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8
9 **IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10
11 IN RE CAPSTONE TURBINE CORP.
12 STOCKHOLDER DERIVATIVE
13 LITIGATION

14 THIS DOCUMENT RELATES TO: All
15 Actions

Master File No.: 2:16-cv-01569

16
17 **DECLARATION OF THOMAS J.
MCKENNA IN SUPPORT OF
18 PLAINTIFFS' MOTION FOR FINAL
19 APPROVAL OF DERIVATIVE
20 SETTLEMENT**

21 DATE: October 30, 2020

22 TIME: 10:00 a.m.

23 CTRM: 8C

24 JUDGE: Hon. Dolly M. Gee
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1 I, THOMAS J. McKENNA, hereby declare under penalty of perjury:

2 1. I am a member of the law firm Gainey McKenna & Egleston (“Gainey
3 McKenna” or the “Firm”), Co-Lead Counsel for plaintiffs (“Federal Plaintiffs”) in the
4 consolidation action captioned, *In re Capstone Turbine Corp. Stockholder Derivative*
5 *Litigation*, Case No. 2:16-cv-01569 (C.D. Cal.) (the “Federal Consolidated Action”).¹ I
6 have been admitted *pro hac vice* to practice before this Court. The testimony provided
7 herein is based on my own personal knowledge, information and belief and, if called
8 upon, I could and would competently testify thereto.

9 2. I submit this Declaration in Support of Plaintiffs’ Motion for Final Approval
10 of Derivative Settlement. The purpose of this Declaration is to set forth the background
11 and procedural history of the Actions, the negotiations that led to the Settlement, and the
12 results achieved. This Declaration further demonstrates that: (i) the Settlement is fair,
13 reasonable, and adequate, and in the best interest of Capstone Turbine Corporation
14 (“Capstone” or the “Company”) and its shareholders; and (ii) the agreed-upon amount of
15 attorneys’ fees and expenses to be paid to Plaintiffs’ Counsel is fair and reasonable.

16 **I. OVERVIEW**

17 3. The Settlement resolves: (1) the Federal Consolidated Action and *Boll v.*
18 *Jamison, et al.*, C.A. No. 2:16-cv-05282-DMG-RAO (C.D. Cal.) (collectively, the
19 “Federal Actions”); and (2) related shareholder derivative actions pending in California
20 state court, captioned *Stesiak v. Jameson, et al.*, C.A. No. BC610782 (Super. Ct. L.A.)
21 (the “*Stesiak* Action”) and *Kilpatrick v. Simon, et al.*, C.A. No. BC623167 (Super. Ct.
22 L.A.) (the “*Kilpatrick* Action”) (the “State Actions,” and collectively with the Federal
23 Actions, the “Actions”). The Settlement is the product of extensive arm’s-length
24 negotiations between Plaintiffs, the Individual Defendants, and Nominal Defendant

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26 ¹All capitalized terms, unless otherwise defined herein, have the same meaning as defined
27 in the Stipulation of Settlement executed July 14, 2020 (“Stipulation” or “Stip.”) attached
28 as Exhibit A to the Declaration of Ligaya T. Hernandez in Support of Unopposed Motion
for Preliminary Approval of Settlement filed on July 27, 2020 (Dkt. 55).

1 Capstone (collectively, the “Settling Parties”), overseen by a mediator experienced in
2 complex stockholder litigation.

3 4. Pursuant to the Settlement, Capstone agreed to adopt and/or enact and
4 maintain for at least four (4) years important corporate governance reforms designed to
5 address the alleged wrongdoing in the Actions (the “Corporate Governance Measures”).
6 The Corporate Governance Measures, among other things, enhance board independence
7 requirements; improve the Board-level Audit Committee’s supervision and oversight
8 duties and responsibilities, including in connection with the Company’s recognition of
9 revenue and Whistleblower Policy; enhance the duties and responsibilities of the
10 management-level Disclosure Committee to ensure sufficient oversight of and to ensure
11 the timeliness and accuracy of the Company’s public disclosures; separate the positions
12 of Chief Financial Officer ("CFO") and Chief Accounting Officer ("CAO"); provide for
13 the appointment of a new CAO; improve monitoring and disclosure practices and
14 requirements relating specifically to the Company’s key distributors; mandate new
15 written policies and requirements relating to the Company’s sales backlog to ensure
16 accurate disclosures concerning the Company’s true revenue and business prospects;
17 provide for additional procedures related to the credit extended by Capstone to its
18 customers; and improve the Company’s Whistleblower Policy.

19 5. The Settlement guarantees that Capstone and its stockholders will reap the
20 long-term benefits of strong corporate governance, which in turn will help enhance
21 investor confidence and improve returns over time as these changes take effect. Weighed
22 against the substantial risks, costs and delays entailed in attempting to improve upon this
23 result through further litigation, the Settlement’s guarantee of substantial benefits in the
24 form of the strong governance processes, policies, and procedures embodied in the
25 Corporate Governance Measures is fair, reasonable and adequate.

26 6. Capstone and its Board of Directors (i) acknowledge and agree that the
27 Corporate Governance Measures confer substantial benefits upon Capstone; and (ii)
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1 acknowledge that the filing, prosecution, and resolution of the Actions was a substantial
2 and material factor in the Board's adoption, implementation, and maintenance of the
3 Corporate Governance Measures. Stip., §.IV.2.1. In recognition of the substantial
4 benefits conferred by Plaintiffs' Counsel on the Company, Defendants and Plaintiffs'
5 Counsel negotiated the amount of attorneys' fees and expenses that Defendants' insurer
6 would pay to Plaintiffs' Counsel. As a result of those negotiations, the Company's
7 insurer, on behalf of Defendants, has agreed to pay Plaintiffs' Counsel \$500,000 to
8 compensate Plaintiffs' Counsel for their fees and litigation expenses (the "Fee and
9 Expense Amount"). This amount was negotiated by the Settling Parties at arm's-length,
10 separate, and apart from the material terms of the Settlement and is fair and reasonable in
11 light of the substantial benefits achieved by the Settlement.

12 7. For the reasons discussed herein and in Plaintiffs' Memorandum of Law in
13 Support of Plaintiffs' Motion for Final Approval of Derivative Settlement (the "Final
14 Approval Brief"), Plaintiffs believe the Settlement is a sound resolution of this complex
15 derivative litigation and merits final approval in all respects.

16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 **A. The Federal Actions**

18 8. On March 7, 2016, Plaintiff Haber filed a verified stockholder derivative
19 complaint in this Court (the "*Haber* Action"). See Stipulation, §I.A. On July 12, 2016
20 and July 18, 2016, stockholders Tuttle (the "*Tuttle* Action") and Brandon Boll ("*Boll*"
21 and the "*Boll* Action"), respectively, filed related verified stockholder derivative
22 complaints in this Court. *Id.*

23 9. The *Haber* Action and the *Tuttle* Action were consolidated by order of the
24 Court on August 22, 2016, with plaintiffs Haber and Tuttle appointed as Lead Plaintiffs,
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1 and Hynes Keller & Hernandez, LLC² and Gainey McKenna & Eggleston appointed as
2 Co-Lead Counsel in the Federal Consolidated Action.³ *See* Dkt. 31.

3 10. The Federal Actions allege that between at least November 2013 and
4 October 2015, the Individual Defendants made repeated false and/or misleading
5 statements about Capstone's business and business prospects that led stockholders and
6 the investing public to believe the Company was on an upward trajectory. *See*
7 Stipulation, §I.A. Specifically, the Federal Actions allege that the Individual Defendants
8 failed to disclose that: (1) BPC Engineering ("BPC"), one of the Company's main
9 Russian distributors, was unlikely to be able to fulfill many of its legal and financial
10 obligations to Capstone; (2) Capstone failed to make appropriate adjustments to its
11 accounts receivable and backlog to account for BPC's inability to fulfill its obligations to
12 Capstone; (3) as such, Capstone issued financial statements in violation of Generally
13 Accepted Accounting Principles; (4) the Company lacked adequate internal controls over
14 accounting; and (5) as a result of the foregoing, the Company's financial statements, as
15 well as the Individual Defendants' statements about Capstone's business, operations, and
16 prospects, were false and misleading and/or lacked a reasonable basis. *Id.* The Federal
17 Actions allege that once the truth was revealed, Capstone's market capitalization plunged
18 more than 97%, its stock price fell significantly below the \$1 per share listing
19 requirement to stay on the NASDAQ, and the Company faced significant liability in
20 numerous actions alleging violations of the federal securities laws. *Id.*

21 11. On March 9, 2018, the parties to the Federal Action stipulated to, and on
22 March 13, 2018, the Court ordered a stay pending the close of discovery in the related
23 Securities Class Action (defined herein), in exchange for the Federal Plaintiffs' right to
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25 ² Hynes Keller & Hernandez, LLC has since become Hynes & Hernandez, LLC.

26 ³ On April 28, 2017, a Notice of Related Action was filed in the *Boll* Action by Plaintiffs
27 Haber and Tuttle relating the *Boll* Action to the Federal Consolidated Action. The
28 Settlement in this Stipulation resolves the claims in the *Boll* Action and will result in the
Boll Action being dismissed with prejudice.

1 (among other things) discovery provided in the Securities Class Action and any
2 documents provided to the plaintiff in the Securities Class Action in connection with any
3 mediation or settlement discussions. The Federal Plaintiffs thereafter received, reviewed,
4 and evaluated non-public documents produced by the Defendants. *See* Dkt. 37, 38.

5 **B. The Related State Actions**

6 12. The first state derivative action, the *Stesiak* Action, was commenced in the
7 Superior Court of the State of California, County of Los Angeles, on February 18, 2016.
8 Thereafter, on June 8, 2016, the *Kilpatrick* Action was commenced in the Superior Court
9 of the State of California, County of Los Angeles. The State Actions allege breaches of
10 fiduciary duty and unjust enrichment against certain of the Company's current and former
11 officers and directors, arising out of substantially similar facts and containing
12 substantially similar allegations to those in the Federal Actions.

13 13. In the interests of efficiency, the parties to the State Actions negotiated a
14 temporary stay of the State Actions that provided that Defendants were required to
15 provide certain of the plaintiffs in the State Actions with (among other things) all
16 discovery produced by defendants in the Securities Class Action and to provide all
17 plaintiffs in the State Actions with any documents provided by the defendants in
18 connection with any future mediations or settlement negotiations. The plaintiffs in the
19 State Actions thereafter received, reviewed, evaluated non-public documents produced by
20 the Defendants.

21 **C. The Related Securities Class Action**

22 14. In connection with the same alleged false and misleading misstatements at
23 issue in the Actions, Capstone, as well as certain of its current and former officers
24 (defendants Jamison, Reich, and Brooks) were sued in this Court in a federal securities
25 fraud class action, titled *In re Capstone Turbine Corporation Securities Litigation*, Case
26 No. 2:15-cv-08914-DMG (RAOx) (the "Securities Class Action").

1 15. On February 9, 2018, this Court denied the defendants' motion to dismiss
2 the Securities Class Action and thereafter, on November 15, 2018, the parties to the
3 Securities Class Action reached an agreement in principle to settle the action, pursuant to
4 which Capstone agreed to pay \$5,550,000.00, all of which was paid by Capstone's
5 insurer. On November 15, 2019, this Court approved the settlement and entered a final
6 judgment dismissing the Securities Class Action.

7 **D. Settlement Efforts in the Actions**

8 16. On September 24, 2018, Plaintiffs' Counsel and counsel for Capstone and
9 the Individual Defendants held a mediation session in Newport Beach (the "Mediation").
10 Prior to the Mediation, Plaintiffs' Counsel sent comprehensive settlement demands to
11 counsel for the Defendants, and the Settling Parties, as well as other parties from related
12 litigation, exchanged detailed mediation briefs and mediation reply briefs (that included
13 Plaintiffs' evaluation of the non-public documents produced to Plaintiffs by Defendants)
14 addressing their respective views on the derivative claims, available defenses, damages,
15 and remedial issues. Despite their good faith efforts and significant progress made, after
16 a full day of hard fought, arm's-length negotiations, the Settling Parties were unable to
17 reach agreement at the Mediation on the substantive consideration for a settlement.
18 Thereafter, the Settling Parties, with the assistance of the Mediator, continued to engage
19 in hard-fought settlement negotiations for more than six months, and ultimately were able
20 to reach agreement on the substantive consideration for the Settlement (*i.e.*, the Corporate
21 Governance Measures outlined in Exhibit A of the Stipulation). The Settling Parties then
22 separately negotiated in good faith and on an informed basis the amount of attorneys'
23 fees to be paid to Plaintiffs' Counsel in recognition of the substantial benefits Plaintiffs'
24 Counsel's efforts and the Settlement have conferred on Capstone. The Settling Parties
25 then documented the Settlement in the Stipulation.

1 **E. Preliminary Approval and Notice to Shareholders**

2 17. On August 28, 2020, the Court entered the Order Preliminarily Approving
3 Settlement and Providing for Notice (the “Preliminary Approval Order”). Dkt. 61.
4 Pursuant to the terms of the Preliminary Approval Order, on September 11, 2020
5 Capstone filed a Form 8-K with the SEC, attaching the Notice, and also published a copy
6 of the Summary Notice in the *Investors’ Business Daily* on September 7, 2020. The
7 Notice contained a detailed history of the Actions and proposed Settlement, the claims
8 that will be released if the proposed Settlement is approved, and the agreed Fee and
9 Expense Amount to be paid to Plaintiffs’ Counsel upon Court approval. The Notice was
10 also posted on the investor relations section of Capstone’s corporate website. In addition,
11 Plaintiffs’ Counsel also posted the Stipulation and Notice on their respective firm
12 websites. Pursuant to the Preliminary Approval Order, the Notice directed that any
13 objections to the Settlement be filed by October 12, 2020. To date, the Settling Parties
14 have not received and are not aware of any objections to the Settlement.

15 **III. TERMS OF THE SETTLEMENT**

16 18. The Settlement addresses the core concerns raised in the Actions and offers
17 Capstone and Current Capstone Shareholders the benefit of substantial, immediate, and
18 important corporate governance reforms including, among others:

19 **Separate Chairman/CEO or Lead Independent Director.** The Company will
20 amend its Corporate Governance Measures to require that either: (a) the Chairman and
21 CEO positions will be occupied by different individuals; or (b) if the Company’s
22 Chairman is not an independent director, then the Board shall appoint a Lead Independent
23 Director. The Lead Independent Director shall be empowered to chair all meetings of the
24 Board when the Chairman is not present, call and chair executive session meetings of
25 independent directors, set agendas for meetings of the independent directors with input
26 from the independent directors, place items on the agenda for full Board meetings, call
27 special meetings of the Board, and serve as a liaison between the independent directors
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Board Chair Rotation. The Company will amend its Corporate Governance Principles to require the role of Chairman of the Board, if held by an independent director, be rotated among independent directors at least every five (5) years. If the Company's CEO is Chairman of the Board, the role of Lead Independent Director will be rotated among independent directors at least every five (5) years.

Meetings in Executive Session. Capstone will amend its Corporate Governance Measures to require that the Company’s independent directors meet in executive session following each regularly scheduled board meeting, and in no event less than four (4) times per year.

1. The Audit Committee must meet a minimum of five (5) times per year. During these meetings, the Audit Committee shall review and discuss, on an as needed basis, with the independent auditors, management, the internal auditors, and outside consultants engaged in the review of Company financial reporting: (a) financial reporting issues and practices, and critical accounting policies and estimates; (b) significant financial risks and exposures and assess the steps management has taken to monitor such controls; (c) issues regarding accounting principles and financial statement presentation (including any significant changes in the Company's selection or application of accounting principles); (d) issues as to the adequacy of the Company's internal controls systems and compliance with applicable laws and regulations; and (e) the effectiveness of any special auditing steps adopted in light of identified significant and/or material control deficiencies.

2. The CFO and CAO, or either individually should the other not be available (to the extent the CFO and CAO roles are separated), shall report to the Audit Committee regarding all unusual significant revenue recognition decisions prior to the issuance of each quarterly and annual financial statement.

3. Implementation of a policy requiring that, at least quarterly, the CAO, or in the absence of the CAO the CFO (to the extent the CFO and CAO roles are separated), will report to the Audit Committee on any critical issues impacting the Company's recognition of revenue, which shall include, at a minimum: any such issues relating to Capstone's Days Sales Outstanding ("DSO") and any potential issues that may substantially negatively impact sales to a particular distributor and/or the Company's ability to collect payments from that distributor.

4. Under the Company's Whistleblower Policy, the submission procedures for complaints made shall include a method for interested parties with bona fide complaints to communicate with the chair of the Audit Committee. The Audit Committee shall be responsible for overseeing procedures for the receipt, retention, and treatment of complaints about accounting, internal accounting control, and auditing matters, and for confidential, anonymous submissions by employees of concerns about questionable accounting or auditing matters.

Disclosure Committee. The Company will amend its Disclosure Committee Charter to include provisions covering the following procedures and responsibilities:

1. The Disclosure Committee shall be comprised of (at least) the following (subject to availability and change of titles): (a) the CEO; (b) the CFO; (c) Staff Counsel; (d) the CAO; (e) the Director of Cost Accounting; and (f) a representative from the Company's Internal Audit function.

2. The Disclosure Committee will be responsible for, among other things: (a) evaluating the materiality of information and events relating to or affecting the Company, and determining the timing and appropriate method of disclosure of information deemed

1 material; (b) reviewing in advance, with the Audit Committee, each Form 10-K and Form
2 10-Q filed by the Company with the SEC to determine the adequacy and accuracy of the
3 disclosures included therein; and (c) reporting and advising the Company's CEO and
4 CFO with respect to the certifications they must provide for the Company's quarterly and
5 annual reports.

6 3. The Disclosure Committee shall hold regular meetings and record meeting
7 minutes in connection with the preparation and review of each of the Company's Forms
8 10-K and Forms 10-Q.

9 4. The Disclosure Committee shall also hold *ad hoc* meetings as necessary or
10 appropriate (and record meeting minutes), including, in its discretion, upon the
11 occurrence of an unusual or significant event that may require the filing of a Form 8-K
12 report by the Company.

13 5. The Disclosure Committee may invite other Company personnel and/or the
14 Company's external auditors, outside counsel, or other outside advisors to attend
15 Committee meetings, as deemed necessary by the Committee in performing its duties and
16 responsibilities.

17 6. Before each Form 10-K and Form 10-Q is finalized, the Disclosure
18 Committee shall report to the CEO, CFO and Audit Committee regarding the Disclosure
19 Committee's deliberations, activities, and disclosure recommendations sufficiently prior
20 to the filing or distribution of the final document for the CEO and CFO to satisfy
21 themselves as to the adequacy of the process and to provide their own input on
22 disclosure.

23 7. At least on a quarterly basis, the Disclosure Committee Chairperson shall
24 report any concerns regarding disclosure issues, should they have any, to the Audit
25 Committee of the Board.

26 **Separation of CFO and CAO Positions, and Appointment of New CAO.**
27 Capstone will use its best efforts to separate the CFO and CAO positions and give its
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Corporate Controller the title of CAO.⁴ In addition, the separation of the CFO and CAO positions shall become mandatory upon the Company attaining total quarterly revenue of \$20 million.

Enhanced Monitoring and Disclosure of Key Distributors.

1. The Company shall identify a senior employee who shall, in consultation with the sales team, evaluate and monitor macroeconomic developments, regional conditions overseas, and the international politico-regulatory environment for changes that might impact key distributors.

2. This senior employee shall work with the CFO and CAO (to the extent the CFO and CAO roles are separated) to develop, implement, and maintain a program for due diligence regarding potential new distributors and ongoing credit review of current distributors that account for 10% or more of the Company's sales and/or accounts receivable outstanding in any quarter over the preceding four (4) quarters ("Key Distributors").

3. This review shall include, at a minimum, each Key Distributor's credit history and financial history and determinations as to whether credit should be extended (or continue to be extended) to that distributor, in what limits and on what terms. Any significant and/or potentially material issues with respect to particular distributors shall be escalated for review by the CFO, the CAO (to the extent the CFO and CAO roles are separated), with notice as needed to the Disclosure Committee and the Audit Committee.

Enhanced Backlog Transparency.

1. The Company shall develop a written policy concerning the Company's backlog disclosures. The policy shall state the criteria for decisions to include and withdraw orders from the Company's backlog.

2. Decisions to remove sales orders from the Company's backlog must be

⁴ Capstone will use "best efforts" due to the ongoing, global economic impact from the COVID-19 pandemic.

1 based on the Company's written policy and the rationale for withdrawal of material
 2 orders in their entirety must be explained in the Company's next SEC filing following the
 3 decision to withdraw an order from the backlog.

4 **Customer Credit Procedures.**

5 1. Within six months of the conclusion of the Company's annual internal
 6 review cycle following the adoption of these Corporate Governance Measures, the
 7 Company will complete an evaluation of the sufficiency of its existing process for
 8 performing reassessments of assigned credit limits for existing customers. Upon
 9 completion of this evaluation, the Company will add language to its annual revenue cycle
 10 narrative describing its process for periodically reevaluating customers' assigned credit
 11 limits.

12 2. The Company will add language to its annual revenue cycle narrative
 13 describing the process by which management deems it appropriate to lift customer credit
 14 holds for purposes of selling additional products. The process described in the annual
 15 revenue cycle narrative will include an approval authority matrix and a requirement that
 16 approvals be documented.

17 Taken together, the agreed-to reforms will enhance shareholder value by
 18 improving decision-making, communications, and Board oversight of core operations,
 19 and enhancing investor confidence in the Company.

20 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

21 **A. The Settlement Merits a Presumption of Fairness Because It Is the** 22 **Product of Arm's-Length Negotiations by Experienced and Well-** 23 **Informed Counsel With the Assistance of a Skilled Mediator**

24 19. The presumption of fairness applies here because the Settlement is the
 25 product of extensive arm's-length negotiations by well-informed, skilled, and
 26 experienced counsel, with the assistance and oversight of a skilled Mediator.

20. These negotiations included extensive negotiations and countless revisions to a corporate governance term sheet, as well as numerous conference calls regarding the Company's existing governance structure and necessary governance enhancements for any settlement. The negotiations were conducted by highly qualified counsel. Plaintiffs' Counsel have litigated scores of shareholder derivative actions to successful resolution, and their lawyers are nationally recognized as leaders in the field of shareholder rights litigation. Copies of the firm resumes of Gainey McKenna & Egleston, Hynes Hernandez, LLC, Robbins LLP, Lifshitz Law Firm, P.C., Bragar, Egel & Squire P.C., The Rosen Law Firm, P.A., Stull Stull & Brody, and The Wagner Firm are attached to the accompanying fee declarations of each firm, which are attached hereto as Exhibits A-H respectively. Wilson Sonsini Goodrich & Rosati, a nationally recognized corporate defense firm, represents the Defendants in this case and also served as defense counsel in the Securities Class Action. This supports a presumption that the Settlement is fair and reasonable.

21. Plaintiffs and their counsel acted on an informed basis in negotiating the Settlement. Specifically, by and through Plaintiffs' Counsel, Plaintiffs engaged in extensive investigation, and other litigation efforts throughout the prosecution of the Actions and have accumulated sufficient information discovered through these efforts to be well-informed about the strengths and weaknesses of the Actions and to engage in effective settlement discussions with Defendants. These efforts by Plaintiffs included, among other things: (i) reviewing Capstone's press releases, public statements, SEC filings, and securities analysts' reports and advisories about the Company; (ii) reviewing media reports about the Company; (iii) researching the applicable law with respect to the claims alleged in the Actions and the potential defenses thereto; (iv) preparing and filing stockholder derivative complaints; (v) reviewing and analyzing relevant non-public documents produced by the Defendants over the course of the litigation; (vi) participating in informal conferences with Defendants' Counsel regarding the specific facts of the

1 cases, the perceived strengths and weaknesses of the cases, and other issues in an effort to
2 facilitate negotiations and fact gathering; (vii) conducting extensive research into
3 corporate governance at Capstone and peer companies, as well as industry-wide best
4 practices; and (vii) negotiating the Settlement with Defendants, including before, at, and
5 after the September 24, 2018 mediation. All counsel possessed a firm understanding of
6 the strengths and weaknesses of their respective claims and defenses while negotiating
7 and before agreeing to the Settlement.

8 22. Moreover, the settlement negotiations were overseen and materially assisted
9 by the Mediator, further demonstrating the fairness of the settlement process.

10 23. The Settling Parties did not begin negotiating the amount of fees and
11 expenses payable to Plaintiffs' Counsel until after all of the substantive terms of the
12 Settlement were agreed upon, further demonstrating the fairness of the arm's-length
13 Settlement.

14 24. Courts also traditionally afford substantial deference to directors' exercise of
15 independent business judgment. Capstone's Board (i) acknowledges and agrees that the
16 Corporate Governance Measures confer substantial benefits upon Capstone; and (ii)
17 acknowledges that the filing, prosecution, and resolution of the Actions was a substantial
18 and material factor in the Board's adoption, implementation, and maintenance of the
19 Corporate Governance Measures. Stip., §IV.2.1.

20 25. The fact that the Settlement is the product of arm's-length negotiations by
21 experienced counsel, with the assistance of a respected mediator, supports a presumption
22 of fairness and final approval of the Settlement.

23 **B. The Settlement Confers Substantial Benefits on Capstone and its**
24 **Shareholders**

25 26. The Settlement achieves for Capstone and Current Capstone Shareholders
26 the substantial benefit of numerous reforms that will materially improve the Company's
27 corporate governance. The bulk of the allegations in the Actions stem from failures of
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1 accounting and disclosure and that these failures in turn led to the propagation of
2 misleading information regarding Capstone. The Corporate Governance Measures
3 directly address the above allegations, which form the basis of the Actions, by enhancing
4 oversight of the Company's accounting practices and significantly bolstering Capstone's
5 abilities to disclose timely, pertinent and accurate information to shareholders. The
6 Corporate Governance Measures, *inter alia*, include well-targeted fail-safes to the
7 enhanced accounting and disclosure requirements, including, but not limited to the
8 following provisions.

9 27. The requirement of an independent Board Chairman or Lead Independent
10 Director (Stip., Ex. A, §I.A) will ensure that key personnel charged with leading the
11 Board's oversight of management are not a member of management. Separating these
12 offices and/or having a Lead Independent Director in place is a respected measure of
13 good corporate governance.

14 28. The enhancements to the duties and responsibilities of the Audit Committee
15 (Stip., Ex. A, §I.B), among other things, provide for increased oversight with respect to
16 Capstone's revenue recognition and other accounting practices, including improved
17 requisite communications and reporting between the Audit Committee and Capstone's
18 CFO and/or CAO. This will help ensure the propriety of the Company's revenue
19 recognition practices (and accounting practices, generally) and the accuracy of the
20 Company's related public statements. The enhancements to the duties and
21 responsibilities of the Disclosure Committee (Stip., Ex. A, §I.C) will further improve the
22 effectiveness of management-level oversight of the Company's disclosures and internal
23 controls, including by ensuring sufficient communication and information-sharing
24 between the Disclosure Committee and the Audit Committee.

25 29. The Settlement provides for enhanced monitoring and disclosure reforms
26 overseen by a senior employee (Stip., Ex. A, §I.E)), which will help ensure that the
27 Company and the Board are able to better monitor macroeconomic developments,
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1 regional conditions overseas, and the international politico-regulatory environment for
2 changes that might impact key distributors.

3 30. The Settlement also provides for enhanced backlog transparency, whereby
4 the Company shall develop a written policy concerning the Company's backlog
5 disclosures (Stip., Ex. A, §I.F), including the criteria for decisions to include and
6 withdraw orders from the Company's backlog. The decisions for withdrawal of material
7 orders must be explained in the Company's next SEC filing following the decision to
8 withdraw an order from the backlog. This will ensure that the Company maintains a
9 more accurate record of its backlog, thus preventing misstatements about the Company's
10 operations and inaccuracies in its financial statements.

11 31. The Settlement also requires the separation of the positions of CFO and
12 CAO (Stip., Ex. A, §I.D). The CAO will oversee all accounting functions at the
13 Company, including ledger accounts, financial statements, and cost control systems, with
14 a focus on regulatory compliance and practices. This will ensure improved and more
15 direct oversight of the Company's accounting procedures.

16 32. The Settlement also requires independent members of the Board to meet in
17 executive session following each regularly scheduled board meeting (Stip., Ex. A,
18 §I.A.6). This will help ensure that the independent directors meet regularly to discuss the
19 condition of the Company. The closed sessions provide the independent directors with
20 the opportunity for objective discussion without the CEO and other members of
21 management present and should not be confined to when things are already going wrong.
22 Such regular meetings may very well have allowed the Board's independent directors to
23 possibly prevent future litigation, including but not limited to the allegations at the heart
24 of the Actions, and remedy them before the Company suffered harm as a result of the
25 failures.

26 33. Taken together, the Corporate Governance Measures in the Settlement that
27 directly address the wrongdoing in the Actions will bring immediate and substantial
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1 benefits to the Company that far outweigh the speculative potential of any monetary
2 recovery that may or may not be realized years down the road through continued
3 litigation. Indeed, Capstone and its Board acknowledge and agree that the Corporate
4 Governance Measures confer substantial benefits upon Capstone, and the filing,
5 prosecution, and resolution of the Actions was a substantial and material factor in the
6 Board's adoption, implementation, and maintenance of the Corporate Governance
7 Measures. Stip., §2.1.

8 34. The Settlement also requires Capstone to maintain the Corporate
9 Governance Measures for not less than four (4) years—time enough for them to become
10 embedded in Capstone's corporate culture and governance practices. Stip., §2.

11 **C. Continued Litigation Would Be Risky, Costly, and Time-Consuming**

12 35. The Settlement guarantees the foregoing substantial benefits and avoids the
13 uncertainty, risks, costs, and delays in attempting to improve upon the result through
14 further litigation. These concerns are particularly significant in complex stockholder
15 derivative litigation. The likely complexity, expense, and duration of further litigation,
16 and the significant risk that it would produce no benefit at all for Capstone weigh
17 strongly in favor of final approval, here.

18 36. There is no question that derivative actions are fraught with risk. The odds
19 of winning a derivative suit are extremely small, and a derivative failure of oversight
20 claim—the type of breach of fiduciary duty claim brought by Plaintiffs here—is possibly the
21 most difficult theory in corporation law for a derivative plaintiff to successfully prosecute.
22 Plaintiffs would face motions to dismiss challenging the sufficiency of the allegations, as
23 well as whether demand futility was adequately pled.

24 37. If Plaintiffs defeated those motions, litigation would be extremely complex,
25 costly, and of substantial duration. Document discovery would need to be conducted,
26 depositions would need to be taken, experts would need to be designated, and expert
27 discovery conducted. Motions for summary judgment would have to be briefed and
28

1 argued and a trial would have to be held. The Individual Defendants would likely
2 continue to assert that their conduct was protected by the business judgment rule, which
3 creates the powerful presumption that the Board and management acted in the best
4 interests of the Company. This presumption, applicable to most derivative actions, would
5 have been even harder to rebut in the Actions because the issues involve exceedingly
6 complex matters of regulatory law relating to the Company's duty to disclose financial
7 information concerning accounting, metrics, and financial prospects. The possibility that
8 this protective umbrella could have shielded the Individual Defendants made establishing
9 liability in the Actions uncertain, at best.

10 38. Even if liability was established, the amount of recoverable damages would
11 still have posed significant issues and would have been subject to further litigation. And
12 even assuming that liability could eventually be established, it is not clear or certain what
13 amount of damages or corporate governance reforms Plaintiffs could recover on behalf of
14 Capstone at trial. Under traditional applications of Delaware law, Plaintiffs faced a
15 formidable challenge establishing and collecting monetary damages in the Actions.
16 While Capstone may have suffered losses as a result of the conduct challenged in the
17 Actions, the question of whether it suffered legal, non-exculpated damages is a much
18 more complicated question. For instance, Defendants would have likely argued that
19 while the Company may have suffered losses, it was not actually damaged. On
20 November 15, 2019, this Court approved a settlement of the Securities Class Action for
21 approximately \$5.5 million, which was entirely paid by insurance proceeds. The fact that
22 the Securities Class Action was resolved with insurance proceeds surely would have been
23 raised in this litigation. Moreover, not only did the Securities Class Action release claims,
24 the settlement approved by this Court contains denials of fault, wrongdoing and liability
25 by the defendants.

26 39. Moreover, the issue of damages to Capstone would have been hotly disputed
27 and clearly would have been the subject of expert testimony proffered by all parties. The
28

1 damages assessments of experts retained by the parties would surely vary substantially,
 2 and the assessment of this crucial element of Plaintiffs' claims would likely be reduced at
 3 trial to a "battle of the experts." It is far from certain that a jury would have disregarded
 4 Defendants' experts' opinions. Indeed, defense experts seeking to establish that damages
 5 were caused by factors other than Defendants' wrongdoing, or, alternatively, trying to
 6 minimize the amount of the Company's damages, might very well sway a jury.
 7 Conceivably, a jury could find that there were no damages at all, or that damages were a
 8 fraction of the amount asserted by Plaintiffs.

9 40. Even victory at trial is no guarantee that the judgment would ultimately be
 10 sustained on appeal or by the trial court. Add to these post-trial and appellate risks, the
 11 difficulty and unpredictability of a lengthy and complex trial—where witnesses could
 12 suddenly become unavailable or the fact finder could react to the evidence in unforeseen
 13 ways—and the benefits of the Settlement become all the more apparent. The Settlement
 14 eliminates these and other risks of continued litigation, including the very real risk of no
 15 recovery after years of litigation, while providing the Company and its stockholders
 16 substantial benefits now. The immediate implementation of the Corporate Governance
 17 Measures is far more favorable than the costly, uncertain, and time-consuming process of
 18 seeking to obtain a better recovery through further litigation.

19 41. Even setting aside the significant risks inherent in proceeding, the expense
 20 and likely duration of the Actions would yield diminishing returns for the Company. The
 21 Settlement's immediate, certain, and substantial benefits of the significant reforms to the
 22 Company's corporate governance are preferable to pursuing years of uncertain litigation in
 23 the speculative hope of obtaining an even better result down the road.

24 **D. The Reaction of Capstone Shareholders Further Supports Final**
 25 **Approval of the Settlement**

26 42. The deadline for Current Capstone Shareholders to object to the proposed
 27 Settlement is October 12, 2020. To date, counsel has not heard from any stockholders
 28

1 indicating that they are not satisfied with the Settlement. Even where a handful of
2 objections are made, this factor weighs in favor of approval.

3 **V. THE NEGOTIATED FEE AND EXPENSE AMOUNT IS FAIR AND**
4 **REASONABLE**

5 43. Pursuant to the “substantial benefit” doctrine, counsel who prosecute a
6 stockholder derivative action that generates substantial benefits for the corporation are
7 entitled to reasonable attorneys’ fees and expenses commensurate with the benefits’ value
8 and the risks of proceeding on a contingency basis.

9 44. Here, as a result of Plaintiffs’ Counsel’s efforts, Capstone will enjoy long-
10 term benefits flowing from the Corporate Governance Measures secured by the
11 Settlement. The Reforms will help to prevent a recurrence of similar wrongdoing in the
12 future, improve the Company’s internal controls, and lay the foundation for restoring
13 investor confidence. The agreed-to Fee and Expense Amount of \$500,000 is fair and
14 reasonable in relation to the probable range of value of the Corporate Governance
15 Measures and given the complexity of the matter, the litigation risks, and the time and
16 expenses Plaintiffs’ Counsel devoted to the Actions on a fully contingent basis.

17 **A. The Negotiated and Agreed-to Fee and Expense Amount Should Be**
18 **Afforded Substantial Weight**

19 45. The Court is not being called upon to fashion a fee and expense award;
20 rather, it is being asked to determine whether the Fee and Expense Amount agreed to by
21 well-represented parties at arm’s-length falls within the range of reasonableness. Unlike
22 in class actions, where the diverging interests of class counsel and absent class members
23 at the fee stage warrant close judicial scrutiny, in this shareholder derivative matter,
24 Capstone and its insurer participated in the negotiations, were represented by counsel,
25 and had every incentive to pay the lowest possible fee for the services rendered by
26 Plaintiffs’ Counsel. The Settling Parties’ conclusion that the agreed upon Fee and
27 Expense Amount is fair and reasonable is entitled to substantial deference.

B. The Fee and Expense Amount Is Reasonable in Light of the Benefits Conferred

46. Counsel responsible for a corporation's decision to adopt governance enhancements that address the alleged deficiencies and are designed to prevent recurrence of the alleged wrongdoing are entitled to attorneys' fees reflecting the significant economic value conferred.

47. Here, Plaintiffs' Counsel's efforts produced a strong Settlement that provides for valuable and sweeping corporate governance reforms for Capstone for which the agreed-to Fee and Expense Amount is fair and reasonable compensation. Specifically, as discussed above, the Corporate Governance Measures include, *inter alia*, a more independent Capstone Board of Directors; the requirement for executive sessions so that independent directors have the opportunity to discuss issues without management present; additional Audit Committee supervision and oversight of the Company's financial reporting, accounting policies, and the Whistleblower Policy; enhancements to the management-level Disclosure Committee to ensure that financial statements are accurate and timely and the requirement that the Disclosure Committee reports to the Audit Committee to ensure regular communication between the committee and the Board; enhanced monitoring on key distributors that include requirements for due diligence on the distributors' credit and financial history; the initiation of a policy regarding disclosures on the Company's backlog and how the Company makes decisions with regard to its backlog; and new customer credit procedures that include regularly evaluating and keeping track of customer credit limits. *See* Stip., Ex. A.

48. The reforms to Capstone's internal controls produced under the Settlement directly address the claims alleged in the Actions (*i.e.*, that the Company had accounting problems and as a result issued false and misleading statements regarding its account receivables and its backlog with respect to one of the Company's main distributors) and are designed to prevent the recurrence of the alleged misconduct. The Settlement also provides for significant reforms to Capstone's overall corporate governance practices and

1 policies, including reforms at both the Board- and management-level, which will improve
2 the internal policies and procedures of Capstone.

3 49. The cumulative value of the Reforms easily justifies the negotiated Fee and
4 Expense Amount. *See, e.g., In re Schering-Plough Corp. S'holders Derivative Litig.*,
5 2008 WL 185809, at *1, *5 (D.N.J. Jan. 14, 2008) (approving \$9.5 million fee based on
6 benefits conferred by governance reforms) (“This litigation provides an example of how
7 derivative actions that result in the adoption of rigorous compliance standards confer
8 tangible benefits to the corporation and its shareholders.... The adoption of the corporate
9 governance and compliance mechanisms required by the settlement can prevent
10 breakdowns in oversight that would otherwise subject the company to the risk of
11 regulatory action, or uncover and remedy a problem at the early stages before it becomes
12 the subject of a government investigation. Effective corporate governance can also affect
13 stock price by bolstering investor confidence and improving consumer perceptions.”);
14 *Unite Nat’l*, 2005 WL 2877899, at *5 (approving \$9.2 million fee for governance
15 reforms); *City of Pontiac Gen. Emps.’ Ret. Sys. v. Langone*, No. 2006-cv-122302, slip op.
16 (Ga. Super. Ct.-Fulton Cty. June 10, 2008) (\$14.5 million fee in settlement involving
17 corporate therapeutics), Ex. I; *In re Motorola, Inc., Derivative Litig.*, No. 07CH23297,
18 slip op. (Ill. Cir. Ct.-Cook Cty. Nov. 29, 2012) (\$9.5 million fee in settlement involving
19 corporate therapeutics), Ex. J; *Warner v. Lesar*, Cause No. 2011-09567, slip op. (Tex.
20 Dist. Ct., Harris Cty. Oct. 1, 2012) (\$7.75 million attorneys’ fees in governance-only
21 settlement), Ex. K; *In re Alphatec Holdings, Inc., Derivative S’holder Litig.*, No. 37-
22 2010-58586-CU-BT-NC, slip op. (Cal. Super. Ct.-San Diego Cty. Aug. 18, 2014)
23 (\$5.25 million fee in settlement involving corporate therapeutics), Ex. L; *In re F5*
24 *Networks, Inc. Derivative Litig.*, Case No. 2:06-cv-00794-RSL, slip op. (W.D. Wash. Jan.
25 6, 2011) (\$5 million fee in governance-only settlement), Ex. M; *Rubery v. Kleinfeld*, No.
26 2:12-cv-00844-DWA, slip op. (W.D. Pa. Jan. 20, 2015) (\$3.75 million fee in governance-
27 only settlement), Ex. N; *In re Rambus Inc. Derivative Litig.*, No. 06-cv-3513, 2009 U.S.

1 Dist. LEXIS 131845 (N.D. Cal. Jan. 20, 2009) (\$2 million in attorneys' fees for
 2 settlement of shareholder derivative actions consisting of corporate governance reforms
 3 and no monetary contribution).

4 50. The cumulative value of the Reforms easily justifies the negotiated Fee and
 5 Expense Amount.

6 **C. The Risks of Litigation, the Skill Required, and the Quality of Work**

7 51. Plaintiffs' Counsel faced tremendous litigation risk in the Actions, as
 8 derivative lawsuits are rarely successful. These risks and the benefits secured for
 9 Capstone and its shareholders fully justify the proposed fee amount.

10 52. The skill required by Plaintiffs' Counsel to prosecute and settle the Actions
 11 and Plaintiffs' Counsel's quality of work are additional factors that support Plaintiffs'
 12 requested Fee and Expense Amount. Plaintiffs' Counsel are nationally recognized law
 13 firms that specialize in stockholder litigation. Copies of the firm resumes of Gainey
 14 McKenna & Egleston, Hynes Hernandez, LLC, Robbins LLP, Lifshitz Law Firm, P.C.,
 15 Bragar, Eigel & Squire P.C., The Rosen Law Firm, P.A., Stull Stull & Brody, and The
 16 Wagner Firm are attached to the accompanying fee declarations of each firm, which are
 17 attached hereto as Exhibits A-H respectively. Plaintiffs' Counsel provided extensive,
 18 high-quality representation throughout the pendency of the Actions. Plaintiffs' Counsel
 19 expended significant time prosecuting the Actions and negotiating the Settlement. And
 20 Plaintiffs' Counsel did so in the face of formidable opposition: Wilson Sonsini Goodrich
 21 & Rosati, a nationally recognized corporate defense firm, represents Capstone and also
 22 served as defense counsel in the Securities Class Action.

23 53. The quality of Plaintiffs' Counsel's work and their efforts throughout the
 24 Actions warrant the approval of the Fee and Expense Amount.

25 **D. The Contingent Nature of the Fee and Burdens on Plaintiffs' Counsel**

26 54. Plaintiffs' Counsel undertook the litigation of the Actions with the
 27 expectation that they would have to devote many hours of hard work to the prosecution
 28

1 of a case involving complex factual and legal issues without any guarantee of successful
 2 resolution or of compensation for their efforts. Plaintiffs' Counsel diligently investigated
 3 the claims, commenced litigation of the Actions, pursued the interests of their clients and
 4 nominal defendant Capstone with appropriate aggressiveness, and successfully brought
 5 the Actions to an amicable resolution. The prosecution of the Actions involved the
 6 expenditure of significant resources, including the time spent by attorneys and
 7 professional staff, as well as the substantial expenses that were incurred during the
 8 litigation, for which Plaintiffs' Counsel received no compensation during the course of
 9 litigation. Accordingly, the contingent nature of Plaintiffs' Counsel's representation fully
 10 supports the requested Fee and Expense Amount.

