

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

MOTION SEQ. 010

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT,  
APPROVING FORM AND MANNER OF NOTICE, AND SETTING DATE FOR  
HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS, Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund (“Lead Plaintiff”), on behalf of the proposed Settlement Class (as defined below), has applied to the Court pursuant to § 904 of the New York Civil Practice Law and Rules (“CPLR”) for an

Order authorizing the dissemination of notice of the proposed settlement of this Action to the proposed Settlement Class for settlement purposes only; and

WHEREAS, the proposed Settlement is embodied in the Stipulation and Agreement of Settlement, dated as of April 11, 2022 with annexed exhibits (collectively, the "Stipulation"), which has been submitted to the Court with Lead Plaintiff's motion; and

WHEREAS, the Court has considered the Stipulation and Lead Plaintiff's submissions; and

WHEREAS, all terms of the proposed Settlement are subject to the Court's approval after notice has been provided to the Settlement Class and the Court has held a Settlement Hearing; and

WHEREAS, all capitalized terms used in this Order that are not otherwise defined herein shall have the meaning set forth in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Preliminary Approval of Settlement.** The Court preliminarily finds that:
  - (a) the Settlement resulted from informed, extensive arm's-length negotiations, including mediation under the direction of an experienced mediator, Michelle Yoshida, Esq.; and
  - (b) the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, such that it warrants providing notice of the Settlement to the Settlement Class.
2. **Provisional Certification of the Settlement Class.** The Court hereby provisionally certifies the Settlement Class solely for purposes of the proposed Settlement, pursuant to CPLR §§ 901 and 902. The Settlement Class is: 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. 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.

3. This provisional certification of the Settlement Class is made for the sole purpose of the consummation of the proposed settlement of the Action in accordance with the Stipulation. If the Court does not grant final approval of the proposed Settlement or if the Court's grant of final approval does not become Final for any reason, this provisional class certification shall be deemed void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

4. For purposes of the proposed settlement of the Action, and only for those purposes, and subject to the terms of the Stipulation, the Court provisionally finds that the requirements of CPLR §§ 901 and 902 appear to be satisfied, in that:

(a) The Settlement Class appears to be so numerous that joinder of all members would be impracticable;

(b) Lead Plaintiff has alleged questions of fact and law that would be common to all Settlement Class Members, which predominate over questions affecting only individual class members;

(c) Based on Lead Plaintiff's allegations that Defendants engaged in uniform conduct affecting all Settlement Class Members, Lead Plaintiff's claims would be typical of those of the other members of the Settlement Class;

(d) Lead Plaintiff and Lead Counsel appear to be capable of fairly and adequately protecting the interests of the members of the Settlement Class;

(e) A class action would be superior to other available methods for the fair and efficient adjudication of the Action; and

(f) Consistent with CPLR § 902, (i) there appears to be no overriding interest of individual class members to prosecute separate actions; (ii) class certification would not be impracticable or inefficient; (iii) this Action is the only-filed litigation concerning the events and matters at issue; (iv) this Court is an appropriate forum for these claims; and (v) the Settlement Class would be manageable.

5. Solely for purposes of the proposed Settlement, the Court hereby provisionally certifies City of Pittsburgh Comprehensive Municipal Pension Trust Fund as the Class Representative and provisionally appoints Labaton Sucharow LLP as Class Counsel.

6. **Settlement Hearing.** The Court will hold a settlement hearing (the "Settlement Hearing") on December 1, 2022 at 11:30 a.m., either in person or remotely, in the Court's discretion, in Part 53 of the Supreme Court of the State of New York, New York County, Courtroom 238, 60 Centre Street, New York, NY 10007 for the following purposes: (i) to determine whether the Court should grant final certification of the Action as a class action for purposes of the Settlement and confirm its appointment of Lead Plaintiff and Lead Counsel as Class Representative and Class Counsel, respectively; (ii) to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class;

(iii) to determine 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) to determine whether the Plan of Allocation for the distribution of the Net Settlement Fund is reasonable and should be approved; (v) to rule upon 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) to consider any objections or requests for exclusion received by the Court; and (vii) to consider any other matters that may properly be brought before the Court in connection with the Settlement, as the Court may deem appropriate.

