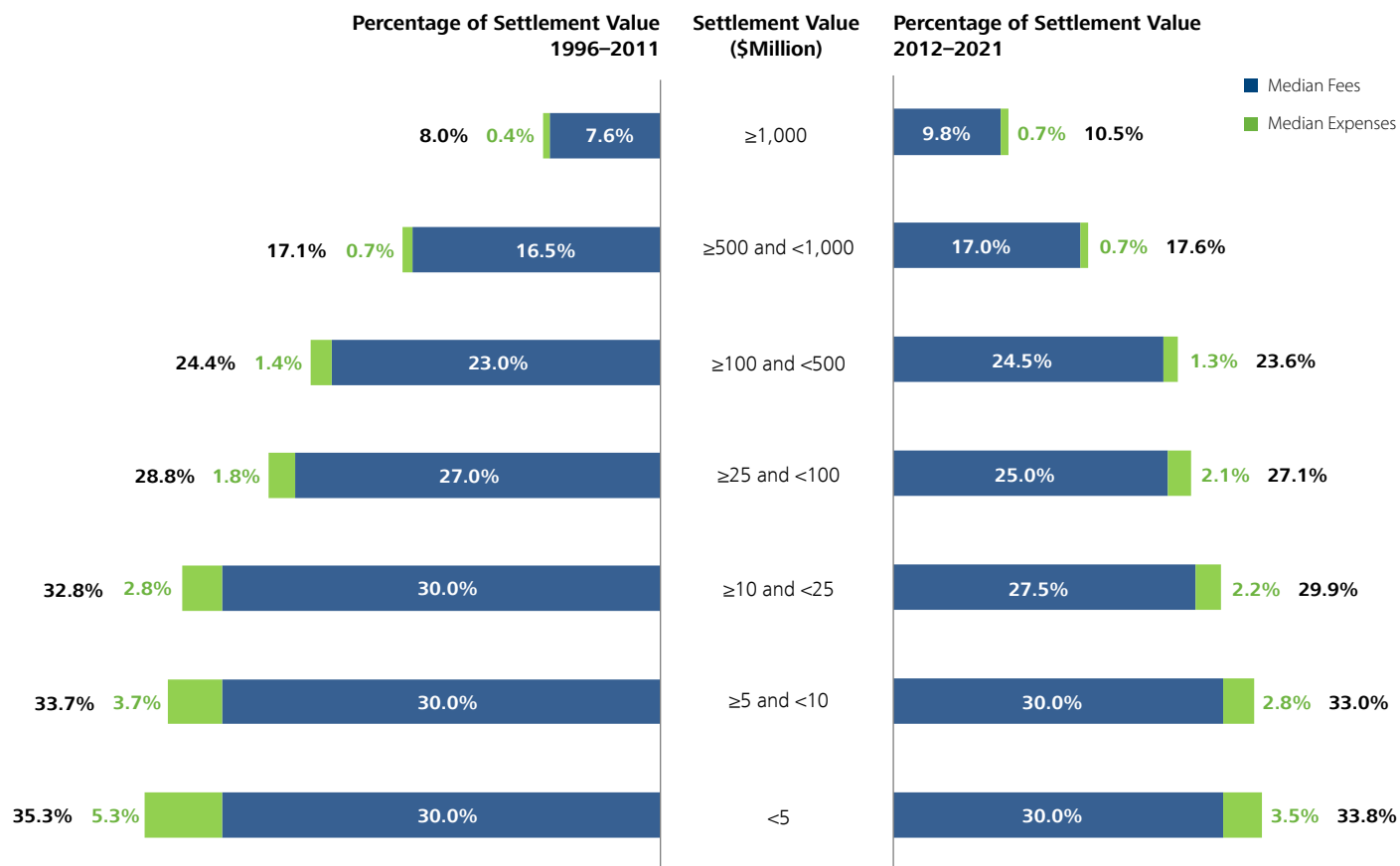
Figure 24. **Aggregate Plaintiffs’ Attorneys’ Fees and Expenses by Settlement Size**
January 2012–December 2021



As settlement size increases, fees and expenses represent a declining percentage of settlement value. More specifically, while the percentage is only 10.5% for cases that settled for over \$1 billion in the last 10 years, for cases with settlement amounts under \$5 million, fees and expenses represent 34% of the settlement. See Figure 25.

Figure 25. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**

Excludes Merger Objections and Settlements for \$0 to the Class



Conclusion

New securities class action cases filed declined to 205 in 2021, the lowest number of annual filings in the last 10 years but well within the historical range. This decline in total filings was driven primarily by the 85% decrease in merger-objection cases between 2020 and 2021. Due to the numerous filings related to SPACs, the percentage of cases alleging a violation related to merger integration issues increased to 17% while violations related to misled future performance, the most common allegation, were included in 40% of the 2021 suits filed. In 2021, there was a decline in total resolutions, resulting from a notable decrease in the number of merger-objection cases dismissed.

Of the 96% of cases with a motion to dismiss filed, a decision was reached in 73% of the cases prior to resolution of the case, with the motion to dismiss granted in approximately 56% of these cases. Among cases with a motion for class certification filed, a decision was reached in 56% prior to the case resolution, with the motion for class certification granted in 83% of the cases with a decision.

Aggregate settlements in 2021 amounted to \$1.8 billion, the lowest total in the 2018–2021 period. No cases resolved with a settlement amount of \$1 billion or higher in the last year. The average settlement value for all non-merger-objection cases with positive settlement values, and cases of less than \$1 billion, decreased in 2021 to \$21 million. The median settlement value showed a similar trend, declining by approximately 40% to \$8 million.

Notes

- 1 This edition of NERA's report on "Recent Trends in Securities Class Action Litigation" expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Planchich, and others. The authors thank Dr. David Tabak and Benjamin Seggerson for helpful comments on this edition. We thank researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA's proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.
- 2 Data for this report were collected from multiple sources, including Institutional Shareholder Services, complaints, case dockets, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, and public press reports.
- 3 NERA tracks class actions involving securities that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, the first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.
- 4 Most securities class action complaints include multiple allegations. For this analysis, all allegations from the complaint are included and, as such, the total number of allegations exceeds the total number of filings.
- 5 It is important to note that, due to the small number of cases in some of these categories, the findings summarized here may be driven by one or two cases.
- 6 Here the word "dismissed" is used as shorthand for all cases resolved without settlement; it includes cases in which a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an unsuccessful motion for class certification.
- 7 See Janeen McIntosh and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review," NERA Economic Consulting, p. 13, Figure 11, available at <https://www.nera.com/publications/archive/2021/recent-trends-in-securities-class-action-litigation--2020-full-y.html>.
- 8 Analyses in this section exclude IPO laddering cases and merger-objection cases.
- 9 NERA's analysis of motions only includes securities class action suits involving common stock, with or without other securities, and an allegation of Rule 10b-5 violation alone or accompanied by Section 11, and/or Section 12 violation.
- 10 For our analysis, NERA includes settlements that have had the first hearing of approval of case settlement by the court. This means we do not include partial settlements or tentative settlements that have been announced by plaintiffs and/or defendants. When evaluating trends in average and median settlement values, we limit our data to non-merger-objection cases with settlements of more than \$0 to the class.
- 11 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock over a defined class period. As a result, we have not calculated this metric for cases such as merger objections.

About NERA

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

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