11 **E. A Lodestar "Cross-Check" Further Supports the Agreed-to Fee and**
 12 **Expense Amount**

13 55. A "lodestar cross-check" also supports the reasonableness of the agreed-to
 14 Fee and Expense Amount.

15 56. Here, Plaintiffs' Counsel and liaison counsel expended 1,627.73 hours and
 16 incurred \$963,453.51 in lodestar during the successful prosecution of the Actions. *See*
 17 Exhibits A-H. In connection therewith, Plaintiffs' Counsel and liaison counsel also
 18 incurred \$26,318.61 in unreimbursed expenses in connection with the litigation of the
 19 Actions. *Id.* After subtracting these expenses, the requested Fee and Expense Amount
 20 represents a fractional lodestar multiplier of 0.49%.⁵ The requested Fee and Expense
 21 Award is eminently reasonable.

22 57. The time spent by Plaintiffs' Counsel and liaison counsel is reasonable under
 23 the circumstances of this Action and was spent on tasks that led directly to the recovery,
 24 including: (i) reviewing Capstone's press releases, public statements, SEC filings, and
 25 securities analysts' reports and advisories about the Company; (ii) reviewing media
 26

27 ⁵ \$500,000 requested Fee and Expense Award - \$26,318.61 in case expenses =
 28 \$473,681.39, which is approximately 0.49% of total lodestar of \$963,453.51.

reports about the Company; (iii) researching the applicable law with respect to the claims alleged in the Actions and the potential defenses thereto; (iv) preparing and filing stockholder derivative complaints; (v) reviewing and analyzing relevant non-public documents produced by the Defendants over the course of the litigation; (vi) participating in informal conferences with Defendants' Counsel regarding the specific facts of the cases, the perceived strengths and weaknesses of the cases, and other issues in an effort to facilitate negotiations and fact gathering; (vii) reviewing and analyzing relevant documents and pleadings in the Securities Class Action; and (viii) negotiating the Settlement with Defendants, including before, at, and after the September 24, 2018 mediation.

58. In addition, the hourly rates charged by Plaintiff's Counsel and liaison counsel are unquestionably reasonable. Accordingly, the lodestar "cross-check" confirms that the agreed-to Fee and Expense Amount is fair and reasonable compensation for the time and labor Plaintiffs' Counsel and liaison counsel expended in achieving the benefits of the Settlement.

59. With the exception of the hours and lodestar reported for Gainey McKenna, which I address in my separate Fee Declaration submitted herewith (Ex. A), the other lodestar and expense numbers are drawn from the Declarations of Ligaya T. Hernandez, Shane P. Sanders, Josh Lifshitz, Melissa A. Fortunato, Laurence M. Rosen, Patrice L. Bishop, and Avi Wagner, which are filed as Exhibits B-H.

60. Plaintiffs' Counsel collectively incurred a total of \$26,318.61 in expenses performing tasks in connection with the Actions. *See* Exhibits A-H. These expenses were necessary to effectively prosecute and resolve the Actions on favorable terms, would have been billed in non-contingency matters, and are properly reimbursed.

61. In total, Plaintiffs' Counsel collectively expended 1,627.73 hours in connection with the Actions, for a total lodestar of \$963,453.51. *Id.* The resultant fractional multiplier of 0.49% is well within the range regularly approved by courts in

1 this type of litigation and further demonstrates that the agreed-to Fee and Expense
2 Amount is fair, reasonable, and adequate, and should be approved in full.

3 **F. The Service Awards to Plaintiffs Are Reasonable**

4 62. Plaintiffs are also seeking approval of nominal service awards of \$3,000
5 each—to be paid from the Fee and Expense Amount—in recognition of their role in
6 creating substantial benefits for Capstone and its shareholders. The service awards are
7 well within the range approved by courts as fair and reasonable and should be approved.
8 The modest service awards are reasonable in light of Plaintiffs' role in securing confer
9 substantial benefits on Capstone, and, because they are drawn from the Fee and Expense
10 Amount, they would not reduce the benefit enjoyed by the Company.

11 **VI. CONCLUSION**

12 63. The proposed Settlement is a fair compromise of the issues in dispute. After
13 weighing the benefits of this Settlement against the uncertainty and risks of continued
14 litigation, the Settling Parties believe that the proposed Settlement is fair, reasonable, and
15 adequate and warrants final approval. Therefore, I respectfully request that the Court
16 enter the [Proposed] Order and Final Judgment approving the proposed Settlement and
17 dismissing the Actions with prejudice.

18 64. Attached hereto are true and correct copies of the following exhibits:

19
20 Exhibit A: Declaration of Thomas J. McKenna In Support of Plaintiffs'
21 Motion for Final Approval of Derivative Settlement, Fee
Award, and Service Award

22 Exhibit B: Declaration of Ligaya T. Hernandez In Support of Plaintiffs'
23 Motion for Final Approval of Derivative Settlement, Fee
24 Award, and Service Award;

25 Exhibit C: Declaration of Shane P. Sanders In Support of Plaintiffs'
26 Motion for Final Approval of Derivative Settlement, Fee
27 Award, and Service Award;

Exhibit D: Declaration of Josh Lifshitz In Support of Plaintiffs' Motion for Final Approval of Derivative Settlement, Fee Award, and Service Award;

Exhibit E: Declaration of Melissa A. Fortunato In Support of Plaintiffs' Motion for Final Approval of Derivative Settlement, Fee Award, and Service Award;

Exhibit F: Declaration of Laurence M. Rosen In Support of Plaintiffs' Motion for Final Approval of Derivative Settlement, Fee Award, and Service Award;

Exhibit G: Declaration of Patrice L. Bishop In Support of Plaintiffs' Motion for Final Approval of Derivative Settlement, Fee Award, and Service Award;

Exhibit H: Declaration of Avi Wagner In Support of Plaintiffs' Motion for Final Approval of Derivative Settlement, Fee Award, and Service Award;

Exhibit I: *City of Pontiac Gen. Emps.' Ret. Sys. v. Langone*, No. 2006-cv-122302, slip op. (Ga. Super. Ct.-Fulton Cty. June 10, 2008);

Exhibit J: *In re Motorola, Inc., Derivative Litig.*, No. 07CH23297, slip op. (Ill. Cir. Ct.-Cook Cty. Nov. 29, 2012);

Exhibit K: *Warner v. Lesar*, Cause No. 2011-09567, slip op. (Tex. Dist. Ct., Harris Cty. Oct. 1, 2012);

Exhibit L: *In re Alphatec Holdings, Inc., Derivative S'holder Litig.*, No. 37-2010-58586-CU-BT-NC, slip op. (Ca. Super. Ct.-San Diego Cty. Aug. 18, 2014);

Exhibit M: *In re F5 Networks, Inc. Derivative Litig.*, Case No. 2:06-cv-00794-RSL, slip op. (W.D. Wash. Jan. 6, 2011); and

Exhibit N: *Rubery v. Kleinfeld*, No. 2:12-cv-00844-DWA, slip op. (W.D. Pa. Jan. 20, 2015).

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On September 28, 2020, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Central District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 28, 2020, at Los Angeles, California.

s/ Avi Wagner

Avi Wagner

Exhibit A

1 AVI WAGNER (SBN 226688)
2 THE WAGNER FIRM
3 1925 Century Park East, Suite 2100
4 Los Angeles, CA 90067
5 Telephone: (310) 201-9150

6 *Attorney for Plaintiffs*

7 [Additional Counsel on Signature Page]

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE CAPSTONE TURBINE CORP.
11 STOCKHOLDER DERIVATIVE
12 LITIGATION

13 THIS DOCUMENT RELATES TO:
14 All Actions

Master File No.: 2:16-cv-01569

**DECLARATION OF THOMAS J.
McKENNA IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
DERIVATIVE SETTLEMENT,
FEE AWARD,
AND SERVICE AWARD**

DATE: October 30, 2020

TIME: 9:30 A.M.

CTRM: 8C

JUDGE: Hon. Dolly M. Gee

1 I, Thomas J. McKenna, declare and state, under penalty of perjury, that the following
2 is true and correct to the best of my knowledge, information and belief:

3 1. I am an attorney duly licensed to practice law in New York.

4 2. I am a member of Gainey McKenna & Egleston (“GM&E”), which
5 served as counsel for Plaintiff Andrew Tuttle in the Actions.¹ We were appointed
6 Co-Lead Counsel in the Actions by this Court on August 22, 2016. (Dkt. No. 31). I
7 have personal knowledge of the matters set forth herein and, if called upon, I could
8 and would completely testify thereto.
9

10 3. A copy of GM&E’s résumé is annexed hereto as Exhibit A.

11 4. GM&E has been involved in the Actions since we began investigating
12 Plaintiff Tuttle’s claims in advance of filing the Complaint on his behalf on July 12,
13 2016.
14

15 5. GM&E, as Co-Lead Counsel for Plaintiffs in the Actions, has
16 committed 256.00 hours to litigating the Actions from initial investigation to its
17 resolution, which includes time spent on: (a) conducting a lengthy investigation by
18 reviewing and analyzing publicly available information regarding Defendants,
19 including SEC filings, online and newspaper articles, press releases, and earnings
20 conference call information; (b) reviewing allegations in the related securities class
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26
27 ¹ Unless defined herein, all capitalized terms have the same definitions as set forth
28 in the Stipulation of Settlement dated July 14, 2020 (“Stipulation”).

actions; (c) researching the applicable law with respect to the claims and the potential defenses thereto; (d) finding an appropriate mediator and preparing with co-counsel a mediation brief and a detailed settlement demand; (e) preparing for and participating in an all-day mediation; (f) participating in additional negotiations relating to the settlement terms and specific terms included in the Settlement Agreement; (g) preparing the Settlement Agreement; and (h) communicating with our client, Mr. Tuttle, and keeping him advised of developments in the Actions.

6. The chart below is a summary of time expended by the attorneys and professional staff of GM&E on the Actions through July 14, 2020, and the lodestar calculation based on their current billing rate. These hourly rates are my firm's customary rates and are well within the range of hourly rates that have been accepted by courts as reasonable in other securities or shareholder litigation. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.

Professional (position)*	Years in Practice	Hourly Rate	Hours Worked	Lodestar
Thomas J. McKenna (P)	34	\$795.00	129.10	\$ 102,634.50
Gregory M. Egleston (P)	21	\$775.00	93.50	\$ 72,462.50
Noemi Rivera (PL)	19	\$285.00	18.10	\$ 5,158.50
Elaine Rosa (PL)	4	\$260.00	12.00	\$ 3,120.00
Rebecca Ramotar (PL)	1	\$100.00	3.30	\$ 330.00
Total			256.00	\$ 183,705.50

* Partner (P), Senior Attorney (SA), Paralegal (PL).

7. From Plaintiff Tuttle filing his complaint through July 14, 2020, the signing of the Stipulation, the total lodestar amount for my firm is \$183,705.50. The hours reported excludes the time spent by my firm: (1) negotiating the Fee and Expense Amount; and (2) preparing the briefs and declarations in support of preliminary and final approval of the Settlement.

8. GM&E expended a total of \$3,782.85 in un-reimbursed expenses that were reasonably and necessarily incurred in connection with prosecution of the Actions broken down as follows:

LIST OF UNREIMBURSED EXPENSES

<u>Category</u>	<u>Amount</u>
Telephone and Facsimile	\$ 21.63
Photocopying/Reproduction	\$ 202.15
Postage/Messenger/Federal Express	\$ 27.58
Mediation	\$1,166.67
Computer Research/Services	\$ 210.80
Press Release	\$ 187.27
Court Filing Fees	\$ 725.00
Travel/Hotel Accommodations/Meals	\$1,241.75
TOTAL:	\$3,782.85

9. The expenses set forth above are reflected in counsel's books and records. These books and records are prepared from expense vouchers, check records, and financial statements prepared in the normal course of business for my firm and are an accurate record of the expenses incurred in the prosecution of the Actions.

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

3 Executed this 28th day of September 2020.

4
5 /s/ Thomas J. McKenna
6 Thomas J. McKenna
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EXHIBIT A

Gainey McKenna & Egleston

Attorneys at Law

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FIRM RÉSUMÉ

I. Introduction

Gainey McKenna & Egleston (the “Firm”) is based in New York and New Jersey and litigates throughout the country in both state and federal court. Members of the Firm have been engaged in the practice of law for over thirty years. The Firm concentrates its practice on civil litigation of all types and especially in class action litigation on behalf of investors, consumers and small businesses.

The Firm has broad experience in the following areas: breach of fiduciary duty claims under the Employee Retirement Income Security Act of 1974 (“ERISA”), securities, shareholder derivative, consumer fraud and other types of complex commercial and tort litigation. The Firm also has experience in federal and state minimum wage laws, overtime laws or other employment laws regulating the payment of wages and benefits to employees.

Many of the Firm’s cases involve multi-district litigation. The Firm is experienced in, and thoroughly familiar with, all aspects of complex litigation, including the underlying substantive law, the procedures recommended in the Manual for Complex Litigation and the substance and procedure of class certification.

The Firm’s approach to each case is the same. It presents an aggressive position for its clients and uses all available resources necessary to achieve the best possible outcome for its clients. In short, the Firm works hard to produce victories for its clients and takes pride in providing a high level of legal service. It also develops a strong working relationship with its clients and will do whatever it takes within the bounds of the law to get results.

The Firm was formed with the goal of combining the experience gained through practicing law at large firms with the closeness, flexibility and attention to detail that characterize many smaller firms. In essence, the Firm has designed itself to be able to handle both large and small matters, offering what we believe our clients want most: quality legal work with an emphasis on communication.

We also represent plaintiffs and defendants in a variety of complex civil and commercial litigations, including real estate and business disputes, breach of contract and commercial disputes, employment cases (discrimination, harassment, wrongful termination), insurance coverage disputes, professional malpractice (accounting, legal and medical), products liability, and personal injury lawsuits.

The Firm recently made law in the field of ERISA with its successful prosecution of an appeal to the United States Supreme Court wherein the Court struck down a “presumption of prudence” that lower courts had been using to protect the actions of fiduciaries of employer retirement plans who imprudently invested in company stock for the retirement plan. In the case, *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), the Firm argued with co-counsel that the presumption was illegitimate and had no place in the ERISA statutory framework. The Supreme Court agreed.

We have also been retained strictly as trial counsel in many matters. Members of the Firm are admitted to practice in all the courts of the State of New York, New Jersey, Pennsylvania, and Connecticut as well as in the United States Supreme Court, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, the United States District Court of New Jersey, United States District Court for the Eastern District of Pennsylvania, the United States District Court of Connecticut, the United States Court of Appeals for the Second Circuit, Fifth Circuit, Sixth Circuit, Eighth Circuit, Ninth Circuit and Eleventh Circuit. Members of the firm have also been admitted *pro hac* vice in a number of other state and federal jurisdictions.

II. Notable Achievements

Below are just some of the cases the attorneys at the Firm have successfully prosecuted by producing a recovery for their clients:

- *Dudenhoeffer, et al. v. Fifth Third Bancorp., et al.*, Civil Action No.: 08-cv-538 (S.D. Ohio) (Co-Lead Counsel in ERISA Class Action) (Recovery of \$6,000,000 in cash and structural relief to the 401(k) Plan);
- *Borboa, et al. v. Theodore L. Chandler, et al.*, Case No.: 3:13-cv-844-JAG (E.D. Va.) (counsel in ERISA Class Action) (Recovery of \$5 million for the employees’ 401(k) plan);
- *Klein v. Gordon et al.*, Civil Action No.: 8:17-cv-00123-AB (C.D. Cal.) (Court Appointed Interim Lead Counsel in Derivative Action) (settlement achieved on behalf of Opus Bank consisting of corporate governance reforms);
- *In re CytRx Corporation Stockholder Derivative Litigation II*, Civil Action No.: C.A. No. 11800-VCMR (Chancery Delaware) (*de facto* Co-Lead Counsel in

Derivative Action) (settlement achieved on behalf of CytRx Corp. consisting of corporate governance reforms);

- *Floridia et al v. Dolan, et al.*, Civil Action No.: 14-cv-03011 (D. Minn.) (Lead Counsel in securities fraud Class Action) (settled for \$2.1 million for benefit of class);
- *In re Wilmington Trust Corp. ERISA Litig.*, Civil Action No.: 10-cv-001114-SLR (D. Del.) (Co-Lead Counsel in ERISA Class Action) (Recovery of \$3 million for the employees' 401(k) plan);
- *In re Schering-Plough Corp. Enhance ERISA Litig.*, Civil Action No.: 08-cv-1432 (D.N.J.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$12.25 million for the employees' 401(k) plan);
- *In re Popular Inc. ERISA Litig.*, Master File No.: 09-cv-01552-ADC (D. P.R.) (Co-Lead Counsel in ERISA Class Action) (recovery \$8.2 million for the employees' 401(k) plan);
- *Salvato v. Zale Corp., et al.*, Civil Action No.: 06-cv-1124 (N.D. Tex.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$7 million for the employees' 401(k) plan);
- *In re General Growth Properties, Inc. ERISA Litig.*, Master File No.: 08-cv-6680 (N.D. Ill.) (Co-Class Counsel for the Settlement Class in ERISA class action) (recovery of \$5.75 million for the employees' 401(k) plan);
- *Morrison v. MoneyGram Int'l, Inc., et al.*, Civil Action No.: 08-cv-1121 (D. Minn.) (Lead Counsel in ERISA Class Action) (recovery of \$4.5 million for the employees' 401(k) plan);
- *Jennifer Taylor v. Monster Worldwide, Inc.*, Civil Action No.: 06-cv-8322 (AKH) (S.D.N.Y.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$4.25 million for the employees' 401(k) plan);
- *Boyd, et al. v. Coventry Health, et al.*, Civil Action No.: 09-cv-2661 (D. Md.) (Co-Lead Counsel in ERISA class action) (recovery \$3.6 million for the employees 401(k) plan);
- *Singh v. Tri-Tech Holdings, Inc.*, Civil Action No.: 13-cv-09031 (Co-Lead Counsel in securities fraud Class Action) (settled for \$975,000 for benefit of class);
- *Shane v. Kenneth E. Edge, et al.*, Civil Action No.: 10-cv-50089 (N.D. Ill.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$3.35 million for the employees' 401(k) plan);

- *Thurman v. HCA, Inc., et al.*, Civil Action No.: 05-cv-01001 (M.D. Tenn.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$3 million for the employees' 401(k) plan);
- *Bagley, et al., v. KB Home, et al.*, Civil Action No.: 07-cv-1754 (C.D. Cal.) (Co-Lead Counsel in ERISA Class Action) (recovery \$3 million for the employees' 401(k) plan);
- *Maxwell v. Radioshack Corp., et al.*, Civil Action No.: 06-cv-499 (N.D. Tex.) (Co-Lead Counsel in ERISA class action) (recovery of \$2.4 million for the employees' 401(k) plan);
- *In re MBNA Corp. ERISA Litig.*, Master Docket No.: 05-cv-429 (D. Del.) (Class Counsel in ERISA Class Action) (recovery of \$4.5 million for the employees' 401(k) plan);
- *In re Guidant Corp. ERIS Litig.*, Civil Action No.: 05-cv-1009 (S.D. Ind.) (recovery of \$7 million for the employees' 401(k) plan);
- *In re ING Groep, N.V. ERISA Litig.*, Master File No.: 09-cv-00400 (N.D. Ga.) (Co-Counsel in ERISA Class Action) (recovery of \$3.5 million for the employees' 401(k) plan);
- *In re Netsol Technologies, Inc.*, Civil Action No.: 14-cv-05787 (C.D. Cal.) (Lead Counsel in securities fraud Class Action) (settled for \$850,000 for benefit of class).

III. The Firm Serving As “Lead,” “Co-Lead” or “Counsel”

The Firm has significant experience in prosecuting complex cases, including class actions under ERISA involving breach of fiduciary duty, consumer class actions, securities fraud class actions, derivative cases and transactional matters. By way of example, the following are some of the other cases the Firm has been involved in serving as “Lead or “Co-Lead” Counsel:

Derivative Actions

- *Recupero v. Friedli, et al.*, Civil Action No.: 1:17-cv-00381-JKB (D. Md.) (Court Appointed Interim Lead Counsel in Derivative Action) (settlement achieved on behalf of Osiris Therapeutics, Inc. consisting of corporate governance reforms);
- *In re Fifth Street Finance Corp., Stockholder Litig.*, C.A. No.: 12157-VCG (Del. Chancery) (Court Appointed Co-Lead Counsel in Derivative Action) (settlement achieved in cooperation with other derivative actions venued elsewhere for monetary and non-monetary corporate benefits conferred on corporation);

- *Hamdan v. Munro, et al.*, Civil Action No.: 3:16-cv-03706-PGS (D. N.J.) (Lead Counsel in Derivative Action) (settlement achieved on behalf of Intercloud Systems, Inc. consisting of corporate reforms);
- *In Re Capstone Turbine Corp. Stockholder Derivative Litigation*, Civil Action No.: CV16-01569-DMG (C.D. Cal) (Court Appointed Co-Lead Counsel in Derivative Action);
- *Nahar, et al., v. Bianco, et al.*, Civil Action No.: 2:16-cv-00756-RSL (W.D. Wash.) (Court Appointed Co-Lead Counsel in Derivative Action) (settlement achieved on behalf of CTI Biopharma Corp. in cooperation with other derivative actions venued elsewhere consisting of corporate reforms);
- *In re Provectus Biopharmaceuticals Inc. Derivative Litig.*, Civil Action No.: 3:14-cv-00372-PLR-HBG (E.D. Tenn.) (Co-Lead Counsel in Derivative Action) (settlement consisting of corporate governance reforms achieved on behalf of Company);
- *Loyd v. Giles, et al.*, Case No.: 2015CV33429 (Colo., Denver County) (settlement consisting of corporate governance reforms achieved on behalf of Ampio Pharmaceuticals, Inc.);
- *Vacek v. Awad, et al.*, Civil Action No.: 2:17-cv-02820 (E.D. Pa.) (settlement achieved on behalf of Walter Investment Management Corp. consisting of corporate reforms);
- *Giesbrecht v. Lee, et al.*, Civil Action No.: 3:13-cv-0697 (D. Nev.) (settlement achieved in cooperation with other derivative actions venued elsewhere for corporate benefits conferred on L&L Energy, Inc.);
- *Hapka v. Dennis Crowley, et al.*, 50-2005 CA (15th Judicial Circuit in and for Palm Beach County, Florida) (*de facto* Lead Counsel in Derivative Action) (settlement achieved on behalf of Spear & Jackson, Inc. for monetary benefits conferred on corporation);
- *Nieman v. Ira B. Lampert, et al.*, Civil Action No.: 05-cv-60574 (S.D. Fl.) (*de facto* Co-Lead Counsel in Derivative Action) (settlement consisting of corporate governance reforms achieved on behalf of Concord Camera Corp.);
- *Riley v. Jorge Mas, et al.*, Case No.: 04-cv-27000 (11th Judicial Circuit in and for Dade County, Florida) (Lead Counsel in Derivative Action) (settlement consisting of corporate governance reforms achieved on behalf of Mastec, Inc.);

- *Ramseur v. Callidus Software, Inc., et al.*, Civil Action No.: 04-cv-4419 (N.D. Cal.) (Co-Counsel in Derivative Action) (settlement achieved on behalf of Callidus Software, Inc. consisting of corporate reforms);
- *Emond v. Murphy, et al.*, Civil Action No.: 2:18-cv-09040 (C.D. Cal.) (settlement achieved in cooperation with other derivative action venued elsewhere for corporate benefits conferred on Izea Worldwide, Inc. consisting of corporate reforms);
- *In re India Globalization Capital, Inc. Derivative Litigation*, Civil Action No.: 1:18-cv-3698 (D. Md.) (Court Appointed Co-Lead Counsel) (settlement in principle reached in cooperation with other derivative action);
- *In re Revolution Lighting Technologies, Inc. Derivative Action*, Civil Action No.: 1:19-cv-03913 (S.D.N.Y.) (Court Appointed Co-Lead Counsel) (settlement in principle reached in cooperation with other derivative action venued elsewhere);
- *Kelly Nicole Desmond-Newman v. Saagar Govil, et al.*, Civil Action No.: 18-cv-03992 (E.D. NY) (Court Appointed Interim Lead Counsel in Derivative Action) (settlement achieved on behalf of Cemtrex, Inc. consisting of corporate reforms in cooperation with other derivative action venued elsewhere);
- *Savage, Spencer, et al., v. Kay, Robert B., et al.*, Index No.: 162407/2015 (*de facto* lead counsel in Derivative Action) (settlement achieved on behalf of iBIO, Inc. consisting of corporate reforms);
- *Labare v. Dunleavy, et al.*, Civil Action No.: 3:15-cv-01980 (D. N.J.) (co-counsel) (settlement achieved on behalf of Ocean Power Technologies, Inc. consisting of corporate reforms);
- *In re Marriott International Customer Security Data Breach Litigation – Derivative Track*, Civil Action No.: 8:19-md-02879 (D. Md.) (Court Appointed Co-Lead Counsel);
- *In re iRobot Corporation Derivative Litigation*; Civil Action No.: 1:20-cv-10034 (D. Mass.) (Court Appointed Co-Lead Counsel);
- *In re CBL & Associates Properties, Inc. Stockholder Derivative Litigation*; Consolidated Case No.: 2020-0011-JTL (Chancery Delaware) (Court Appointed Co-Lead Counsel);
- *In re Ormat Technologies, Inc. Derivative Litigation*, Civil Action No.: 3:18-cv-00439 (D. Nev.) (Court Appointed Co-Lead Counsel);

- *In re 22nd Century Group, Inc. Derivative Litigation*, Civil Action No.: 1:19-cv-00479 (W.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *Thiese v. Giles. et al.*, Civil Action No.: 18-cv-02558-RBJ (D. Co.) (Court Appointed Co-Lead Counsel in Derivative Action);
- *In re Rev Group, Inc. Derivative Litigation*, Civil Action No.: 1:19-cv-0009 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re LendingClub Corporation Stockholder Derivative Litigation*, Civil Action No.: 3:18-cv-04391(N.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In Re Zillow Group, Inc. Shareholder Derivative Litigation*, Civil Action No.: 17-cv-1568 (W.D. Wash) (Court Appointed Co-Lead Counsel; motion to dismiss denied);
- *Bonessi v. Bank of the Ozarks, Inc. (Nominal Defendant)*, Civil Action No.: 4:19-cv-00567-DPM (E.D. Ark.) (*de facto* lead counsel in Derivative Action; motion to dismiss fully briefed);
- *Kates v. Metlife, Inc. (Nominal Defendant)*, Civil Action No.: 1:19-cv-01266-LPS-JLH (D. Del.) (co-counsel in Derivative Action; motion to dismiss fully briefed);
- *Behrman, et al. v. Dentsply Sirona, Inc. (Nominal Defendant)*, Civil Action No.: 1:19-CV-00772-RGA (D. Del.) (*de facto* lead counsel in Derivative Action; motion to dismiss fully briefed);
- *Wajda v. Lipocine, Inc. (Nominal Defendant)*, C.A. No.: 2019-0122-JTL (Del. Chancery) (*de facto* lead counsel in Derivative Action; motion to dismiss fully briefed);
- *In Re stamps.com Derivative Litigation*, Civil Action No.: 2:19-cv-04272 (C.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In re Taronis technologies, Inc. Shareholder Derivative Litigation*, Civil Action No.: 2:19-cv-04547 (D. Ariz.) (Court Appointed Co-Lead Counsel);
- *In Re Cloudera, Inc. Stockholder Derivative Litigation*, Civil Action No.: 1:19-cv-01422 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re CVS Health Corporation Derivative Litigation*, Civil Action No.: 17-378 (D. RI) (Court Appointed Co-Lead Counsel);

- *In re Colony Capital Stockholder-Derivative Litigation*, Civil Action No.: 1:18-cv-03176 (Court Appointed Co-Lead Counsel);
- *Klein v. Arora, et al.*, Civil Action No.: 19-cv-01348 (N.D. Il.) (Court Appointed Co-Lead Counsel in Derivative Action);
- *Mina Pastagia, et al., v. Charles J. Philippin, et al.*, Case No.: 2018-CH-07432 (Chancery Illinois, Cook County) (Interim Lead Counsel in Derivative Action involving Ulta Beauty, Inc.);
- *Ruth v. CanaVest Corp. (Nominal Defendant)*, Civil Action No.: 2:15-cv-00481 (D. Nev.) (*de facto* lead counsel in Derivative Action);
- *In re Johnson & Johnson Talc Stockholder Derivative Litigation*, Lead Case No.: 3:19-cv-18874-FLW-LHG (Court Appointed Executive Committee in the Derivative Action);
- *In re Beyond Meat, Inc. Derivative Litigation*, Civil Action No.: 20-2524 (C.D. Cal.) (Court Appointed Co-Lead Counsel);
- *Lee v. TrueCar, Inc. (Nominal Defendant)*, Case No 2019-0988 (Chancery Delaware) (Court Appointed Interim Lead Counsel);
- *In re Crown Castle International Corp. Derivative Litigation*, Civil Action No.: 20-cv-00606 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Acer Therapeutics, Inc. Derivative Litigation*, Civil Action No. 19-cv-01505 (D. Del.) (Court Appointed Co-Lead Counsel); and
- *In re Curo Group Holdings, Corp., Derivative Litigation*, Civil Action No.: 20-cv-00851 D. Del.) (Court Appointed Co-Lead Counsel).

Securities Class Actions

- *In re VimpelCom Ltd. Securities Litig.*, Civil Action: No.: 1:15-cv-08672 (ALC) (S.D.N.Y.) (Lead Counsel in securities fraud Class action);
- *Fogel v. Vega, et al.*, Civil Action No.: 1:13-cv-02282-KPF (S.D.N.Y.) (Lead Counsel in securities fraud Class Action against Wal-Mart de Mexico SAB de CV, Ernesto Vega, Scot Rank, and Wal-Mart Stores, Inc.);
- *Floridia et al v. Dolan, et al.*, Civil Action No.: 14-cv-03011 (D. Minn.) (Lead Counsel in securities fraud Class Action);

- *In re Netsol Technologies, Inc.*, Civil Action No.: 14-cv-05787 (C.D. Cal.) (Lead Counsel in securities fraud Class Action);
- *Singh v. Tri-Tech Holdings, Inc.*, Civil Action No.: 13-cv-09031 (Co-Lead Counsel in securities fraud Class Action);
- *Jason v. Junfeng Chen, et al.*, Civil Action No.: 12-cv-1041 (S.D.N.Y.) (Lead Counsel in securities fraud Class action);
- *Anderson v. Peregrine Pharmaceuticals, Inc., et al.*, Civil Action No.: 12-cv-01647 PSG (FMOx) (C.D. Cal.) (Lead Counsel in securities fraud Class Action);
- *Araj v. JML Portfolio Mgmt. Ltd., et al.*, Civil Action No.: 09-cv-00903 (M.D. Fla.) (Co-Lead Counsel in securities fraud Class Action);
- *Hanson et al, v. Frazer, LLP., et al.*, Civil Action No.: 12-cv-3166 (S.D.N.Y.) (Lead Counsel in securities fraud Class Action);
- *Labit v. Glenn Zagoren, et al.*, Civil Action No.: 03-cv-2298; (S.D.N.Y.) (Co-Lead Counsel in securities fraud Class Action); and
- *Karp v. SI Financial Group, Inc., et al.*, Civil Action No: 19-cv-199 (D. Conn.) (Lead Counsel in securities fraud Class Action).

ERISA Class Actions

- *In re Comcast Corp. ERISA Litig.*, Master File No.: 08-cv-00773-HB (E.D. Pa.) (recovery of \$5 million for the employees' 401(k) plan);
- *Simeon v. Affiliated Computer Services, Inc. et al.*, Civil Action No.: 06-cv-1592 (N.D. Tex.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$1.5 million for the employees' 401(k) plan);
- *Herrera v. Wyeth, et al.*, Civil Action No.: 08-cv-04688 (RJS) (S.D.N.Y.) (recovery of \$2 million for the employees' 401(k) plan);
- *Douglas J. Coppess v. Healthways, Inc.*, Civil Action No.: 10-cv-00109 (M.D. Tenn.) (Lead Counsel in ERISA Class Action) (recovery of \$1.25 million for the employees' 401(k) plan);
- *In re Int'l Game Tech. ERISA Litig.*, Civil Action No.: 09-cv-00584 (D. Nev.) (Co-Lead Counsel in ERISA class action) (recovery of \$500,000 for the employees' 401(k) plan);

- *Jennifer Jones v. NovaStar Fin., Inc.*, Civil Action No.: 08-cv-490 (NKL) (W.D. Mo.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$925,000 for the employees' 401(k) plan);
- *Page v. Impac Mortgage Holdings, Inc., et al.*, Civil Action No.: 07-cv-1447 (C.D. Cal.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$300,000 for the employees' 401(k) plan);
- *Fulmer v. Scott Klein, et al.*, Civil Action No.: 09-cv-2354-N (N.D. Tex.) (Lead Counsel in ERISA Class Action);
- *In re Pilgrims Pride Stock Investment Plan ERISA Litig.*, Civil Action No.: 08-cv-000472-TJW-CE (E.D. Tex.) (Co-Lead Counsel in ERISA Class Action);
- *In re UBS ERISA Litig.*, Civil Action No.: 08-cv-6696 (S.D.N.Y.) (Co-Lead Counsel in ERISA Class Action);
- *Rinehart v. Lehman Brothers Holdings Inc., et al.*, Civil Action No.: 08-cv-5598 (S.D.N.Y.) (Co-Lead Counsel in ERISA Class Action);
- *Usenko v. Sunedison Semiconductor, LLC., et al.*, Civil Action No.: 17-cv-2227 (E.D. Mo.) (*de facto* Co-Lead Counsel in ERISA Class Action);
- *Harris and Ramos v. Amgen, Inc., et al.*, Civil Action No.: 07-cv-5442 (C.D. Cal.) (Co-Lead Counsel in ERISA Class Action);
- *Russell v. Harman Int'l Industries Inc., et al.*, Civil Action No.: 07-cv-02212 (D. of Columbia) (*de facto* Lead Counsel in ERISA Class Action);
- *Mellot v. Choicepoint, Inc., et al.*, Civil Action No.: 05-cv-1340 (N.D. Ga.) (Co-Lead Counsel in ERISA Class Action);
- *In re Eastman Kodak ERISA Litig.*, MASTER FILE NO. 6:12-CV-06051-DGL (W.D.N.Y.) (Co-Counsel in ERISA Class Action); and
- *Sheedy v. Adventist Health System Sunbelt Healthcare Corporation., et al.*, Civil Action No.: 6:16-cv-01893-GAP (M.D. Fl.) (Interim Lead Counsel in ERISA Action).

Anti-Trust Class Actions

- *In re: Package Seafood Products Antitrust Litig.*, Civil Action No.: 15-MD-2670 (JLS) (MDD) (S.D. Cal.) (co-counsel in on-going anti-trust action);

- *In re Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328 (Member of the committee in anti-trust action) (settlement obtained from several defendants); and
- *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation*, MDL No. 2542 (co-counsel in on-going anti-trust action).

FLSA Actions

- *Affen v. The TJX Companies, Inc., et al.*, Civil Action No.: 14-cv-03820-CCC-JBC (D. N.J.);
- *Roberts v. The TJX Companies, Inc.*, Civil Action No.: 14-cv-00746-BJD-MCR (M.D. Fla.);
- *Sifferman v. Sterling Financial Corp.*, Civil Action No.: 13-cv-00183 (W.D. Wash.); and
- *Winfield, et al., v. Citibank, N.A.*, Case No.: 10-cv-7304 (S.D.N.Y.).

Consumer Actions

- *Jairo Jara, et al., v. DeVry Education Group, Inc., et al.*, Civil Action No.: 1:16-cv-10168 (N.D. Ill.);
- *Dumont v. Litton Loan Servicing, LP*, Civil Action No.: 1:12-cv-2677-ER-LMS (S.D.N.Y.) (Gainey McKenna & Egleston and Robbins Geller Rudman & Dowd LLP were plaintiffs' co-lead counsel in a putative class action lawsuit filed in the United States District Court for the Southern District of New York on behalf of thousands of homeowners in New York, New Jersey and Pennsylvania. The lawsuit alleged, among other things, that Litton Loan Servicing ("Litton") and Ocwen Loan Servicing ("Ocwen") engaged in a deceptive scheme to delay or deny permanent mortgage loan modifications through the federal Home Affordable Modification Program ("HAMP") to desperate homeowners, systematically breaching their contractual obligations to homeowners, committing deceptive trade practices, and causing significant financial harm);
- *Schroeder, et al. v. Countrywide Home Loans, Inc. Bank of America, et al.*, Civil Action No.: 07-cv-1363 (PGS) (D.N.J.) (Class Counsel in nationwide class action on behalf of United States Military Service members overcharged on their mortgages in violation of the Service members' Civil Relief Act; recovery of \$5.962 million for more than 17,000 service members); and
- *Stamm v. My Pillow, Inc. a Minnesota Corporation, a/k/a My Pillow Direct, LLC*, Index No.: 651472/2017 (N.Y. Sup. Ct.).

IV. Attorneys

Barry J. Gainey received his bachelor's degree in 1981 from Boston University and received his J.D. in 1984 from Washington and Lee University School of Law where he was a Law Review Notes and Comments Editor and authored two published articles. Mr. Gainey was a partner at Wilson, Elser, Moskowitz, Edelman & Dicker in New York City, and the founding partner of Renzulli, Gainey & Rutherford (which later became Gainey & McKenna and now Gainey McKenna & Egleston), with offices in New York City and New Jersey. Mr. Gainey has worked on many high profile actions such as:

- *Schroeder, et al. v. Countrywide Home Loans, Inc., Bank of America, et al.*, Civil Action No.: 07-cv-1363 (D.N.J.) (Appointed Class Counsel in nationwide class action on behalf of United States Military Service members with Countrywide mortgages);
- *Klyachman v. Vitamin Shoppe, et al.*, Civil Action No.: 07-cv-1528 (D.N.J.) (Appointed Class Counsel in nationwide consumer fraud case);
- *Kleck v. Bluegreen Corp.*, Civil Action No.: 09-cv-81047 (S.D. Fl.) (Appointed Class Counsel with Florida firm in nationwide class action);
- *Resnik v. Lucent Technologies, Inc. et al.*, Case No.: L-1230-06 (N.J.) (Appointed Co-Class Counsel in class action);
- *Alamo v. Bluegreen Corp. et al.*, Case No.: L-6716-05 (N.J.) (Appointed Class Counsel in consumer fraud case); and
- *Blumer, et al. v. Acu-Gen Biolabs, Inc., et al.*, Civil Action No.: 06-cv-10359 (D. Mass) (Appointed Class Counsel in consumer fraud case).

Mr. Gainey is admitted to practice in the Federal and State Courts of New York and New Jersey. He is also a past or current member of the American Association for Justice, New Jersey Association for Justice, New York State Bar Association, American Bar Association, New York State Trial Lawyers Association, New Jersey State Bar Association, and Bergen County Bar Association.

Thomas J. McKenna received his bachelor's degree in 1981 from Boston College (*magna cum laude*) and received his J.D. in 1984 from Syracuse University College of Law (*cum laude*) where he was a Law Review Editor and a Member of the Justinian Honorary Law Society. Following law school, Mr. McKenna clerked in the United States District Court for the Eastern District of Louisiana for the Honorable Veronica D. Wicker from 1984 through 1986.

Before starting his own law practice, Mr. McKenna was associated with Cahill, Gordon & Reindel ("Cahill") in New York City, practicing class actions and securities law, insurance coverage

litigation and general commercial litigation. After his association with Cahill, he was an attorney at Grutman Greene & Humphrey in New York City where he concentrated on class actions and trial practice in complex commercial and tort litigation. In 1996, Mr. McKenna started his own law firm and then formed Gainey & McKenna in 1998 where he focused his practice on trials, class actions and commercial disputes. Mr. McKenna has worked on many important actions such as:

- *Allapattah Services, Inc., et al., v. Exxon Corp.*, Civil Action No.: 91-cv-0983 (S.D. Fla.) (Nationwide class action for class of Exxon service station operators against Exxon for allegedly overcharging them for gasoline, eventually settled for over \$1 billion);
- *In re Popular Inc. ERISA Litig.*, Master File No.: 09-cv-01552-ADC (D. P.R.) (Co-Lead Counsel) (breach of fiduciary duty case under ERISA);
- *In re Schering-Plough Corp. Enhance ERISA Litig.*, Civil Action No.: 08-cv-1432 (D.N.J.) (Co-Lead Counsel) (claim on behalf of employees and ex-employees against 401(k) fiduciaries for breaches of duty in connection with Vytorin);
- *In re General Growth Properties, Inc. ERISA Litig.*, Master File No.: 08-cv-6680 (N.D. Ill.) (Class Counsel) (breach of fiduciary duty case involving harm to retirement plan in connection with alleged risky real estate investments); and
- *Morrison v. MoneyGram Int'l, Inc., et al.*, Civil Action No.: 08-cv-1121 (D. Minn.) (Lead Counsel) (breach of fiduciary duty claims involving alleged improper investment practices).

Mr. McKenna is a member of the Bar of the State of New York and admitted to practice before the United States Supreme Court and United States District Courts for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second, Fifth, Sixth, Ninth and Eleventh Circuits. He has also been admitted *pro hac vice* in numerous other courts. Mr. McKenna is also a member of the Association of the Bar of the City of New York, the New York State Trial Lawyers Association, and the American Association for Justice (formerly the American Trial Lawyers Association) and past member of the New York County Lawyers Association.

Gregory M. Egleston received his bachelor's degree in 1992 from Fordham University (*magna cum laude*), his master's degree in 1994 from Columbia University, and received his J.D. in 1997 from New York Law School. Before joining the Firm, Mr. Egleston had his own law firm and prior to that, Mr. Egleston was an attorney specializing in securities class action litigation, shareholder derivative actions, and consumer fraud litigation at a prominent Manhattan plaintiffs' class action firm. Mr. Egleston has worked on many high-profile class actions such as:

- *Shane v. Kenneth E. Edge, et al.*, Civil Action No.: 10-cv-50089 (N.D. Ill.) (recovery of \$3.35 million for the company's 401(k) plan);

- *Mayer v. Administrative Committee of Smurfit-Stone Container Corp. Retirement Plans*, Civil Action No.: 09-cv-02984 (N.D. Ill.) (recovery of \$7.75 million for the company's 401(k) plan);
- *In re YRC Worldwide Inc. ERISA Litig.*, Civil Action No.: 09-cv-02593 JWL/JPO (D. Kan.) (recovery of \$6.5 million for the company's 401(k) plan);
- *In re Beazer Homes U.S.A., Inc. Sec. Litig.*, Civil Action No.: 07-cv-725-CC (N.D. Ga.) (\$30.5 million settlement in a Securities Class Action);
- *In re Willbros Group, Inc. Sec. Litig.*, Civil Action No.: 06-cv-1778 (S.D. Tex.) (\$10.5 million settlement in a Securities Class Action);
- *In re Royal Dutch/Shell Transport Sec. Litig.*, Civil Action No.: 04-cv-374 (JAP) (D.N.J.) (U.S. settlement with a minimum cash value of \$138.3 million with a potential value of more than \$180 million, in addition to a related European settlement of \$350 million);
- *In re Marsh & McLennan Companies, Inc. Sec. Litig.*, Civil Action No.: 04-cv-8144 (CM) (S.D.N.Y.) (\$400 Million settlement in a Securities Class Action); and
- *In re Lumenis Sec. Litig.*, Civil Action No.: 02-cv-1989 (S.D.N.Y.) (\$20.1 million settlement in a Securities Class Action).