7. Papers in support of the Settlement, the Plan of Allocation, and Lead Counsel's application for attorneys' fees and payment of litigation expenses shall be filed and served by Lead Counsel no later than thirty-five (35) calendar days prior to the Settlement Hearing. Reply papers shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

8. Any member of the Settlement Class may appear at the Settlement Hearing and show cause why the proposed Settlement embodied in the Stipulation should or should not be approved as fair, reasonable, adequate and in the best interests of the Settlement Class, and/or to present opposition to the Plan of Allocation or to the application of Lead Counsel for attorneys' fees and litigation expenses. However, no Settlement Class Member shall be heard or entitled to contest the approval of the Settlement, or the terms of the Plan of Allocation, or the application by Lead Counsel for an award of attorneys' fees and litigation expenses, unless, no later than twenty-one (21) calendar days prior to the Settlement Hearing, that Class Member (i) has filed said objections, papers, and briefs with the Clerk of the Supreme Court of the State of New York,

County of New York, Commercial Division; and (ii) has served written objections, by hand or first-class mail, as well as copies of any papers, and/or briefs in support of his, her, or its position, upon each of the following counsel for receipt no later than twenty-one (21) calendar days prior to the Settlement Hearing:

**Court Clerk**

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

**Lead Counsel for Lead Plaintiff**

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

**Defendants' Counsel Representative**

Sheryl Shapiro Bassin, Esq.  
Wilson Sonsini Goodrich & Rosati, P.C.  
1301 Avenue of the Americas, 40th Floor  
New York, New York 10019

9. Any objections must include: (i) the name, address, telephone number, and email address of the objector and must be signed by the objector; (ii) a statement that the objector is objecting to the proposed Settlement, 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.); (iii) the 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 the objector wishes to bring to the Court's attention; and (iv) documents sufficient to prove the objector's 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 the objector purchased, acquired, and sold from March 1, 2019, the date of the SPO, through November 5, 2020, as well as the dates, quantities, and prices of each such purchase, acquisition, and sale during the Class Period. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in this Order and in the Notice shall be deemed to have waived the objection and shall forever be 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. Settlement Class Members submitting written objections are not required to attend the Settlement Hearing, but any Settlement Class Member wishing to be heard orally in opposition to the approval of the Settlement the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses must file a written objection and indicate in the written objection his, her, or its intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

10. By objecting to the Settlement, the Plan of Allocation, and/or the application by Lead Counsel for an award of attorneys' fees and litigation expenses, or otherwise requesting to be heard at the Settlement Hearing, a Person shall be deemed to have submitted to the jurisdiction

of the Court with respect to the subject matter of the Settlement, including, but not limited to, enforcement of the terms of the Settlement.

11. If approved, all Settlement Class Members will be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Judgment and all releases provided for therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiff's Released Claims or any determination of the Court affecting Settlement Class Members, regardless of whether or not a Settlement Class Member objects or submits a Proof of Claim form.

12. Any member of the Settlement Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If any Settlement Class Member chooses to hire an attorney at his, her, or its own expense, that attorney must file a notice of appearance with the Court and serve it on Lead Counsel so that the notice is received twenty-one (21) days prior to the Settlement Hearing. Absent such notice of appearance, each Settlement Class Member will be represented by Lead Counsel.

13. The Court reserves the right (i) to adjourn or continue the Settlement Hearing, without further individual notice to Settlement Class Members; (ii) to approve the Stipulation with modification(s) approved by the Parties and without further individual notice to Settlement Class Members; (iii) to modify the Plan of Allocation; and (iv) to award such attorneys' fees and expenses from the Net Settlement Fund as the Court finds fair and reasonable. The Court retains jurisdiction over this Action to consider all further applications arising out of or otherwise relating to the proposed Settlement and as otherwise warranted.

14. **Mailing and Publication of Notice.** The Court approves the form of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses



("Notice") (annexed hereto as Exhibit 1); the Proof of Claim and Release form ("Claim Form") (annexed hereto as Exhibit 2); and the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Summary Notice") (annexed hereto at Exhibit 3), finds that the procedures established for publication, mailing, and distribution of such documents, substantially in the manner and form set forth in this Order, meet the requirements of CPLR §§ 904 & 908, the Due Process Clause of the United States Constitution, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7), and the rules of this Court, and constitute the best notice practicable under the circumstances and constitute due and sufficient notice to all persons and entities entitled to notice.