Mr. Egleston was also involved in a high-profile landlord/tenant action entitled *Roberts v. Tishman Speyer, L.P., et al.*, N.Y. Sup. Ct., Index No. 07600475. The core legal issue was whether landlords could permissibly deregulate and charge market rents for certain so-called "luxury" apartment units in these complexes in years in which the landlords were simultaneously receiving tax abatements from New York City known as "J-51" benefits. The Court of Appeals ruled that the New York statutory scheme prevents landlords of rent stabilized buildings from charging market rents while receiving J-51 benefits for as long as they continue to receive those tax benefits. The action recently settled for \$68.8 million.

Mr. Egleston is admitted to the Bars of the States of New York and Connecticut. He is also admitted to practice before the Bars of the federal district courts for the Southern and Eastern Districts of New York and the District of Connecticut.

Robert J. Schupler received his bachelor's degree in 1979 from Drexel University (Philadelphia, PA), and received his J.D. in 1982 from Southwestern University School of Law (Los Angeles, CA).

Mr. Schupler began his legal career at a boutique law firm in Los Angeles where he focused on civil litigation and transactional matters. He returned "home" to the Philadelphia area in the 90's and shortly thereafter began focusing on class action litigation and complex tort and commercial disputes, assisting in litigation matters which included *Sunbeam* and *WorldCom*.

Mr. Schupler has the unique experience of working for both plaintiff and defense litigation firms. While working at an internationally recognized defense law firm, Mr. Schupler concentrated on healthcare related products liability litigation matters. In one of these matters, Mr. Schupler was responsible for the administration of a multi-billion dollar settlement involving tens of thousands of plaintiff claimants.

In 2015, Mr. Schupler began working with Gainey McKenna & Egleston. He has assisted GME in prosecuting numerous class action and shareholder derivative actions, including:

- *In Re: Packaged Seafood Products Antitrust Litigation*, Civil Action No.: 15-MD-2670 JLS (MDD) (S. D. Cal.);
- *George Dumont, et al. vs. Litton Loan Servicing LP, et al.*, Civil Action No.: 7:12-cv-02677-ER-LMS (S.D.N.Y.);
- *Gordon Niedermayer, et al. v. Steven A. Kriegsman, et al.*, Civil Action No.: 11800-VCMR (Chancery Delaware);
- *Arthur P. Cardi, et al. v. FXCM Inc., et al.*, Civil Action No.: 1:17-cv-4699-PAC-HBP (S. D.N.Y.);
- *In Re Rocket Fuel, Inc. Derivative Litigation*, Civil Action No.: 4:15-cv-04625-PJH (N.D. Cal.);
- *Douglas Labare v. Charles Dunleavy, et al.*, Civil Action No.: 3:15-cv-01980-FLW-LHG (D. N.J.);
- *Waseem Hamdan vs. Mark Munro, et al.*, Civil Action No.: 2:16-cv-03706 (D. N.J.);
- *In Re VimpelCom, Ltd. Securities Litigation*, Civil Action No.: 1:15-cv-08672-ALC (S.D.N.Y.); and
- *Shuli Chiu, et al., v. Michelle Dipp, et al.*, Civil Action No.: 1:17-cv-11382 (D. Mass.).

Mr. Schupler is a member of the Bar of the State of Pennsylvania and is also admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

David A. Silva received his bachelor's degree in 1982 from New York University and received his J.D. in 1985 from Brooklyn Law School where he was a member of the Moot Court National Team. Between the years of 1985 and 1988, Mr. Silva worked as an Assistant Corporation Counsel in the Law Department of the City of New York. While at the Law Department, Mr. Silva represented various city agencies in Article 78 proceedings as well as defended the constitutionality of various aspects of the New York City Public Health Law, as well as the Building Code and Zoning Resolution. In addition, he was lead counsel on Federal civil rights actions defending the City and its employees.

In 1988, Mr. Silva left the City and joined Mound Cotton Wollan & Greengrass as an associate and worked there for 25 years becoming a partner in 1995 and a senior partner in 2002.

Mr. Silva has served as counsel to both insurers and reinsurers in dozens of reinsurance arbitrations and court proceedings across the United States. He has also acted as lead counsel in arbitrations in both Bermuda and England, involving some of the highest profile issues in the industry. Mr. Silva regularly advises clients on a wide range of issues including workers' compensation carve out and spiral business; life, personal accident and medical reinsurance issues; long term care reinsurance; actuarial disputes; coverage of declaratory judgment expenses; rescission claims; claims for pre-answer security; letter of credit disputes; commutation valuations; allocation of losses; contract drafting; records inspection rights, and audits. He also has substantial experience in other reinsurance-related matters, including issues involving domestic and off-shore captive reinsurers, surplus relief treaties, and many matters relating to life, accident, health, and long-term care insurance. He also has substantial involvement in all aspects of property and casualty insurance litigation including first- and third-party coverage and claims defense, business interruption, products liability defense, and disputes between primary and excess carriers.

Mr. Silva has been recognized in the Chambers USA Directory, Best Lawyers in America, and Super Lawyers as a leading individual in the field of insurance and reinsurance. Mr. Silva has also served as a lecturer and panelist for various reinsurance programs, including the Reinsurance Association of America, ARIAS U.S., as well as Harris Martin and HB Litigation Conferences.

Mr. Silva is admitted to practice in the federal and state courts of New York and is a past member of the New York State Bar Association as well as the New York County Lawyers Association.

Exhibit B

1 AVI WAGNER (SBN 226688)
2 THE WAGNER FIRM
3 1925 Century Park East, Suite 2100
4 Los Angeles, CA 90067
5 Telephone: (310) 201-9150

6 *Attorney for Plaintiffs*

7 [Additional Counsel on Signature Page]

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE CAPSTONE TURBINE CORP.
11 STOCKHOLDER DERIVATIVE
12 LITIGATION

13 THIS DOCUMENT RELATES TO:
14 All Actions

Master File No.: 2:16-cv-01569

**DECLARATION OF LIGAYA T.
HERNANDEZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
DERIVATIVE SETTLEMENT, FEE
AWARD,
AND SERVICE AWARDS**

DATE: October 30, 2020

TIME: 9:30 A.M.

CTRM: 8C

JUDGE: Hon. Dolly M. Gee

1 I, Ligaya T. Hernandez declare and state, under penalty of perjury, that the
2 following is true and correct to the best of my knowledge, information and belief:

3 1. I am an attorney duly licensed to practice law in the Commonwealth
4 of Pennsylvania.

5
6 2. I am a member of Hynes & Hernandez, LLC (“Hynes & Hernandez”),
7 which served as counsel for Plaintiff Isaac Haber (“Haber”), in the Actions.¹ I
8 have personal knowledge of the matters set forth herein and, if called upon, I could
9 and would completely testify thereto.

10
11 3. A copy of Hynes & Hernandez’s résumé is annexed hereto as Exhibit
12 A.

13
14 4. Hynes & Hernandez has been involved in the Actions since Plaintiff
15 Haber filed his complaint on March 7, 2016.

16
17 5. Hynes & Hernandez, as counsel for Plaintiff Haber in the Actions, has
18 committed 255.2 hours to litigating the Actions from the initial investigation to its
19 resolution, which includes time spent on: (i) reviewing Capstone’s press releases,
20 public statements, SEC filings, and securities analysts’ reports and advisories about
21 the Company; (ii) reviewing related media reports about the Company; (iii)
22 researching applicable law with respect to the claims alleged in the Actions and
23 potential defenses thereto; (iv) preparing and filing a derivative complaint; (v)
24

25
26 ¹ Unless defined herein, all capitalized terms have the same definitions as set forth
27 in the Stipulation of Settlement dated July 14, 2020 (“Stipulation”).

reviewing and analyzing relevant non-public documents produced by the Defendants over the course of the litigation; (vi) conducting extensive research into corporate governance at Capstone and peer companies, as well as industry-wide best practices, and preparing comprehensive settlement demands in furtherance of Plaintiffs' efforts to resolve the Actions in the best interests of the Company and its shareholders; (vii) evaluating the merits of, and the defendants' potential liability in connection with the Securities Class Action; and (viii) negotiating the Settlement with Defendants, including before, at, and after the September 24, 2018 Mediation.

6. The chart below is a summary of time expended by the attorneys and professional staff of Hynes & Hernandez on the Actions, and the lodestar calculation based on their current billing rate. These hourly rates are my firm's customary rates and are well within the range of hourly rates that have been accepted by courts as reasonable in other securities or shareholder litigation. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.

Professional (position)*	Years in Practice	Hourly Rate	Hours Worked	Lodestar
Michael J. Hynes (P)	28	\$775	131.3	\$101,757.50
Ligaya T. Hernandez (P)	11	\$675	123.9	\$83,632.50
Total			255.2	\$ 185,390

* Partner (P), Senior Attorney (SA), Paralegal (PL).

7. From Plaintiff Haber filing his complaint through July 14, 2020, the signing of the Stipulation, my firm performed a total of 255.2 professional work hours in the prosecution of the Actions. The total lodestar amount for my firm is \$185,390. The hours reported excludes the time spent by my firm: (1) negotiating the Fee and Expense Amount; and (2) preparing the briefs and declarations in support of preliminary and final approval of the Settlement.

8. Hynes & Hernandez expended a total of \$1,806.35 in un-reimbursed expenses that were reasonably and necessarily incurred in connection with prosecution of the Actions broken down as follows:

LIST OF UNREIMBURSED EXPENSES

<u>Category</u>	<u>Amount</u>
Pro hac vice Fee	\$325.00
Photocopying/Reproduction	\$122.00
Mediation Travel Expenses	\$969.31
Computer Research/Services	\$226.04
Process Server Fees	\$95.00
Administrative Fees	\$69.00
TOTAL:	\$1,806.35

9. The expenses set forth above are reflected in counsel's books and records. These books and records are prepared from expense vouchers, check records, and financial statements prepared in the normal course of business for my firm and are an accurate record of the expenses incurred in the prosecution of the Actions.

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

3 Executed this 21st, day of September 2020.

4
5 

6
7 _____
8 Ligaya T. Hernandez
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Exhibit A



**101 Lindenwood Drive
Suite 225
Malvern, PA 19355
Telephone: (484) 875-3116
Fax: (484) 875-9273**

FIRM RESUME

I. THE FIRM

Hynes & Hernandez, LLC is a boutique law firm with a national practice dedicated to providing exceptional legal services in shareholder litigation, with a focus on corporate malfeasance and breaches of fiduciary duty. The firm is comprised of experienced attorneys who built their careers at prominent law firms specializing in complex civil litigation.

The attorneys at Hynes & Hernandez, LLC are recognized leaders in shareholder litigation. The firm is dedicated to representing individual and institutional investors who have been wronged by corporate transgressions such as breaches of fiduciary duty, mismanagement, corporate waste and insider trading. The purpose of the firm is to help shareholders hold wrongdoers accountable for the damages inflicted on the company and its shareholders by corporate misconduct. The attorneys at Hynes & Hernandez, LLC have a proven track record of obtaining not only monetary recoveries for shareholders in shareholder litigation, but also significant and innovative corporate governance reforms that inure directly to the benefit of the company and its investors. Corporate governance refers to the system by which companies are directed and controlled. Corporate governance is intended to increase the accountability of a company's management to investors and to avoid corporate wrongdoing and malfeasance that can result in investor loss. The lawyers at Hynes & Hernandez, LLC have witnessed first-hand how companies and their shareholders benefit from improved corporate governance.

Many instances of corporate misconduct result from a lack of adequate corporate governance. Conversely, good corporate governance fosters fairness, transparency, and accountability to shareholders and has been shown to benefit companies and shareholders alike. For example, studies have shown that companies with poor corporate governance scores have 5-year returns that are 3.95% below the industry average, while companies with good corporate governance scores have 5-year returns that are 7.91% above the industry-adjusted average. The difference in performance between these two groups is 11.86%. *Corporate Governance Study: The Correlation between Corporate Governance and Company Performance*, Lawrence D. Brown, Ph.D., Distinguished Professor of Accountancy, Georgia State University and Marcus L. Caylor, Ph.D. Student, Georgia State University.

II. ATTORNEY PROFILES

MICHAEL J. HYNES

Mr. Hynes is a founding Partner of Hynes & Hernandez, LLC. Prior to forming Hynes & Hernandez, LLC, Mr. Hynes was a partner at two nationally recognized securities firms. He practiced in the area of shareholder derivative litigation at both firms, serving as head of the Shareholder Derivative Litigation Department at the latter firm.

Mr. Hynes has served as lead or co-lead counsel in numerous high profile derivative actions relating to the “backdating” of stock options, including *In re Monster Worldwide, Inc. Derivative Litig.*, Index No. 06-108700 (New York County, NY); *In re Barnes & Noble, Inc. Derivative Litig.*, Index No. 06-602389 (New York County, NY); *In re Affiliated Computer Services, Inc. Derivative Litig.*, Cause No. 06-3403 (Dallas County, TX); and *In re Progress Software Corp. Derivative Litig.*, Civil A. No. 07-1937-BLS2 (Suffolk County, MA). More recently, he was involved in litigation concerning Computer Sciences Corporation, *Bainto v. Laphen, et al.*, Consolidated Case No.: A-12-661695-B (District Court Clark County, Nevada) and NCR Corporation, *Williams v. Nuti, et al.*, No. 1:13-cv-01400-SCJ (N.D. Ga. Apr. 26, 2013). Settlements of these, and similar actions, resulted in significant monetary recoveries and corporate governance improvements for those companies and their public shareholders. Mr. Hynes is currently litigating cases involving breaches of fiduciary duties arising out of the payment of excessive compensation to executive officers, violations of the Foreign Corrupt Practices Act, and violations of the False Claims Act. He has also successfully argued an appeal before the Superior Court of Pennsylvania in the matter of *Gray, L. v. DeNaples, L., et al.*, Docket No. 2198 MDA 2014.

Prior to concentrating on shareholder derivative litigation, Mr. Hynes practiced law at Cozen O'Connor, where he concentrated on bankruptcy and commercial litigation. He was also an attorney with the Defenders' Association of Philadelphia from 1991 to 1996, where he defended thousands of misdemeanor and felony cases and obtained jury trial experience. Mr. Hynes received his law degree from Temple University School of Law (J.D. 1991, *cum laude*), and is a graduate of Franklin and Marshall College (1987). Mr. Hynes is licensed to practice law in Pennsylvania, New Jersey and Montana, and has been admitted to practice in the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Eastern and Middle Districts of Pennsylvania. He currently sits on the Board of Directors of the Public Interest Law Center of Philadelphia (PILCOP).

LIGAYA T. HERNANDEZ

Ms. Hernandez has years of experience at some of the top class action litigation firms in the country. She specializes in representing shareholders in derivative suits.

Ms. Hernandez has successfully achieved several multi-million dollar recoveries in derivative cases throughout her career. She has also had a lead role in cases that resulted in significant corporate governance for companies, which greatly benefits its public shareholders. Notable cases include:

- *Harbor Police Retirement System v. Roberts*, Cause No. 09-09061 (95th District Court, Dallas County, Texas). Counsel in a shareholder derivative action alleging corporate waste as to a departing executive officer's retirement package. Settlement of the action required substantial modifications to corporate policies, designed to heighten the independence of outside directors in awarding executive compensation.
- *Williams v. Nuti et al.*, No. 1:13-cv-01400-SCJ (N.D. Ga. Apr. 26, 2013). Counsel in a shareholder derivative action where settlement required a number of enhancements to the company's corporate compliance program.
- *In re Maxwell Technologies, Inc. Derivative Litigation*, Case No. 13-CV-966 (S.D. Cal. 2015). Counsel in a shareholder derivative action based on allegations that management misrepresented its consolidated financial statements as they related to the recognition of certain of the company's revenues. Settlement included improvements to the company's policies and procedures concerning the company's compliance with applicable laws and regulations, as well as enhancing the board of directors' oversight of the company's compliance function.
- *In re Galena Biopharma, Inc. Derivative Litig.*, Case No. 3:10-cv-00382-S (D. Or. 2015). Counsel in a shareholder derivative action where management was accused of inflating the company's share price with a misleading marketing campaign and committing insider trading. Settlement included the payment of \$15 million to the company, the cancellation of certain stock options that were accused of being improperly granted, and the implementation of significant corporate governance that addressed, among other things, the company's stock option granting policies.

Ms. Hernandez received her J.D. and a Health Law Certificate from Loyola University Chicago in 2009. While in law school she served as Senior Editor for the Annals of Health Law Journal and received the CALI Award for highest grade in Appellate Advocacy. Ms. Hernandez received a Master in Health Services Administration in Health Policy from The George Washington University and a Bachelor of Science degree in Biology from the University of Pittsburgh. She is licensed to practice law in Pennsylvania and New Jersey and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey.

Ms. Hernandez has also been named a "Rising Star" by Pennsylvania Super Lawyers since 2015.

III. ACHIEVEMENTS

Below are some notable cases that Hynes & Hernandez, LLC has litigated on behalf of its clients:

Marvin H. Maurras Revocable Trust v. Bronfman, Jr. et al., Case No. 12-cv-03395 (N.D. Ill.)

Accretive Health Inc. ("Accretive"), a registered debt-collection agency in Minnesota and several other states, was alleged to have violated numerous debt collection statutes and patient privacy laws in connection with the operation of its business. These violations became public when the Minnesota Attorney General's Office filed a lawsuit against Accretive in federal district court in

Minnesota on January 19, 2012, citing numerous violations of state and federal health privacy laws, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Emergency Medical Treatment and Active Labor Act (“EMTALA”), debt collection laws, and consumer fraud laws. *Swanson v. Accretive Health, Inc.*, Civil File No. 12-145 RHK/JJK (D. Minn. Jan. 19, 2012). Through the shareholder derivative suit, Hynes & Hernandez, LLC achieved important reforms pertaining to Accretive’s internal compliance program to address and remediate the alleged misconduct.

Among other things, Accretive implemented the following corporate governance reforms as part of the settlement:

- Creation of a Compliance Oversight Committee whose function, among other things, was to facilitate the continued development, implementation and operation of an effective compliance program and scrutinize the external and internal environment through early detection and reporting of potential risks (economic, regulatory, inadvertent, political) that will minimize losses to Accretive and its clients;
- A Compliance Oversight Committee charter that will allow, among other things, the Compliance Oversight Committee to (1) assess risks of non-compliance with (a) applicable debt collection regulations and laws and (b) HIPAA, EMTALA, and other applicable privacy laws; (2) train and heighten awareness on compliance, ethics, and policies and communicate methods for reporting possible violations; and (3) reinforce Accretive’s culture of collaboration and compliance and audit and monitor adherence to Accretive’s compliance and ethics related policies and procedures;
- Continued engagement of an independent, third-party supplier to provide and monitor a whistle-blower hotline to Accretive employees, to provide an anonymous communication channel for employees; and
- Procedures governing reported violations of Accretive’s Code of Business Conduct and Ethics through the whistle-blower hotline, including the requirement that the General Counsel or his designee, as appropriate (a) evaluate such information; (b) inform the Chief Executive Officer (“CEO”) and audit committee of any alleged violations involving an executive officer or a director of Accretive; (c) determine whether an informal inquiry or a formal investigation is necessary, and initiate such inquiry or investigation as appropriate; and (d) report the results of any such inquiry or investigation, together with a recommendation as to a disposition of the matter, to the CEO, or in the event an executive officer or director is involved to the audit committee, for action.

Gloria Basaraba v. Robert Greenberg, et al., Case No. CV-13-05061-PSG (C.D. Cal.)

Skechers U.S.A., Inc. (“Skechers”) was accused of making numerous “unfounded claims” in the advertising of its highly promoted “Shape-ups” line of rocker-bottom shoes. These “unfounded claims” resulted in consumer and personal injury lawsuits and a \$40 million settlement with the Federal Trade Commission prohibiting Skechers’ continued use of numerous “unfounded claims” in Shape-ups advertising. Through the diligence of Hynes & Hernandez, LLC and after extensive negotiations, a settlement was reached which directly addressed the underlying claims in the

litigation. For example, the Settlement called for all significant advertising campaigns to be reviewed by the legal department or outside legal counsel to ensure its appropriateness and legal compliance. The settlement also provided for the maintenance of a code of business ethics to be overseen by Skechers' General Counsel with the assistance of the company's Human Resources Department. The settlement required periodic business ethics and code of conduct training to its employees and additional training for managers with functions that require the approval, preparation, execution, or dating of documents. The settlement also resulted in various improvements that support Skechers' compliance procedures and board-level oversight, including a requirement that the Head of Internal Audit, who is responsible for reviewing Skechers' internal controls, report to the Chair of the Audit Committee on an ongoing, real time basis.

Moreover, the settlement included measures that strengthen the board of directors' independence and transparency. These measures include rotation of the lead director position, ensuring the independence of the board of directors' committees, written independence guidelines, increased director training and greater access to information for shareholders. As nearly every corporate governance expert has recognized, an independent board of directors and strong audit committee is the bedrock of sound corporate governance and supervision of corporate affairs. *See, e.g.,* Ira M. Millstein & Paul W. MacAvoy, *The Active Board of Directors and Performance of the Large Publicly Traded Corporation*, 98 Colum. L. Rev. 1283, 1318 (1998) (finding "a substantial and statistically significant correlation between an active, independent board and superior corporate performance"); *Beyond "Independent" Directors: A Functional Approach to Board Independence*, 119 Harv. L. Rev. 1553, 1553 (2006) (noting that "the need for active, independent boards has become conventional wisdom").

In re Maxwell Technologies, Inc. Derivative Litigation, Case No. 13-cv-966 (S.D. Cal.)

Maxwell Technologies, Inc. ("Maxwell") was alleged to lack the internal controls necessary to prevent improper revenue recognition and to have falsely represented its operations and finances between April 28, 2011 and 2013. Hynes & Hernandez, LLC was an integral part of a team of attorneys that caused Maxwell to adopt corporate governance reforms that not only strengthened Maxwell's internal controls, but also made Maxwell's board of directors more effective representatives of Maxwell and its shareholders. The governance measures include: (1) the requirement that the board of directors hold executive sessions at least twice quarterly; (2) enhanced director training; (3) the requirement that the audit committee meet periodically with Maxwell's legal, internal audit and regulatory operations department to ensure there is meaningful oversight over Maxwell's financial risks; (4) mandatory quarterly meetings and reports between the audit committee and the Chief Compliance Officer to discuss significant internal control issues and material enterprise, operational, financial legal/regulatory and reputational risks; (5) the implementation of annual comprehensive employee training regarding revenue recognition, Generally accepted accounting principles, and other financial reporting regulations and policies; and (6) the establishment of an internal audit plan to ensure that Maxwell has proper internal controls in place and are being followed by Maxwell employees.

In re Galena Biopharma, Inc. Derivative Litig., Case No. 3:14-cv-382-SI (D. Or.)

The derivative action brought on behalf of Galena Biopharma, Inc. (“Galena”) and its shareholders arose from allegations that certain officers and/or directors of Galena secretly hired a stock promotion firm to “pump up” Galena’s stock price, so they could later sell Galena stock while in possession of non-public information at a time when Galena stock was trading at artificially inflated prices. It was also alleged that certain of Galena’s directors used inside information to improperly grant stock options to themselves and fellow officers and/or directors which violated Delaware law because such options were spring-loaded, *i.e.*, granted just prior to the release of material information that was reasonably expected to drive the market price of Galena stock higher, and also failed to comply with the statutory requirements of the Delaware General Corporation Law.

Hynes & Hernandez, LLC was an integral part of a team of law firms that resolved the matter on favorable terms to Galena and its shareholders. The settlement required the payment of \$15 million to Galena by its directors and officers’ liability insurance carrier. In addition, as part of the settlement, a total of 1.2 million stock options that were alleged to have been improperly granted to the director defendants were cancelled in their entirety. Further, the former CEO forfeited over \$800,000 of contractual severance payments due to him and over 1.1 million stock options with an intrinsic value of approximately \$503,062. In total, the settlement provided Galena with financial consideration worth over \$20.8 million.

Furthermore, the settlement required the implementation of significant corporate governance reforms at Galena specifically designed to remediate the alleged wrongdoing. These measures include reforms to Galena’s stock option granting practices, the appointment of a new independent director, reforms to the board of directors and management structure and policies, the adoption of a formal Enterprise Risk Management program and other reforms designed to make Galena’s officers and directors more effective and responsive fiduciaries.

County of York Employees Retirement Plan and Lynne Schwartz, Derivatively on Behalf of Avon Products, Inc. v. Andrea Jung, et al., Index No. 651304/2010 (N.Y. Sup. Ct.)

The derivative action brought on behalf of Avon Products, Inc. (“Avon”) alleged breach of fiduciary duty claims against certain officers and directors in connection with, among other things, alleged violations of the Foreign Corrupt Practices Act of 1977 (“FCPA”). It was alleged that Avon violated the FCPA by paying bribes and kickbacks to get or retain business in China. Eventually, Avon was forced to pay fines in the amount of \$135 million to settle actions with the U.S. Department of Justice and the U.S. Securities and Exchange Commission.

As a result of the prosecution and settlement of the derivative action, Avon agreed to implement and maintain significant corporate governance measures designed to detect and deter violations of the FCPA and to improve the Company’s compliance practices when it conducts business in countries with a high corruption risk profile. The corporate governance provisions include, among other things, the appointment of a Chief Ethics and Compliance Officer (“CECO”), at least bi-annual reporting by the CECO to the audit committee on the status of compliance efforts, implementation of remedial measures, training statistics, and potential violations. The settlement also provided for designated compliance personnel for each business unit, a certification process

requiring global commercial business leaders to provide quarterly certifications on unit compliance with the FCPA and amendments to the audit committee charter requiring semi-annual review of FCPA and anti-corruption compliance. The governance measures further include the implementation of an FCPA Testing Program and associated third-party compliance mechanisms that permit Avon to engage in its global businesses with sufficient controls and other safeguards in place. The court concluded that the settlement conferred substantial benefits on Avon and its shareholders.

In re Fifth Street Finance Corp. S'holder Derivative Litig., Lead Case No. 3:15-cv-01795-RNC (D. Conn.)

The shareholder derivative actions brought on behalf of Fifth Street Finance Corp. (“FSC”), a publicly traded business development company (“BDC”), alleged that insiders at FSC’s external manager, Fifth Street Asset Management, Inc. (“FSAM”), caused FSC to take actions contrary to its interests in order to inflate FSAM’s stock price before FSAM’s November 2014 initial public offering. Hynes & Hernandez, LLC was part of the litigation team that negotiated a settlement conferring substantial monetary and non-monetary benefits on FSC.

In particular, the settlement secured advisory fee enhancements expected to generate monetary benefits worth at least \$30 million to FSC. In addition, the settlement provided for corporate governance, oversight, and conflicts management enhancements to substantially improve the compliance control environment at FSC and FSAM. For example, FSC agreed to adopt measures that will: (i) enhance the independence and rigor of FSC Board oversight, including the appointment of two new independent directors, and ensure that FSAM insiders are held accountable to FSC’s outside directors; (ii) increase the rigor of FSC’s policies and procedures for valuing investments and credits, including enhanced direct Board oversight, more rigorous review of troubled credits, and greater transparency to ensure reasonable valuation and revenue recognition, and timely disclosure of impairments; (iii) create a Risk and Conflicts Committee to address actual and potential conflicts of interest between FSC and FSAM and FSAM insiders, particularly with respect to co-investments, the Investment Advisory Agreement (“IAA”), and FSC’s asset valuation procedures; (iv) establish stock ownership requirements that align FSC’s directors’ interests with the interests of FSC shareholders; and (v) require the formal retention of and consultation with independent outside counsel to enhance the outside directors’ ability to assess and mitigate conflicts of interest, particularly with respect to the annual review and negotiation of the IAA with FSAM.

Salley v. Debrandere, at al., Case No. 17-cv-03777 (D. MD)

The action brought on behalf of Osiris Therapeutics, Inc. (“Osiris”) alleged breach of fiduciary duty claims against certain officers and directors in connection with, among other things, their failure to adopt and implement adequate accounting and financial reporting systems and for allegedly causing the Company to make false and misleading statements regarding its financial condition. Specifically, the Company issued a restated 2014 Form 10-K and restated Forms 10-Q for the quarters ended March 31, 2015 and June 30, 2015, as the original financial reports were based on misleading accounting regarding distributor relationships. These restatements removed over \$3 million of sales and shifted another \$3.9 million in sales between the quarters. The restated financials showed the Company missing its sales targets for all three quarters. Hynes & Hernandez,

LLC was part of the litigation team that negotiated a settlement conferring substantial benefits on Osiris.

The settlement included comprehensive reforms designed to enhance Osiris's overall corporate governance practices, and specifically address management's governance failures. These reforms included the adoption of a compensation claw-back policy, the adoption of a related-party transactions policy, enhancements to the Audit Committee of the Board's oversight and compliance policies, annual review of the Corporate Governance Principles by the Board and other reforms designed to make Osiris' officers and directors more effective and responsive fiduciaries. In sum, these reforms at both the Board and management levels left Osiris as a better governed company with stronger internal controls, enhanced communication and greater independent oversight, and made Osiris' directors and officers more effective representatives of the stockholders.

Exhibit C

1 AVI WAGNER (SBN 226688)
2 THE WAGNER FIRM
3 1925 Century Park East, Suite 2100
4 Los Angeles, CA 90067
5 Telephone: (310) 201-9150

6 *Attorney for Plaintiffs*

7 [Additional Counsel on Signature Page]

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE CAPSTONE TURBINE CORP.
11 STOCKHOLDER DERIVATIVE
12 LITIGATION

13 THIS DOCUMENT RELATES TO:
14 All Actions

Master File No.: 2:16-cv-01569

**DECLARATION OF SHANE P.
SANDERS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
DERIVATIVE SETTLEMENT, FEE
AWARD, AND SERVICE AWARD**

15
16 DATE: October 30, 2020
17 TIME: 10:00 A.M.
18 CTRM: 8C
19 JUDGE: Hon. Dolly M. Gee
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1 I, Shane P. Sanders, declare and state, under penalty of perjury, that the
2 following is true and correct to the best of my knowledge, information and belief:

3 1. I am an attorney duly licensed to practice law in California.

4
5 2. I am a partner at Robbins LLP, plaintiff's counsel in *Stesiak v.*
6 *Jamison, et al.*, No. BC610782 (Cal. Super. Ct.–Los Angeles Cty.) ("*Stesiak*
7 *Action*"). I have personal knowledge of the matters set forth herein and, if called
8 upon, I could and would completely testify thereto.

9
10 3. A copy of Robbins LLP's résumé is annexed hereto as Exhibit A.

11
12 4. Robbins LLP has committed 629.5 hours (through July 14, 2020, the
13 date on which the Stipulation of Settlement was executed) to litigating and
14 resolving the derivative claims from the initial investigation through the
15 Settlement, which includes time spent on: (i) reviewing Capstone's press releases,
16 public statements, U.S. Securities and Exchange Commission filings, and securities
17 analysts' reports and advisories about the Company; (ii) reviewing related media
18 reports about the Company; (iii) researching applicable law with respect to the
19 claims alleged in the Actions and potential defenses thereto; (iv) preparing and
20 filing derivative complaint(s); (v) conducting extensive damages analyses;
21 (vi) reviewing and analyzing relevant non-public documents produced by the
22 Defendants over the course of the litigation; (vii) conducting extensive research
23 into corporate governance at Capstone and peer companies, as well as industry-
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1 wide best practices, and preparing a comprehensive settlement demand in
 2 furtherance of Plaintiffs' efforts to resolve the Actions in the best interests of the
 3 Company and its shareholders; (viii) evaluating the merits of, and the defendants'
 4 potential liability in connection with the related securities class action; (ix)
 5 preparing briefs in connection with the September 24, 2018 mediation; and (x)
 6 negotiating the Settlement with Defendants, including before, at, and after the
 7 September 24, 2018 mediation.¹

10 5. Robbins LLP's lodestar is based on the hourly rates shown below,
 11 which are the usual and customary rates charged for each individual in all of our
 12 cases. These rates are based on market rates for lawyers of comparable skill and
 13 experience and have been approved by federal and state courts throughout the
 14 nation. The hourly rates billed for each Robbins LLP attorney are set using data
 15 derived from the 2016 Annual Billing Rates Survey published by ALM Legal
 16 Intelligence and the 2009 Bankruptcy Billing Survey published by ALM Legal
 17 Intelligence regarding the rates charged for the services of lawyers with
 18 comparable experience by the corporate defense firms we regularly face in
 19 stockholder derivative and securities litigation. We also monitor court filings by
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24 ¹ All capitalized terms that are not otherwise defined shall have the same
 25 definitions as set forth in the Stipulation of Settlement dated July 14, 2020 (the
 26 "Stipulation") attached as Exhibit A to the Declaration of Ligaya T. Hernandez in
 27 Support of Unopposed Motion for Preliminary Approval of Proposed Settlement
 filed on July 27, 2020 (ECF No. 55-1).

1 plaintiffs' firms with comparable stockholder rights practices and reputations to
2 ensure that our hourly rates are comparable. Efficient case management practices,
3 including using associates and corporate research staff with lower hourly rates
4 where appropriate, achieved a low weighted average hourly rate of \$464.
5

6 6. The chart below is a summary of time expended by the attorneys and
7 professional staff of Robbins LLP on this matter, and the lodestar calculation is
8 based on their current billing rate. Robbins LLP's time report was compiled from
9 contemporaneous records made by each biller and then compiled in an electronic
10 database maintained by the firm. The hours totals reported here reflect reductions I
11 made in the exercise of billing judgment. Among other reductions, Robbins LLP's
12 reported time excludes all time spent by my firm: (1) negotiating the Fee and
13 Expense Amount; and (2) preparing the briefs and declarations in support of
14 preliminary and final approval of the Settlement. I supervised the work of and/or
15 worked directly with the lawyers and professionals who billed time to this matter.
16 Having reviewed their time records, I can aver that the hours reported and the work
17 they reflect were reasonably necessary to the successful institution, prosecution,
18 and resolution of this litigation.
19
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23 7. My firm performed a total of 629.5 professional work hours in the
24 prosecution of the Actions through July 14, 2020, the date on which the Stipulation
25
26
27

of Settlement was executed. The total lodestar amount for my firm is \$294,345. A breakdown of the lodestar is as follows:

Lodestar Detail from Inception to July 14, 2020:

<i>Professional</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Shane P. Sanders	(P)	166.75	\$700.00	\$99,287.50
Craig W. Smith	(P)	96.50	\$810.00	\$78,512.50
Brian J. Robbins	(P)	39.50	\$824.00	\$32,562.50
Gregory Del Gaizo	(P)	23.75	\$700.00	\$16,625.00
Ashley R. Rifkin	(P)	6.50	\$700.00	\$4,550.00
Nichole Browning	(OC)*	8.50	\$700.00	\$5,950.00
Corporate Research ²	**	145.25	\$188.00	\$26,675.00
Paralegals	**	142.75	\$209.00	\$30,182.50
<i>Grand Total</i>		629.50		\$294,345.00

(P) Partner

(OC) Of Counsel

Reflects position at time work was performed as such individual no

* longer works for Robbins LLP

** Averaged Rate

² Robbins LLP's Corporate Research Department consists of a group of trained professionals dedicated to investigating various acts of corporate malfeasance. The Corporate Research team conducted substantial factual research and investigation, including, among other things: researching and identifying facts that formed the basis of the allegations; monitoring, analyzing, and circulating to the members of the litigation team relevant public filings, media articles, pleadings in our corporate and securities practice, and other public information; researching and identifying relevant information concerning Capstone's existing corporate governance structure; and conducting research into and analysis of the damages suffered by Capstone as a result of the wrongdoing. The non-attorney time devoted to this matter by the Corporate Research team substantially reduced the number of attorney hours required to effectively prosecute the action and reduced Robbins LLP's average effective billing rate and lodestar.

8. Robbins LLP expended a total of \$11,340.90 in unreimbursed expenses that were reasonably and necessarily incurred in connection with prosecution of the Actions broken down as follows:

From Inception to July 14, 2020:

<i>CATEGORY</i>	<i>TOTAL</i>
Travel & Meals	\$1,048.62
Photocopies	\$689.70
Communications & Messaging	\$627.18
Research & Investigation	\$1,071.03
Discovery Costs	\$222.06
Filing/Service Fees	\$3,015.65
Mediation Fees	\$4,666.66
<i>TOTAL</i>	\$11,340.90


9. The expenses incurred are reflected in the books and records contemporaneously prepared by Robbins LLP. These books and records are prepared from expense vouchers, invoices, and other billing records, and are an accurate record of the expenses incurred. I have reviewed the expenses for which reimbursement is sought and confirmed that they were reasonably necessary for the effective and efficient prosecution and resolution of the litigation and reasonable in amount. The expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

10. Robbins LLP's compensation for services rendered and out-of-pocket expenses incurred in this case was and is entirely contingent on the success of the

1 litigation in providing Capstone a substantial benefit, and on the Court's approval
2 of the agreed Fee and Expense Amount. None of the attorneys' fees and expenses
3 submitted to this Court has been paid from any source or has been the subject of
4 any prior request or prior award in any litigation or other proceeding.
5

6 I declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct.
8

9 Executed this 23rd day of September 2020.



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11 SHANE P. SANDERS
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EXHIBIT A



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FIRM RESUME

Robbins LLP¹ is a nationally recognized shareholder rights law firm dedicated to the prosecution of shareholder derivative and class action lawsuits. We are committed to the principle that the directors and managers of publicly traded corporations must be held accountable to the owners of the enterprise – the shareholders. A leader in corporate governance reform, Robbins LLP has worked with individual and institutional shareholders to improve board oversight, legal compliance, transparency, and responsiveness at more than 120 Fortune 1000 companies. The firm has also helped secure several of the largest monetary recoveries in the history of shareholder derivative litigation, and has helped clients to realize more than \$1 billion of value for themselves and the companies in which they have invested. For its achievements, the firm has received numerous accolades, including recognition from *U.S. News & World Report*, which named the firm a Best Law Firm for 2017-2019, *Daily Journal*, which named the firm a 2015 Top 25 Boutique in California, the Legal 500, which named the firm a Leading Firm in Merger and Acquisition Litigation in 2013-2018, the *National Law Journal*, which included the firm on its 2012 Litigation Boutiques Hot List, and ISS's Securities Class Action Services, which has listed the firm among the nation's top shareholder plaintiffs' firms. Nine of Robbins LLP's attorneys were honored as Super Lawyers or Rising Stars in 2019. In addition, Robbins LLP's co-founder, Brian J. Robbins, is featured in Best Lawyers in America for Securities Litigation (2016-2019), in *San Diego Business Journal* as Best of the Bar (2014-2016), and in *The Daily Transcript* as a Top Attorney (2015).

PRACTICE AREAS

In addition to representing individual and institutional investors in shareholder derivative actions, securities fraud class actions, and securities class actions arising out of mergers and acquisitions, initial public offerings, and going private transactions, Robbins LLP's practice includes antitrust actions, Employee Retirement Income Security Act (ERISA) actions, whistleblower actions under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the False Claims Act, and consumer class actions.

LEADERSHIP

Robbins LLP's experienced attorneys provide skilled representation to clients through all phases of complex litigation. The firm's partners include former federal prosecutors, defense counsel from top corporate law firms, in-house counsel from leading financial institutions, and career shareholder rights litigators. Collectively, they have litigated hundreds of cases in nearly every state, serving in numerous court-appointed leadership roles in complex multi-jurisdictional litigation. They currently serve as lead or co-lead counsel in dozens of cases nationwide. The firm's attorneys are supported by investigators, corporate research analysts, client relations specialists, and legal support professionals, each of whom is dedicated to providing exceptional client service. Our talented team has helped secure significant results for our clients. We feature below some of the firm's achievements across the nation.

- **Pirelli Armstrong Tire Corp. Ret. Med. Benefits Trust v. Hanover Compressor Co.**, No. H-02-0410 (S.D. Tex. Feb. 6, 2004): Shareholders of Hanover Compressor Company, now known as Exterran Holdings Inc., a provider of natural gas compression services operating in the United States and select international markets, brought claims on behalf of the company against company officers and directors for breach of fiduciary duty, waste of corporate assets, abuse of control, and gross mismanagement. The claims arose out of an off-balance-sheet joint venture to build and operate a natural gas processing plant on barges off the coast of Nigeria. Robbins LLP attorneys, serving as lead negotiators for derivative plaintiffs, secured extraordinary results for Hanover. First, Robbins LLP achieved for the company approximately \$57.4 million in compensation – consisting of a \$26.5 million payment and the return of 2.5 million shares valued at approximately \$30.9 million by an entity controlled by certain of the individual defendants. Second, Robbins LLP helped secure corporate governance changes at the company that have been noted as "groundbreaking" and "unprecedented" benefits for Hanover, including the appointment of two shareholder-nominated directors and becoming one of the first

¹ "Robbins LLP" and "the firm" herein collectively refer to the firm's previous names of Robbins Arroyo LLP, Robbins Umeda LLP and Robbins Umeda & Fink, LLP.

companies in the United States to commit to implementing a five-year rotation rule for its outside audit firms.

- ***In re Nicor, Inc. S'holder Derivative Litig.***, No. 02 CH 15499 (Ill. Cir. Ct.-Cook Cnty. Mar. 29, 2005): The firm served as co-lead counsel for plaintiffs who brought claims for breach of fiduciary duty and unjust enrichment against several officers and directors of Nicor, Inc., one of the largest natural gas distributors in the United States. Plaintiffs alleged that Nicor's management made material misrepresentations to and omitted material information from the Illinois Commerce Commission and the company's shareholders and customers, and unlawfully manipulated the company's operating results. Robbins LLP attorneys negotiated and secured personnel changes among Nicor's executive officers and board members, as well as \$33 million for Nicor.
- ***In re OM Group, Inc. Derivative Litig.***, No. 1:03-CV-0020 (N.D. Ohio Nov. 10, 2005): The firm served as lead counsel to plaintiffs in this derivative action arising out of a massive accounting fraud at this global solutions provider and specialty chemical manufacturer. During the litigation, our attorneys opposed and defeated defendants' motions to dismiss, reviewed thousands of documents produced during discovery, conducted expert discovery, and took over forty depositions of witnesses and defendants throughout the United States and Europe. Robbins LLP obtained a settlement that included a \$29 million payment to the company, the termination of the company's chief executive officer, the addition of two shareholder-nominated directors, and the implementation of various other beneficial corporate governance procedures at the company.
- ***Lieb v. Unocal Corp.***, No. BC331316 (Cal. Super. Ct.-L.A. Cnty. Dec. 20, 2005): Robbins LLP served as co-lead counsel for the public shareholders of Unocal Corporation in this securities class action against Unocal and several of its insiders, officers, and directors for self-dealing and breach of fiduciary duty in connection with the proposed sale of Unocal to Chevron Corporation. Plaintiffs alleged that Unocal's management failed to obtain the highest share price reasonably available by tailoring the proposed acquisition terms to meet the specific needs of acquirer Chevron, and by discouraging alternative bids. After obtaining broad expedited discovery, the firm was credited for helping Unocal shareholders to realize \$500 million in additional consideration as a result of Chevron's increased bid of \$17.4 billion. The firm also secured supplemental proxy statement disclosures before Unocal shareholders voted on whether to accept Chevron's bid over a nominally higher bid by the Chinese National Offshore Oil Corporation.
- ***In re Titan, Inc. Sec. Litig.***, No. 04-CV-0676-LAB (NLS) (S.D. Cal. Dec. 20, 2005): The firm served as co-lead counsel in this securities fraud class action against The Titan Corporation and certain of its officers and directors for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and breach of fiduciary duty. Robbins LLP's efforts resulted in a recovery of \$61.5 million for Titan's shareholders.
- ***In re Tenet Healthcare Corp. Derivative Litig.***, No. 01098905 (Cal. Super Ct.-Santa Barbara Cnty. May 5, 2006), *aff'd*, No. B192252 (Cal. App. Sept. 20, 2007): The firm served as co-lead counsel for the plaintiffs, who alleged that Tenet Healthcare Corp.'s top executives breached their fiduciary duties to the company by failing to monitor, investigate, and oversee Tenet's patient procedures, Medicare billing, and accounting practices. After prosecuting the case for over three years, Robbins LLP's attorneys negotiated a comprehensive settlement, which included \$51.5 million in cash contributions to Tenet and sweeping corporate governance reforms and other remedial measures designed to ensure the independence and accountability of the company's board of directors. The new governance regime included separation of the positions of chief executive officer and chairman of the board of directors, strict internal financial controls, enhanced guidelines for stock ownership and stock retention, and a comprehensive insider trading policy. The settlement was upheld on appeal.
- ***In re Qwest Sav. & Inv. Plan ERISA Litig.***, No. 02-cv-00464 (D. Colo. Jan. 29, 2007): Robbins LLP served on plaintiffs' executive committee in a class action brought as a civil enforcement suit for ERISA violations. The employees alleged that Qwest's management repeatedly misrepresented the financial status of the company to its employees to encourage employees to make discretionary investments in Qwest common stock. When the truth about Qwest's financial condition and egregious accounting manipulations was revealed, the price of Qwest common stock plummeted, but employees were restricted from selling their retirement fund shares under the terms of the Qwest Savings & Investment

Plan. When the restriction was lifted, Qwest stock was trading at an all-time low, devastating the employees' retirement funds. After years of contentious litigation, Robbins LLP helped achieve a \$37.5 million settlement for the benefit of the employees who had invested in the retirement plan.

- ***Staeher v. Walter***, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007) (hereinafter *Cardinal Health*): Robbins LLP led the charge in derivative litigation on behalf of the plaintiff who brought claims against certain Cardinal officers and directors arising out of Cardinal's proposed stock-for-stock acquisition of Syncor International Corp. The action forced Cardinal to reduce the previously negotiated acquisition price for Syncor, saving the company millions of dollars. During the course of its work on the Syncor transaction, Robbins LLP and other firms discovered that Cardinal insiders had engaged in a massive revenue inflation scheme to fraudulently overstate the company's financial performance. Robbins LLP filed an amended complaint against several of Cardinal's officers and directors, defeated multiple motions to dismiss, and pursued and reviewed millions of pages of documents in discovery. The firm ultimately negotiated and resolved the matter by obtaining \$70 million for the company—among the largest monetary recoveries ever in a shareholder derivative action. The settlement also required Cardinal's board of directors to implement significant corporate governance and internal accounting controls designed to improve the board's oversight of Cardinal's senior management and to prevent recurrence of the alleged accounting manipulations.
- ***In re Juniper Networks, Inc. Derivative Litig.***, No. 1:06-CV-064294 (Cal. Super. Ct.-Santa Clara Cnty. Dec. 4, 2008): Robbins LLP served as co-lead counsel in this state shareholder derivative suit against several officers and directors of Juniper Networks, Inc., a global networking and communications technology company, for breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, insider selling, accounting, and rescission in connection with a stock option backdating scheme. After extensively prosecuting the case, the firm helped secure substantive corporate governance reforms and the forfeiture of more than \$22 million in stock options to the company from four executives and directors of the board.
- ***In re KB Home S'holder Derivative Litig.***, No. 2:06-CV-05148-FMC (CTx) (C.D. Cal. Feb. 9, 2009): Robbins LLP served as co-lead counsel for the plaintiffs, who alleged that insiders of KB Home, Inc., a prominent builder of single family homes in the United States and France, manipulated their stock option grant dates to misappropriate millions of dollars in illicit compensation. Robbins LLP's efforts helped return nearly \$50 million in value to the company, including a cash payment of over \$31 million. In addition, the firm helped KB Home secure corporate governance enhancements and implement remedial measures, including separation of the chairman of the board and chief executive officer positions; declassification of the board of directors; majority voting for elections to the board; adoption of formal written procedures for the grant of stock options; and limits on future executive severance payments, among others.
- ***Overby v. Tyco Int'l Ltd.***, No. 02-CV-1357-B (D.N.H. Nov. 23, 2009): Robbins LLP represented a class of employees of Tyco International Ltd., the largest electronics security provider in the world, when employees brought claims against the company for ERISA violations. Robbins LLP helped obtain a \$70 million settlement for the beneficiaries of Tyco's defined contribution retirement plan.
- ***In re Brocade Communications Systems, Inc. Derivative Litigation***, No. 1:05CV041683 (Cal. Super. Ct.-Santa Clara County Jan. 28, 2010): Robbins LLP represented plaintiffs in this shareholder derivative action against officers and directors of Brocade Communications Systems, Inc., an industry leader in data center networking solutions, following the announcement that Brocade would have to restate two fiscal years of financial statements to correct its improper accounting for stock-based compensation expenses. For years, Brocade's insiders had engaged in a secret stock option backdating scheme designed to reward executives and recruit engineers with stock options priced below their fair market value as of the date of the grants. Robbins LLP successfully petitioned the court to proceed with litigation to prevent an inadequate settlement of a related federal action, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme for no money to the company nor a payment of attorney's fees, even as the U.S. Government pursued and ultimately won criminal convictions against the responsible executives. After almost three years of diligently prosecuting the case, during which Robbins LLP engaged in extensive motion practice, reviewed approximately three million pages of documents, and marshaled evidence from related cases involving the conduct at Brocade, Brocade's Special Litigation Committee retained Robbins LLP to serve

as its co-counsel, and, after presentations from Robbins LLP, authorized the continued prosecution of claims against Brocade's officers and directors and on behalf of the shareholders.

- ***In re PETCO Animal Supplies, Inc. S'holder Litig.***, No. GIC 869399 (Cal. Super. Ct.-San Diego Cnty. Mar. 26, 2010): Robbins LLP served as co-lead counsel to the public shareholders of PETCO Animal Supplies, Inc., in a class action that sought to enjoin PETCO's insiders, directors, and affiliates from consummating any sale of PETCO unless and until the company implemented a procedure to ensure that PETCO's shareholders received the highest possible price for the sale. Over the course of three years, our attorneys engaged in extensive motion practice and document, expert, and witness discovery. Shortly before the case went to trial, Robbins LLP assisted in achieving a settlement that secured a \$16 million settlement fund for the class.
- ***In re Wireless Facilities, Inc. Derivative Litig.***, No. 04-CV-1663-JAH-(NLS) (S.D. Cal. Mar. 30, 2010): The firm served as co-lead counsel in the derivative action on behalf of an independent provider of security systems engineering for the wireless communications industry and, after more than five years of hard fought litigation, achieved a comprehensive settlement that required certain officers to forfeit significant amounts of stock and/or stock options back to the company, restricted voting rights for certain former officers and directors, secured monetary reimbursement to the company, and implemented a number of important changes to the company's corporate governance, such as the addition of two independent directors to the board and an annual review of the chairman's performance.
- ***In re Am. Int'l Group, Inc. Derivative Litig.***, No. 04 Civ. 8406 (DLC) (S.D.N.Y. Mar. 14, 2011): The firm was appointed lead counsel in the consolidated federal action alleging breach of fiduciary duty claims in connection with a bid-rigging scheme with Marsh & McLennan Companies, Inc., sham reinsurance transactions with General Re Corporation, and other activities intended to falsify American International Group, Inc.'s ("AIG") financial results. As part of a global settlement of the derivative claims on AIG's behalf, Robbins LLP helped secure a \$90 million payment to AIG, one of the largest monetary recoveries in the history of shareholder derivative actions.
- ***Kloss v. Kerker***, No. 50-2010-CA-018594-XXXX-MB (Fla. Cir. Ct.-Palm Beach Cnty. May 27, 2011): Robbins LLP worked with the parties to derivative litigation filed on behalf of the Internet's leading vitamin and supplement retailer, Vitacost.com, Inc., to save the \$158 million market cap company from bankruptcy and to preserve the equity interests of its shareholders. Robbins LLP was instrumental in achieving a settlement that enabled the company to bring its financial statements and Security and Exchange Commission ("SEC") filings current; allowed Vitacost to hold a long overdue shareholder meeting to address fundamental defects in the corporation's formation, board composition, and past stock issuances; and helped the company to persuade NASDAQ to lift its trading moratorium and provide the company and its shareholders access to the capital markets. The firm worked with the company's new board of directors to implement a series of corporate governance best practices, including a robust insider trading policy. Vitacost hired Robbins LLP to evaluate and potentially to prosecute the company's claims against other parties relating to the defects in its formation, stock issuances, and other pre-IPO issues.
- ***Martinez v. Toll (Toll Bros., Inc.)***, No. 2:09-cv-00937-CDJ (E.D. Pa. Mar. 27, 2013); ***Pfeiffer v. Toll***, No. 4140-VCL (Del. Ch. Mar. 15, 2013): Robbins LLP represented shareholders in the Toll Brothers, Inc. shareholder derivative litigation in which plaintiffs alleged that certain company officers and directors, including the co-founders, traded on inside information and grossly misled investors about company earnings projections during a housing market downturn. After four years of contentious litigation, the firm helped secure one of the largest *Brophy* (*Brophy v. Cities Serv. Co.*, 70 A.2d 5 (Del. Ch. 1949)) settlements ever, a \$16.25 million cash payment to the luxury homebuilding company. The settlement included a \$6.45 million payment from the executive directors—an unprecedented result in shareholder litigation of this type.
- ***Cook v. McCullough***, No. 1:11-cv-09119 (N.D. Ill. Jan. 28, 2014): Robbins LLP served as co-lead counsel in shareholder derivative litigation arising out of Career Education Corp.'s alleged publication of false statements regarding job placement and student loan repayment rates, and failure to ensure compliance with Title IV regulations. The firm played a leading role in negotiating the global resolution of a series of actions brought against and on behalf of the company, and helped secure a \$20 million recovery and comprehensive board and management-level corporate governance and oversight

reforms for Career Education, including enhanced compliance and whistleblower policies, new director independence standards, improved executive compensation claw-back provisions, a comprehensive director education and employee training program, and an improved regulatory risk management and disclosure regime.

- ***Espinoza v. Zuckerberg, C.A.*** No. 9745-CB (Del. Ch. Mar. 30, 2016): Robbins LLP served as counsel in shareholder derivative litigation on behalf of Facebook, Inc. arising from the alleged award of unfair excessive compensation by the board of directors to its non-employee members. Certain members of Facebook's board of directors attempted to circumvent corporate law procedures to obtain controlling stockholder approval of compensation awarded by the Board to its non-employee members. After deposing Facebook's Chief Executive Officer Mark Zuckerberg and beating a motion for summary judgment, Robbins LLP convinced Facebook to impose corporate governance reforms designed to ensure the Board awards executive compensation fairly and not to the detriment of the company, including allowing stockholders to vote on non-employee directors' compensation. As such, Robbins LLP helped establish that public companies with controlling stockholders must comply with corporate law procedures.
- ***In re Venoco, Inc. S'holder Litig.***, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016): Robbins LLP served as co-lead counsel to the public shareholders of Venoco, Inc. in this class action arising out of a scheme by the energy company's Chief Executive Officer to buy out Venoco's minority shareholders at an inadequate share price. Robbins LLP conducted extensive fact and expert discovery for two years after the closing of the acquisition. During this time, Venoco foundered due to a decline in the price of oil, a burst pipeline, and additional debt from the acquisition, which ultimately led the company to file for bankruptcy. Amidst the company's demise, the firm achieved a settlement fund of \$19 million for shareholders—a significant recovery in light of Venoco's dire financial circumstances. At the final approval hearing, the Honorable Sam Glasscock III, Vice Chancellor, in the Court of Chancery of the State of Delaware, touted the settlement as a "good result for all" and "very fortunate for the class," and noted Robbins LLP as "excellent counsel." Transcript of Proceeding at 19, 22, *In re Venoco, Inc. S'holder Litig.*, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016).
- ***In re Fifth Street Finance Corp. Shareholder Derivative Litigation***, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016): Robbins LLP served as lead counsel in shareholder derivative litigation brought on behalf of Fifth Street Finance Corp. to challenge alleged conflicts of interest in Fifth Street's relationship with its investment advisor, FSAM. Plaintiffs alleged that certain Fifth Street and FSAM officers and directors caused Fifth Street to make reckless investments, use bogus accounting, and pay excessive fees to inflate FSAM's perceived value in the lead up to FSAM's initial public offering. The firm's settlement negotiations resulted in advisory fee reductions worth at least \$30 million and comprehensive corporate governance, oversight, and conflicts management enhancements.
- ***In re Community Health Systems, Inc. Shareholder Derivative Litig.***, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017): Serving as co-lead counsel against the officers and directors of Community Health, Inc. in shareholder derivative litigation alleging that the fiduciaries systematically steered patients into medically unnecessary inpatient admissions when they should have been treated as outpatient, Robbins LLP was instrumental in obtaining what is believed to be the largest shareholder derivative recovery in the Sixth Circuit to date. After five years of contentious litigation and discovery, defendants agreed to settle the case, which included a \$60 million cash payment to Community Health and the implementation of extensive corporate governance reforms, including board modifications to ensure director independence, improved internal disclosure policies to allow for the confidential reporting of suspected violations of healthcare laws, and the establishment of a Trading Compliance Committee to ensure compliance with Community Health's insider stock trading policy, among others.
- ***In re Saba Software, Inc. Stockholder Litig.*** C.A., No. 10697-VCN (Del.Ch.Sept. 26, 2018): Robbins LLP served as lead counsel in this shareholder class action in the Delaware Chancery Court against the officers and directors of Saba Software, Inc. for breaches of fiduciary duties related to the buyout of Saba by Vector Capital Management. Plaintiffs alleged that because the company was facing mounting financial concerns, including delisting by the U.S. Securities and Exchange Commission and a failure to complete its internal review of the accounting treatment of certain international transactions, defendants chose to sell the company in a flawed and self-serving sales process in exchange for inadequate merger consideration of Saba shareholders. After three and a half years of litigation, including extensive discovery, mediation, and a lengthy settlement negotiation process, defendants agreed to pay Saba's

former shareholders \$19.5 million. In approving the settlement, Vice Chancellor Slight called the firm's representation of the class "exemplary" and touted the settlement as a "strong recovery for the class."

Awards & Recognition

For its achievements, Robbins LLP and our attorneys have received numerous accolades, including:

- Best Law Firm, *U.S. News & World Report* (2017-2019)
- Leading Firm in Merger and Acquisition Litigation, *Legal 500* (2013-2018)
- Top 20 Settlements in California (2017)
- Top 25 Boutique Law Firm in California, *Daily Journal* (2015)
- Litigation Boutiques Hot List, *National Law Journal* (2012)
- Among Top Shareholder Plaintiffs' Firms by ISS's Securities Class Action Services
- Ten attorneys named to *Super Lawyer* lists (2020)
- Top 50 Attorney in San Diego, *Super Lawyers*, George C. Aguilar (2016-2020)
- Top 50 Attorney in San Diego, *Super Lawyers*, Brian J. Robbins (2014, 2016, 2018-2020)
- Best Lawyers in America for Securities Litigation, *Best Lawyers*, Brian J. Robbins (2016-2018)
- Best of the Bar, *San Diego Business Journal*, Brian J. Robbins (2016)
- Best of the Bar, *San Diego Business Journal*, Steven R. Wedeking (2015-2017)
- Best Overall Lawyer in San Diego, *Fine Magazine*, Brian J. Robbins (2016)
- Top Attorney, *The Daily Transcript*, Brian J. Robbins (2015)
- Attorney of the Year, *SD La Raza*, George C. Aguilar (2014)

Robbins LLP's achievements in the courtroom have been recognized by a number of respected jurists. We feature a selection of commendations below.

- *"The quality of representation by the Derivative Plaintiffs' Counsel was witnessed first hand by this Court through their articulate, high quality, and successful pleadings. Moreover, as shown by their excellent efforts in this case, Derivative Plaintiffs' Counsel are dedicated to vindicating the rights of shareholders"*

Honorable Ed Kinkeade, Judge of the U.S. District Court for the Northern District of Texas, *In re Heelys, Inc. Derivative Litig.*, No. 3:07-CV-1682-K

- *"I think you've actually set the bar kind of high for future settlements. This looks like an excellent result for the various class members in both the derivative action and the other action.... And it's to the credit of the lawyers that they were able to achieve this result before a lot of discovery and a lot of expenses were undertaken ... And so, I would be quite delighted and satisfied to make the necessary findings that this is an excellent settlement for plaintiffs."*

Honorable Robert S. Lasnik, Judge of the U.S. District Court for the Western District of Washington, *In re Cutter & Buck Sec. Litig.*, No. C02-1948L

- Robbins LLP's lawyers proved *"competent, experienced, [and] trustworthy."*

Honorable Larry A. Burns, Judge of the U.S. District Court for the Southern District of California, *In re Sequenom, Inc. Derivative Litig.*, No. 09CV1341-LAB (WMC)

- *"Class counsel is highly experienced in bringing both class actions and derivative claims" and have "a nationwide reputation for handling shareholder derivative litigation, various class actions, and complex litigation.... Throughout the litigation, [class counsel] has shown themselves to be capable and qualified to represent the class."*

Honorable Darla Williamson, Judge of the Fourth Judicial District of the State of Idaho, County of Ada, *Carmona v. Bryant*, CV-OC-0601251

- *"The court also notes that the settlement appears to place the shareholders in a much better position than that which existed prior to the beginning of this litigation."*

Honorable John A. Houston, Judge of the U.S. District Court for the Southern District of California, *In re Wireless Facilities Inc., Derivative Litig.*, No. 04-CV-1663 JAH (NLS)

- *"I have high regard for ... your firm."*

Honorable James P. Kleinberg, Judge of the Superior Court of California, County of Santa Clara, *In re Altera Corp. Derivative Litig.*, No. 1-06-CV-063537

- *"[W]e had ... competent counsel who were able to reach a very handsome settlement for the shareholders who were working here on behalf of the shareholders interests."*

Honorable Denise de Bellefeuille, Judge of the Superior Court of California, County of Santa Barbara, *In re Tenet Healthcare Corp. Derivative Litig.*, No. 01098905

- *"Thank you very much for the good work that you all did. And I think that your stockholders will appreciate it, too."*

Honorable Sophia H. Hall, Judge of the Circuit Court of Cook County, Illinois, *In re Nicor, Inc. S'holder Derivative Litig.*, No. 02CH 15499

- *"Thank you for your good work on behalf of your clients. I appreciate it."*

Honorable Thomas Barkdull, Circuit Judge of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, *Kloss v. Kerker*, No. 50-2010-CA-018594-XXXX-MB

- *"I want to tell you what a pleasure it is dealing with talented counsel.... Thank you very much."*

Honorable John G. Evans, Judge of the Superior Court for the State of California, Riverside County, *Hess v. Heckmann*, No. INC10010407

- *"I think the plaintiffs and their counsel did a good job pressing forward with this action and achieving a good result.... I think that all in all, [\$16.25 million] is a good value, a significant benefit for the company."*

Honorable J. Travis Laster, Vice Chancellor in the Court of Chancery of the State of Delaware, *Toll Bros.*, No. 2:09-cv-00937-CDJ and No. 4140-VCL

- *"It seems to me to be an excellent settlement in light of all the circumstances: and "a good result for all." "[P]laintiffs' counsel [got] a result that I think is very fortunate for the class."*

Honorable Sam Glasscock III, Vice Chancellor in the Court of Chancery of the State of Delaware, *In re Venoco, Inc. Shareholder Litigation*, C.A. No. 6825-VCG

- *"I think y'all have done a great job pulling this thing together. It was complicated, it was drawn out, and a lot of work clearly went into this.... I'll approve this settlement. I appreciate the work you all did on this. I think this is one where – I can't always say this ... there is ... benefit to the shareholders that are above and beyond money, a benefit to the company above and beyond money that changed hands."*

Honorable Kevin H. Sharp, U.S. Chief District Judge, U.S. District Court for the Middle District of Tennessee Nashville Division, *In re Community Health Systems, Inc., Shareholder Derivative Litigation*, No. 3:11-cv-00489

- *"[T]his recovery is a strong recovery for the class. And, it's one, again, that I think counsel should be commended for achieving."*

Honorable Joseph R. Slights, III, Vice Chancellor in the Court of Chancery of the State of Delaware, *In re Saba Software, Inc. Stockholder Litig.*, C.A. No. 10697-VCN

PARTNERS

George C. Aguilar

George C. Aguilar is a former federal prosecutor and trial lawyer who has tried more than forty federal criminal trials. He currently concentrates his practice on complex litigation, and is the partner in charge of the firm's Antitrust Litigation Group. Prior to taking the helm of the firm's antitrust practice, Mr. Aguilar litigated on behalf of shareholder clients against fraudulent management and company insiders, securing meaningful corporate governance reforms at companies across the U.S. For example, in *Warner v. Lesar*, No. 2011-09567 (Tex. Dist. Ct.-Harris Cnty. Oct. 1, 2012), Mr. Aguilar led the firm's efforts on behalf of Halliburton Company arising from defendants' mismanagement of risk, controls, and operations that led to the worst oil spill in U.S. history at the Deepwater Horizon offshore drilling rig in the Gulf of Mexico. Navigating the case through the company's internal investigation, and difficult and complex settlement discussions and mediation sessions, Mr. Aguilar secured comprehensive health, safety, and environmental governance reforms. In shareholder derivative litigation on behalf of Maxwell Technologies, Inc., *Loizides v. Schramm*, No. 37-2010-00097953-CU-BT-CTL (Cal. Super. Ct.-San Diego Cnty. Apr. 12, 2012), Mr. Aguilar helped secure a settlement in which the company adopted corporate governance and compliance measures addressing its violations of the Foreign Corrupt Practices Act (FCPA) after being investigated by federal agencies for bribery and subcontracting kickbacks. Of particular note is the creation of a new FCPA and Anti-Corruption Compliance department led by a Chief Compliance Officer to provide for greater effectiveness of Maxwell's board of directors in responding to FCPA compliance issues worldwide. In shareholder litigation involving Brocade Communications Systems, *In re Brocade Communications Systems, Inc., Derivative Litigation*, No. 1:05CV041683 (Cal. Super. Ct.-Santa Clara Cnty. Jan. 28, 2010), the firm prosecuted the shareholder action involving a criminal options backdating scheme at Brocade until the company formed a Special Litigation Committee to consider the plaintiffs' claims. A key player in the prosecution of the action, Mr. Aguilar successfully presented facts and law to the Special Litigation Committee on behalf of the firm's shareholder clients. Brocade ultimately retained the firm as co-counsel to prosecute its claims against Brocade's officers and directors.

Mr. Aguilar also led the firm's efforts as part of a consortium of plaintiff firms in a high profile antitrust class action suit, *Dahl v. Bain Capital Partners*, No. 1:07-cv-12388(WGY) (D. Mass. Mar. 17, 2015), against several private equity firms. The case involved allegations of conspiracy among defendants to rig bids, restrict the supply of private equity financing, fix transaction prices, and divide up the market for private equity services for leveraged buyouts. Robbins LLP played a prominent role in this litigation, bearing the responsibility for building the case against a principal defendant, one of the largest private equity firms in the world. In doing so, Mr. Aguilar conducted several depositions of some of the key private equity principals during the initial discovery phase of the case. The defendants settled for more than \$590 million.

Before joining Robbins LLP, Mr. Aguilar spent 17 years as a federal prosecutor with the U.S. Attorney's Office in San Diego. During his tenure, Mr. Aguilar served as chief for the Terrorism, Violent Crimes, and General Prosecutions Section; deputy chief for the General Crimes Section; trial lawyer for the Financial Institution Fraud Task Force and the Major Frauds Sections; and as a supervising ethics officer. He led grand jury investigations and indicted and tried complex white collar criminal cases involving corporate, securities, bank, investor, tax, foreign currency and bankruptcy fraud, bank bribery, and money laundering, among others. He authored 35 appellate briefs, and argued more than a dozen cases on appeal before the U.S. Court of Appeals for the Ninth Circuit. For his work, Mr. Aguilar received several awards of recognition from the U.S. Department of Justice and federal agencies, including the prestigious Director's Award of the Executive Office for U.S. Attorneys. Prior to joining the U.S. Attorney's Office, Mr. Aguilar worked on complex securities defense litigation at Morrison & Foerster LLP's San Francisco office.

Mr. Aguilar is a recognized leader in the legal and civic communities. He writes and speaks on topics related to shareholder litigation and corporate governance. He was recently appointed as a member of the U.S. District Court's Magistrate Judge's Merit Selection Panel, and is an active member of Association of Business Trial Lawyers, Public Justice Foundation, San Diego La Raza Lawyers Association, and San Diego County Bar Association. He has served in top leadership positions at La Raza Lawyers Association of California, San Diego La Raza Lawyers Association, the State Bar of California, and the City of San Diego. Mr. Aguilar was honored as a Super Lawyers Top 50 attorney in San Diego (2016-2018) and has been named a Super Lawyer for eight consecutive years (2012-2019). He is also the recipient of the Attorney of the Year Award from San Diego La Raza Lawyers Association (2014) and has received the San Diego Mediation Center's Peacemaker Award for his community service work.

Mr. Aguilar received his law degree in 1986 from the University of California, Berkeley School of Law. While in law school, he served on the Moot Court Board and was managing editor of the *La Raza Law Journal*. Mr. Aguilar graduated from the University of Southern California in 1983 with a Bachelor of Arts in both Political Science and Journalism. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the Eastern District of Wisconsin, and the District of Colorado, as well as the U.S. Courts of Appeals for the Second, Ninth, and Tenth Circuits, and the U.S. Supreme Court.

Gregory E. Del Gaizo

Gregory E. Del Gaizo focuses his practice on shareholder rights litigation. As the head of Robbins LLP's New Matters Group, he initiates and oversees pre-litigation investigations and analysis of new cases for the firm. Mr. Del Gaizo has prosecuted shareholder litigation that recouped over one hundred million dollars and secured extensive corporate governance reforms and other pro-investor measures at companies in which his clients invest.

Mr. Del Gaizo's successes on behalf of clients include leading the discovery process for Robbins LLP in litigation on behalf of luxury homebuilder Toll Brothers, Inc., which resulted in a \$16.25 million settlement, one of the largest *Brophy* monetary recoveries ever. *Martinez v. Toll*, No. 2:09-cv-00937-CDJ (E.D. Pa. Mar. 27, 2013). He was also a member of litigation teams in *Staehr v. Walter*, No. 02-CVG-11-0639 (Ohio Ct. C.P.-Del. Cnty. Dec. 17, 2007), which secured a payment of \$70 million to Cardinal Health, and *In re KB Home S'holder Derivative Litig.*, No. 2:06-CV-05148-FMC (CTx) (C.D. Cal. Feb. 9, 2009), which obtained \$30 million in cash benefits and substantial corporate governance reforms for the home builder.

Mr. Del Gaizo has authored several articles on securities litigation, including *State Law Insider Trading Claims See New Light*, The Recorder, July 1, 2011; *Directors and Officers Can't Hide in Del.*, Securities Law360, Jan. 14, 2011; *Control of Forum in Derivative Actions*, The Recorder, Dec. 10, 2010; and *Clearing the Path for Double Derivative Suits*, The Recorder, Nov. 1, 2010. He also speaks to audiences about shareholder rights, and was recognized as a Rising Star by Super Lawyers (2015-2016) and a Recommended Attorney in M&A Litigation by Legal 500 (2016).

Mr. Del Gaizo obtained his Juris Doctor degree in 2006 from the University of San Diego School of Law. While in law school, Mr. Del Gaizo served as a research assistant to Frank Partnoy, director of the Center for Corporate and Securities Law at the University of San Diego, and as an intern at Kim & Chang, the largest law firm in Korea. Mr. Del Gaizo attended Providence College and, while there, interned for the New York City Law Department. He graduated *cum laude* in 2003 with a Bachelor of Arts degree in Political Science. Mr. Del Gaizo is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California and the District of Colorado.

Stephen J. Oddo

Stephen J. Oddo has devoted his practice to representing individual and institutional shareholders in corporate merger and acquisition class actions for more than a decade. In so doing, he has secured tens of millions of dollars of additional consideration for shareholders whose investments have been adversely impacted by corporate transactions. Mr. Oddo has also achieved disclosure of material information to shareholders so they are informed on the transaction at the time of the vote. His litigation efforts have helped preserve the integrity of the merger process in companies across the country and helped maximize value to shareholders. For his excellence in practice, Mr. Oddo was named a Super Lawyer (2016-2019) and a Recommended Attorney in M&A Litigation by Legal 500 (2016, 2018).

Serving as lead counsel in *In re Saba Software, Inc. Stockholder Litig.* C.A. No. 10698-VCN, Mr. Oddo secured a \$19.5 million settlement on behalf of former Saba Software shareholders in a class action alleging the company had engaged in a flawed and self-serving sales process in exchange for inadequate merger consideration for Saba Software shareholders. The court acknowledged that the settlement was "exemplary" and a "strong recovery for the class." In *In re Venoco, Inc. S'holder Litig.*, C.A. No. 6825-VCG (Del. Ch. Oct. 5, 2016), Mr. Oddo, serving as co-lead counsel to the public shareholders of the energy company, achieved a \$19 million settlement fund for shareholders – a significant recovery in light of Venoco's dire financial circumstances. Mr. Oddo earned praise from the judge for securing a "good result for all" and noted Robbins LLP as "excellent

counsel." Mr. Oddo secured a \$5.9 million settlement fund as lead counsel in *In re Star Scientific, Inc. Securities Litig.*, No. 3:13-CV-00183-JAG (E.D. VA July 6, 2015), a securities fraud class action alleging that defendants made materially false and misleading statements regarding one of the company's clinical trials. In *In re PETCO Animal Supplies, Inc. S'holder Litig.*, Lead Case No. GIC 869399 (Cal. Super. Ct.-San Diego Cnty. Mar. 26, 2010), Mr. Oddo helped secure a \$16 million settlement fund for the shareholder class after three years of contentious litigation. At his former firm, Mr. Oddo represented shareholders of eMachines, Inc., in *In re eMachines, Inc. Merger Litigation*, No. 01-CC-00156 (Cal. Super. Ct.-Orange Cnty. July 25, 2007), in challenging the efforts of the company's founder to take the company private. Mr. Oddo's litigation efforts helped secure a \$24 million common fund for shareholders. In the merger and acquisition-related securities class action *In re Electronic Data Systems Class Action Litigation*, Master File No. 366-01078-2008 (Tex. Dist. Ct.-Collin Cnty. Dec. 23, 2008), Mr. Oddo served as lead counsel and challenged the acquisition of Electronic Data Systems Corporation by Hewlett-Packard Company. Mr. Oddo negotiated a pre-closing settlement that secured for Electronic Data Systems shareholders a \$25 million dividend and the disclosure of previously omitted material information concerning the transaction that allowed for an informed shareholder vote.

Prior to joining Robbins LLP, Mr. Oddo was a partner at the firm now known as Robbins Geller Rudman & Dowd LLP, where Mr. Oddo was part of a team at the forefront of litigating shareholder claims challenging unfair business combinations. Before entering the legal profession, Mr. Oddo served as Press Secretary to U.S. Representative Robert T. Matsui (D-Cal).

Mr. Oddo received his Juris Doctor in 1994 from the University of San Diego School of Law. During law school, he interned for the Honorable Eugene Lynch, U.S. District Judge in the Northern District of California. Mr. Oddo earned his Master of Science in Journalism from Northwestern University, Medill School of Journalism in 1987, and his Bachelor of Arts from Santa Clara University in 1986. Mr. Oddo is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the Northern District of Illinois, the Southern District of Texas, the Eastern District of Michigan, and the Eastern District of Wisconsin.

Ashley R. Rifkin

Ashley R. Rifkin has over 13 years of experience representing clients in complex litigation, including shareholder rights, consumer class actions, and antitrust matters. She has helped achieve significant recoveries for shareholders in connection with securities class actions involving corporate mergers and acquisitions. For example, in *Fuerstenberg v. Mid-State Bancshares*, No. CV 060976 (Cal. Super. Ct.-San Luis Obispo County Oct. 4, 2007), Ms. Rifkin was part of the litigation team that obtained waivers of the "confidentiality" and "no-shop" provisions in the sale agreement, which enabled other suitors to participate effectively in the bidding process. In *In re HCA Inc. Derivative Litigation*, No. 3:05-CV-0968 (M.D. Tenn. Dec. 20, 2007), Ms. Rifkin was part of the litigation team that forced the disclosure of material information to shareholders before they voted on the proposed buyout by a private equity group and founding member.

Ms. Rifkin has litigated shareholder derivative actions on behalf of corporations and shareholders seeking to redress various forms of corporate misconduct including backdating and springloading practices, false and misleading public disclosures, improper Medicare and Medicaid billing practices, claims of off-label marketing, violations of the FCPA, and other state and federal law violations. She has helped achieve considerable monetary recoveries and corporate governance reforms for clients and companies through these actions. In *In re Community Health Systems Inc. Shareholder Derivative Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017), Ms. Rifkin was part of the team that brought shareholder derivative litigation against the officers and directors of Community Health Systems, Inc. alleging that the fiduciaries systematically steered patients into medically unnecessary inpatient admissions when they should have been treated as outpatient. Ms. Rifkin oversaw the extensive document review process and other aspects of discovery. Ms. Rifkin's team obtained a \$60 million cash payment to Community Health and the implementation of extensive corporate governance reforms. In shareholder derivative litigation arising from Motorola Inc.'s publication of allegedly misleading statements regarding its next-generation cell phones and revenue projections, *In re Motorola, Inc. Derivative Litig.*, No. 07CH23297 (Ill. Cir. Ct.-Cook Cnty. Nov. 29, 2012), Ms. Rifkin helped negotiate comprehensive governance reforms that overhauled the company's oversight of financial disclosures and achieved structural reforms that better aligned director and executive compensation with long-term shareholder interests. Ms. Rifkin served alongside a team of plaintiff firms in antitrust litigation involving allegations of conspiracy among private equity firms to rig bids, restrict the supply of private equity financing, fix transaction prices, and divide up the market for

private equity services for leveraged buyouts. *Dahl v. Bain Capital Partners*, No. 1:07-cv-12388 (WGY) (D. Mass. Mar. 17, 2015). The defendants settled for more than \$590 million.

Ms. Rifkin was named a Super Lawyer Rising Star (2015-2016, 2019) and to the "Best Young Attorneys in San Diego County" list by *The Daily Transcript* (2011).

Ms. Rifkin received her Juris Doctor in 2006 from Thomas Jefferson School of Law. She graduated *summa cum laude* second in her class, was on the Dean's List, and received the Outstanding Scholastic Achievement Award for the 2004-2005 school year. While in law school, Ms. Rifkin served as a judicial extern for the Honorable David A. Workman in the Los Angeles Superior Court. She also was chief articles editor and notes editor of the *Thomas Jefferson Law Review* and vice president of operations of the Tax Society. Ms. Rifkin graduated from the University of California, Santa Barbara in 2002 with a Bachelor of Arts degree in Psychology. She is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, and the U.S. Courts of Appeals for the Ninth and Tenth Circuits.

Brian J. Robbins

Brian J. Robbins is a co-founder and the managing partner of Robbins LLP and oversees the management of the firm and its practice areas. He has committed his entire career to representing shareholders, employees, consumers, and businesses in complex litigation matters. Focusing on shareholder rights litigation, Mr. Robbins has served as lead or co-lead counsel in many complex, multi-party actions across the country on behalf of U.S. and international clients. He has secured hundreds of millions of dollars in monetary recoveries and comprehensive corporate governance enhancements for shareholders and the public corporations in which they have invested.

In *Titan, Inc. Securities Litigation*, No. 04-CV-0676-LAB (NLS) (S.D. Cal. Dec. 20, 2005), Mr. Robbins helped obtain a \$61.5 million recovery, one of the largest securities fraud class action recoveries in San Diego's history, and in *In re Tenet Healthcare Corporation Derivative Litigation*, No. 01098905 (Cal. Super Ct.-Santa Barbara Cty. May 5, 2006), *aff'd*, No. B192252 (Cal. App. Sept. 20, 2007), he helped recover \$51.5 million for Tenet and sweeping corporate governance enhancements and remedial measures. In *In re OM Group, Inc. Derivative Litigation*, No. 1:03-CV-0020 (N.D. Ohio Nov. 10, 2005), Mr. Robbins secured \$29 million for OM Group, the removal of the company's long term chief executive officer, the addition of two shareholder-nominated directors, and other corporate governance reforms, and in *In re Wireless Facilities, Inc. Derivative Litigation*, No. 04-CV-1663-JAH-(NLS) (S.D. Cal. Mar. 30, 2010), Mr. Robbins was instrumental in obtaining the forfeiture of stock and/or stock options back to the company by certain officers, restricted voting rights for certain former officers and directors, monetary reimbursement to the company, and corporate governance reforms, such as the addition of two independent directors to the board and an annual review of the chairman's performance. Mr. Robbins was also instrumental in achieving an extraordinary settlement on behalf of his shareholder client in *Kloss v. Kerker*, No. 50-2010-CA-018594-XXXX-MB (Fla. Cir. Ct.-Palm Beach Cty. May 27, 2011), which virtually saved vitamin and supplement retailer Vitacost.com, Inc. from bankruptcy and helped to preserve the equity interests of its shareholders.

Mr. Robbins is recognized nationally as a leader in the plaintiffs' bar. He has authored articles in several national publications and speaks to audiences as an authority on securities litigation, corporate governance, and shareholder rights topics. For his leadership and achievements, he has been named a Super Lawyer for the past 12 years (2007–2019), Best of the Bar by *San Diego Business Journal* (2014–2016), and a Top 50 Attorney in San Diego by Super Lawyers (2014, 2016, 2018, 2019). He was also recognized by Best Lawyers in America for Securities Litigation (2016-2018), and a Top Attorney by *The Daily Transcript* (2015).

Mr. Robbins earned his Master of Laws (LL.M.) in Securities and Financial Regulation from the Georgetown University Law Center in 1998 and received his Juris Doctor from Vanderbilt Law School in 1997. While at Vanderbilt, Mr. Robbins served as research assistant for two corporate and securities law professors: Professor Donald C. Langevoort, former Special Counsel for the U.S. Securities and Exchange Commission in the Office of the General Counsel, and the late Professor Larry D. Soderquist, one of the most respected professors in the field of corporate and securities law. He earned his Bachelor of Arts in Sociology from the University of California, Berkeley in 1993 after only two and a half years of study. Mr. Robbins is licensed to practice law in the State of California and the State of Connecticut, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the District of Connecticut, and

the Western District of Texas, as well as the U.S. Courts of Appeals for the Second, Fifth, Sixth, Ninth, and Tenth Circuits.

Shane P. Sanders

Shane P. Sanders represents individual and institutional investors in shareholder derivative actions, securities fraud class actions, and mergers and acquisitions actions. He has helped prosecute shareholder litigation that recouped millions of dollars from fraudulent corporate officers and secured the implementation of extensive corporate governance reforms at public corporations. In so doing, Mr. Sanders has successfully opposed numerous dispositive motions, including motions based on demand futility.

Mr. Sanders helped litigate shareholder derivative litigation on behalf of Fifth Street Finance Corp., *In re Fifth Street Finance Corp. Shareholder Derivative Litigation*, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016), based on allegations that the company's officers and directors caused Fifth Street to pursue reckless asset growth strategies, employ aggressive accounting and financial reporting practices, and pay excessive fees to its investment advisor to inflate the investment advisor's perceived value in advance of its initial public offering. Mr. Sanders was instrumental in the discovery efforts and settlement negotiations and mediations, and helped secure an outstanding settlement for Fifth Street and its stockholders, including advisory fee reductions worth at least \$30 million to Fifth Street, and comprehensive corporate governance, oversight, and conflicts management enhancements to substantially improve the compliance control environment at Fifth Street and reduce the likelihood of a recurrence of similar wrongdoing in the future. Mr. Sanders was the lead associate in *In re Koss Corporation Shareholder Derivative Litigation*, No. 10-CV-2422 (Wis. Cir. Ct.-Milwaukee Cnty. Sept. 22, 2011), a shareholder derivative action that involved the theft of tens of millions of dollars from the company by one of its executive officers. In that case, Mr. Sanders and his fellow counsel defeated defendants' motion to dismiss based on demand futility and negotiated a settlement that provided for the implementation of extensive corporate governance changes, including the separation of the positions of chairman of the board of directors, chief executive officer, and chief financial officer; the appointment of a lead independent director; enhanced accounting and audit functions; and the implementation of a plan requiring the reimbursement of excess incentive-based compensation in the event of a financial restatement. In *In re Fossil, Inc. Derivative Litigation*, No. 3:06-cv-01672-F (N.D. Tex. July 6, 2011), Mr. Sanders supported a team in multi-year derivative litigation that achieved a settlement securing \$8.6 million payment for Fossil from individual defendants and industry leading corporate governance reform, such as declassifying the election of directors to the board. Mr. Sanders was the lead associate in *Paschetto v. Shaich*, No. 08-SL-CC00805 (Mo. Cir. Ct.-St. Louis Cnty. April 8, 2011), a shareholder derivative action on behalf of Panera Bread Company in which Mr. Sanders helped the firm defeat defendants' motion to dismiss based on demand futility and negotiate a settlement that provided substantial benefits to the company and its shareholders. In *In re Vitesse Semiconductor Corporation*, No. Civ240483 (Cal. Sup. Ct.-Ventura Cnty. Oct. 17, 2008), Mr. Sanders was part of a team that achieved the return of more than \$13 million from company insiders and valuable corporate governance improvements. In *In re Ligand Pharmaceuticals, Inc. Derivative Litigation*, No. GIC834255 (Cal. Super. Ct.-San Diego Cnty. Oct. 12, 2006), Mr. Sanders supported a team that persuaded the court that demand on the board of directors was futile and subsequently defeated all of defendants' other motions, and helped obtain a \$14 million payment to the corporation and significant corporate governance improvements for the company.