15. The Court approves the appointment of A.B. Data, Ltd. as the Claims Administrator to supervise and administer the notice procedure set forth herein, as well as the processing of claims, as more fully set forth below.

(a) The Claims Administrator shall cause the Notice and the Claim Form, substantially in the forms annexed hereto as Exhibits 1 and 2, respectively, to be mailed, by first-class mail, postage prepaid, no later than ten (10) business days after entry of this Order ("Notice Date"), to all Settlement Class Members who can be identified with reasonable effort. Defendant Benefitfocus, to the extent it has not already done so, no later than ten (10) calendar days following entry of this Order, shall provide, or shall cause to be provided, to Lead Counsel or the Claims Administrator, at no cost to Lead Plaintiff or the Settlement Class, the Company's transfer records lists in electronic searchable form, containing the names and addresses of Persons who purchased or acquired Benefitfocus common stock during the Class Period, to the extent such lists are reasonably available from Benefitfocus's transfer agent.

(b) The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers, such as brokerage firms and other persons or entities, that purchased or acquired Benefitfocus common stock during the Class Period as record owners but not as beneficial owners. These nominees shall either: (a) within ten (10) calendar days of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all beneficial owners for which they 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) within ten (10) calendar days of receipt of the Notice, 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. Nominees who elect to send the Notice to their beneficial owners shall also send a statement to the Claims Administrator confirming that the mailing was made and shall retain their 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, the nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought.

(c) The Court directs that Lead Counsel shall cause the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date.

(d) The Notice, the Summary Notice, and the Claim Form, and any updates after dissemination, shall also be placed on the website created for the Settlement.

16. Lead Counsel shall, at least seven (7) calendar days before the Settlement Hearing, file with the Court proof of mailing of the Notice and Claim Form, and proof of publication of the Summary Notice.

17. **Claims Process.** In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the Stipulation, each claimant must take the following actions and is subject to the following conditions:

18. The claimant must submit a properly executed Claim Form, substantially in the form annexed hereto as Exhibit 2, to the Claims Administrator, at the address indicated in the Notice, postmarked or received no later than one hundred twenty (120) calendar days after the Notice Date. Each Claim Form shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class or overnight mail, postage prepaid) as long as the Claim Form is actually received before a distribution of the Net Settlement Fund. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice. Any Settlement Class Member who does not timely submit a Claim Form within the time provided for shall be barred from sharing in the distribution of the Net Settlement Fund, unless otherwise ordered by the Court or allowed by Lead Counsel, but nonetheless shall be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Judgment and all releases provided for therein, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiffs' Released Claims, and shall be bound by any judgment or determination of the Court affecting the Settlement Class Members. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claim Forms

provided such acceptance does not delay the distribution of the Net Settlement Fund to Authorized Claimants.

19. The Claim Form submitted by each claimant must satisfy the following conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be properly completed, signed, and submitted in a timely manner in accordance with the preceding paragraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported in it, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or other documentation that is deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of his or her current authority to act on behalf of the claimant must be included in the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained in it and must be signed under penalty of perjury.

20. The Claims Administrator, subject to the supervision of Lead Counsel and the Court, will make administrative determinations concerning the acceptance and rejection of the Proof of Claim Forms submitted by claimants pursuant to the procedures set forth in the Stipulation. As part of the Claim Form, each claimant shall submit to the jurisdiction of the Court with respect to the claim submitted.

21. With the sole exception of Benefitfocus's obligation to secure payment of the Settlement Amount into the Escrow Account as provided for in ¶ 6 of the Stipulation and Benefitfocus's obligation pursuant to ¶ 36 of the Stipulation, 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 ¶ 11(a) of the Stipulation).