For his achievements, Mr. Sanders was recognized by his peers as a Super Lawyer Rising Star (2015).

Mr. Sanders received his Juris Doctor degree in 2004 from the University of San Diego School of Law. While in law school, Mr. Sanders served as a law clerk at the San Diego County Public Defender's Office, and he was a member of the Association of Trial Lawyers of America and USD's Sports and Entertainment Law Society. He also participated in USD's Thorsnes Closing Argument Competition and Senior Honors Moot Court Competition, receiving among the highest marks for his written briefs. Mr. Sanders graduated from the University of California, Santa Barbara in 2001 with a Bachelor of Arts degree in Sociology. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California and the District of Colorado, as well as the U.S. Courts of Appeals for the First, Second, and Ninth Circuits.

Kevin A. Seely

Kevin A. Seely devotes his practice to representing shareholders, whistleblowers, and consumers in complex derivative, *qui tam*, and class actions throughout the U.S. A tenacious trial lawyer with more than 25 of litigation

experience in both the public and private sectors and in criminal and civil fraud prosecutions, Mr. Seely has successfully prosecuted top corporate executives, high-ranking government officials, and corporate entities for a variety of wrongdoing, including theft of government services, bribery, embezzlement, and health care fraud.

Mr. Seely has achieved significant results for his clients. In *In re Community Health Systems, Inc. Shareholder Derivative Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 20, 2017), serving as plaintiff's co-lead counsel, Mr. Seely and his team were instrumental in obtaining a \$60 million cash payment to Community Health, which is believed to be the largest shareholder derivative recovery in the Sixth Circuit to date, and extensive corporate governance reforms. The firm brought *In re Alphatec Holdings, Inc., Derivative Shareholder Litigation*, No. 37-2010-00058586-CU-BT-NC (Cal. Super. Ct.—San Diego Cnty. Aug. 21, 2014) on behalf of Alphatec Holdings, Inc. to hold the company's fiduciaries responsible for their role in depleting shareholder equity through their self-serving actions. Mr. Seely's efforts resulted in the resignation of several defendant directors and senior executives, and Alphatec's implementation of reforms providing for director independence, greater review and oversight of related party transactions, and enhanced audit committee responsibilities regarding disclosure of company financial information. In shareholder derivative litigation on behalf of Computer Sciences Corporation, *Bainto v. Laphen*, No. A-12-661695-B (Nev. Dist. Ct.—Clark Cnty. Nov. 6, 2013), arising out of senior management and board of directors' breaches of fiduciary duties, Mr. Seely obtained extensive governance enhancements, including personnel changes, implementation of a Global Ethics & Compliance Program, and finance and administration training to strengthen accounting procedures and processes. Mr. Seely's settlement in *In re SciClone Pharmaceuticals, Inc. Shareholder Derivative Litigation*, No. CIV 499030 (Cal. Super. Ct.—San Mateo Cnty. Dec. 13, 2011), was praised by the Honorable Marie S. Weaver as "the most detailed and extensive corporate governance changes I've seen in a derivative settlement," and established consequences to employees for violations of the FCPA and other criminal misconduct. The settlement also created the position of compliance coordinator and a compliance program and code, instituted a due diligence process pertaining to the hiring of all foreign agents and distributors and demanded employee compliance training, established policies for disclosure and clawback of incentive-based compensation for officers in the event of a material restatement of the company's financial statements, and modified the company's whistleblower programs. In *In re ArthroCare Corporation Derivative Litigation*, No. D-1-GN-08-003484 (W.D. Tex.); *Weil v. Baker*, No. 08-CA-00787-SS (W.D. Tex. Dec. 8, 2011), Mr. Seely obtained a substantial monetary recovery for ArthroCare Corporation, as well as the implementation of enhanced internal controls and reforms designed to curtail future corporate misconduct.

Prior to joining Robbins LLP, Mr. Seely served as an Assistant U.S. Attorney ("AUSA") in the U.S. District Court for the Southern District of California where he prosecuted civil fraud claims under the federal False Claims Act. He also served as an AUSA for the Districts of Guam and Northern Mariana Islands, focusing on white collar crime and public corruption matters. In actions filed on behalf of various U.S. federal agencies, Mr. Seely led the investigation, litigation, and negotiation of numerous settlements resulting in the return of millions of dollars to the victims of complex financial, accounting, and contract fraud schemes. Before becoming a federal prosecutor, Mr. Seely was a partner at a prominent commercial litigation law firm with offices in Guam and the Commonwealth of the Northern Mariana Islands.

Mr. Seely has authored articles in leading legal publications on shareholder and consumer rights topics, and was named a Super Lawyer for the past five years (2015–2019).

Mr. Seely received his Juris Doctor in 1992 from the Northwestern School of Law of Lewis & Clark College. While in law school, he was an associate editor of the *Lewis & Clark Law Review*. Mr. Seely graduated *cum laude* from the University of California, Irvine in 1988. He is licensed to practice law in the State of California, the territory of Guam, and the Commonwealth of the Northern Mariana Islands, and he has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, the District of Colorado, the Northern District of Florida, the District of Guam, the Northern and Central Districts of Illinois, the Eastern District of Michigan, the District of the Northern Mariana Islands, and the Western District of Texas, as well as the U.S. District Court of Appeals for the Ninth Circuit.

Craig W. Smith

Craig C. Smith represents shareholders in derivative and securities fraud class actions. His clients include shareholders invested in the banking and finance, biotechnology, defense, education, information technology, leisure, consumer goods, and pharmaceutical industries. Mr. Smith also serves as the firm's general counsel.

Mr. Smith has led the firm's prosecution of a number of successful actions brought directly on behalf of shareholders and derivatively for the benefit of public corporations. In *In re Fifth Street Corp. Shareholder Derivative Litigation*, Lead Case No. 3:15-cv-01795-RNC (D. Conn. Dec. 13, 2016), Mr. Smith served as lead counsel in shareholder derivative litigation on behalf of Fifth Street to challenge alleged conflicts of interest in Fifth Street's relationship with its investment advisor after certain Fifth Street officers and directors caused the company to make reckless investments and pay excessive fees to inflate the investment advisor's perceived value in advance of its initial public offering. Mr. Smith led the settlement negotiations that resulted in advisory fee reductions worth at least \$30 million and comprehensive corporate governance, oversight, and conflicts management enhancements. Mr. Smith and his team played a leading role in a shareholder derivative suit brought on behalf of Avon Products, Inc., *Pritika v. Jung*, No. 651479/2015 (N.Y. Sup. Ct. May 1, 2015), against certain officers and directors who plaintiffs allege turned a blind eye to bribes made in violation of the FCPA to secure the first foreign direct sales license in China. Mr. Smith led the negotiations that resulted in Avon's agreement to adopt a comprehensive corporate governance and compliance reform program. The *Wall Street Journal* praised the settlement as "a victory for shareholders looking for accountability from the business." Mr. Smith also played a leading role in shareholder derivative litigation brought on behalf of Career Education Corporation against officers and directors who plaintiffs alleged allowed its for-profit schools to falsify job placement and student loan repayment rates, fall short of accreditation standards, and jeopardize access to the Title IV federal student loan funds that account for the lion's share of its revenues. Mr. Smith and his co-counsel in *Alex v. McCullough*, No. 1:12-cv-08834 (N.D. Ill. Dec. 5, 2012); *Bangari v. Lesnik*, No. 1:11-CH-41973 (Ill. Cir. Ct.-Cook Cty. Dec. 11, 2011); and *Cook v. McCullough*, No. 1:11-cv-09119 (N.D. Ill. Dec. 22, 2011), negotiated a global settlement that secured a \$20 million recovery for Career Education, as well as comprehensive board and management-level governance and oversight reforms.

Mr. Smith has played an important role in improving the quality of corporate governance and oversight at pharmaceutical and bio-technology companies. In *In re Forest Labs., Inc., Derivative Litigation*, No. 1:05-cv-03489 (RJH) (S.D.N.Y. Feb. 7, 2012), Mr. Smith secured comprehensive regulatory oversight and compliance reforms to address the fallout resulting from Forest Lab's marketing of Celexa and Lexapro for off-label treatment of pediatric depression — violations that cost Forest Labs more than \$313 million in fines and sanctions. The reforms included the creation of Chief of Compliance and Chief Medical Officer positions, board oversight and management-level oversight of sales and promotions compliance, comprehensive policies and procedures governing sales and promotional activities, and compliance monitoring programs, including field sampling of interactions with physicians and rigorous reporting procedures and controls. Mr. Smith spearheaded the litigation and settlements in shareholder derivative actions brought on behalf of biotechnology companies, MannKind Corporation, *In re MannKind Corp. Derivative Litigation*, No. 1:11-cv-05003-GAF-SSx (C.D. Ca. June 13, 2011), and CTI BioPharma (f.k.a. Cell Therapeutics), *In re Cell Therapeutics, Inc., Derivative Litigation*, No. 2:10-cv-00564-MJP (W.D. Wash.-Seattle Apr. 1, 2010), that led to their adoption of state-of-the-art clinical trial and disclosure oversight and internal controls programs, following costly mismanagement of clinical trials and publication of misleading disclosures.

Mr. Smith played a leading role in securing best-in-class corporate governance for Motorola, Inc. in shareholder derivative litigation arising from Motorola's publication of misleading statements about prospects for its next-generation cell phones and related revenue projections. *In re Motorola, Inc. Derivative Litigation*, No. 07-CH-23297 (Ill. Cir. Ct.-Cook Cty. Nov. 29, 2012). Mr. Smith was instrumental in drafting and negotiating a comprehensive overhaul of board- and executive-level supervision of financial disclosures, as well as broader corporate governance reforms designed to align director and executive compensation with long-term shareholder interests and to eliminate incentives for executives to manipulate results or withhold negative information from shareholders. As lead counsel in *Monday v. Meyer*, No. 1:10-cv-01838-DCN (N.D. Ohio Aug. 17, 2012), Mr. Smith challenged the KeyCorp Board of Director's handling of an unlawful tax avoidance scheme, which exposed the bank to billions of dollars in back taxes and fines by the IRS. While the case was on appeal, Mr. Smith negotiated corporate governance reforms that strengthened KeyCorp's internal controls and Board oversight over financial transactions and legal/regulatory risk, capital planning, dividends, and stock repurchases. Mr. Smith played a key role in persuading Brocade Communication Systems, Inc.'s Board Special Litigation Committee to prosecute stock option backdating claims against former officers and directors of Brocade. *In re Brocade Communication Systems, Inc., Derivative Litigation*, No. 1:05-cv-041683 (Cal. Super. Ct.-Santa Clara Cty. Jan. 28, 2010). As part of a four-lawyer team, Mr. Smith convinced the Committee to retain the firm as co-counsel to pursue the claims. Brocade recovered tens of millions of dollars and extinguished its obligation to fund the criminal defense of its former CEO.

Mr. Smith was recognized by his peers as a *San Diego Super Lawyer* for five consecutive years (2015–2019).

Before joining Robbins LLP, Mr. Smith served for four years as division and regional counsel for UBS Financial Services, Inc., a global financial services company, where he advised management regarding litigation, regulatory, and employment matters arising in the company's Northern Pacific region. Mr. Smith spent the first decade of his career at O'Melveny & Myers LLP, where he defended Fortune 500 companies and professional services firms in securities fraud class actions, shareholder derivative litigation, SEC investigations and enforcement actions, and professional malpractice and business tort matters. Mr. Smith served for five years on O'Melveny & Myers' firm-wide Pro Bono Committee.

Mr. Smith earned his Juris Doctor in 1992 from Yale Law School. At Yale, he externed for the U.S. Attorney's Office in New Haven, Connecticut. Mr. Smith graduated with highest honors in Political Science and highest distinction in Letters and Science from the University of California, Berkeley in 1988, and was initiated into Phi Beta Kappa as a junior. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California, as well as the U.S. Courts of Appeals for the First, Sixth, and Ninth Circuits.

ASSOCIATES

Jonathan D. Bobak

Jonathan D. Bobak dedicates his practice to representing plaintiffs in complex litigation, with a focus on shareholder derivative cases and securities class actions. Previously, Mr. Bobak was a member of the New Matters Group, where he focused on researching and evaluating potential new cases and legal theories for liability and recovery, drafting complaints for clients, and identifying new business opportunities.

Before joining Robbins LLP, Mr. Bobak worked as a law clerk for a boutique San Diego law firm. Prior to entering law school, Mr. Bobak was a Lieutenant in the U.S. Navy, last serving as Training Officer aboard the guided-missile destroyer USS Milius, where he supervised and coordinated all training programs and events for a crew of over 240 personnel.

Mr. Bobak received his Juris Doctor degree from University of San Diego School of Law, where he completed a concentration in business and corporate law. While in law school, Mr. Bobak served as comments editor of the *San Diego International Law Journal*, and as a judicial extern for the Honorable Mitchell D. Dembin of the U.S. District Court for the Southern District of California and the Honorable Alan G. Lance, Sr. of the U.S. Court of Appeals for Veterans Claims. Mr. Bobak graduated from Miami University with a Bachelor of Arts degree in International Studies and German. He is licensed to practice in the State of California and has been admitted to the U.S. District Courts for the Northern, Central and Southern Districts of California.

Emily R. Bishop

Emily R. Bishop is a member of the firm's Shareholder Rights Group primarily representing individual and institutional shareholders in complex litigation, including shareholder derivative and securities fraud class actions. She was previously a part of the firm's New Matters Group where she evaluated factual and legal theories for liability and recovery and drafted complaints for clients.

Ms. Bishop is a member of the San Diego County Bar Association.

Ms. Bishop received her Masters of Laws in Taxation from University of San Diego and her Juris Doctor from University of San Diego School of Law, where she graduated cum laude. During her time in law school, Ms. Bishop served as the articles editor for the *San Diego International Law Journal* and interned at several boutique litigation law firms. Ms. Bishop earned her Bachelor of Business Administration degree in Economics and Real Estate and a Bachelor of Arts in Political Science from the University of San Diego. She is licensed in the State of California.

Eric M. Carrino

Eric M. Carrino focuses his practice on representing individuals and institutional shareholders in complex securities litigation, including derivative shareholder rights matters and securities class actions. Mr. Carrino previously worked within the firm's Antitrust Litigation Group.

First joining the firm in 2011, Mr. Carrino worked as a client relations specialist before attending law school. In that role, he developed a passion for protecting the rights and interests of shareholders by working closely with the firm's clients and supporting the firm's Stock Watch program.

Mr. Carrino holds a Juris Doctor degree from the University of San Diego School of Law with a concentration in corporate and securities law. He graduated *cum laude* and was the recipient of the Law Faculty Honor Scholarship and the Faculty Outstanding Scholar Award. While in law school, Mr. Carrino was a member of the San Diego Review and clerked for a Los Angeles based aviation and aerospace law firm, as well as for Robbins LLP. Mr. Carrino graduated *cum laude* from the University of California, Los Angeles with a Bachelor of Science degree in Political Science. He is licensed to practice in the State of California and has been admitted to the U.S. District Court for the Southern District of California and Eastern District of Wisconsin.

Trevor S. Locko

Trevor S. Locko represents clients in consumer litigation. Prior to joining Robbins LLP, Mr. Locko worked for a local law firm overseeing discovery production for a multi-million dollar arbitration process.

Mr. Locko received his Juris Doctor from University of San Diego School of Law. During his time in law school, Mr. Locko interned for the Attorney General of San Diego and served as a research assistant to Professor Jordan Barry. Mr. Locko earned his Bachelor of Arts degree in Political Science with a minor in Law and Economics from University of San Diego. With an intent to enter law school, Mr. Locko interned at various law firms while earning his undergraduate degree. He is licensed in the State of California, and admitted to practice in the U.S. District Court for the Central District of California and the U.S. District Court for the Eastern District of Wisconsin.

Steven M. McKany

Steven M. McKany dedicates his practice to representing plaintiffs in complex litigation, including shareholder derivative actions, consumer class actions, and antitrust litigation. Prior to joining Robbins LLP, Mr. McKany was an associate at a boutique firm where he represented clients in a variety of matters, including complex construction defect, personal injury, and medical malpractice. Mr. McKany also worked for a law firm specializing in complex class and private actions related to shareholder derivative and securities litigation.

Mr. McKany earned his Juris Doctor degree from Saint Louis University School of Law, where he graduated *cum laude*. During law school, Mr. McKany served as a legal intern for the Missouri State Public Defender and San Diego Public Defender's Office. Mr. McKany earned his Bachelor of Arts degree from San Diego State University. He is licensed to practice law in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California, and the District of Colorado.

Michael J. Nicoud

Michael J. Nicoud is a member of the firm's Antitrust Practice Group. Previously, Mr. Nicoud was a member of the firm's Shareholder Rights Practice Group, representing individual and pension plan investors in complex litigation to improve corporate governance practices and recover lost assets for shareholders of publicly traded companies. Mr. Nicoud has litigated cases involving antitrust violations, accounting fraud, insider trading, false and misleading statements, and other types of fiduciary and corporate misconduct at public and private companies. In addition to his experience at Robbins LLP, Mr. Nicoud has worked at several boutique business litigation firms in San Diego, where he worked on trials, arbitrations, and mediations in cases before state and federal courts. For his work, Mr. Nicoud has been recognized by his peers as a Super Lawyer Rising Star for four consecutive years.

Mr. Nicoud received his Juris Doctor degree from the University of Colorado Law School. While in law school, Mr. Nicoud served as an intern at the San Diego Public Defender's Office, as an editor of the *Colorado Journal of International Environmental Law and Policy*, as president of the Student Trial Lawyers Association, and was on the Moot Court Board. As a member of the mock trial team, he earned a best advocate award at the national level, and received the Melanie Ruth Vogl Memorial Scholarship for Outstanding Trial Advocacy. Mr. Nicoud received his Bachelor of Science in Environmental Science, with honors, from the University of Calgary in Alberta, Canada. Mr. Nicoud is licensed to practice law in California, and has been admitted to the U.S. District Court for the Northern District of California, the U.S. District Court for the District of Colorado, the U.S. District

Court for the Central District of Illinois, and the U.S. District Court of Appeals for the Ninth Circuit.

Steven R. Wedeking

Steven R. Wedeking has spent most of his legal career representing the interests of plaintiff clients, and currently concentrates his practice on shareholder rights litigation. For his work on behalf of his clients, Mr. Wedeking was named Best of the Bar by San Diego Business Journal from 2015-2017.

Mr. Wedeking first joined Robbins LLP in 2005 as a law school graduate. Mr. Wedeking then decided to strike out on his own and spent 12 years representing plaintiffs in personal injury and eviction matters. Mr. Wedeking has substantial litigation experience, handling cases from inception through trial. He has conducted arbitrations, mediations, and settlement negotiations.

Mr. Wedeking earned his Juris Doctor degree at the University of San Diego School of Law. While in law school, Mr. Wedeking served on the *San Diego Law Review*, won Best Team in the ATLA Intramural Mock Trial Competition, and clerked for the Office of General Counsel of the Department of the Navy. Upon graduation, Mr. Wedeking was presented with the International Academy of Trial Lawyers Award for Excellence in Advocacy and Procedure. Mr. Wedeking received his Bachelor of Arts degree from the University of Texas. He is licensed to practice in the State of California, and has been admitted to the U.S. District Courts for the Northern, Central, and Southern Districts of California.

Exhibit D

1 AVI WAGNER (SBN 226688)
2 THE WAGNER FIRM
3 1925 Century Park East, Suite 2100
4 Los Angeles, CA 90067
5 Telephone: (310) 201-9150

6 *Attorney for Plaintiffs*

7 [Additional Counsel on Signature Page]

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE CAPSTONE TURBINE CORP.
11 STOCKHOLDER DERIVATIVE
12 LITIGATION

13 THIS DOCUMENT RELATES TO:
14 All Actions

Master File No.: 2:16-cv-01569

15 **DECLARATION OF JOSHUA M.**
16 **LIFSHITZ IN SUPPORT OF**
17 **PLAINTIFFS' MOTION FOR**
18 **FINAL APPROVAL OF**
19 **DERIVATIVE SETTLEMENT, FEE**
20 **AWARD,**
21 **AND SERVICE AWARD**

22 DATE: October 30, 2020

23 TIME: 10:00 A.M.

24 CTRM: 8C

25 JUDGE: Hon. Dolly M. Gee
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27
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1 I, Joshua M. Lifshitz, declare and state, under penalty of perjury, that the following
2 is true and correct to the best of my knowledge, information and belief:

3 1. I am an attorney duly licensed to practice law in New York.

4 2. I am a member of Lifshitz Law Firm, P.C. (“Lifshitz Law Firm”),
5 which served as counsel for Plaintiff Velma Kilpatrick (“Kilpatrick”) in the
6 Actions.¹ I have personal knowledge of the matters set forth herein and, if called
7 upon, I could and would completely testify thereto.
8

9 3. A copy of Lifshitz Law Firm’s résumé is annexed hereto as Exhibit A.

10 4. Lifshitz Law Firm has been involved in the Actions since Plaintiff
11
12 Kilpatrick filed her Complaint on June 8, 2016.

13 5. Lifshitz Law Firm, as counsel for Plaintiff Kilpatrick in the Actions
14 has committed 201.25 hours to litigating the Actions from the initial investigation
15 to its resolution, which includes time spent on: (i) reviewing Capstone’s press
16 releases, public statements, SEC filings, and securities analysts’ reports and
17 advisories about the Company; (ii) reviewing media reports about the Company;
18 (iii) researching the applicable law with respect to the claims alleged in the Action
19 and the potential defenses thereto; (iv) participating in informal conferences with
20 Defendants’ Counsel regarding the specific facts of the cases, the perceived
21 strengths and weaknesses of the cases, and other issues in an effort to facilitate
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26 ¹ Unless defined herein, all capitalized terms have the same definitions as set forth
27 in the Stipulation of Settlement dated July 14, 2020 (“Stipulation”).

negotiations and fact gathering; (v) reviewing and analyzing relevant documents and pleadings in the Securities Class Action; (vi) attending an in-person mediation (vii) preparing a settlement demand; and (viii) negotiating the Settlement with Defendants; (ix) drafting and reviewing the Stipulation of Settlement.

6. The chart below is a summary of time expended by the attorneys and professional staff of Lifshitz Law Firm on the Actions, and the lodestar calculation based on their current billing rate. These hourly rates are my firm's customary rates and are well within the range of hourly rates that have been accepted by courts as reasonable in other securities or shareholder litigation. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.

Professional (position)*	Years in Practice	Hourly Rate	Hours Worked	Lodestar
Joshua M. Lifshitz (P)	27	\$825	54.25	\$44,756.25
Edward Miller (P)	25	\$725	43.25	\$31,356.26
Michael Slade (A)	4	\$400	29.50	\$11,800.00
Matthew Hettrich (A)	3	\$525	74.25	\$38,981.25
Total			201.25	\$126,893.76

* Partner (P), Associate (A).²

7. From Plaintiff Kilpatrick's filing her complaint through July 14, 2020, the signing of the Stipulation, my firm performed a total of 201.25 professional work hours in the prosecution of the Actions. The total lodestar amount for my

² Michael Slade departed the firm in January 2018, thus his hourly rate has not been increased since that time. Edward Miller was a partner of Lifshitz & Miller, LLP, and is not affiliated or associated with Lifshitz Law Firm, P.C.

1 firm is \$126,893.76. The hours reported excludes the time spent by my firm: (1)
 2 negotiating the Fee and Expense Amount; and (2) preparing the briefs and
 3 declarations in support of preliminary and final approval of the Settlement.
 4

5 8. Lifshitz Law Firm expended a total of \$4,714.40 in un-reimbursed
 6 expenses that were reasonably and necessarily incurred in connection with
 7 prosecution of the Actions broken down as follows:
 8

9 **LIST OF UNREIMBURSED EXPENSES**

<u>Category</u>	<u>Amount</u>
Travel Expenses	\$610.59
Courtcall/Filing Fees/Court Services	\$2,094.56
Photocopying/Reproduction	\$67.25
Postage/Messenger/Federal Express	\$132.81
Mediation	\$1,750.00
Computer Research/Services	\$59.19
TOTAL:	\$4,714.40

17 9. The expenses set forth above are reflected in counsel's books and
 18 records. These books and records are prepared from expense vouchers, check
 19 records, and financial statements prepared in the normal course of business for my
 20 firm and are an accurate record of the expenses incurred in the prosecution of the
 21 Actions.
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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 28th day of September 2020.

4
5 /s/ Joshua M. Lifshitz
6 JOSHUA M. LIFSHITZ
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EXHIBIT A

LIFSHITZ LAW FIRM, P.C.

Attorneys at the firm have represented shareholders as lead counsel, co-lead counsel or as an executive committee member in numerous cases which have resulted in substantial recoveries on behalf of stockholders. Among the more prominent of these cases are:

- ***Nally v. Reichental, et al.***, Lead C.A. No. 0:15-cv-03756-MGL (D. S.C.) (“3D Systems”). Lifshitz Law Firm was Court appointed Co-Lead Counsel to derivatively represent nominal defendant 3D Systems Corporation in a federal shareholder derivative action.
- ***In re Javelin Mortgage Investment Corp. Shareholders Litigation***, Case No. 24-C-16-001542(Cir. Ct. Baltimore City) (“*Javelin*”): Lifshitz Law Firm was Court appointed Interim Lead Co-Counsel representing a shareholder challenging the consideration received by the target company in a merger.
- ***Ponzio v. John Michael Preston, et al.***, Case No. 8672-VCG (Court of Chancery, Delaware State Court). Lead Counsel. Plaintiffs brought this action against directors, officers and insiders of Velcera, Inc., challenging a 2010 financing and merger alleging the transactions were unfair to shareholders. After vigorous litigation including a mediation, plaintiffs obtained a court approved cash settlement increasing consideration to class members by 78%.
- ***In re Laureate Education, Inc. Shareholder Litigation*** (Case No. 24-C-07-000664 (Circuit Court of Maryland). Court appointed Co-Lead Counsel. Court approved \$35 million cash settlement following four and a half years of litigation.

In this action, plaintiffs challenged a going private transaction led by the Company’s Chief Executive Officer (“CEO”). Plaintiffs brought this action against the former directors of Laureate Education, Inc. alleging breach of fiduciary duties in connection with the CEO’s successful attempt to take the Company private in June 2007 for \$62 per share, or an aggregate transaction value of \$3.82 billion. After vigorous litigation including extensive and lengthy appellate practice pursued over the course of several years, plaintiffs obtained a settlement of \$35 million to the Class.

- ***In re eMachines Securities Litigation***, No. 01-CC-00156 (Superior Court of California, County Of Orange). Co-Lead Counsel, and after 6 years of litigation and “on the eve of trial”, obtained a \$24 million settlement of class action challenging a going private transaction.

Plaintiff brought this action on behalf of former shareholders of eMachines against the former directors and executive officers of eMachines alleging breach of fiduciary duties in connection with the Company founder Lap Shun Hui’s successful attempt to take the Company private in December 21, 2001 via an

unfair process and at the unfair price of \$1.06 per share or \$161 million in aggregate consideration.

- ***In re Chiron Shareholders Deal Litigation***, Case No. RG 05-230567 (Superior Court of the State of California, County of Alameda). Court appointed Executive Committee Member. Court approved settlement pursuant to which plaintiffs obtained an increase from the initial offer of \$40 per share to \$48 per share or approximately a total increase of \$880 million.

Plaintiffs challenged an Agreement and Plan of Merger pursuant to which Novartis would acquire all of Chiron's outstanding shares it did not already own for \$40 per share.

- ***Giarraputo v. UnumProvident Corp., J. Harold Chandler, James F. Orr, III, Robert E. Broatch and Thomas R. Watjen***, Case No. 99-301-P-C (D. Maine). Court appointed Executive Committee Member. Court approved \$45 million cash settlement – one of the largest class action securities recoveries ever obtained in the 1st Circuit.

Plaintiffs charged that in connection with the merger of Unum Corporation and Provident Companies, Inc., UnumProvident and certain of its officers had violated Sections 10(b), 14(a) and 20 of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 by making, or causing to be made, certain false and misleading public statements.

- ***In re Musicmaker.com Securities Litigation***, Master File No. 00-02018 (United States District Court, Northern District of California). Court appointed Executive Committee Member. Court approved \$15 million cash settlement.

In this action, plaintiffs charged defendants with a scheme to defraud investors through the dissemination of false and misleading statements of material fact contained in, and material omissions from, the SEC filings and other class period public statements by or relating to Musicmaker.com, Inc. in violation of Sections 11, 12(2) and 15 of the Securities Act of 1933 and 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

- ***In Re: Initial Public Offering Securities Litigation***, Case 21 MC 92 (SAS) (United States District Court, Southern District of New York). Court appointed Litigation Steering Committee Member. Court granted final approval of \$586 million settlement.

Plaintiffs charged that more than 300 public companies, their bankers and their insurers rigged IPOs during the late 1990s Internet boom. The plaintiffs charged that banks manipulated the market with optimistic research; inflated trading commissions in exchange for access to the new shares; and that investors who

were allocated IPO shares were required to buy more shares in the after-market to help push up the share price. They claimed the issuers were guilty of the same charges because they were aware of the schemes and benefited from stock prices that as much as tripled in opening days of trading.

- ***In re Rite Aid Corporation Derivative Litigation v. Alex Grass, Rite Aid Corp. et al.***, C.A. No. 17440 (Court of Chancery, Delaware State Court, New Castle County). Court appointed Co-lead Counsel. Court approved a global settlement of class and derivative actions in the Eastern District of Pennsylvania including \$5 million cash settlement for Delaware and Pennsylvania derivative actions.

This was a derivative action brought pursuant to Rule 23.1 of the Rules of the Court of Chancery, by plaintiff a stockholder of Rite Aid. In the action, plaintiff charged that the Board of Directors of Rite Aid breached their fiduciary duties by failing to oversee adequately the Company's growth and maintain adequate internal controls which resulted in Rite Aid being sued under the federal securities laws.

- ***In re Homestead Village, Inc. Shareholder Litigation***, Consolidated C.A. No. 24-C-O-001556 (Circuit Court Baltimore, State of Maryland). Court appointed Executive Committee Member. Court approved settlement of \$10.9 million.
- ***In re Avis Group Holdings, Inc. Shareholder Litigation***, Consolidated C.A. No. 18212 (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. The Court approved a settlement of the Action increasing consideration for Avis Group Holdings, Inc. ("Avis") shareholders of \$4 per share or approximately \$100 million in aggregate consideration in connection with a merger of Avis with Cendant Corporation.

This litigation was brought in response to the announcement by Cendant Corporation of the proposed acquisition of the publicly-owned shares of Avis for consideration consisting of \$29.00 per share in cash. At the time the proposed transaction was announced on August 15, 2000, Cendant owned approximately 17.8% of the outstanding shares of Avis common stock, held an economic interest in Avis of approximately 33%, and had three designees on Avis' 10-member board of directors and, thus, was Avis' controlling stockholder with attendant fiduciary duties. The Action was brought as a class action on behalf of all Avis stockholders against Cendant and its directors, seeking injunctive and other appropriate relief on the grounds that the Proposed Transaction was unfair in a number of respects, including timing and price.

- ***In re Prodigy Communications Corp. Shareholders Litigation***, Consolidated C.A. No. 19113-NC (Court of Chancery, Delaware State Court; New Castle County). Court appointed Co-Lead Counsel. The Court approved a settlement increasing consideration for Prodigy shareholders from \$5.45 to \$6.60 per share, or approximately \$81 million).

The Action was brought to challenge a proposed acquisition of the publicly owned Class A shares of Prodigy Communications Corp. by SBC Communications Inc. for \$5.45 per share in cash. At the time, by virtue of its Class B stock holdings, SBC controlled approximately 42% of the voting power of the Company. The Action was brought as a class action on behalf of all Prodigy shareholders (except defendants and their affiliates) against SBC and the directors of Prodigy seeking injunctive and other appropriate relief on the grounds the Proposed Transaction was unfair to Prodigy's public shareholders in a number of respects, including price.

- ***In re Kroll-O-Gara Shareholders Litigation***, Case No. CV 9911 2178 (Court of Common Pleas, State of Ohio, Butler County). Court appointed Co-Lead Counsel. Court approved settlement of action Ordering Kroll to institute substantial material therapeutic benefits including requirements that the Company establish a Special committee to consist of not less than three independent directors to review annually, Kroll's shareholder protection defense measures, including relevant bylaws and proposed bylaws and any change in control agreements involving management of Kroll and recommend to Kroll's full Board of Directors any changes deemed by them to be in the best interests of Kroll's stockholders.

Plaintiffs originally challenged a proposed sale of Kroll to Blackstone for \$18.00 per share in cash. Pursuant to the terms of the acquisition, defendant Jules B. Kroll, certain other members of Kroll-O'Gara's management and defendant American International Group, Inc. were to retain ownership of not less than 7.7% of Kroll-O'Gara's common stock. Subsequently, Kroll announced that Blackstone had informed Kroll that it had terminated the Blackstone Acquisition. Thereafter, Kroll-O'Gara announced that its Board had approved an Agreement and Plan of Reorganization and Dissolution which provided for the separation of Kroll-O'Gara's primary businesses -- the Security Products & Services Group (O'Gara-Hess & Eisenhardt Armoring) and the Investigations & Intelligence Group (Kroll Risk Consulting Services) -- into two stand alone companies, the "O'Gara Company" and "Kroll Risk" Thereafter, Kroll announced that the Spin-Off would not be pursued and, instead, that Kroll-O'Gara had signed a definitive agreement to separate the Products and Services Group (O'Gara-Hess & Eisenhardt Armoring) and the Investigations & Intelligence Group (Kroll Risk Consulting Services). Thereafter, Kroll-O'Gara announced it had signed a definitive agreement with third-party Armor Holdings, pursuant to which Armor Holdings would acquire Kroll-O'Gara's Security Products and Services Group for \$56.5 million.

Plaintiffs then filed their Supplemental Second Consolidated Amended Verified Derivative Complaint which updated plaintiffs' allegations through the Armor Transaction. In the Supplemental Consolidated Complaint, plaintiffs once again

asserted claims against the Individual Defendants for allegedly allowing "internecine disputes" between and among Kroll-O'Gara's management to harm Kroll-O'Gara and for allegedly abdicating their duties by failing to prevent various defendants from harming Kroll-O'Gara and engaging in a continuous course of self-dealing. In the Supplemental Consolidated Complaint, plaintiffs recognized that the class claim(s) that had been previously asserted had been rendered moot by the Armor Transaction. Accordingly, plaintiffs dropped their class claim(s) and decided to only pursue derivative claims.

- ***Brody v. First Union National Bank***, Index No. 00-001296 (G.J. O'Connell) (Supreme Court State of New York, Nassau County). Co-Lead Counsel. Court approved a settlement of consumer class action.

The Settlement directly remedied the statutory violations complained of in the Action, namely defendant's failure to comply with the New York Motor Vehicle Retail Leasing Act, Personal Law, Article 9-A. As a result of the Settlement, each member of the Class who was charged for and paid excess wear and damages charges received consideration consisting of their pro rata portion of Four Hundred Fifty Thousand Dollars (\$450,000) in cash (less attorneys' fees, expenses and notice costs). The cash consideration resulted in each Class member who was charged for and paid excess wear and damages charges receiving upwards of 60% of any amounts they paid. In addition, as part of the Settlement, First Union agreed to discontinue any effort to collect excess wear and damage charges from members of the Class.

- ***In re Gramercy Property Trust Stockholder Litigation***, Index No. 652424/2015 (S. Scarpulla) (Supreme Court State of New York, County of New York). Co-Lead Counsel. Court approved a settlement which included disclosure of material information to Gramercy shareholders enabling them to cast a fully informed vote in connection with the sale of Gramercy.

Plaintiff challenged the proposed of Gramercy to Chambers Street Properties. Under the terms of the Merger Agreement, Gramercy stockholders would receive 3.1898 shares of Chambers for each share of Gramercy common stock owned. In connection with seeking shareholder approval for the transaction, Defendants agreed to supplemental disclosures including, among other things: (i) the financial advisor's analysis concerning the *Dividend Discount Model Analysis* and *Selected Public Trading Analysis*; (ii) potential conflicts of interest with existing financing and contractual arrangements resulting from a transaction with Chambers; and (iii) information concerning the background of the Proposed Transaction.

- ***Roof v. Sterling C. Scott, et al.***, Case No. 2:14-cv-3777-CAS (JEM) (C.D. Cal.). Lifshitz Law Firm acted as sole derivative counsel in federal shareholder derivative action alleging breaches of fiduciary duty by the board of directors of

Grow Life, Inc., which resulted in a beneficial settlement for shareholders involving substantial corporate reforms.

- ***Berkowitz v. Sino Gas International Holdings, Inc., et al.***, Lead Case No: 140902517 (Third Judicial District Court, State of Utah, Salt Lake County). Co-Lead Counsel. Court approved a settlement which included disclosure of material information to Sino Gas shareholders in order to make an informed decision to vote or seek appraisal in connection with a proposed going private transaction.

Plaintiff challenged a proposed sale of Sino Gas to a consortium of private equity funds and buyers including Morgan Stanley Private Equity Asia, Inc., Zhongyu Gas Holdings Ltd. and two other entities created for the purpose of the Merger. Under the terms of the Merger Agreement, Sino Gas stockholders would receive \$1.30 in cash for each share of common stock owned. In connection with seeking shareholder approval for the transaction, Defendants agreed to supplemental disclosures including, among other things: (i) the projected financial information considered by Sino Gas's Board of Directors provided to the Company's financial advisor; (ii) the financial advisor's analysis concerning the *Discounted Cash Flow Analysis* and the *Selected Companies Analysis*; and (iii) information concerning the background of the Proposed Transaction.

- ***Ortsman v. Adesa, Inc. et al.***, C.A. No. 2670-VCL (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. Court approved a settlement which included disclosure of material information to Adesa shareholders in order to make an informed decision to vote or see appraisal in connection with a proposed going private transaction.

Plaintiff challenged a merger agreement entered into by Adesa, Inc. pursuant to which Adesa would be acquired by a consortium of private equity funds consisting of Kelso & Company, L.P., ValueAct Capital Management, L.P., and Parthenon Capital, LLC. Under the terms of the Merger Agreement, Company stockholders would receive \$27.85 in cash for each share of common stock. Counsel for the parties to the Action reached agreement to settle the Action, subject to negotiation of a Supplement to the Proxy to be provided to stockholders of Adesa which included disclosure of potential conflicts of interest held by Adesa's financial advisor in connection with the transaction, a detailed description of the genesis of the provision of the option for any potential bidder for Adesa to utilize stapled financing offered by Adesa's financial advisor and the rationale for offering such stapled financing including increasing the potential number of bidders who could participate in the sales process, maintenance of the confidentiality of the process, and disclosure of the final bid instruction letter that Adesa's financial advisor provided to the final bidders which explicitly stated that the financing commitments being offered were optional and not a factor in evaluating a potential bidder's proposal and the financing commitments were being shared with potential bidders solely to facilitate the transaction.

- ***In re Intergraph Shareholder Litigation***, C.A. No. 2398 – N (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. Court approved a settlement which included disclosure of material information to Intergraph shareholders in order to make an informed decision to vote or seek appraisal in connection with a proposed going private transaction.

Plaintiff challenged a proposed sale of Intergraph Corporation to a consortium of private equity funds including Hellman & Friedman, LLC, Texas Pacific Group and JMI Equity. Under the terms of the Merger Agreement, Intergraph stockholders would receive \$44.00 in cash for each share of common stock owned. In connection with seeking shareholder approval for the transaction, Defendants agreed to supplemental disclosures including, among other things: (i) the projected financial information considered by Intergraph’s Board of Directors; (ii) certain intellectual property litigation updates; and (iii) valuation of certain of Intergraph’s non-core assets.

- ***In re Cardiac Science, Inc. Shareholders Litigation***, Consol. C.A. No. 1138-N (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. Court approved a settlement which included disclosure of material information to Cardiac shareholders in order to make an informed decision to vote in favor of or seek appraisal in connection with a proposed stock-for-stock merger between Cardiac and Quinton Cardiology Systems.

Plaintiffs challenged a proposed stock-for-stock merger agreement between Cardiac and Quinton which provided for, among other things, the formation of a new corporation, CSQ Holding Company (“CSQ”), the mergers of Cardiac and Quinton into wholly owned subsidiaries of CSQ, and the merger of Quinton into CSQ. Cardiac agreed to revise the Preliminary Proxy Statement to address disclosures requested by Plaintiffs, and agreed to by Cardiac’s counsel, including, among other things, disclosures regarding Cardiac’s net operating losses, Cardiac’s patent litigation, Cardiac’s board of director deliberations, and the factual background concerning the Proposed Transaction.

- ***Schnipper v. Target Logistics, Inc.***, Case No. 24-C-07 (Circuit Court for Baltimore City, State of Maryland). Sole Lead Counsel. Court approved the settlement which included disclosure of material information to Target shareholders in order to make an informed decision to vote in favor of or seek appraisal in connection with a proposed going private transaction.

Plaintiff challenged an Agreement and Plan of Merger by and among Target, Mainfreight Limited and Saleyards pursuant to which Mainfreight would acquire Target. Under the terms of the Merger Agreement, Target shareholders would receive \$2.50 in cash for each share of common stock and \$62.50 in cash for each share of Class F Preferred Stock. Among other things, plaintiff alleged that the Target directors breached their fiduciary duties in connection with the proposed

Merger by (i) failing to engage in a process best calculated to maximize shareholder value; (ii) failing to fully consider possible alternative transactions with other potential buyers; (iii) approving allegedly improper deal protection devices; and (iv) agreeing to an inadequate price per share. The Complaint also alleged that the Target directors further breached their fiduciary duties in connection with the Company's Preliminary Information Statement by failing to provide full and complete disclosures concerning matters that a reasonable shareholder would deem important under the circumstances. Target agreed to issue supplemental disclosures in the form an 8-K which such disclosures included information relating to the factual background concerning the Proposed Transaction in addition to financial information used by the Company's financial advisor.

- ***In re Harrah's Entertainment Shareholder Litigation***, C.A. No. 2453-N (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. Court approved settlement that included, *inter alia*, material curative disclosures caused to be included in Harrah's Entertainment, Inc.'s ("Harrah's") Definitive Proxy Statement seeking shareholder approval of a proposed going private transaction.

This was a stockholder class action brought by plaintiffs on behalf of the public shareholders of Harrah's common stock. Plaintiffs sought to enjoin the defendants from causing the Company to be acquired by private equity buyers Apollo Management and Texas Pacific Group as well as the Company's Chairman and CEO, Defendant Gary W. Loveman at an inadequate consideration. Defendants' Counsel and Plaintiffs' Counsel engaged in extensive good faith discussions with regard to a possible settlement, which resulted in an agreement in principle pursuant to which the Special Committee of Harrah's Board of Directors acknowledged that it was aware of and considered the pending stockholder lawsuits claiming breaches of the Board's fiduciary duties with respect to the potential sale of the Company, prior to obtaining a \$9 per share increase in the consideration to be paid to Harrah's stockholders, and the disclosure of information Plaintiffs sought in their complaints in a definitive proxy statement the Defendants caused the Company to file with the SEC and mail to Harrah's stockholders. Those disclosures included, *inter alia*, information relating the background of the merger, the nature of the fees paid to the Company's financial advisor, and detailed information relating the Discounted Cash Flow analysis performed by the Company's financial advisor.

- ***Stern v. Ryan, et al.***, No. 02-16831 (Circuit Court of Illinois County, Chancery Division). Sole Lead Counsel. Court approved settlement of Action on basis of implementation of new comprehensive Corporate Governance Policies.

Plaintiff alleged, *inter alia*, that the officers and directors of AON had breached their fiduciary duties to AON and its shareholders in the management and oversight of AON's business, particularly with respect to the Company's internal

financial and accounting controls. The new Corporate Governance Policies which formed the basis of the settlement included, *inter alia*, establishing a corporate governance website through which shareholders can communicate non trivial matters to independent director, all Executive Vice Presidents and the CFO shall make reports to the Board regarding their respective areas of responsibility, at least annually, and shall meet at least annually with the non employee directors of the Company, the appointment and creation of a lead Independent Directorship, and agreement by the Company that the Audit Committee shall continue to consist of only independent directors.

- ***In re ARV Assisted Living Inc. Shareholders Litigation***, C.A. No. 19926-NC (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. The Court approved a settlement increasing consideration for ARV shareholders from between \$3.25 and \$3.60 per share to \$3.90 per share, or approximately a total between \$2.97 million and \$6.44 million).

The action was brought in challenging a proposed acquisition of the publicly owned shares of ARV Assisted Living, Inc. by Prometheus Assisted Living LLC, an affiliate of Lazard Freres & Co. at a price between \$3.25 to \$3.60 per share in cash. At the time, Prometheus owned 43.5% of the Company. The Action was brought as a class action on behalf of all ARV shareholders (except defendants and their affiliates) against the Company, Prometheus and the directors of ARV seeking injunctive and other appropriate relief on the grounds the Proposed Transaction was unfair to ARV's public shareholders in a number of respects, including price.

- ***In Re Bacou USA, Inc. Shareholders Litigation***, C.A. No. 18930-NC (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. Court approved a settlement which included disclosure of material information to Bacou shareholders in order to make an informed decision to vote or seek appraisal in connection with a proposed going private transaction.

Plaintiff challenged a proposed sale of Bacou USA, Inc. to Christian Dalloz, S.A. Under the terms of the Merger Agreement between Bacou S.A. and Christian Dalloz, S.A. each share of Bacou USA, Inc. not owned by Bacou, S.A. would be cashed out at a price of \$28.50 per share. At that time, Bacou S.A. owned and/or controlled over 70% of the outstanding common stock of Bacou, USA. In connection with seeking shareholder approval for the transaction, Defendants agreed to supplemental disclosures including, among other things additional information concerning the Merger.

- ***Wilfred v. Modany et al.***, C.A. No. 13-cv-3110 (JPO) (S.D.N.Y.) (J. Paul Oetken) (“ITT”). Court appointed Co-Lead Counsel. Court approved settlement of Action on basis of implementation of new comprehensive Corporate Governance Reforms.

Plaintiff brought this shareholder derivative action on behalf of ITT Educational Services, Inc. (“ITT”) alleging, *inter alia*, that the Board of Directors breached their fiduciary duties by causing ITT’s failure to properly account for its obligations under certain risk-sharing agreements (“RSAs”) with third-party lenders to increase the availability of private student loans to ITT students. Plaintiff further alleged ITT failed to maintain adequate internal controls over financial reporting and failed to disclose the extent of the risks ITT faced under the RSAs. The new Corporate Governance Reforms, which formed the basis of the settlement included, *inter alia*, enhanced Audit Committee Duties, establishment of a Chief Compliance and Risk Officer, enhanced independence of the Board of Directors and increased director education, compensation policies and practices that reflect and take into account an executive’s performance as it relates to both legal compliance and compliance with ITT’s internal policies, and adoption of a clawback and recoupment policy.

- ***Meisner v. Fiallo et al.***, No. 19558-NC (Court of Chancery, State of Delaware, New Castle County). Sole Lead Counsel. Court approved settlement of Action on basis of implementation of new comprehensive Corporate Governance Policies.

Plaintiff alleged, *inter alia*, that certain of the officers and directors of Enterasys Networks, Inc. had breached their fiduciary duties to Enterasys and its shareholders in the management and oversight of Enterasys’s business, particularly with respect to the Company’s internal financial and accounting controls. The new Corporate Governance Policies which formed the basis of the settlement included, *inter alia*, establishing a corporate governance website through which shareholders can communicate non trivial matters to independent director, all Executive Vice Presidents and the CFO shall make reports to the Board regarding their respective areas of responsibility, at least annually, and shall meet at least annually with the non employee directors of the Company, the appointment and creation of a lead Independent Directorship, and agreement by the Company that the Audit Committee shall continue to consist of only independent directors.

- ***In re Liberty Satellite & Technology, Inc. Shareholders Litigation***, Consolidated Action No. 20224-NC (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. The Court approved a settlement that resulted in approximately \$3.5 million or 30% in additional consideration to LSAT public shareholders.

Prior to the transactions at issue in this litigation, Liberty Media Corporation (“Liberty”) owned or controlled approximately 87% of LSAT’s outstanding A Series and B Series common stock and 98% of the overall voting power of all LSAT common and preferred stock. The public float of LSAT Series A and

Series B common stock was approximately 6 million shares and 400,000 shares, respectively. On April 2, 2003, LSAT publicly announced that it had received a letter from Liberty in which Liberty expressed an interest in a potential business combination with LSAT, pursuant to which the holders of LSAT Series A common stock would receive 0.2131 of a share of Liberty Series A common stock for each share of LSAT stock (the “March Proposal”). On August 5, 2003, plaintiffs and defendants entered into a memorandum of understanding (the “MOU”) providing for the settlement and dismissal of the Action, subject to certain conditions, in which Liberty would proceed with a merger (the “Merger”) in which the public stockholders of LSAT common stock would receive 0.2750 of a share of Liberty Series A common stock per share of LSAT common stock. Among other things, the defendants acknowledged in the MOU that defendants “took into account the desirability of satisfactorily addressing the claims in the [Action]” when agreeing to increase the consideration to be paid to LSAT’s public shareholders by approximately 30%, from 0.2131 to 0.2750 per LSAT share. At the prevailing price of Liberty shares at the time, this increase represented approximately \$3.5 million in additional consideration to LSAT public shareholders.

- ***In re Realogy Corp. Shareholder Litigation***, C-181-06 (Superior Court of New Jersey, Chancery Division). Court appointed Executive Committee Member. Court approved settlement of Action on basis of irrevocable waiver by buyer of termination fee in excess of \$180,000,000, certain agreements by the Defendants concerning shareholders demands for appraisal rights and the inclusion of certain additional disclosures in the Company’s Final Proxy Statement.

Plaintiffs brought an action challenging an agreement and plan of merger pursuant to which all shares of Realogy common stock would be acquired for \$30 per share.

- ***In re Sportsline.com, Inc. Shareholder Litigation***, C.A. NO. 538-N (Court of Chancery, State of Delaware, New Castle County). Court appointed Co-Lead Counsel. Court approved a settlement which provided for an increase in the consideration to be paid shareholders of Sportsline.com from \$1.50 to \$1.75 per share.

This Action challenged a transaction announced by Viacom, Inc. - an entertainment mega-corporation – an owner of approximately 38% of SportsLine’s publicly-traded common stock – to purchase all remaining outstanding shares of the Company at a rate of compensation of \$1.50 per share to be paid in cash.

NOTEWORTHY COMMENTS BY THE COURT

Courts throughout the Country have recognized the skill and experience of the attorneys at Lifshitz Law Firm. Recent examples include the following:

- ***Nally v. Reichental, et al.***, Lead C.A. No. 0:15-cv-03756-MGL (D. S.C.) (“*3D Systems*”). Lifshitz Law Firm was Court appointed Co-Lead Counsel in a federal shareholder derivative action because “counsel possess extensive experience and impressive records of success in cases similar to the Related Action.” The Court further stated that counsel “ha[s] prosecuted the litigation with well-pled and thorough pleadings.”
- ***In re Javelin Mortgage Investment Corp. Shareholders Litigation***, Case No. 24-C-16-001542 (“*Javelin*”): Lifshitz Law Firm was Court appointed Interim Lead Co-Counsel - representing a shareholder challenging the consideration received by the target company in a merger - over six other plaintiffs’ firms that had joined together because “counsel (Lifshitz Law Firm) for [plaintiff] showed initiative and skill.” *Stourbridge Investments, LLC v. Daniel C. Staton, et al.*, Case No. 24-C-16-001542 (ORDER) (Cir. Ct. Baltimore City April 29, 2016).

ATTORNEYS

Joshua M. Lifshitz, prior to co-founding Lifshitz Law Firm, he was the co-founder of Bull & Lifshitz, LLP, where he established himself as one of the leading securities class action and derivative law practitioners in the United States. Securities Class Action Services recognized his predecessor firm on two occasions as one of the top 50 plaintiffs' law firms ranked by total cash amount of final securities class action settlements in which the law firm served as lead or co-lead counsel. Mr. Lifshitz’s practice has included a wide variety of litigation matters involving the federal securities laws, shareholder and consumer class actions, insurance law, federal and state antitrust laws, and various other commercial matters. Mr. Lifshitz is a graduate of Brooklyn College and St. Johns University School of Law. Mr. Lifshitz has received his CPA from the State of Maryland. He is admitted to practice in the State of New York and State of New Jersey and the United States District Court for the Southern and Eastern Districts of New York.

Matthew Hettrich, Associate, obtained his Bachelor of Arts from Stony Brook University in 2009. He obtained his Juris Doctorate from Touro College, Jacob D. Fuchsberg Law Center (“Touro Law”) in 2016 where he graduated *Summa Cum Laude* and served as the Editor-in-Chief of the Touro Law Review. Upon graduation from Touro Law, he began work in the offices of Lifshitz Law Firm.

Exhibit E

MELISSA A. FORTUNATO (SBN 319767)
BRAGAR EAGEL & SQUIRE, P.C.
445 Figueroa Street, Suite 3100
Los Angeles, CA 90071
Telephone: (213) 612-7222

Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

IN RE CAPSTONE TURBINE CORP.
STOCKHOLDER DERIVATIVE
LITIGATION

THIS DOCUMENT RELATES TO:
All Actions

Master File No.: 2:16-cv-01569

**DECLARATION OF MELISSA
A. FORTUNATO IN SUPPORT
OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF
DERIVATIVE SETTLEMENT,
FEE AWARD, AND SERVICE
AWARD**

DATE: October 30, 2020

TIME: 9:30 A.M.

CTRM: 8C

JUDGE: Hon. Dolly M. Gee

1 I, Melissa A. Fortunato, declare and state, under penalty of perjury, that the
2 following is true and correct to the best of my knowledge, information, and belief:

3 1. I am an attorney duly licensed to practice law in California.

4 2. I am a member of Bragar Eagel & Squire, P.C. (“BES”), which served
5 as counsel for Plaintiff Isaac Haber in the Actions.¹ I have personal knowledge of
6 the matters set forth herein and, if called upon, I could and would completely testify
7 thereto.

8 3. A copy of BES’s résumé is annexed hereto as Exhibit A.

9 4. BES has been involved in the Actions since Plaintiff Isaac Haber filed
10 his Complaint on March 7, 2016.

11 5. BES, as counsel for Plaintiff Isaac Haber in the Actions, has committed
12 143 hours to litigating the Actions from the initial investigations to its resolution,
13 which includes time spent on: (1) reviewing and analyzing Capstone Turbine Corp.’s
14 (“Capstone”) public filings with the SEC, press releases, announcements, transcripts
15 of investor conference calls, and news articles; (2) reviewing and analyzing the
16 allegations contained in the Securities Class Action; (3) researching and drafting the
17 initial shareholder derivative complaint in the Actions; (4) researching the applicable
18 law with respect to the claims in the Actions and the potential defenses thereto;
19 (5) preparing for and attending a full day mediation with Defendants’ Counsel as
20 well as with the mediator, Layne Phillips of Phillips ADR; (6) engaging in extensive,
21 subsequent settlement discussions with Defendants’ Counsel and reviewing
22 settlement documents.

23 6. The chart below is a summary of time expended by the attorneys and
24 professional staff of BES on the Actions, and the lodestar calculation based on their
25

26 ¹ Unless defined herein, all capitalized terms have the same definitions as set forth
27 in the Stipulation of Settlement dated July 14, 2020 (“Stipulation”).

current billing rates. These hourly rates are the firm's customary rates and are well within the range of hourly rates that have been accepted by courts as reasonable in other securities or shareholder litigation. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm.

Professional (position)*	Years in Practice	Hourly Rate	Hours Worked	Lodestar
Lawrence P. Eigel (P)	36	\$950	3.25	\$3,087.50
Brandon Walker (P)	12	\$900	29.25	\$26,325.00
Melissa A. Fortunato (P)	7	\$775	26.00	\$20,150.00
Todd Henderson (A)	8	\$600	13.75	\$8,250.00
Shaelyn Gambino-Morrison (A)	3	\$450	6.50	\$2,925.00
Alexandra Raymond (A)	2	\$450	2.50	\$1,125.00
Paralegal (PL)	n/a	\$325	56.75	\$18,433.75
Total			138.00	\$80,387.50

* Partner (P), Of Counsel (OC), Associate (A), Paralegal (PL).

7. From when Plaintiff Isaac Haber filed his complaint through July 14, 2020, the signing of the Stipulation, my firm performed a total of 138 professional work hours in the prosecution of the Actions. The total lodestar amount for my firm is \$80,387.50. The hours reported excludes the time spent by my firm: (1) negotiating the Fee and Expense Amount; and (2) preparing the briefs and declarations in support of preliminary and final approval of the Settlement.

8. BES expended a total of \$1,750.42 in un-reimbursed expenses that were reasonably and necessarily incurred in connection with prosecution of the Actions, broken down as follows:

LIST OF UNREIMBURSED EXPENSES

<u>Category</u>	<u>Amount</u>
Photocopying/Reproduction	\$27.25
Mediation	\$622.77
Computer Research/Services	\$10.40
Filing Fees	\$1,090.00
TOTAL:	\$1,750.42

9. The expenses set forth above are reflected in counsel's books and records. These books and records are prepared from expense vouchers, check records, and financial statements prepared in the normal course of business for my firm and are an accurate record of the expenses incurred in the prosecution of the Actions.

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

Executed this 22nd day of September 2020.



Melissa A. Fortunato

Exhibit A

B|E|S BRAGAR EAGEL & SQUIRE, P.C.

FIRM RESUME

Bragar Eagel & Squire, P.C. represents clients in complex litigation throughout the country. Our practice focuses on prosecuting stockholder securities class actions, corporate governance actions, and merger actions in federal and state courts. Our attorneys have been appointed as lead counsel or co-lead counsel in hundreds of securities, corporate governance, and merger actions around the country. We also have strong practices in bankruptcy-related litigation, and we are often retained by creditor committees or post-confirmation trustees to litigate D&O and other claims for the benefit of the bankruptcy estate or creditors. We also have a breadth of experience to litigate a full range of commercial disputes.

Our attorneys come from various legal backgrounds and collectively have decades of experience litigating securities class actions, corporate governance matters, merger actions, and consumer rights actions, obtaining well over a billion dollars in recoveries for clients and class members. We litigate cases aggressively, from the initial investigation, through motion practice, discovery, trial and appeals. We are headquartered in New York City and have offices in San Francisco and Los Angeles, California.

DERIVATIVE, SECURITIES, AND MERGER LITIGATION

The core of our practice is prosecuting securities class actions, corporate governance actions, and merger actions. Our attorneys have represented stockholders in hundreds of securities class actions, individual securities actions, corporate governance actions, and merger actions.

We have an active practice before the Delaware Court of Chancery and have achieved success before the Delaware Supreme Court litigating matters involving stockholder rights, corporate governance, and limited partner rights. We are one of the nation's leading firms litigating complex legal issues under Delaware law applicable to alternative entities, including publicly-traded master limited partnerships and limited liability companies.

In the master limited partnership field, we frequently represent limited partners challenging the fairness of "conflicted" transactions between the publicly-traded partnership and its controlling parent entity. In *In re El Paso Pipeline Partners, L.P., Derivative Litigation*, we successfully tried claims before the Delaware Court of Chancery and obtained the only verdict finding that independent directors of a master limited partnership acted with *subjective* bad faith when approving a conflicted transaction with the parent. 2015 Del. Ch. LEXIS 116 (April 20, 2015).¹

In *Mesirov v. Enbridge Energy Company, Inc.*, we obtained a very favorable ruling from the Delaware Supreme Court, which clarified the standard applicable to certain conflicted

¹ The case was subsequently dismissed on appeal due to plaintiff's loss of standing.

B|E|S BRAGAR EAGEL & SQUIRE, P.C.

transactions between the master limited partnership and its parent. 159 A.3d 242 (Del. March 28, 2017).

Representative Matters

Derivative Actions

- ***Mesirov v. Enbridge Energy Company, Inc., et al.***, C.A. No. 11314, Appeal No. 273, (Del. Supreme Court 2016). We prosecuted class and derivative claims on behalf of Enbridge Energy Partners, L.P. (“EEP”) against EEP’s general partner, parent, and affiliated entities. The claims arose out of a January 2015 “drop down” transaction pursuant to which the general partner sold certain pipeline assets to EEP for \$1 billion plus additional consideration in the form of a “special tax allocation”. We secured a favorable ruling from the Delaware Supreme Court, reversing in part the Chancery Court’s dismissal of the action. The action was dismissed as a result of EEP’s merger into Enbridge Inc., which deprived the plaintiff of standing. The EEP Special Committee that negotiated an increase in the merger price valued the derivative claims at \$111.2 million and asserted that Enbridge’s offer failed to account for this value. Reported decisions: 159 A.3d 242 (Del. March 28, 2017) (reversing order of dismissal); 2018 Del. Ch. LEXIS 294 (Del. Ch. August 29, 2018) (denying in part motion to dismiss third amended complaint).
- ***In re Activision Blizzard, Inc. Stockholder Litigation***, C.A. No. 8885 (Del. Ch. 2013). We were co-lead counsel prosecuting class and derivative claims on behalf of Activision’s stockholders arising out of a conflicted transaction unfairly favoring Activision’s senior management. The matter settled on the eve of trial for \$275 million, by far the largest monetary settlement in the history of the Delaware Court of Chancery and the largest cash derivative settlement in the country. In addition, the settlement provided significant corporate governance benefits to class. Reported decision: 86 A.3d 531 (February 21, 2014) (court compelled foreign national directors of controlling stockholder to respond to discovery).
- ***In re El Paso Pipeline Partners, L.P. Derivative Litigation***, C.A. No. 7141 (Del. Ch. 2011). We prosecuted claims on behalf of El Paso Pipeline Partners, L.P., a public master limited partnership, against its general partner and its sponsor, El Paso Corporation (now merged into Kinder Morgan, Inc.). The claims arose out of the 2010 “drop down” of certain pipeline assets from the general partner to the partnership. After trial, the Court found that the Special Committee that recommended approval of the transaction did not believe that the transaction was in the best interests of the partnership and, therefore, that the general partner breached the partnership agreement by engaging in the transaction. The Court found that the partnership was damaged in the amount of \$171 million.² Reported decision: 2015 Del. Ch. LEXIS 116 (April 20, 2015) (post-trial memorandum opinion finding that the three independent

² The case was subsequently dismissed on appeal due to plaintiff’s loss of standing.

B|E|S BRAGAR EAGEL & SQUIRE, P.C.

directors that approved a conflicted transaction did not believe that the transaction was in the best interests of the partnership).

- ***In re Third Avenue Trust Stockholder & Derivative Litigation***, Cons. C.A. No. 12184 (Del. Ch. 2016). We were co-lead counsel prosecuting claims for breach of fiduciary duty against the Trust's officers and its investment advisor arising out of the collapse of the Third Avenue Focused Credit Fund. The case settled for \$25 million.
- ***In re CenturyLink Sales Practices and Securities Litigation: Consolidated Derivative Action***, MDL No. 17-2795 (MJD/KMM), United States District Court for the District of Minnesota. We were appointed sole lead counsel to pursue derivative claims on behalf of CenturyLink against certain of its current and former directors and officers. The claims arise out of the company's practice of allowing its employees to add services or lines to accounts without customer permission, resulting in millions of dollars in unauthorized charges to CenturyLink customers.
- ***In re Equifax, Inc. Derivative Litigation***, Case No. 1:18-cv-17, United States District Court for the Northern District of Georgia. We represent individual and institutional stockholders prosecuting derivative claims on behalf of Equifax against certain of Equifax's current and former officers and directors for breaches of fiduciary duty arising out of Equifax's 2017 data breach.
- ***In re Align Technology, Inc. Derivative Litigation***, Lead Case No. 5:19-cv-00202-LHK, United States District Court for the Northern District of California. We represent a stockholder of Align Technology, Inc., the manufacturer of Invisalign® teeth aligners, asserting derivative claims on behalf of the company alleging that certain former directors and officers caused the company to make materially false and misleading statements concerning the company's promotions and their negative effect on gross margins and net revenues. We were appointed co-lead counsel on February 26, 2019.
- ***Baron v. Sanborn, et al.***, Case No. 3:18-cv-04391-WHA, United States District Court for the Northern District of California. We represent a stockholder of LendingClub Corporation, an on-line marketplace platform that connects borrowers to lenders. The stockholder is bringing derivative claims on behalf of the company against certain current and former directors and officers for arising out of the company's business practice of make false statements to potential borrowers concerning applicable fees and the loan approval process. The court appointed us co-lead counsel on April 25, 2019.
- ***Meldon v. Thompson, et al.***, Civil Action No.: 18-cv-10166, United States District Court for the District of New Jersey. We represent a stockholder of Freshpet, Inc., a manufacturer of foods for dogs and cats. The stockholder is bringing a derivative action on behalf of the company alleging that certain current and former directors and officers caused the company to make false and misleading statements about the company's business results and prospects. The claims arise out of the defendants'

B|E|S BRAGAR EAGEL & SQUIRE, P.C.

alleged failure to disclose expected decreases in revenues due to manufacturing problems and financial difficulties at the company's primary retail customers.

- ***Walker v. Desisto, et al.***, Civ. A. No. 17-10738-MLW, United States District Court for the District of Massachusetts. We represent a stockholder of Insulet Corporation bringing derivative claims on behalf of the company against certain of the company's current and former directors and officers for making false and misleading statements concerning market demand for the company's disposable insulin delivery system, "OmniPod." The parties have agreed to a settlement of the matter, which remains subject to the court's approval.
- ***In re Tesla Motors, Inc. Stockholder Litigation***, C.A. No. 12711, Delaware Court of Chancery. We represent institutional asset managers prosecuting direct and derivative claims on behalf of Tesla arising out of Tesla's acquisition of SolarCity Corporation. The class was certified on April 18, 2019 and discovery is ongoing.
- ***Brinckerhoff v. Texas Eastern Products Pipeline Company, L.L.C.***, C.A. No. 2427 (Del. Ch. 2010). We prosecuted claims on behalf of TEPPCO's common unitholders claiming that in a series of transactions orchestrated by TEPPCO's general partner, TEPPCO had been shortchanged by hundreds of millions of dollars. The action was resolved by a merger which benefitted TEPPCO's unitholders by more than \$400 million. Reported decision: 2008 Del. Ch. LEXIS 174 (November 25, 2008) (denial in part of motion to dismiss).
- ***Gerber v. Enterprise Products Holdings L.L.C.***, C.A. No. 5989 (Del. Ch. 2013). We served as lead counsel for derivative and class claims arising out of a variety of master limited partnership transactions, alleging that the general partner's approvals of the transactions were done in bad faith and in breach of the implied covenant of good faith and fair dealing. One action was settled by defendants agreeing to a merger that increased the value of the limited partnership units by approximately \$400 million. In another action, after the trial court dismissed the complaint, we prevailed before the Delaware Supreme Court to reinstate the claims for breach of implied covenant. The matters settled for \$12.4 million for the Master Limited Partnership unitholders. Reported decision: 67 A.3d 400, *overruled in part*, 159 A.3d 242 (Del. June 10, 2013) (reversing order of dismissal).
- ***In re Allegiant Travel Co. Stockholder Derivative Litigation***, Master File No. 3:18-01864, United States District Court for the District of Nevada. We are co-lead counsel representing stockholders in a derivative action asserting claims against Allegiant's current and former officers and directors for breaches of duties owed to the company arising out of the company's failures to maintain the safety of its airplanes.

Securities Class Actions

- ***Lefkowitz v. Synacor, Inc.***, Case No. 18-2979, United States District Court for the Southern District of New York. On October 17, 2018, we were appointed sole lead

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counsel to prosecute claims on behalf of a class of Synacor stockholders alleging that Synacor, Inc. violated federal securities laws by making false and misleading statements and failing to disclose adverse facts concerning a contract with AT&T.

- ***Crago v. Charles Schwab & Co., Inc., et al.***, Case No. 3:16 Civ. 3938, United States District Court for the Northern District of California. We are co-lead counsel prosecuting claims seeking to recover damages on behalf of a class of retail brokerage customers arising out of Charles Schwab's alleged omissions regarding its order routing practices. The Court denied Charles Schwab's motion to dismiss on December 5, 2017 and the case has now proceeded into further discovery. Reported decision: 2017 U.S. Dist. LEXIS 215871 (December 5, 2017) (denial of motion to dismiss).
- ***In re Supreme Industries, Inc., Securities Litigation***, Case No. 3:17-143, United States District Court for the District of Indiana. We are co-lead counsel prosecuting claims on behalf of a class of stockholders alleging that Supreme Industries violated federal securities laws by making false and misleading representations concerning its order backlog, an indicator of its current and future financial performance.
- ***In re BP p.l.c. Securities Litigation***, Case No. 4:10-md-02185, United States District Court for the Southern District of Texas. We represent nine institutional asset managers that purchased BP stock on the London Stock Exchange and are prosecuting claims against BP for violations of English securities laws arising out of BP's false and misleading statements concerning the safety of its offshore oil rigs and operations and false and misleading statements regarding the size of the oil spill.
- ***Sudunagunta v. NantKwest, Inc., et al.***, Case No. 2:16 Civ. 1947, United States District Court for the Central District of California. We were co-lead counsel prosecuting a securities class action against NantKwest, a biotechnology company that develops immunotherapeutic agents for various clinical conditions and in which we are co-lead counsel for the plaintiff. The action resulted from NantKwest's false and misleading statements in connection with its initial public offering and failure to disclose errors in its financial filings with the SEC. On May 13, 2019, the Court granted final approval of a settlement that will provide \$12 million to the class. Reported decision: 2018 U.S. Dist. LEXIS 137084 (Aug. 13, 2018) (order granting class certification).
- ***Xu v. Gridsum Holding Inc., et al.***, Case No. 1:18 Civ. 3655, United States District Court for the Southern District of New York. We are lead counsel prosecuting claims for violations of the federal securities laws arising out of Gridsum's materially false and misleading statements and omissions regarding its financial reporting. The Court appointed us lead counsel on September 17, 2018.
- ***Shah v. A10 Networks, Inc., et al.***, No. 3:18 Civ. 1772, United States District Court for the Northern District of California. We are co-lead counsel prosecuting claims on behalf of a class of stockholders arising out of alleged violations of the federal securities laws related to materially false and misleading statements related to a failure to disclose an Audit Committee investigation prompted by A10's internal

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control issues, as well as allegations that improper revenue recognition caused false financial statements. The Court appointed us lead counsel on August 31, 2018.

- ***Cullinan v. Cemtrex, Inc., et al.***, Consolidated Case No. 2:17-cv-01067, United States District Court for the Eastern District of New York. We are co-lead counsel prosecuting claims on behalf of a class of stockholders arising out of violations of the federal securities laws related to company insider's improper sales of stock and false and misleading statements concerning the company's business operations. The court appointed us co-lead counsel on March 9, 2018. The Parties negotiated a settlement of the action for a \$625,000 cash payment to the Class, which is subject to final approval by the Court.
- ***In re Altice USA, Inc. Securities Litigation***, Index No. 711788/2018, Supreme Court of the State of New York, Queens County. We are co-lead counsel prosecuting claims on behalf of a class of stockholders arising out of violations of the federal securities laws related to the company's filing of a false and misleading proxy statement in connection with its June 2017 initial public offering.
- ***Vardanian v. Arlo Technologies, Inc., et al.***, Case NO. 19cv342418, Superior Court of the State of California, County of Santa Clara. We represent a class of Arlo Technologies, Inc., stockholders alleging claims for violation of the federal securities laws arising out of the company's Registration Statement and Prospectus issued in connection with its August 2018 initial public offering.
- ***Alden v. FAT Brands, Inc., et al.***, Case No. BC716017, Superior Court for the State of California, County of Los Angeles. We represent a class of FAT Brands stockholders alleging claims for violation of federal securities laws arising out of the company's Registration Statement and Offering Circular filed in connection with its initial public offering.
- ***Trinad Capital Master Fund, Ltd. v Majesco Entertainment Company, et al.***, C.A. No. 06-05265 (D.N.J. 2006). We represented hedge fund in opt-out securities fraud litigation against officers and directors of public company. The case resolved favorably for client.

Merger Litigation

- ***True Value Company***, C.A. No. 2018-0257, Delaware Court of Chancery. Co-lead counsel representing stockholder and independent retailer of True Value Company in a challenge to the fairness of a conflicted transaction by which each True Value stockholder would be forced to sell 70% of its shares at par value, ending up as indirect minority members of the Company. The action resulted in additional disclosures by defendants, which the Court found to be material.
- ***In re Cornerstone Therapeutics, Inc. Stockholder Litigation***, C.A. No. 8922, Delaware Court of Chancery. Co-lead counsel representing a class of Cornerstone

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Therapeutics stockholders challenging an acquisition of the company by its controlling stockholder in a “going private” transaction. The matter settled for **\$17,881,555** in cash benefits to the class.

- ***Ross and Parker v. Rhône Capital, L.L.C. et al.***, Case No. CACE-16-013220 (Cir. Ct. 17th Jud. Dist., Broward Cty., Fla.). Partners of our firm were counsel in action challenging the acquisition of Elizabeth Arden by Revlon.
- ***In re Allion Healthcare, Inc. Shareholders Litigation***, C.A. No. 5022-CC (Del. Ch.). Partners of our firm co-lead counsel in action challenging a going-private transaction whereby Allion merged with H.I.G. Capital Inc. and a group of Allion stockholders. The action was settled with a \$4 million payment to Allion’s unaffiliated shareholders and additional disclosures to shareholders.
- ***In re RehabCare Group, Inc., Shareholders Litigation***, C.A. No. 6197-VCL (Del. Ch.). Partners of our firm co-lead counsel in action challenging the acquisition of RehabCare by Kindred Healthcare, Inc. which resulted in a \$2.5 million payment to RehabCare shareholders, modification of the merger agreement, and additional disclosures to shareholders.
- ***In re Atheros Communications Shareholder Litigation***, C.A. No. 6124-VCN (Del. Ch.). Partners of our firm co-lead counsel in action challenging the acquisition of Atheros by Qualcomm Incorporated which resulted in the issuance of a preliminary injunction by the Delaware Court of Chancery delaying the shareholder vote and requiring additional disclosures to shareholders.
- ***Maric Capital Master Fund, Ltd. v. PLATO Learning, Inc.***, C.A. No. 5402-VCS (Del. Ch.). Partners of our firm were lead counsel in action challenging the acquisition of PLATO by Thoma Bravo, LLC which resulted in the issuance of a preliminary injunction by the Delaware Court of Chancery requiring additional disclosures to shareholders.



BANKRUPTCY AND INSOLVENCY-RELATED LITIGATION

Our knowledge of bankruptcy law and procedure has helped us carve a niche in this often-overlapping sphere of litigation. We have a particularly strong practice representing clients who have invested in companies undergoing reorganization. Because of our expertise, we have acted as bankruptcy counsel to other firms pursuing claims on behalf of their clients. We are also involved in more traditional aspects of reorganization and bankruptcy proceedings. We are often retained by creditors committee or post-confirmation trustees to pursue claims for the benefit of the estates in question, including litigation arising out of financial misrepresentation and breaches of fiduciary duty by debtors' directors and officers.

Representative Matters

- ***Creditor Trust of Energy & Exploration Partners, Inc. v. Apollo Investment Corporation, et al.***, C.A. No. 17-04035 (Bankr. N.D. Tex. 2017). We represented a post-confirmation Creditor Trust asserting claims against Apollo Investment Corporation and affiliated entities for fraudulent conveyance arising out of Debtors' payment of penalty in connection with prepayment of debt. The matter settled favorably for the Creditor Trust.
- ***Creditor Trust of Vivaro Corporation v. Catalina Acquisitions LLC***, JAMS Arbitration. We represented a post-confirmation Creditor Trust asserting claims for breach of promissory note. The matter settled favorably for the Creditor Trust.
- ***Hebrew Hospital Senior Housing, Inc., Plan Administrator***, C.A. 17-01240 (Bankr. S.D. 2017). We represent a post-confirmation Plan Administrator bringing claims for breach of fiduciary duty against certain former officers and directors of Hebrew Hospital Senior Housing, Inc. ("HSHS"), a bankrupt "continuing care retirement community." The Plan Administrator is also asserting claims assigned by current and former residents of HSHS asserting that they did not receive mandated disclosures.
- ***Advance Watch Company, Ltd. Creditor Trust***, C.A. No. 17-7461 (S.D.N.Y. 2017). We represent a post-confirmation Liquidating Trust asserting claims for breach of fiduciary duty against former officers and directors of Advance Watch Company, Ltd.
- ***UGHS Senior Living, Inc. Liquidating Trust***, C.A. No. 2017-75532, District Court of State of Texas, Harris County. We represented a post-confirmation Liquidating Trustee asserting claims for breach of fiduciary duty against former officers and directors. The matter settled favorably for the Creditor Trust.
- ***In re Solutions Liquidation LLC***, Adv. P. No. 18-50304 (Bankr. Del. 2018). We represent the post-confirmation Liquidating Trust bringing claims for breach of fiduciary duty against the former officers and directors of SDI Solutions LLC.
- ***Industrial Enterprises of America***, We are litigating twelve adversary proceedings in the Bankruptcy Court for the District of Delaware and one civil action in the United

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States District Court for the District of Colorado. We, along with another firm, represent a trustee in bankruptcy of a company that was the subject of a major fraud for which the two principals were convicted of fraud and jailed. We are pursuing the thirteen actions against one hundred and twenty defendants for a variety of wrongdoings, ranging from orchestrating the fraud and assisting the fraud to constructive fraudulent conveyance and unjust enrichment.

- ***In re Pitt Penn Holding Co.***, No. 09-11475 (Bankr. D. Del. 2005). We represented Industrial Enterprises of America, Inc. in twelve different adversary proceedings in the Bankruptcy Court, District of Delaware and one civil action in the United States District Court for the District of Colorado. We, along with another firm, represent a trustee in bankruptcy of a company that was the subject of a major fraud, for which the two principals were convicted and jailed. We have pursued the thirteen actions against one hundred and twenty defendants for a variety of wrongdoings ranging from orchestrating and assisting the fraud to constructive fraudulent conveyance and unjust enrichment.
- ***In re Worldcom***, No. 02-13533 (Bankr. S.D.N.Y.). We represented a patent owner in a multimillion dollar claim for patent infringement. The case resolved favorably for client.
- ***In re Enron Corp.***, No. 01-16034 (Bankr. S.D.N.Y.). Stockholders filed suit against a corporation that withdrew from a merger agreement with the debtor corporation seeking to enforce the merger agreement. The case was settled for \$6 million.
- ***In re Universal Automotive Industries, Inc.***, No. 05-27778 (Bankr. D.N.J. 2005). We represented trustee and secured lenders in claims against former officers and directors. The case resolved favorably for plaintiffs.
- ***In re Acclaim Entertainment, Inc.***, No. 04-85595 (Bankr. E.D.N.Y. 2004). We represented a trustee in litigation against former officers and directors. The case resolved favorably for trustee.
- ***In re Allou Distributors, Inc.***, No. 03-82321 (Bankr. E.D.N.Y.). We represented trustee and secured lenders in claims against former officers and directors. The case resolved favorably for plaintiffs.
- ***Arbor Place, L.P. v. Encore Opportunity Fund, L.L.C.***, No. 20436 (Del. Ch. 2003). Investors in a hedge fund sued for misrepresenting the value of the investments. The case resolved favorably for plaintiffs.



CONSUMER CLASS ACTIONS

We have extensive experience litigating class actions on behalf of consumers. We have prosecuted claims for damages arising out of data breaches, defective coin-counting machines, and consumer loyalty programs.

- ***Sateriale v. R.J. Reynolds Tobacco Co., Inc.***, United States District Court for the Central District of California. We represented a class of California adult smokers who purchased packs of Camel cigarettes and collected Camel Cash, or “C-Notes,” as part of the Camel Cash loyalty program. The class asserted claims that Reynolds breached its contract with program members when, on October 1, 2006, Reynolds removed all of the non-tobacco related merchandise from the Camel Cash program, and program members could redeem C-Notes only for cigarettes or coupons for dollars off cigarettes. In 2012, we obtained a victory before the United States Court of Appeals for the Ninth Circuit reversed the district court’s dismissal of the complaint. The Ninth Circuit found that the Camel Cash program created a unilateral contract between consumers and Reynolds. Pursuant to a settlement reached in 2016, R.J. Reynolds offered Class Members the opportunity to use C-Notes that they collected and held as of October 1, 2006, to redeem for non-tobacco merchandise. Reported decisions: 697 F.3d 777 (9th Cir. October 15, 2012) (reversing order of dismissal); 2014 U.S. Dist. LEXIS 176858 (order granting class certification); 2014 U.S. Dist. LEXIS 176858 (order denying defendant’s motion for summary judgment).
- ***Castillo v. Seagate Technology LLC***, United States District Court for the Northern District of California. We represented current and former employees of Seagate and its affiliates, and the employees’ spouses, seeking damages arising from Seagate’s March 2016 data breach in which Seagate wrongfully disclosed the employees’ 2015 Form W-2 tax information in a “phishing” scam. The matter settled in March 2018. Pursuant to the settlement, Seagate agreed to provide Class Members with the option to obtain two years of identity theft protection and to reimburse Class Members for certain economic costs. Reported decision: 2017 U.S. Dist. LEXIS 187428 (order denying in party motion to dismiss).
- ***Feinman v. TD Bank, N.A.***, Supreme Court of the State of New York, New York County. We were co-class counsel in consumer class action alleging that TD Bank’s “Penny Arcade” coin-counting machines under-counted coins deposited by consumers. Class counsel negotiated a \$7.5 million settlement in favor of the class.

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GENERAL COMMERCIAL LITIGATION

Our attorneys handle both plaintiff and defendant work encompassing all aspects of commercial litigation in traditional forums and through alternate dispute resolution. We have recently brought an arbitration against a national brokerage firm, prosecuted a consumer class action involving a marketing promotion, and defended a company and its founder against claims of fraud in connection with the sale of a high-tech start-up. Although frequently involved in trial practice, much of our work is consultative in nature. As such, we act in an advisory capacity or pre-litigation mode where we attempt to solve business disagreements and partnership disputes without commencing a formal action. This often occurs when small businesses undergo a significant change, such as a partnership split or business “divorce,” or in the case of a closely held business, a transition of ownership. Additional areas of focus include commercial contract actions and personal service contracts, both in negotiation and in contests questioning the parties’ adherence to contract terms. In this regard, we have been involved in several arbitration cases involving major sports teams. We also handle cases involving insurance disputes, including contesting insurance valuations and coverage refusals.

Representative Matters

- ***Dimension Trading Partners, LLC v. Jamie F. Lissette and Hammerstone NV, Inc.***, No. 650284/2013, New York Supreme Court, New York County. We defended a proprietary trader against a claim to collect on promissory note issued in connection with the establishment of trading relationship.
- ***Ator Limited v. Comodo Holdings Limited***, No. 12-03083 (D.N.J.). We represented third-party defendants in a dispute arising out of the sale of a start-up company.
- ***Financials Restructuring Partners v. Premier Bancshares, Inc.***, No. 651283/2013, New York Supreme Court, New York County. We defended former bank holding company against attempt to foreclose upon \$6 million in debt securities.
- ***325 Schermerhorn LLC v. Nevins Realty Corp.*** We obtained a victory on summary judgment compelling defendants to pay \$3.6 million plus interest representing a returned down payment on four properties because of a transit easement assumedly known to all parties at the time the contracts were executed. Reported decision at 2009 WL 997501.
- ***Bellis v. Tokio Marine Insurance Company***. We procured a \$7 million settlement after obtaining a jury verdict on liability based on causation of damage in insurance claim. We also defeated a summary judgment motion reported at 2002 WL 193149 (S.D.N.Y.). The case involved attribution of liability for some priceless Tiffany glass that was damaged while on exhibit in Tokyo. Reported decision at 2004 WL 1637045 (S.D.N.Y.).

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- ***Paquette v. Twentieth Century Fox***. Compelled Fox television to grant “created by/inspired by” credits to authors of comic book from which television series was adapted, establishing claim of reverse passing off, *i.e.*, improperly taking credit for someone else’s work, under the Lanham Act. Reported decision at 2000 WL 235133 (S.D.N.Y.).
- ***Colton Hartnick Yamin & Sheresky v. Feinberg***, New York Supreme Court, New York County. We successfully reversed the trial court’s denial of summary judgment to law firm on impropriety of claim of malpractice. On appeal, the court dismissed the malpractice claim based on lack of facts to establish legal malpractice and punitive damages. Reported decision at 227 A.D.2d 233, 642 N.Y.S.2d 283.
- ***Raycom v. Kerns***, New York Supreme Court, Kings County. We are representing a Singapore-based aircraft part manufacturer in a breach of contract suit against a multi-national corporation.

OUR ATTORNEYS



Raymond A. Bragar

Ray Bragar is a partner of the firm. Ray started the firm in 1983 and practices general litigation with a sub-specialty in real estate and real estate litigation. He has over thirty years of experience practicing in New York State and Federal Courts. He has handled complex trials before juries and judges lasting several weeks and numerous appeals in both the State and Federal Courts. He also has extensive experience working in the nontraditional forum of alternate dispute resolution, including multiple-week trials.

Following graduation, Ray was law clerk to the Hon. Lloyd F. McMahon who was then Chief Judge for the United States District Court for the Southern District of New York. He also previously worked for the firm of Katten Muchin Rosenman LLP (formerly Rosenman & Colin, LLP).