22. **Exclusion from the Settlement Class.** Any requests for exclusion from the Settlement Class in connection with the Notice must be submitted in accordance with the instructions included in the Notice. A Class Member wishing to make such a request shall mail the request in written form by first class mail to the address designated in the Notice, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion shall clearly state that the Settlement Class Member requests 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.)” and must (i) state the name, address, telephone number, and email address of the Person requesting exclusion; (ii) state the number of shares of Benefitfocus common stock the Person purchased, acquired, and sold during the Class Period, as well as the dates and prices of each such purchase, acquisition, and sale; and (iii) be signed by the Person requesting exclusion or an authorized representative. The request for

exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

23. All Persons who submit valid and timely requests for exclusion in the manner set forth in this Order and the Notice shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

24. Any member of the Settlement Class who does not request exclusion from the Settlement Class in the manner stated in this Order and the Notice shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class, shall forever be barred from requesting exclusion from the Settlement Class, and shall be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Judgment and all releases provided for therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Defendant Releasee concerning any of Plaintiffs' Released Claims, if the Court approves the Settlement.

25. **Settlement Fund.** All funds held in the Escrow Account, and all earnings thereon, shall be deemed to be *in* the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds shall have been disbursed or returned pursuant to the terms of the Stipulation and/or further order of the Court.

26. **Termination.** In the event that the Settlement fails to become effective in accordance with its terms, or if the Judgment is not entered or is reversed, vacated, or materially modified on appeal (and, in the event of material modification, if any Party elects to terminate the Settlement), this Order (except paragraphs 26, 27, 29) shall be null and void, the Stipulation shall

be deemed terminated, and the Parties shall return to their positions without prejudice in any way, as provided for in the Stipulation.

27. **Stay.** Unless and until otherwise ordered by the Court, all proceedings in the Action shall be stayed, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, Lead Plaintiff and all Settlement Class Members shall not institute, commence, maintain, or prosecute any action, and are hereby barred and enjoined from instituting, continuing to prosecute, soliciting, commencing, maintaining, prosecuting, or encouraging or participating in the prosecution of any action in any court of law or equity, arbitration tribunal, administrative forum, or other forum, which, in any case, asserts any of Plaintiff's Released Claims against any of the Defendant Releasees.

28. **Jurisdiction.** The Court retains exclusive jurisdiction over the Action to, *inter alia*, consider all further matters arising out of or connected with the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and expenses.

29. **Use of this Order.** This Order, the Stipulation, whether or not consummated, and whether or not approved by the Court, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and/or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action or any proceeding or motion to enforce the terms of the Stipulation or the Judgment, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption,

concession, or admission by Defendants or any Defendant Releasee with respect to the truth of any allegation by Lead Plaintiff and the Settlement Class, the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Plaintiff's Released Claims, the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, the entitlement of any investors who are not Settlement Class Members to any payment by or damages from the Defendants or Defendant Releasees, or of any liability, damages, negligence, fault, or wrongdoing of Defendants or any Person whatsoever;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants or against or to the prejudice of Lead Plaintiff or any other member of the Settlement Class as evidence of any infirmity in the claims of Lead Plaintiff or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff, any other member of the Settlement Class, or their respective counsel with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing or in any way referred to for any other reason against or to the prejudice of any of the Defendants or any Defendant Releasee, Lead Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;



(d) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee, Lead Plaintiff, or any other member of the Settlement Class, that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial;

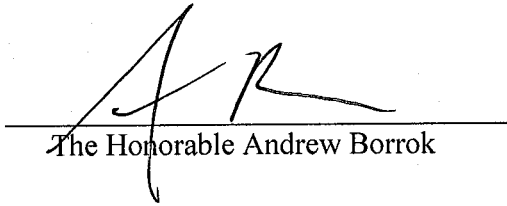
(e) do not constitute, and shall not be offered or received against or to the prejudice of Lead Plaintiff as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Lead Plaintiff, or any other member of the Settlement Class that any of their claims are without merit or infirm or that damages recoverable under any of the complaints filed in the Action would not have exceeded the Settlement Amount; and

(f) do not constitute, and shall not be offered or received against or to the prejudice of Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants or any Defendant Releasee that class certification is appropriate in this Action or any other action, except for the purposes of this Settlement.

IT IS SO ORDERED.

Dated: New York, New York

August 15, 2022

  
The Honorable Andrew Borrok