Ray is member of the bar of the State of New York. He is also admitted to practice before the United States Supreme court, as well as in the United States Courts of Appeals for the Second, Fourth, and District of Columbia Circuits, United States District Courts for the Southern, Eastern, and Northern Districts of New York, and the United States Bankruptcy Courts for the Eastern and Southern Districts of New York. He is a member of the New York State Bar Association, where he has been a member of the Civil Practice Law & Rules Committee since 1985.

Ray is a 1972 *cum laude* graduate of the Harvard Law School and is a 1968 *magna cum laude* graduate of Rutgers University.



Lawrence P. Eagel

Larry Eagel is a partner in the firm and joined in 1994. Larry handles all types of litigation, but he is particularly skilled in the areas of securities and bankruptcy-related litigation, including class actions. Prior to 1994, he was associated with the firm of Proskauer Rose LLP. Larry was also a certified public accountant and worked in the late 1970's as an auditor with Grant Thornton & Co. (formerly Alexander Grant & Co.) in the firm's Washington, D.C. office.

Larry is member of the bars of the State of New York and the State of New Jersey. He is also admitted to practice before the United States Courts of Appeals for the Second and Third Circuits, the United States District Courts for the Southern, Eastern, and Northern Districts of New York, the United States District Court for the District of New Jersey, and the United States Tax Court. He is a member of The Association of the Bar of the City of New York, where he was a member of the Committee on Federal Legislation from 1993 to 1997.

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Larry is a 1983 *cum laude* graduate of the Brooklyn Law School, where he was a Comments Editor of the *Brooklyn Law Review*. He completed his undergraduate work at George Washington University in 1978, where he also earned an M.B.A. in 1980.



J. Brandon Walker

J. Brandon Walker is a partner in the firm. Before joining the firm in 2015, Brandon was a partner at Kirby McInerney LLP. Brandon has a broad background in securities fraud, corporate governance, and other complex class action and commercial litigation on behalf of shareholders. He has represented public retirement systems, union pension funds, European investment managers, and other institutional and individual investors before federal, state, and appellate courts throughout the country.

Brandon is a member of the bars of the State of New York and the State of South Carolina. He is admitted to practice before the United States Courts of Appeals for the First, Second, and Sixth Circuits, and the United States District Courts for the Eastern and Southern Districts of New York.

Brandon is a 2008 graduate of Wake Forest University School of Law with an MBA from the Wake Forest University Graduate School of Management. He completed his undergraduate work at New York University.



David J. Stone

David J. Stone is a partner in the firm, having joined in May 2011. David has extensive experience litigating all types of commercial matters, including securities, mortgage-backed securities, and consumer class actions. Prior to joining the firm, David was associated with Greenberg Traurig LLP, Morrison & Foerster LLP, and Cravath Swaine & Moore LLP.

David is a member of the bars of the State of New York and the State of California. He is admitted to practice before the United States Court of Appeals for the Second and Third Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, the Northern and Central Districts of California, and the Southern District of Texas, and the United States Bankruptcy Courts for the Southern and Eastern Districts of New York.

David is a 1994 graduate of the Boston University School of Law, where he was an editor of the Law Review, and a 1988 *cum laude* graduate of Tufts University. Following graduation, David was law clerk to the Hon. Joseph L. Tauro who was then Chief Judge for the United States District Court for the District of Massachusetts.

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W. Scott Holleman

Scott is a partner of the firm. He has a broad range of experience litigating complex claims involving securities fraud, corporate governance, mergers & acquisitions, antitrust, consumer class actions and other litigation. Scott has represented clients in federal and state courts throughout the nation.

Scott is a 2007 graduate of St. John's University School of Law, and a 2003 graduate of the University of North Carolina.

Scott is a member of the bars of the State of New York and California, and is admitted to practice before the United States Court of Appeal for the Sixth Circuit, United States District Court for the Northern District of California, United States District Court for the Eastern, Northern, and Southern Districts of New York, and the United States District Court for the Eastern District of Wisconsin.



Melissa A. Fortunato

Melissa is a partner of the firm. She has a broad background in securities fraud, corporate governance, and other complex class action and commercial litigation on behalf of investors. Many of her cases have involved breaches of fiduciary duties by public company boards of directors, and she has represented institutional and individual stockholders in the mediation and settlement of numerous derivative and class actions.

Melissa is a 2013 *magna cum laude* graduate of the Pace University School of Law, where she was a Notes Editor of the Pace Environmental Law Review, and a 2004 *cum laude* graduate of Georgetown University.

Melissa is a member of the bars of the states of New York, New Jersey, Connecticut, and California. She is admitted to practice before the United States Court of Appeals for the Fourth and Ninth Circuits, and the United States District Courts for the Eastern, Western, and Southern Districts of New York, the District of New Jersey, and the Northern, Central, and Eastern Districts of California.

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Jeffrey H. Squire



Jeffrey H. Squire is Of Counsel at the firm. Jeff was previously a partner at Kirby, McInerney & Squire LLP and Of Counsel to Wolf Popper LLP. Jeff, as lead or co-lead counsel, has prosecuted scores of class and derivative actions on behalf of the stockholders of many corporations, including: Adelphia Communications Corporation; AT&T Corporation; Bennett Funding Group; Bisys Group, Inc.; eBay, Inc.; Ford Motor

Company; The Limited Corporation; Morrison Knudsen; Washington Group, Inc.; Waste Management, Inc.; and Woolworth, Inc. In such cases, he has recovered over one billion dollars for stockholders.

Jeff's ability to prosecute sophisticated class actions successfully has often been the subject of judicial recognition:

"You have acted the way lawyers at their best ought to act. And I have had a lot of cases in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here I would say this has been the best representation that I have ever seen." *In re Waste Management, Inc. Securities Litigation*.

"Nonetheless, in this Court's experience, relatively few cases have involved as high level of risk, as extensive discovery, and, most importantly, as positive a final result for the class members as that obtained in this case." *In re Bisys Securities Litigation*.

Jeff is a 1976 graduate of the University of Pennsylvania Law School and a 1973 *cum laude* graduate of Amherst College. He is member of the bars of the State of New York and State of Pennsylvania (retired). He is also admitted to practice before the United States Courts of

Appeals for the Second, Third, Sixth, and Seventh Circuits, and the United States District Courts for the Southern, Eastern, and Northern Districts of New York, the Northern District of Georgia, the Northern District of California, and the Southern District of Texas.



Marion Passmore

Marion Passmore is Of Counsel at the firm. Marion has a broad litigation practice, with an extensive background in securities litigation. She has prosecuted numerous securities fraud actions on behalf of institutional and individual investors. Prior to joining the firm, she co-founded a small private practice that specialized in estate planning and probate actions, civil litigation, real property, and served as city attorney for the City of Choteau, Montana.

Marion is a 2003 graduate of the University of San Diego School of Law. She received an M.B.A from the San Diego School of Business in 2004 and was also a member of the Beta Gamma Sigma Honors Society. Marion is a 2000 *cum laude* graduate of the University of Southern California.

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Marion is a member of the bars of the states of California and Montana. She is admitted to practice in the United States District Courts for the Southern, Northern, and Central Districts of California and the District of Montana.



Alexandra Raymond

Alexandra Raymond is an associate at the firm. Alexandra's practice involves securities, corporate governance and merger litigation. She also has experience in corporate transactional work and finance law.

Alexandra is a 2018 graduate of Boston University School of Law. While in law school, she spent a semester at Bucerius Law School in Hamburg, Germany, studying international and comparative business law. She received a B.A. from New York University in 2014.



Derek Scherr

Derek Scherr is an associate at the firm. Derek practices commercial litigation involving contract disputes, commercial and residential real estate, partnership disputes, business fraud, and bankruptcy litigation.

Derek is a 2013 graduate of the Benjamin N. Cardozo School of Law. He received a B.A. in history from New York University in 2010.

Derek is a member of the bar of the State of New York.



Garam Choe

Garam Choe is an associate at the firm. Garam's practice involves securities, corporate governance and merger litigation. Garam is a 2016 graduate of St. John's University School of Law, and a 2011 graduate of Baruch College. Garam is a member of the bar of the State of New York.



Siedel Bethune

Siedel Bethune is a staff attorney at the firm. Siedel's practice involves securities, corporate governance and merger litigation. He has over eleven years of experience in all facets of discovery, including antitrust litigation document review, "second requests" issued by the Department of Justice or Federal Communications Commission, class action lawsuits, banking compliance litigation, mortgage securities litigation, pharmaceutical products liability litigation, patent and trademark prosecutions, criminal investigations, and internal investigations.

Siedel is a 2003 graduate of Boston College Law School, and received his B.A. from State

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Exhibit F

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6 *Attorney for Plaintiffs*

7 [Additional Counsel on Signature Page]

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE CAPSTONE TURBINE CORP.
11 STOCKHOLDER DERIVATIVE
12 LITIGATION

13 THIS DOCUMENT RELATES TO:
14 All Actions

Master File No.: 2:16-cv-01569

15 **DECLARATION OF LAURENCE**
16 **M. ROSEN IN SUPPORT OF**
17 **PLAINTIFFS' MOTION FOR**
18 **FINAL APPROVAL OF**
19 **DERIVATIVE SETTLEMENT, FEE**
20 **AWARD,**
21 **AND SERVICE AWARD**

22 DATE: October 30, 2020

23 TIME: 9:30 A.M.

24 CTRM: 8C

25 JUDGE: Hon. Dolly M. Gee

26 Master File No.: 2:16-cv-01569

27 DECLARATION OF LAURENCE M. ROSEN IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL
28 APPROVAL OF DERIVATIVE SETTLEMENT, FEE AWARD, AND SERVICE AWARD

1 I, Laurence M. Rosen, declare and state, under penalty of perjury, that the
2 following is true and correct to the best of my knowledge, information and belief:

3 1. I am an attorney duly licensed to practice law in California and before
4 this Court.

5 2. I am the Managing Partner of The Rosen Law Firm, P.A. (“Rosen
6 Law”), which served as counsel for Plaintiff Brandon Boll (“Boll”) in the Actions.¹
7 I have personal knowledge of the matters set forth herein and, if called upon, I
8 could and would completely testify thereto.

9 3. A copy of Rosen Law’s résumé is annexed hereto as Exhibit A.

10 4. Rosen Law has been involved in the Actions since Plaintiff Boll filed
11 his Complaint in July 2016.

12 5. Rosen Law, as counsel for Plaintiff Boll in the Actions, has
13 committed 41.18 hours to litigating the Actions from the initial investigation to
14 July 14, 2020, which includes time spent on: (1) reviewing and analyzing Capstone
15 Turbine Corp.’s (“Capstone”) public filings with the SEC, press releases,
16 announcements, transcripts of investor conference calls, and news articles; (2)
17 reviewing and analyzing the allegations contained in the related securities class
18 action; (3) researching and drafting the initial shareholder derivative complaint in
19 *Boll v. Jamison, et al.*, Case No. 2:16-cv-05282-DMG-RAO (C.D.Cal.) (“*Boll*
20 *Action*”); (4) negotiating court submissions with defense counsel and other
21 plaintiffs’ counsel, including the stipulation to stay the *Boll Action* and joint status
22 reports; (5) preparing and filing status reports to the Court in the *Boll Action*; and
23 (6) reviewing and commenting on settlement papers.

24 6. The chart below is a summary of time expended by the attorneys of
25 Rosen Law on the Actions, and the lodestar calculation based on their current

26 ¹ Unless defined herein, all capitalized terms have the same definitions as set forth
27 in the Stipulation of Settlement dated July 14, 2020 (“Stipulation”).

1 billing rate. These hourly rates are my firm's customary rates and are well within
 2 the range of hourly rates that have been accepted by courts as reasonable in other
 3 securities or shareholder litigation. The chart was prepared from contemporaneous,
 4 daily time records regularly prepared and maintained by my firm.

Professional (position)*	Years in Practice	Hourly Rate	Hours Worked	Lodestar
Phillip Kim (P)	17	\$925	27.00	\$24,975.00
Erica L. Stone (A)	6	\$675	13.93	\$9,402.75
Ryan Hedrick (A)	1	\$400	0.25	\$100.00
Total			41.18	\$34,477.75

* Partner (P), Associate (A).

7. From Plaintiff Boll filing his complaint through July 14, 2020, the signing of the Stipulation, my firm performed a total of 41.18 professional work hours in the prosecution of the Actions. The total lodestar amount for my firm is \$34,477.75. The hours reported excludes the time spent by my firm: (1) negotiating the Fee and Expense Amount; (2) preparing the briefs and declarations in support of preliminary and final approval of the Settlement; and (3) preparing additional status reports submitted in the *Boll* Action.

8. Rosen Law expended a total of \$987.05 in un-reimbursed expenses that were reasonably and necessarily incurred in connection with prosecution of the Actions broken down as follows:

LIST OF UNREIMBURSED EXPENSES

<u>Category</u>	<u>Amount</u>
Court Filing Fees	\$400.00
Computer Research/Services	\$147.05
Notice to Investor Fees	\$440.00
TOTAL:	\$987.05

EXHIBIT A

**THE ROSEN LAW FIRM P.A.
BIOGRAPHY**

I. ATTORNEYS

LAURENCE ROSEN - MANAGING PARTNER

Laurence Rosen is a 1988 graduate of New York University School of Law. He earned an M.B.A. in finance and accounting at the University of Chicago Graduate School of Business and a B.A. in Economics from Emory University. Mr. Rosen served as a law clerk to the Honorable Stanley S. Brotman, Senior United States District Judge for the District of New Jersey. Mr. Rosen entered private practice as an associate at the law firm of Skadden Arps Slate Meagher & Flom in New York City where he participated in a number of complex securities class action and derivative litigation matters. He later served as an associate at McCarter & English in Newark, New Jersey where he specialized in securities and business litigation.

After practicing general securities and commercial litigation in New York City with Solton Rosen & Balakhovsky LLP, Mr. Rosen founded The Rosen Law Firm to represent investors exclusively in securities class actions and derivative litigation. Mr. Rosen is admitted to practice law in New York, California, Florida, New Jersey and the District of Columbia. Mr. Rosen is also admitted to practice before numerous United States District Courts throughout the country and the United States Court of Appeals for the Second, Fourth, and Sixth Circuits.

PHILLIP KIM – PARTNER

Mr. Kim graduated from Villanova University School of Law in 2002. He received a B.A. in Economics from The Johns Hopkins University in Baltimore, Maryland in 1999. Prior to joining The Rosen Law Firm, Mr. Kim served as Assistant Corporation Counsel for the City of New York in the Special Federal Litigation Division. In that position, Mr. Kim defended a number of class action lawsuits, litigated numerous individual actions, and participated in more

than seven trials. Mr. Kim focuses his practice on securities class actions and shareholder derivative litigation. Mr. Kim is admitted to the bar of the State of New York and admitted to practice in the United States District Courts for the Southern District of New York, the Eastern District of New York, the Northern District of New York, and the District of Colorado, and the United States Court of Appeals for the Second Circuit.

JACOB A. GOLDBERG – PARTNER

Mr. Goldberg is a 1988 graduate of Columbia University. Mr. Goldberg received his J.D., *cum laude*, from the Temple University School of Law in 1992. For over 23 years, Mr. Goldberg has litigated complex cases at the highest levels, championing the rights of investors, employees and consumers. Mr. Goldberg has recovered over \$200 million for investors in securities class actions. In addition to serving in leadership roles in securities class actions, Mr. Goldberg has litigated many cases under state corporations laws, against faithless boards of directors both on behalf of shareholders, in the mergers and acquisitions context, and, derivatively, on behalf of corporations, to remedy harm to the corporation itself. Mr. Goldberg is admitted to practice law in the Commonwealth of Pennsylvania, New York, the United States Supreme Court, the United States Court of Appeals for the Second, Third, Fourth and Sixth Circuits, and various United States District Courts across the country.

JONATHAN A. SAIDEL – PARTNER

Mr. Saidel has had a long and distinguished career in Pennsylvania politics, as well as in the roles of attorney, accountant and author. He served as Philadelphia city controller for four consecutive terms, each time earning reelection by a wide margin, and enacting financial reforms that have saved taxpayers upwards of \$500 million. Later, in 2010 he went on to campaign for lieutenant governor of Pennsylvania, where he was runner-up to Scott Conklin by only a few thousand votes out of almost 1 million cast. A Lifelong resident of Northeast Philadelphia, Mr.

Saidel's tireless dedication to fiscal discipline reduced the city's tax burden and spurred economic development. Mr. Saidel also pushed for important business tax incentives and expanded minority and small business lending, all of which have revitalized the city, helping it prosper and come back from the brink of bankruptcy in the early 1990's to become one of the most vibrant cities on the East Coast.

Mr. Saidel's book, "Philadelphia: A New Urban Direction", is widely considered an essential guide for effective government and corporate governance and is required reading at many colleges and universities.

Mr. Saidel received his JD from the Widener University of Law and is a graduate of Temple University. He is also an adjunct lecturer at the University of Pennsylvania Fels Institute of Government, and Drexel University's MBA Program. In addition to being a Certified Public Account, Jonathan is a recipient of the National Association of Local Government Auditor's Knighton Award, the President's Council on Integrity and Efficiency Award for Excellence, multiple special project awards from the National Association of Local Government Auditors, and the "Controller of the Year" award, a peer recognition presented by the Pennsylvania City Controllers Association.

SARA FUKS – COUNSEL

Ms. Fuks graduated from Fordham University School of Law, *cum laude*, in February 2005, where she was a member of Fordham Law Review. She received her B.A. in Political Science, *magna cum laude*, from New York University in 2001. Ms. Fuks began her practice at Dewey Ballantine, LLP where she focused on general commercial litigation and then went on to prosecute numerous ERISA and securities class actions as an associate at Milberg LLP. Ms. Fuks is admitted to the bar of the State of New York and admitted to practice in the United States Southern and Eastern District Courts of New York.

JONATHAN HORNE- COUNSEL

Mr. Horne is a 2009 graduate of New York University School of Law, where he received the Lederman/Milbank Law, Economics, and Business fellowship, and holds a B.A. in Economics & Philosophy from the University of Toronto. Mr. Horne began his practice at Kaye Scholer LLP. Mr. Horne specializes in securities litigation. He is admitted to practice in New York and the United States District Courts for the District of Colorado and the Southern and Eastern Districts of New York. Mr. Horne was named a Super Lawyer – Rising Star for the New York Metro Area.

BRIAN ALEXANDER – ATTORNEY

Mr. Alexander graduated from Harvard Law School, *cum laude*, in 2008. He received a B.A. from Cornell University, *magna cum laude*, in 2003. Prior to joining the Rosen Law Firm, Mr. Alexander practiced complex commercial litigation at Boies Schiller Flexner LLP and other prominent law firms in New York. He also served as a law clerk to the Honorable Raymond J. Dearie of the United States District Court for the Eastern District of New York. He is admitted to practice in New York and in the United States District Courts for the Eastern and Southern Districts of New York.

JOSHUA BAKER – ATTORNEY

Mr. Baker graduated from the New York University School of Law in 2013. He received a B.A. from the University of Maryland in 2009. Prior to joining the Rosen Law Firm, Mr. Baker practiced complex commercial litigation for a New York firm. He is admitted to practice in New York, Massachusetts, and United States District Courts for the Eastern and Southern Districts of New York.

JING CHEN - ATTORNEY

Ms. Chen received a Juris Doctor degree from Pace University School of Law in 2011, Juris Master degree from China University of Political Science and Law in Beijing, China and B.A. in English Literature and Linguistics from Shandong University in Jinan, China. She is admitted to practice in New York, New Jersey and China. Prior to joining The Rosen Law Firm, Ms. Chen practiced corporate law, commercial transactions and arbitration for over two years.

GONEN HAKLAY – ATTORNEY

Mr. Haklay graduated from Stanford University School of Law in 1995. He received a B.A. in Political Science from The University of Massachusetts at Amherst in 1992. After several years as an associate at a large Philadelphia law firm, Mr. Haklay joined the Philadelphia District Attorney's office. As a prosecutor, he tried over 100 criminal jury cases and handled both capital and non-capital homicide cases. After 12 years as prosecutor, Mr. Haklay joined a prominent plaintiffs' firm where he tried over ten asbestos cases, recovering millions of dollars for his clients. As a young man, Mr. Haklay served as an infantryman in the Israel Defense Forces. Mr. Haklay is admitted to the bars of the Commonwealth of Pennsylvania, the State of New Jersey, the United States District Court for the Eastern District of Pennsylvania, and the United States Third Circuit Court of Appeals.

DANIEL TYRE-KARP – ATTORNEY

Prior to joining The Rosen Law Firm in May 2018, Mr. Tyre-Karp was a senior associate in the securities litigation and corporate governance group at Weil, Gotshal & Manges, where he advised corporate and individual clients on a variety of high-stakes regulatory and litigation matters in state and federal courts. Mr. Tyre-Karp's extensive experience includes working on several of the largest recent shareholder class action litigations (*In re American International Group, Inc. 2008 Securities Litigation*, Docket No. 08-CV-4772 (S.D.N.Y.) and related opt-out

actions; *In re El Paso Corporation Shareholder Litigation*, Docket No. 6949 (Del. Ch.)), participating in complex business and bankruptcy litigations (*In re Lehman Brothers Holdings, Inc., et al*, Docket No. 1:08-bk-13555 (Bankr. S.D.N.Y.)), and advising numerous clients facing FINRA and SEC investigations. Mr. Tyre-Karp graduated with honors from Wesleyan University in 2003 and received his J.D. from New York University School of Law in 2009, where he served as Senior Notes Editor of the Journal of Legislation and Public Policy. He is admitted to practice in New York and the United States District Courts for the Southern and Eastern Districts of New York

HA SUNG (SCOTT) KIM – ATTORNEY

Mr. Kim graduated from Columbia Law School in 2017. Mr. Kim received his B.A. in Political Science and Economics, *magna cum laude*, from Wheaton College in Massachusetts in 2013. Mr. Kim joined the Rosen Law Firm in January 2020. Mr. Kim is admitted to practice in the State of New York.

BRENT LAPOINTE – ATTORNEY

Mr. LaPointe received his J.D., *cum laude*, from the University of Michigan Law School in 2010, where he served as an Articles Editor on both the Michigan Journal of Law Reform and the Michigan Journal of Gender & Law. Mr. LaPointe received a B.B.A. in Accounting & Information Systems and Political Science, *cum laude*, from the University of Massachusetts-Amherst in 2006. Mr. LaPointe focuses his practice on securities litigation.

RYAN HEDRICK – ATTORNEY

Mr. Hedrick received his J.D. from the University of Chicago in 2019. He received his B.A. in Linguistics and Political Science, *summa cum laude*, from The Ohio State University in 2015. Mr. Hedrick joined the Rosen Law Firm in August 2019. Mr. Hedrick is admitted to practice in New Jersey.

LEAH HEIFETZ-LI - ATTORNEY

Ms. Heifetz-Li is a 2009 graduate of Columbia Law School, and received a B.A. from the University of Pennsylvania. Ms. Heifetz-Li served as a Law Clerk to the Honorable Cynthia S. Kern, New York State Supreme Court, New York County. She has extensive experience in class action litigation, having previously practiced at a large class action firm representing shareholders in merger and acquisition litigation as well as shareholder derivative actions. Ms. Heifetz-Li has worked on case teams that secured significant financial recoveries for stockholders as well as corporate governance reforms in the Delaware Court of Chancery and other courts throughout the country.

STEPHEN SHEPARDSON – ATTORNEY

Mr. Shepardson received his J.D. from New York University School of Law in 2015 and a B.S. in Financial Math and B.A. in Philosophy from the University of California, Santa Barbara in 2010. Mr. Shepardson joined The Rosen Law Firm in August 2018 and focuses his practice on securities litigation. Mr. Shepardson was previously an associate at a complex litigation boutique. He is admitted to practice in the State of New York.

YU SHI – ATTORNEY

Mr. Shi received his J.D. from Columbia Law School in 2011 and his B.A., *cum laude*, from Columbia University in 2008. He has been selected to *Super Lawyers* New York Metro Rising Stars list each year since 2018. Mr. Shi began his career as a Special Assistant Corporation Counsel in the New York City Law Department's Economic Development Division. Mr. Shi joined The Rosen Law Firm in 2012 and focuses his practice on securities litigation. He is admitted to practice in the State of New York and the United States District Courts for the Southern and Eastern Districts of New York.

JONATHAN STERN – ATTORNEY

Mr. Stern graduated from New York University School of Law in May of 2008, where he was a Development Editor of the Annual Survey of American Law. He received his B.A. in Philosophy with Honors from McGill University. Mr. Stern began his practice in the litigation department of Simpson Thacher & Bartlett LLP, and then went on to practice at the litigation boutique of Simon & Partners LLP, where he participated in a Federal trial. Mr. Stern is admitted to the bar of the State of New York and admitted to practice in the United States Southern and Eastern District Courts of New York.

ERICA STONE- ATTORNEY

Ms. Stone graduated from the Benjamin N. Cardozo School of Law in 2013. She received her B.A. in Political Science and Communications, *cum laude*, from the University of Pennsylvania in 2009. She is admitted to practice in New York, New Jersey, and the United States District Courts for the Southern and Eastern Districts of New York and the District of New Jersey.

II. RECENT ACCOMPLISHMENTS OF THE ROSEN LAW FIRM PA

Christine Asia Co Ltd. v. Alibaba Group Holding Ltd., No. 15-md-2631 (CM) (SDA). The Rosen Law Firm was sole Class Counsel in this multidistrict certified class action in U.S. District Court for the Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties settled this action for \$250 million in cash.

Pirnik v. Fiat Chrysler Automobiles, N.V., 15-CV-7199 (JMF). The Rosen Law Firm was co-Class Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act

arising out of the Company's issuance of materially false and misleading statements about its true business condition. The parties settled this action for \$110 million in cash.

Hayes v. Magnachip Semiconductor Corp., No. 12-CV-1160-JST. The Rosen Law Firm was co-Class Counsel in this certified class action in the U.S. District Court for Northern District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of false financial statements. The parties settled this action for \$29.7 million.

Menaldi v. Och-Ziff Capital Management Group LLC, No. 14-CV-3251 (JPO). The Rosen Law Firm was co-Class Counsel in this certified class action in the U.S. District Court for Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties settled this action for \$28.75 million in cash.

Beck v. Walter Investment Management, No. 14-cv-20880-UU. The Rosen Law Firm was co-Lead Counsel in this consolidated class action in the U.S. District Court for Southern District of Florida. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company concealing its true financial condition. The parties settled the action for \$24 million in cash.

Deering v. Galena Biopharma, Inc., No. 3:14-cv-00367-SI. The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for District of Oregon. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company concealing an undisclosed stock promotion scheme. The parties have agreed to settle the action for \$20.165 million in cash.

Turocy v. El Pollo Loco Holdings, Inc., No. CV-15-1343-DOC. The Rosen Law Firm was co-Class Counsel in this certified class action in the U.S. District Court for the Central

District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The settled the action for \$20 million in cash.

Yang v. Tibet Pharmaceuticals, Inc., No. 14-cv-3538. The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the District of New Jersey. The complaint alleged violations of the Securities Act of 1933 in connection with material misrepresentations in the Company's Registration Statement and Prospectus. Plaintiffs and the underwriters have agreed to settle their claims for \$14 million proof of claim in bankruptcy court. Plaintiffs have also agreed to a \$2.075 million settlement with Tibet's auditor.

In re Silvercorp Metals, Inc. Securities Litigation, No. 12-CV-9456 (JSR). The Rosen Law Firm was counsel to lead plaintiff in this consolidated class action in the U.S. District Court for Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial information. The parties agreed to settle this action for \$14 million in cash.

Hellum v. Prosper Marketplace, Inc., No. CGC-08-482329. The Rosen Law Firm was class counsel in this certified class action in California Superior Court, San Francisco County alleging violations of the Securities Act of 1933 and the California Corporations Code in connection with defendants' offer and sale of unregistered securities. Plaintiffs settled this action for \$10 million in cash.

In re Textainer Financial Servs. Corp., No. CGC 05-440303. The Rosen Law Firm was Co-Lead Counsel in this class action in the California Superior Court, San Francisco County alleging breach of fiduciary duty in connection with the sale of the assets of six related publicly traded limited partnerships. After winning the first phase of a multi-phase bench trial, Plaintiffs obtained a \$10 million cash settlement for class members.

Friedman v. Quest Energy Partners LP, et al., No. CIV-08-936-M. The Rosen Law Firm was sole Lead Counsel on behalf of purchasers of Quest Resource Corporation's securities in this consolidated class action filed in the U.S. District Court for the Western District of Oklahoma. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements in connection with the Company's former CEO and CFO misappropriating nearly \$10 million. All classes and parties to this litigation settled this action for \$10.1 million in cash.

Parmelee v. Santander Consumer USA Holdings Inc., No. 3:16-cv-783-K. The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for the Northern District of Texas. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties agreed to settle this case for \$9.5 million in cash.

Meyer v. Concordia International Corp., No. 16-cv-6467 (RMB). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of the Securities Exchange Act of 1934 in connection with the Company's issuance of materially false and misleading business information. The parties agreed to settle this case for \$9.25 million in cash.

In re Puda Coal Securities Litigation, No. 11-CV-2598 (DLC) (Partial Settlement). The Rosen Law Firm is currently serving as co-Lead Counsel in this consolidated class action pending in the U.S. District Court for the Southern District of New York. The complaint alleges violations of the Exchange Act and Securities Act arising out of the Company's issuance of materially false and misleading financial statements. The parties agreed to settle Plaintiffs' claims against the underwriters and certain other defendants for \$8.7 million. The case continues against other defendants.

Hufnagle v. RINO International Corporation, No. CV 10-8695-VBF (VBKx). The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements of revenue and earnings. The parties settled this action against the company and its auditor for a total of \$8,685,000 in cash.

In re Montage Technology Group Limited Securities Litigation, No. 3:2014-cv-0722 (SI). The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Northern District of California. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of false statements relating to certain undisclosed related party transactions and the Company's revenue. The parties agreed to settle this action for \$7.25 million in cash.

Blitz v. AgFeed Industries, No. 3:11-0992. The Rosen Law Firm was co-Lead Counsel in this consolidated class action in the U.S. District Court for the Middle District of Tennessee. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial information. The parties agreed to settle this action for \$7 million in cash.

Cole v. Duoyuan Printing, Inc., No. 10-CV-7325(GBD). The Rosen Law Firm was Co-Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 and §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements about the Company's true financial condition and adequacy of the Company's internal controls. Plaintiffs and the issuer defendants agreed to a partial settlement of \$4.3 million cash payment to class members. Plaintiffs and the underwriters

agreed to a separate \$1,893,750 cash payment to class members. The total settlement was \$6,193,750 in cash.

In re Nature's Sunshine Products, Inc. Securities Litigation, No. 2:06-cv-00267-TS-SA. The Rosen Law Firm was sole Lead Class Counsel in this class action in the U.S. District Court for the District of Utah. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's materially false and misleading statements concerning its financial statements and business practices. Following the certification of the class and extensive discovery, Plaintiffs agreed to settle this case for \$6 million in cash.

Carmack v. Amaya, Inc., No. 16-cv-1884-JHR-JS. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the District of New Jersey. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties settled this action for \$5.75 million in cash.

Miller v. Global Geophysical Services, No. 14-CV-708. The Rosen Law Firm was Lead Counsel in this consolidated class action in the U.S. District Court for Southern of Texas. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act and Sections 11 and 15 of the Securities Act arising out a financial restatement. The parties settled this case for \$5.3 million in cash.

Bensley v. FalconStor Software, Inc., No. 10-CV-4672 (ERK) (CLP). The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Eastern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements about the Company's true financial and business condition. The parties agreed to settle this action for \$5 million in cash.

Delorosa v. State Street, 17-cv-11155-NMG. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for District of Massachusetts. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties agreed to settle this action for \$4.9 million in cash.

Berry v. KIOR, Inc., No. 13-CV-2443. The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for the Southern District of Texas. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. The parties settled this action for \$4.5 million in cash.

In re Entropin, Inc. Securities Litigation, Case No. CV 04-6180-RC. The Rosen Law Firm was counsel to Plaintiff in this securities class action in the United States District Court for the Central District of California, and Lead Counsel in the related class action brought in California state court against Entropin, Inc., a defunct pharmaceutical company. These actions alleged violations of §§ 10b and 20(a) of the Securities Exchange Act and violations various state securities laws arising out of allegedly false and misleading statements about the Company's lead drug candidate Esterom, respectively. On the eve of trial, Defendants agreed to settle these cases for a \$4.5 million cash payment to class members.

Fitzpatrick v. Uni-Pixel, Inc., No. 13-CV-01649. The Rosen Law Firm was co-Lead Counsel in this class action pending in the U.S. District Court for the Southern District of Texas. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company concealing its true financial condition. The parties settled this action for \$4.5 million consisting of \$2.35 million in cash and \$2.15 million in stock.

Munoz v. China Expert Technology, Inc., Case No. 07-CV-10531 (AKH). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of: (a) the Company's issuance of materially false statements of revenues and earnings; and (b) the Company's auditors' issuance of materially false and misleading "clean" audit opinions. The parties settled this action for \$4.2 million cash payment to class members.

In re IDreamSky Technology Limited Securities Litigation, No. 15-cv-2514 (JPO). The Rosen Law Firm was co-Lead Counsel in this consolidated class action in the U.S. District Court for the Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act §§ 11 and 20(a) of the Securities Act and arising out of the issuance of misleading business information. The parties settled this case for \$4.15 million in cash.

Snellink v. Universal Travel Group, Inc., Case No.11-CV-2164. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the District of New Jersey. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising the issuance of false statements concerning the Company's true financial condition. The parties settled this action for \$4.075 million.

Stanger v. China Electric Motor, Inc., Case no. CV 11-2794-R (AGRx). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 in connection with the Company's \$22.5 million initial public offering. The parties settled this action for \$3,778,333.33 in cash.

In re IsoRay, Inc. Securities Litigation, No. 15-cv-5046-LRD. The Rosen Law Firm was co-Lead Counsel in this consolidated class action in the U.S. District Court for Eastern District

of Washington. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company misstating certain study results relating to the Company's products. The parties settled this action for \$3,537,500 in cash.

Rose v. Deer Consumer Products, Inc., No. CV11-3701 –DMG (MRWx). The Rosen Law Firm was sole Lead Counsel in this class action pending in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising from the issuance of false statements concerning the Company's true financial condition. Plaintiffs settled their claims against Deer and its auditor through two settlements totaling \$3.55 million in cash.

In re L&L Energy, Inc. Securities Litigation, No. 13-CV-6704 (RA). The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of false financial statements. The parties settled this action for \$3.5 million in cash.

Sood v. Catalyst Pharmaceutical Partners, Inc., No. 13-CV-23878-UU. The Rosen Law Firm was sole lead counsel in this class action filed in the U.S. District Court for the Southern District of Florida. The complaint alleged that the Company failed to disclose material facts about its primary drug candidate. The parties settled this action for \$3.5 million in cash.

Cheung v. Keyuan Petrochemicals, Inc., No. 13-cv-6057 (PAC). The Rosen Law firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act of 1934 in connection with the Company's failure to disclose material related party transactions in periodic reports it filed with the SEC. The parties settled this action for \$2.65 million in cash. Separately, in the related case Omanoff v. Patrizio & Zhao LLC, No. 2:14-cv-723-FSH-JBC, The

Rosen Law Firm was sole lead counsel in this class action in the U.S. District Court for the District of New Jersey. The complaint alleged that Patrizio & Zhao, LLC, as auditor for Keyuan Petrochemicals, Inc., issued materially false and misleading audit opinions. The parties have settled this action for \$850,000 in cash. The total recovery for Keyuan investors was \$3.5 million.

In re StockerYale, Inc. Securities Litigation, Case No. 1:05-cv-00177. The Rosen Law Firm served as sole Lead Counsel in this consolidated class action in the U.S. District Court for the District of New Hampshire. The complaint alleged violations of §§ 10b, 20(a) and 20A of the Securities Exchange Act arising out of the issuance of allegedly false and misleading press releases regarding certain contracts the Company claimed to have signed. Plaintiffs settled this class action for \$3.4 million cash payment to class members.

Mallozzi v. Industrial Enterprises of America, Inc., Case No. 07-CV-10321 (GBD). The Rosen Law Firm was Co-Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements of revenues and earnings. During the pendency of the Company's bankruptcy, the parties settled this class action for \$3.4 million in cash.

Napoli v. Ampio Pharmaceuticals, Inc., CV-3474-TJH. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false statements regarding the clinical testing of one its products. The parties settled this action for \$3.4 million in cash.

Kelsey v. Textura Corporation, No. 14 C 7837. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for Northern District of Illinois. The

complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of allegations that the Company misstated its true financial condition. The parties settled this action for \$3.3 million in cash.

Ding v. Roka Bioscience, Inc., No. 14-8020 (FLW). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for District of New Jersey. The complaint alleges violations of §§11 and 15 of the Securities Act arising out of the Company's issuance of materially false and misleading business information. The parties agreed to settle this case for \$3.275 million in cash.

Meruelo Capital Partners 2, LLC et al. v. Wedbush Morgan Securities, Inc., Case no. BC 352498. The Rosen Law Firm was co-counsel to plaintiffs in this action brought in California Superior Court, Los Angeles County for violations of the California State securities laws against the securities issuer and broker-dealer in connection with the sale of \$2.5 million worth of securities. On the eve of trial, plaintiffs settled the claims against the issuer for a cash payment of \$1 million. Following an eight day jury trial, Plaintiffs obtained a jury verdict in their favor and against the underwriter for over \$2.2 million (which included prejudgment interest). In sum, plaintiffs recovered over \$3.2 million, which represented 100% of plaintiffs' principal investment of \$2.5 million and over \$700,000 in prejudgment interest. The verdict was affirmed by the California 2nd District Court of Appeal.

Ray v. TierOne Corporation, Case No. 10CV199. The Rosen Law Firm was sole Lead Counsel in this class action brought in the U.S. District Court for the District of Nebraska. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements of earnings and the Company's banking operations and business. The parties settled this action for \$3.1 million in cash.

Van Wingerden v. Cadiz, Inc., No. CV-15-3080-JAK-JEM. The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. The parties settled this action for \$3 million in cash.

Pham v. China Finance Online Co. Limited, No. CV 15-CV-7894 (RMB). The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. The parties settled this action for \$3 million in cash.

In re Skilled Healthcare Group, Inc. Securities Litigation, Case No. 2:09-CV-5416-DOC (RZx). The Rosen Law Firm was Co-Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of the §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 and §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements of revenue and earnings. Plaintiffs settled this action for \$3 million in cash.

Abrams v. MiMedx Group, Inc., No. 1:13-cv-03074-TWT. The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Northern District of Georgia. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of false statements relating the regulatory compliance of its products. The parties settled this action for \$2.979 million.

Madden v. Pegasus Communications Corp., Case No. 2:05-cv-0568. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Eastern District of Pennsylvania. The action alleged violations of §§ 10b and 20(a) of the Securities Exchange

Act arising out of the issuance of allegedly false and misleading statements concerning the Company's direct broadcast satellite agreement with DirecTV and the Company's reported subscriber growth and totals. Plaintiffs settled this action for a \$2.95 million cash payment to class members.

Gauque v. Albany Molecular Research, No. 14-CV-6637 (FB) (SMG). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Eastern District of New York. The complaint alleged violation of §10b and 20(a) of the Securities Exchange Act out of the Company's misstatements about its true financial condition and prospects. The parties settled this action for \$2.868 million.

In re Lihua International, Inc. Sec. Litig., No. 14-CV-5037 (RA). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of the Securities Exchange Act of 1934 in connection with the Company's issuance of materially false and misleading financial statements. The collective settlement of the class action and consolidated derivative actions are \$2.865 million in cash.

In re TVIA, Inc. Securities Litigation, Case No. C-06-06403-RMW. The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Northern District of California. The complaint alleged violations of §§ 10b, 20(a), 20A of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements by virtue of the Company improper recognition of revenues in violation of GAAP. Plaintiffs settled this action for a \$2.85 million cash payment to class members.

Vaccaro v. New Source Energy Partners LP, No. 15-CV-8954 (KMW). The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for Southern District of

New York. The complaint alleged violations of §§11 and 15 of the Securities Act arising out of the company's issuance of materially false and misleading business information. The parties settled this action for \$2.85 million in cash.

Zagami v. Natural Health Trends Corp., et al., Case No. 3:06-CV-1654-D. The Rosen Law Firm served as sole Lead Counsel in this class action in the U.S. District Court for the Northern District of Texas. The complaint alleged violations of § 10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements in violation of GAAP. Plaintiffs settled this case for \$2.75 million cash payment to class members.

In re Akari Therapeutics PLC Securities Litigation, No. 17-cv-3577 (KPF). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements about the results of a clinical study. The parties settled this case for \$2.7 million in cash.

Romero v. Growlife, Inc., Case No. 2:14-cv-03015-CAS (JEMx). The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising the issuance of false statements concerning the Company's true financial condition. The parties settled this action for total consideration of \$2.7 million, comprised of \$700,000 in cash and \$2 million in stock.

Moleski v. Tangoe, Inc., No. 3:17-cv-00146. The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for the District of Connecticut. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the

Company's issuance of materially false and misleading financial statements. The parties settled this action for \$2.55 million in cash.

Hosey v. Twitter, Inc., No. 16-CIV-02228. The Rosen Law Firm was co-Lead Counsel in this class action in the Superior Court of the State of California in San Mateo County. The complaint alleged violations of §§11 of the Securities Act arising out of the Company's issuance of materially false and misleading business information. The parties settled this action for \$2.5 million in cash.

Nguyen v. Radient Pharmaceuticals Corporation, Case No. CV11-0405-DOC (MLGx). The Rosen Law Firm was sole Lead Counsel in this class in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the issuance of false statements concerning the Company's clinical trial involving its principal product. The parties agreed to settle this action for \$2.5 million in cash.

In re Robert T. Harvey Securities Litigation, Case No. SA CV-04-0876 DOC (PJWx). The Rosen Law Firm served as Co-Lead Counsel in this class action in the U.S. District Court for the Central District of California and the related California state court class actions. This action alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the sale of partnership interests that corresponded to the securities of Chaparral Network Storage and AirPrime, Inc., n/k/a Sierra Wireless, Inc. Plaintiffs settled this and the related state court actions for an aggregate \$2.485 million cash payment to class members.

In re China Education Alliance, Inc. Securities Litigation, No. C 10-9239-CAS (JCx). The Rosen Law Firm was sole Lead Counsel in this consolidated class in the U.S. District Court for the Central District of California. The complaint alleges violations of §§10b and 20(a) of the

Exchange Act arising out of the Company's issuance of materially false and misleading statements of revenue and earnings. The parties settled this action for \$2.425 million in cash.

In re Akers Biosciences, Inc. Sec. Litig., No. 18-cv-10521 (ES) (CLW). The Rosen Law Firm is serving as sole lead counsel in this consolidated class action pending in U.S. District Court for the District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties agreed to settle this action for \$2.25 million in cash, pending court approval.

Kubala v. SkyPeople Fruit Juice, No. 11-CV-2700 (PKC). The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act out of the Company's failure to disclose material related party transactions that rendered the Company's financial statements false. The parties agreed to settle this action for \$2.2 million in cash.

Tapia-Matos v. Caesarstone Sdot-Yam Ltd., No. 15-CV-6726 (JMF). The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading statements about the Company's true financial condition and business prospects. The parties agreed to settle this action for \$2.2 million in cash.

In re Fuwei Films Securities Litigation, Case no. 07-CV-9416 (RJS). The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the Southern District of New York. The complaint alleged violations of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 in connection with material misrepresentations in the Company's

Registration Statement and Prospectus in connection with the Company's \$35 million IPO. The parties settled this action for \$2.15 million cash payment to class members.

Snellink v. Gulf Resources, Inc., No.CV11-3722-ODW (MRWx). The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's failure to disclose the related party nature of certain transactions, and the Company's issuance of false financial statements. The parties agreed to settle this action for \$2.125 million in cash.

Crandall v. PTC Inc., No. 16-cv-10471-WGY. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for District of Massachusetts. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act and certain violations of the Securities Act arising out of the Company's issuance of materially false and misleading statements about the Company's true financial condition. The parties agreed to settle this action for \$2.1 million in cash.

In re DS Healthcare Group, Inc. Sec. Litig., No. 16-60661-CIV-DIMITROULEAS. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of Florida. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties agreed to settle this action for \$2.1 million in cash.

Henning v. Orient Paper, Inc., No. CV 10-5887-VBF (AJWx). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act and certain violations of the Securities Act arising out of the Company's issuance of materially

false and misleading statements about the Company's true financial condition and business prospects. The parties settled this action for \$2 million in cash.

Pena v. iBio, Inc., 14-CV-1343-RGA. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the District of Delaware. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of misstatements and omissions relating to the Company's purported involvement with an Ebola treatment. The parties settled this action for \$1.875 million in cash.

Campton v. Ignite Restaurant Group, Inc., No. 12-CV-2196. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of Texas. The complaint alleged violations of the Securities Act of 1933 in connection with material misrepresentations in the Company's Registration Statement and Prospectus issued for the company's IPO. The parties settled this action for \$1.8 million in cash.

Petrie v. Electronic Game Card, Inc., No. SACV 10-0252-DOC (RNBx). The Rosen Law Firm was sole Lead Counsel in this class action in the United States District Court for the Central District of California. Following dismissal of the complaint by the district court, the Rosen Firm obtained a reversal of the dismissal from U.S. Court of Appeals for the Ninth Circuit. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements in violation of Generally Accepted Accounting Principles and the Company's publicly stated internal policies. The parties settled this case for \$1.755 million in cash.

Ford v. Natural Health Trends Corp., No. 16-00255 TJH (AFM). The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act

arising out of the company's issuance of materially false and misleading business information. The parties agreed to settle this action for \$1.75 million in cash.

Hayden v. Wang, et al., No. Civ. 518333. The Rosen Law Firm was sole lead counsel in this class action in the California Superior Court of San Mateo County brought on behalf of purchasers of Worldwide Energy & Manufacturing USA, Inc. common stock in two private placements. The Complaint alleged that the offering documents were materially false. The parties settled this action for \$1,615,000 in cash.

Burritt v. Nutracea, Inc., Case No.CV-09-00406-PHX-FJM. The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the District of Arizona. This action alleged violations of §§ 10b and 20(a) of the Securities Exchange Act of 1934 and the Arizona securities laws in connection with the Company's issuance of materially false and misleading statements of earnings and revenues. During the pendency of the Company's bankruptcy, Plaintiffs settled this action for \$1.5 million in cash and a remainder interest of 50% of the issuer's directors' and officers' liability insurance policy.

Press v. Delstaff LLC, No. MSC 09-01051. The Rosen Law Firm was sole Lead Counsel in this class action in the California Superior Court for Contra Costa County, brought in connection with a "going private" transaction valued at \$1.25/share for the 6.4 million shares implicated in the transaction. The parties settled this action for \$1,642,500 in additional compensation to shareholders.

Shapiro v. Alliance MMA, Inc., No. 17-CV-2583 (RBK)(AMD). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the District of New Jersey. The complaint alleged violations of §§11b and 15(a) of the Securities Act arising out of the company's issuance of materially false and misleading financial statements in connection

with the company's initial public offering. The parties settled this action for \$1.55 million in cash.

In re Lightinthebox Holding Co., Ltd., 13-CV-6016 (PKC). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company concealing its true financial condition. The parties agreed to settle this action for \$1.55 million in cash.

Pankowski v. BlueNRGY Group Ltd, f/k/a CBD Energy Ltd., No. 4:15-cv-1668. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of Texas. The complaint alleged violations Securities Act and Exchange Act arising out of the Company's issuance of materially false financial statements. The parties agreed to settle this action for \$1.5 million in cash.

Guimetla v. Ambow Education Holding Ltd., No. CV-12-5062-PSG (AJWx). The Rosen Law Firm was sole Lead Counsel in this class action filed in the U.S. District Court for the Central District of California. The complaint alleged violations of the Securities Exchange Act of 1934 in connection with the Company's issuance of materially false and misleading financial statements. The parties agreed to settle this action for \$1.5 million.

Lee v. Active Power, Inc., No. 1:13-cv-00797. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Western District of Texas. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of false statements relating to a purported distribution agreement with a major information technology provider. The parties agreed to settle this action for \$1.5 million.

In re Northfield Laboratories, Inc. Securities Litigation, Case No. 06 C 1493. The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for

the Northern District of Illinois. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's materially false and misleading statements concerning its PolyHeme blood substitute product and business prospects. Following extensive class discovery and litigation activity in bankruptcy court, the parties agreed to settle this action for \$1.5 million in cash.

In re PartsBase.com, Inc. Securities Litigation, Case No. 01-8319. The Rosen Law Firm was Co-Lead Counsel in this class action in the U.S. District Court for the Southern District of Florida. The action arose from a \$45.5 million initial public offering of common stock by the defendant issuer and a syndicate of underwriters including Roth Capital Partners and PMG Capital Corp. Plaintiffs settled this action for \$1.5 million in cash.

Vandavelde v. China Natural Gas, Inc., No. 10-728-SLR. The Rosen Law Firm was sole Lead Counsel in the class action pending in the U.S. District Court for the District of Delaware. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the issuance of materially false and misleading financial statements. Plaintiffs settled this action for \$1.5 million in cash.

Simmons v. FAB Universal Corp., No. 13-CV-8216 (RWS). The Rosen Law Firm was co-Lead Counsel in this consolidated class action in the U.S. District Court for Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company concealing its true financial condition. The parties agreed to settle this action for \$1.5 million in cash.

Springer v. Code Rebel Corp., No. 16-cv-3492 (AJN). The Rosen Law Firm was co-Lead Counsel in this class action pending in the U.S. District Court for the Southern District of New York and counsel in a related case in California Superior Court. The actions alleged

violations of the Exchange Act and Securities Act violations, respectively. Following the bankruptcy of the Company, the parties settled both actions for \$1.415 million.

In re Emphyrean Bioscience Securities Litigation, Case No. 1:02CV1439. This class action in which the Rosen Law Firm was sole Lead Counsel was filed in the U.S. District Court for the Northern District of Ohio. The action alleged violations of §§10b and 20(a) of the Securities Exchange Act based on misrepresentations in defendants' SEC filings and press releases concerning the clinical testing of the Company's GEDA Plus microbicide gel. After the court denied defendants' motion to dismiss the complaint, the parties briefed the issue of whether the securities were traded in an efficient market. Prior to a decision on market efficiency, Plaintiffs settled the case for a \$1.4 million payment to class members.

Balon v. Agria, Inc., No. 16-8376 (SDW). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the District of New Jersey. The complaint alleged violation of §10b and 20(a) of the Securities Exchange Act out of the Company's manipulation of its stock price. The parties settled this case for \$1.3 million in cash.

Desta v. Wins Financial Holdings, Inc., 17-cv-2983-CAS-AGR. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Central District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The parties have agreed to settle this case for \$1.26 million in cash, pending Court approval.

Tran v. ERBA Diagnostics, Inc., No. 15-cv-24440. The Rosen Law Firm was co-Lead Counsel in this class action on appeal with the U.S. Court of Appeals for the Eleventh Circuit. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. While on

appeal following the dismissal of the case, the parties settled the action for \$1.215 million in cash.

Knox v. Yingli Green Energy Holding Co. Ltd., No. 2:15-cv-4003. The Rosen Law Firm was sole Lead Counsel in this class action in the United States District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false financial statements. While on appeal following the dismissal of the case, the parties agreed to settle the action for \$1.2 million in cash.

In re Himax Technologies, Inc. Securities Litigation, Case No. C 07-4891-DDP. The Rosen Law Firm served as Co-Lead Counsel in this consolidated class action in the U.S. District Court for the Central District of California, Western Division. The complaint alleged violations of §§ 11 and 15 of the Securities Act arising out of the Company's IPO. Plaintiffs agreed to settle this case for \$1.2 million cash payment to class members.

In re Flight Safety Technologies, Inc. Securities Litigation, Case No. 3:04-cv-1175. The Rosen Law Firm was sole Lead Counsel in this consolidated class action in the U.S. District Court for the District of Connecticut. The action alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the defendants alleged failure to disclose material adverse information concerning the Company's products under development and misrepresenting the amount of time it would take to commercialize the products. Plaintiffs settled the case for a \$1.2 million cash payment to class members.

In re: M.H. Meyerson & Co. Securities Litigation, Case No. 02-CV-2724. This class action, in which the Rosen Law Firm was sole Lead Counsel, was filed in U.S. District Court for District of New Jersey. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act based on allegedly false and misleading SEC filings related to the planned launch

of an online brokerage business, and other material misrepresentations, which allegedly inflated the price of Meyerson stock during the class period. Plaintiffs settled the case for a \$1.2 million payment to class members.

Perez v. Izea, Inc., No. 18-cv-2784-SVW-GJS. The Rosen Law Firm was Co-Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial information. The parties agreed to settle this action for \$1.2 million in cash.

In re OPUS360 Corp. Securities Litigation, Case No. 01-Civ-2938. The Rosen Law Firm was Co-Lead Counsel for this action brought in the Southern District of New York alleging violations of the federal securities laws arising from a \$75.0 million initial public offering of common stock by the defendant issuer and a syndicate of underwriters including JP Morgan and Robertson Stephens, Inc. The Court certified the action as a class action and approved a final settlement.

Ansell v. National Lampoon, Inc., Case No. CV10-9292-PA (AGR_x). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of a market manipulation scheme involving National Lampoon's common stock. The parties agreed to settle this action for \$1 million in cash.

Garcia v. Lentuo International, Inc., CV-15-1862-MWF (MRW_x). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of the Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. The parties settled this action for \$1 million in cash.

Fouladian v. Busybox.com, Inc., Case No. BC 248048. The Rosen Law Firm was Co-Lead Counsel in this class action brought in California Superior Court, Los Angeles County. The action arose from a \$12.8 million initial public offering of securities by the defendant issuer and underwriter. California and federal securities laws claims (Cal. Corp. Code §25401 and §11 of 1933 Act) were brought on behalf of a nationwide class of public offering investors. The Court approved a \$1.0 million cash settlement to a nationwide class of investors.

Singh v. Tri-Tech Holding, Inc., No. 13-CV-9031 (KMW). The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company concealing its true financial condition. The parties settled this action for \$975,000 in cash.

Xu v. ChinaCache International Holdings, Ltd., No. CV 15-7952-CAS. The Rosen Law Firm was sole Lead Counsel in this class action pending in the U.S. District Court for Central District of California. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. While on appeal following the dismissal of the case, the parties agreed to settle the action for \$950,000 in cash.

Howard v. Chanticleer Holdings, Inc., No. 12-CV-81123-JIC. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Southern District of Florida. The complaint alleged violations of the Securities Act of 1933 in connection with material misrepresentations in the Company's Registration Statement and Prospectus issued for the Company's public offering of common stock and warrants. The parties agreed to settle this action for \$850,000 in cash.

Pollock v. China Ceramics Co. Ltd, No. 1:14-cv-4100 (VSB). The Rosen Law Firm was co-Lead Counsel in this consolidated class action in the U.S. District Court for Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's lack of internal controls. The parties settled this action for \$850,000, consisting of \$310,000 in cash and \$540,000 in stock.

Katz v. China Century Dragon Media, Inc., Case no. CV 11-02769 JAK (SSx). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Central District of California. The complaint alleged violations of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 and §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. Following entry of default against the issuer and certification of the class, the non-issuer defendants and Plaintiffs agreed to resolve their claims against the non-issuer defendants for \$778,333.33.

Allen v. Pixarbio Corp., No. 2:17-cv-496-CCC-SM. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties agreed to settle this case for \$750,000 in cash, pending court approval.

In re Stemline Therapeutics, Inc. Securities Litigation, 17-cv-832 (PAC). The Rosen Law Firm was co-Lead Counsel in this class action in the U.S. District Court for the Southern District of New York. Following the dismissal of the action and while on appeal with the U.S. Court of Appeals for the Second Circuit, the parties settled this action for \$625,000 in cash.

In re China Intelligent Lighting and Electronics, Inc. Securities Litigation, No. 2:11-CV-02768 PSG (SSx). The Rosen Law Firm was co-Lead Counsel in this consolidated class action in the U.S. District Court for the Central District of California. The complaint alleged violations

of §§ 11, 12(a)(2), and 15 of the Securities Act of 1933 and §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. The parties agreed to partially settle this action for \$631,600 in cash. A default judgment was obtained against the issuer.

Gianoukas v. Tullio and Riiska, Case No. 02CC18223. The Rosen Law Firm was lead counsel to a group of twenty-one plaintiffs that brought claims of fraud and negligent misrepresentation in California Superior Court, Orange County against the former Chief Executive and Chief Financial Officers of a publicly traded software company, NQL Inc. The complaint alleged that the officers issued a series of false and misleading press releases concerning the business of NQL for the purpose of inducing the purchase and retention of NQL securities. Plaintiffs settled the action favorably for a confidential amount.

The BoxLot Company v. InfoSpace, Inc., Case No. GIC 779231. The Rosen Law Firm was plaintiff's counsel for this action filed in California Superior Court, San Diego County which arose from the aborted merger agreement and ultimate sale of The BoxLot Company's assets to InfoSpace. The action alleged violations of California securities laws (Cal. Corp. Code §25400 & §25401) and common laws and sought damages of \$92.8 million from InfoSpace and its CEO, Naveen Jain. The case settled favorably for plaintiffs for a confidential amount.

Hull v. Global Digital Solutions, Inc., No. 16-5153 (FLW). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. The parties agreed to settle this action for \$595,000 in cash, pending Court approval.

Scalfani v. Misonix Inc., No. 16-cv-5215 (ADS) (AKT). The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the Eastern District of New York. The complaint alleged violations of §§ 10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of false financial statements. The parties have settled this action for \$500,000 in cash—resulting in a recovery of nearly 100% of damages.

Teague v. Alternate Energy Holdings, Inc., No. 10-CV-634-BLW. The Rosen Law Firm was sole Lead Counsel in this class action in the U.S. District Court for the District of Idaho. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements and business condition. The parties settled this action for \$450,000.

Huttenstine v. Mast, Case No. 4:05-cv-152 F(3). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Eastern District of North Carolina. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's material misstatements and omissions concerning the nature of certain sales contracts it had entered into. Plaintiffs have preliminarily agreed to settle this action for a \$425,000 cash payment to class members.

In re Forcefield Energy, Inc. Securities Litigation, No. 15-cv-3020 (NRB). The Rosen Law Firm was Lead Counsel in this class action in the U.S. District Court for Southern District of New York. The complaint alleged violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading information. The parties agreed to settle this case for \$414,500.

Kinzinger v. Paradigm Medical Industries, Inc., Case No. 03-0922608. The Rosen Law Firm served as sole Lead Counsel in this class action filed in Utah state court alleged violations of the Utah Securities Act against Paradigm Medical arising out of false and misleading

statements made to investors in a \$5.0 million private placement of securities. The court approved a \$625,000 settlement on behalf of the private placement purchasers.

III. SECURITIES CLASS ACTIONS IN WHICH THE ROSEN LAW FIRM P.A. IS CURRENTLY LEAD COUNSEL

In re Puda Coal Securities Litigation, No. 11-CV-2598 (DLC). The Rosen Law Firm is currently serving as co-Lead Counsel in this consolidated class action pending in the U.S. District Court for the Southern District of New York. The complaint alleges violations of the Exchange Act and Securities Act arising out of the Company's issuance of materially false and misleading financial statements. The class is certified and this action is in discovery.

In re Spectrum Pharms. Inc. Securities Litigation, No. 16-cv-2279-RFP-GWF. The Rosen Law Firm is currently serving as co-Lead Counsel in this consolidated class action pending in the U.S. District Court for the District of Nevada. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. The action is in discovery.

Van Dorp v. Indivior PLC, No. 19-CV-10792-ES-MAH. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the District of New Jersey. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. This action is at the pleading stage.

Grand Clam Capital Master Fund, Ltd. v. Rosen, No. 19-cv- 5362 (PGG). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Southern District of New York brought on behalf of Fusion Connect, Inc. investors. The complaint alleges violations of the Exchange Act in connection with the

Company's issuance of materially false and misleading financial statements. The action is at the pleading stage.

Sell v. Acer Therapeutics, Inc., No. 19-CV-6137 (GHW). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Southern District of New York. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. The action is at the pleading stage.

Yangtze River Port and Logistics Limited, No. 19-CV-24 (DLI) (LB). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Eastern District of New York. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading financial statements. The action is at the pleading stage.

Luo v. Qiao Xing Universal Resources, Inc., No. 12-45-WAL-GWC. The Rosen Law Firm is currently serving as sole Lead Counsel in this consolidated class action pending in the U.S. District Court of the Virgin Islands, St. Croix Division. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading financial statements. The action is at the pleading stage.

Lachman v. Revlon, Inc., No. 19-CV-2859 (ARR) (RER). The Rosen Law Firm is currently serving as co-Lead Counsel in this class action pending in the U.S. District Court for the Eastern District of New York. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. The action is at the pleading stage.

Chan v. New Oriental Education & Technology Group Inc., No. 16-CV-9279-KSH. The Rosen Law Firm is currently serving as co-Lead Counsel in this class action pending in the U.S.

District Court for the District of New Jersey. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading financial statements. This action is at the pleading stage.

Shi v. Ampio Pharmaceuticals, Inc., CV-18-7476-SJO-(RAOx). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Central District of California. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. The action is at the pleading stage.

Machniewicz v. Uxin Limited, No. 19-CV-822 (MKB)(VMS). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Eastern District of New York. The complaint alleges violations of the Securities Act in connection with the Company's issuance of materially false and misleading financial statements. The action is at the pleading stage.

Pepicelli v. Innocoll Holdings Public Ltd., No. 17-341. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Eastern District of Pennsylvania. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. This action is at the pleading stage.

In re Silver Wheaton Corp. Securities Litigation, No. 15-cv-5146-CAS. The Rosen Law Firm is currently serving as sole Class Counsel in this certified class action pending in the U.S. District Court for the Central District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading financial statements. This action is in discovery.

Ito-Stone v. DBV Technologies S.A., No. 19-CV-525-MCA-LDW. The Rosen Law Firm is currently serving as co-Lead Counsel in this class action pending in the U.S. District Court for the District of New Jersey. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. This action is at the pleading stage.

Hrasok v. Kraton Corporation, No. 18-CV-591. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Southern District of Texas. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the company's issuance of materially false and misleading business information. This action is at the pleading stage.

Li v. Aeterna Zentaris, Inc., No. 14-CV-07081 (PGS). The Rosen Law Firm is currently serving as Class Counsel in this certified class action pending in the U.S. District Court for District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This action is in discovery.

Carmona v. Loma Negra Compania Industrial Argentina Sociedad Anonima, No. 18-cv-11323 (LLS). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Southern District of New York. The complaint alleges violations the Securities Exchange Act and Securities Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

Tchatchou v. India Globalization Capital, Inc., No. 18-cv-3396-PWG. The Rosen Law Firm is currently serving co-Lead Counsel in this class action pending in the U.S. District Court for the District of Maryland. The complaint alleges violations of §§10b and 20(a) of the

Securities Exchange Act arising out of the Company's issuance of materially false and business information. The action is at the pleading stage.

Duane & Virginia Lanier Trust v. Sandridge Energy, Inc., et al. The Rosen Law Firm is currently serving as co-Lead Counsel in this class action pending in the U.S. District Court for the Western District of Oklahoma. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act and Sections 11, 12(a)(2), and 15 of the Securities Act arising out of the Company's issuance of materially false and misleading business information. This action is in discovery.

In re Zillow Group, Inc. Sec. Litig., No. C17-1387-JCC. The Rosen Law Firm is currently serving sole Lead Counsel in this class action pending in the U.S. District Court for the Western District of Washington. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is in discovery.

Hartmann v. Verb Technology Company, Inc., No. CV-19-5896-GW-(MAAx). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for the Central District of California. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading business information. This action is at the pleading stage.

Mikhlin v. Oasmia Pharmaceuticals AB., No. 19-cv-4349 (NGG) (RER). The Rosen Law Firm is currently serving as co-Lead Counsel in this class action pending in the U.S. District Court for the Eastern District of New York. The complaint alleges violations the Securities Exchange Act arising out of the Company's issuance of materially false financial statements. The case is at the pleading stage.

In re Blue Apron Holdings, Inc. Sec. Litig., No. 17-CV-4846 (WFK)(PK). The Rosen Law Firm is currently serving as co-Lead Counsel in this class action pending in the U.S. District Court for the Eastern District of New York. The complaint alleges violations Sections 11, 12(a)(2), and 15 of the Securities Act arising out of the Company's issuance of materially false and misleading business information. This action is at the pleading stage.

Lai v. PPDAI Group Inc., No. 18-cv-6716 (FB)(JC). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Eastern District of New York. The complaint alleges violations the Securities Exchange Act and Securities Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

Barney v. Nova Lifestyle, Inc., No. CV 18-10725-AB-AFM. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Central District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The action is at the pleading stage.

Renner v. Teladoc Health, Inc., No. 18-cv-11603 (GHW). The Rosen Law Firm is currently serving as co-Lead Counsel in this class action pending in the U.S. District Court for Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

In re ChinaCast Education Corporation Sec. Litig., No. CV 12-4621- JFW (PLAx). The Rosen Law Firm is currently serving as co-Lead Counsel in this consolidated class action. Following dismissal of the complaint by the district court, the U.S. Court of Appeals for the Ninth Circuit overturned the dismissal. The complaint alleges violations of §§10b and 20(a) of

the Securities Exchange Act arising out of the Company overstating its assets and cash balances and misstating the Company's internal controls. The action is in discovery.

In re Global Brokerage, Inc. f/k/a FXCM, Inc. Sec. Litig., 17-cv-916 (RA). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is in discovery.

Marchand v. Momo, Inc., 19-CV-4433 (GBD). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

May v. KushCo Holdings, Inc., No. 19-cv-798-JLS-KES. The Rosen Law Firm is currently serving as Co-Lead Counsel in this class action pending in the U.S. District Court for Central District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

Ulbricht v. Ternium S.A., No. 18-cv-6801(PKC) (RLM). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

He v. China Zenix Auto International, No. 18-cv-15530 (JLL) (JAD). The Rosen Law Firm is serving as sole lead counsel in this consolidated class action pending in U.S. District

Court for the District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Horowitz v. Sunlands Technology Group, No. 19-CV-3744 (FB)(SMG). The Rosen Law Firm is serving as sole lead counsel in this class action pending in U.S. District Court for the Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Duvnjak v. Box, Inc., No. 19-cv-3173-PJH. The Rosen Law Firm is currently serving as Co-Lead Counsel in this class action pending in the U.S. District Court for Northern District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

Salim v. Mobile TeleSystems PJSC, No. 19-cv-1589 (AMD) (RLM). The Rosen Law Firm is serving as sole lead counsel in this class action pending in U.S. District Court for the Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

In re USA Technologies, Inc. Sec. Litig., No. 18-cv-13759-CCC-CLW. The Rosen Law Firm is serving as sole lead counsel in this consolidated class action pending in U.S. District Court for the District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Brandel v. Sibanye Gold Limited, No. 18-cv-3721 (KAM) (PK). The Rosen Law Firm is currently serving as Co-Lead Counsel in this class action pending in the U.S. District Court for Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

Chu v. BioAmber, Inc., 17-cv-1531 (ADS) (GRB). The Rosen Law Firm is currently serving as Co-Lead Counsel in this class action pending in the U.S. District Court for Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information. The case is at the pleading stage.

In re Aceto Corporation Sec. Litig., No. 18-CV-2425 (JFB)(AYS). The Rosen Law Firm is currently serving as sole Lead Counsel in this consolidated class action pending in the U.S. District Court for Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false financial information. The case is at the pleading stage.

Phetteplace v. Cancer Genetics, Inc., 18-CV-5612-ES-SCM. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false financial information. The case is at the pleading stage.

Thomas v. China Techfaith Wireless, 19-CV-134-FB-CLP. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the

Securities Exchange Act arising out of the Company's issuance of materially false financial information. The case is at the pleading stage.

Luo v. Sogou, Inc., No. 19-cv-230 (JPO). The Rosen Law Firm is serving as co-lead counsel in this class action pending in U.S. District Court for the Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Kupfner v. Altice USA Inc., No. 18-cv-6601-FB-PK. The Rosen Law Firm is serving as sole lead counsel in this class action pending in U.S. District Court for the Eastern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act and §§11, and 15 of the Securities Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Kauffman v. Natural Health Trends Cop., 19-CV-163-MWF-JPR. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action pending in the U.S. District Court for Central District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false financial information. The case is at the pleading stage.

Vignola v. FAT Brands, Inc., No. CV 18-7469 PSG (PLAx). The Rosen Law Firm is serving as co-lead counsel in this class action pending in U.S. District Court for the Central District of California. The complaint alleges violations of §§11 and 15 of the Securities Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Checkman v. Allegiant Travel Co., No. 18-cv-3417-JFW-AS. The Rosen Law Firm is serving as sole lead counsel in this class action pending in U.S. District Court for the Central

District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Kumar v. Kulicke and Soffa Industries, Inc., No. 19-cv-362-CDJ. The Rosen Law Firm is serving as co-Lead Counsel in this class action that is pending in U.S. District Court for the Eastern District of Pennsylvania. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false statements to the investing public. This case is at the pleading stage.

Chapman v. Mueller Water Products, Inc., No. 19-cv-3260-KPF. The Rosen Law Firm is serving as sole Lead Counsel in this class action that is pending in U.S. District Court for the Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false statements. This case is at the pleading stage.

Ramzan v. GDS Holdings Limited, No. 4:18CV539-ALM-KPJ. The Rosen Law Firm is serving as sole Lead Counsel in this class action that is pending in U.S. District Court for the Eastern District of Texas. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false statements to the investing public. This case is at the pleading stage.

Castillo v. 6D Global Technologies, Inc., No. 15-cv-8061 (RWS). The Rosen Law Firm is serving as sole Lead Counsel in this class action that is pending in U.S. District Court for the Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false statements about the improper stock manipulation. After successfully appealing the dismissal of this action with the Second Circuit Court of Appeals, this case is in discovery.

City of Taylor General Employees Retirement System v. Astec Industries, Inc., No. 1:19-cv-PLR-CHS. The Rosen Law Firm is serving as sole lead counsel in this class action pending in U.S. District Court for Eastern District of Tennessee. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Vanderhoef v. China Auto Logistics, Inc., No. 18-cv-10174-CCC. The Rosen Law Firm is serving as sole lead counsel in this class action pending in U.S. District Court for the District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Pepe v. CoCrystal Pharma, Inc., No. 18-cv-14091-KM-JBC. The Rosen Law Firm is serving as sole lead counsel in this class action pending in U.S. District Court for the District of New Jersey. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information and stock manipulation. This case is at the pleading stage.

Miller v. Sonus Networks, Inc., No. 18-12344-GAO. The Rosen Law Firm is serving as co-lead counsel in this class action pending in U.S. District Court for District of Massachusetts. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

In re Pretium Resources, Inc. Sec. Litig., no. 1:18-cv-8199 (LAP). The Rosen Law Firm is serving as sole lead counsel in this consolidated class action pending in U.S. District Court for Southern District of New York. The complaint alleges violations of §§10b and 20(a) of the

Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

In re Centurylink, Inc. Sec. Litig., No. 2:19-cv-1629-CBM-GJS. The Rosen Law Firm is serving as co- lead counsel in this consolidated class action pending in U.S. District Court for Central District of California. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and misleading business information. This case is at the pleading stage.

Nguyen v. Endologix, Inc., No. 17-CV-17AB. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action currently on appeal with the U.S. Court of Appeals for the Ninth Circuit. The complaint alleges violations of the Exchange Act in connection with the Company's issuance of materially false and misleading financial statements.

Edgar v. Anadarko Petroleum Corporation, No. 17cv-1372. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action currently on appeal with the U.S. Court of Appeals for the Fifth Circuit. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the company's issuance of materially false and misleading business information.

Sgarlata v. PayPal Holdings, Inc., No. 17-CV-6956-EMC. The Rosen Law Firm is currently serving as co- Lead Counsel in this class action on appeal with the U.S. Court of Appeals for the Ninth Circuit. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information.

Wochos v. Tesla, Inc., No. 3:17-cv-5828-CRB. The Rosen Law Firm is currently serving as sole Lead Counsel in this class action currently on appeal with the U.S. Court of Appeals for the Ninth Circuit. The complaint alleges violations of §§10b and 20(a) of the Securities

Exchange Act arising out of the Company's issuance of materially false and misleading business information.

In re Omega Healthcare Investors, Inc. Litigation, 17-cv-8983 (NRB). The Rosen Law Firm is currently serving as sole Lead Counsel in this class action currently on appeal with the U.S. Court of Appeals for the Second Circuit. The complaint alleges violations of §§10b and 20(a) of the Securities Exchange Act arising out of the Company's issuance of materially false and business information.

Exhibit G

1 AVI WAGNER (SBN 226688)
2 THE WAGNER FIRM
3 1925 Century Park East, Suite 2100
4 Los Angeles, CA 90067
5 Telephone: (310) 201-9150

6 *Attorney for Plaintiffs*

7 [Additional Counsel on Signature Page]

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE CAPSTONE TURBINE CORP.
11 STOCKHOLDER DERIVATIVE
12 LITIGATION

13 THIS DOCUMENT RELATES TO:
14 All Actions

Master File No.: 2:16-cv-01569

**DECLARATION OF PATRICE L.
BISHOP IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF
DERIVATIVE SETTLEMENT, FEE
AWARD, AND SERVICE AWARD**

DATE: October 30, 2020

TIME: 9:30 A.M.

CTRM: 8C

JUDGE: Hon. Dolly M. Gee

1 I, Patrice L. Bishop, declare and state, under penalty of perjury, that the following
2 is true and correct to the best of my knowledge, information and belief:

3 1. I am an attorney duly licensed to practice law in the State of
4 California (CSB No. 182256) and admitted to practice before this Court.

5 2. I am a senior attorney with the law firm of Stull, Stull & Brody, which
6 served as counsel for Plaintiff Andrew Tuttle in the Actions.¹ I have personal
7 knowledge of the matters set forth herein and, if called upon, I could and would
8 completely testify thereto.

9 3. A copy of Stull, Stull & Brody résumé is annexed hereto as Exhibit A.

10 4. Stull, Stull & Brody acted as local counsel for Plaintiff Andrew Tuttle
11 and, among other things, filed the Complaint on behalf of Mr. Tuttle.

12 5. Stull, Stull & Brody, as counsel for Plaintiff Andrew Tuttle in the
13 Actions, has committed 43.4 hours to litigating the Actions, which includes time
14 spent on reviewing, revising, finalizing and filing the Complaint and related
15 documents, and monitoring the status of the Actions.

16 6. The chart below is a summary of time expended by the attorneys and
17 professional staff of Stull, Stull & Brody on the Actions, and the lodestar
18 calculation based on their current billing rate. These hourly rates are my firm's
19 customary rates and are well within the range of hourly rates that have been
20 accepted by courts as reasonable in other securities or shareholder litigation. The
21 chart was prepared from contemporaneous, daily time records regularly prepared
22 and maintained by my firm.

23 ///

24 ///

26 ¹ Unless defined herein, all capitalized terms have the same definitions as set forth
27 in the Stipulation of Settlement dated July 14, 2020 ("Stipulation").

Professional (position)*	Years in Practice	Hourly Rate	Hours Worked	Lodestar
Patrice L. Bishop (SA)	25+	\$850	19.6	\$16,660.00
Paul J. Harrigan (PL)	20+	\$295	23.8	\$7021.00
Total			43.4	\$23,681.00

* Senior Attorney (SA), Paralegal (PL).

7. From Plaintiff Andrew Tuttle preparing and filing his complaint through July 14, 2020, the signing of the Stipulation, my firm performed a total of 43.4 professional work hours in the prosecution of the Actions. The total lodestar amount for my firm is \$23,681. The hours reported excludes the time spent by my firm: (1) negotiating the Fee and Expense Amount; and (2) preparing the briefs and declarations in support of preliminary and final approval of the Settlement.

8. Stull, Stull & Brody expended a total of \$178.10 in un-reimbursed expenses that were reasonably and necessarily incurred in connection with prosecution of the Actions broken down as follows:

LIST OF UNREIMBURSED EXPENSES

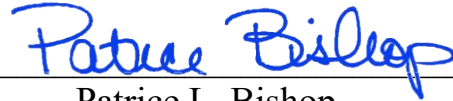
<u>Category</u>	<u>Amount</u>
Postage/Messenger/Federal Express	\$ 19.42
Computer Research/Services	\$ 158.68
TOTAL:	\$ 178.10

9. The expenses set forth above are reflected in counsel's books and records. These books and records are prepared from expense vouchers, check records, and financial statements prepared in the normal course of business for my firm and are an accurate record of the expenses incurred in the prosecution of the Actions.

///

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

3 Executed this 23rd day of September 2020.

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6 Patrice L. Bishop
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EXHIBIT A

STULL, STULL & BRODY
ATTORNEYS AT LAW

New York Office:
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BRIEF BIOGRAPHY OF STULL, STULL & BRODY

For more than forty-five years, Stull, Stull & Brody's ("SS&B") high-quality legal representation has been nationally recognized.

SS&B's efforts were recognized by a late member of the United States Congress, the Representative Paul E. Gillmor, Rep. Ohio 5th District. As The Honorable Congressman Gillmor wrote in connection with *In re Merck & Co., Inc. Sec., S'holder Derivative and ERISA Litig.*, Case No 3:05-CV-01151 (MDL 1658):

I was one of the court appointed lead plaintiffs in *In re Safety-Kleen Rollins Shareholders Litigation*, Civil Action No. 3:00-CV1343-17, which was pending before Judge Joseph Anderson in the District of South Carolina. In that case, which alleged, among other things, violation of the Securities Exchange Act of 1934, I and the other court appointed lead plaintiffs selected Stull, Stull & Brody to be one of the lead counsel for the plaintiffs. That case resulted in a settlement recovery for the class of a very substantial portion of the money that could have been recovered if the case had gone to trial net of fees, expenses and administration fees.

During the course of that litigation, which lasted for about five years, Stull, Stull & Brody kept me apprised of all significant developments in the action such as class certification, settlement negotiations, litigation strategy, pending motions, court rulings and trial preparation. I would regularly speak to counsel by telephone at which time the foregoing topics would typically be discussed and I would have the opportunity to ask questions and provide input.

(Letter from Rep. Paul E. Gillmor of January 2, 2007, annexed hereto)

Based upon SS&B's results, the "Top 100 Settlements Semi-Annual Report" for the second half of 2012, which "identifies the largest securities class action settlements filed after the passage of the Private Securities Litigation Reform Act of 1995, ranked by the total value of the settlement fund[.]" shows that SS&B ranked in the top ten in a section that lists the law firms that served as lead or co-lead counsel for each litigation in the Top 100 settlements and identifies the most frequent lead or co-lead counsel appearing in the Top 100 settlements.

Indeed, SS&B has earned a national reputation for the zealous representation of plaintiffs in complex litigations, including securities class actions, ERISA actions and consumer class actions. SS&B has litigated hundreds of cases achieving an aggregate of more than two billion dollars in recoveries for aggrieved class members. SS&B's skill and expertise are demonstrated by its results, recovering at least \$100 million for aggrieved investors while serving in a leadership role in each of the following class actions:

- ◆ *In re Merck & Co., Inc., Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-MF (D.N.J.); Case No. 2:05-CV-02367-SRC-MF (D.N.J.) (recovery of \$1.062 billion).
- ◆ *In re Initial Public Offerings Sec. Litig.*, 21 MC 92 (S.D.N.Y. 2009) (recovery of \$586 million; SS&B served on plaintiffs' executive committee)
- ◆ *In re BankAmerica Corp. Sec. Litig.*, MDL No. 1264 (E.D. Mo. 2002) (recovery of \$490 million, which at that time was the highest ever securities settlement in a case without an institutional lead plaintiff)
- ◆ *In re Geodyne Resources, Inc. Sec. Litig.* (S.D.N.Y. and Harris County Tex.) (recovery of \$125 million cash plus an additional \$75 million of contingent benefits)
- ◆ *In re Computer Assoc. Sec. Litig.*, Master File No. 98-CV-4839 (TCP) (E.D.N.Y. 2003) (recovery of 5.7 million shares valued at \$133.5 million)
- ◆ *Spahn v. Edward D. Jones & Co., L.P.*, 04-CV-00086 (E.D. Mo. 2007) (recovery of \$72.5 million in credits for current Edward Jones customers and \$55 million in cash for former Edward Jones customers. In addition, defendants paid class notice and settlement administration costs)
- ◆ *In re Peregrine Sys., Inc. Sec. Litig.*, Civil Action No. 02-CV-870 J (RBB) (S.D. Ca. 2006, S.D. Ca. 2009) (recovery of \$117.5 million)
- ◆ *In re American Express Fin. Advisors Sec. Litig.*, 04-CV-1773 (S.D.N.Y.) (recovery of \$100 million in cash and implementation of significant remedial measures. In addition, defendants paid an estimated \$15 to \$18 million for class notice and settlement administration costs)
- ◆ *In re Ikon Office Solutions, Inc. Sec. Litig.*, MDL No. 1318 (E.D. Pa. May 9, 2000) (recovery of \$111 million, the then-largest ever securities settlement in the Eastern District of Pennsylvania)
- ◆ *In re AOL Time Warner ERISA Litig.*, Civil Action No. 02 CV 8853 (SWK) (S.D.N.Y.) (recovery of \$100 million in cash to the company's 401(k) plan in what the court noted was "one of the largest ERISA settlements to date")
- ◆ *In re Salomon Brothers Treasury Litig.*, Consolidated Action No. 91 Civ. 5471 (RPP) (S.D.N.Y. 1994) (recovery of \$100 million)

SS&B maintains offices in Manhattan and California, enabling the firm to efficiently handle litigations on a nationwide basis. Due to the consistency and seniority of its attorneys, including attorneys who have been with the firm for more than twenty years, SS&B is able to leverage its vast experience efficiently and effectively to achieve favorable results on behalf of class members in many cases. SS&B's lawyers possess outstanding credentials and the firm has received numerous acknowledgements for its achievements.

SS&B's expertise has also been recognized by the following courts: *In re Frontier Group Ins., Inc. Sec. Litig.*, 172 F.R.D. 31 (E.D.N.Y. 1997); *In re Allegheny Int'l Inc. S'holder Litig.*, 86-835 (W.D. Pa.) (Order, December 10, 1987, Diamond J.); *Zucker v. United States Steel*, C-1-79-588 (S.D. Ohio) (Order, October 14, 1981, Rubin, C.J.); *Friedman v. Colgate Palmolive*, 80 Civ. 2340 (CPS) (E.D. N.Y.) (Order, June 16, 1981, Sifton, J.); *Zuckerman v. Sparton*, G79-457-C.A. (W.D. Mich.) (Opinion and Order, April 14, 1981, Fox, J.); *Mottoros v. Abrams*, 524 F. Supp. 254 (N.D. Ill. 1981); *Koenig v. Smith*, 79 C 452 (ERN) (E.D.N.Y.) (Memorandum Opinion and Order, December 3, 1980, Neaher, J.); *Koenig v. Kenneally*, 79 Civ. 0487 (LBS) (S.D.N.Y.) (Opinion No. 49289, November 5, 1979, Sand, J.); *In Re Commonwealth Oil-Tesoro Petroleum Sec. Litig.*, MDL No. 347 (Order, July 24, 1979, Higginbotham, J.); *Wietschner v. McCulloch*, CV 78-4036-RMT (C.D. Ca.) (Order, June 29, 1979, Takasugi, J.); *Fruchthandler v. LTV Corp.*, 77C 1879 (E.D.N.Y.) (Order, May 10, 1978, Nickerson, J.); *Lewis v. Adikes*, 76 F.R.D. 68 (E.D.N.Y. 1977); *Lewis v. Black*, [1976-77 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,738 (E.D.N.Y. 1976) (Mishler, C.J.); and *Fruchthandler v. Blakely*, 73 F.R.D. 318 (S.D.N.Y. 1976).

SEMINAL CASES

Throughout its 40 year history, SS&B has been involved with a number of seminal cases that have significantly affected the landscape of securities litigation.

- ♦ In *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633 (2010), in a case brought on behalf of investors in Merck securities alleging that they were defrauded due to misrepresentations made by Merck, the United States Supreme Court issued a ruling making it easier for defrauded investors to file actions claiming violation of the Securities Exchange Act of 1934 by holding that the statute of limitations does not begin to run until the investor should have known that a materially false statement was knowingly or recklessly made.
- ♦ In *Rand v. Monsanto Co.*, 926 F.2d 596 (7th Cir. 1991), the firm appeared on behalf of the plaintiff in a landmark decision establishing the principle that a class representative plaintiff need not be willing to bear all of the class' costs in an action to satisfy the adequacy of representation requirement of Federal Rule of Civil Procedure 23.
- ♦ In *In re Lucent Tech., Inc. ERISA Litig.*, Civil Action No. 01-cv-3491 (JAP) (D.N.J. 2005), the firm was largely responsible for a frequently-cited district court decision that denied defendants' motion to stay the ERISA litigation until a related securities

class action was resolved. SS&B's briefing in opposition to the stay motion highlighted the significant differences between ERISA and securities class actions, even when those actions involve the same factual issues. The court ruled that "resolution of the securities class action . . . will not necessarily resolve all issues in this matter" and "[t]he legal issues here will still have to be determined, and a stay or continuance shall not change that fact."

- ◆ In *Small v. Fritz Co. Inc.*, 30 Cal. 4th 167 (2003), the firm successfully argued before the California Supreme Court that a non-trading shareholder has the right to sue a corporation for damages where the shareholder relies on false financial statements issued by the corporation. The decision represented a significant change in legal doctrine and was widely heralded as a potent new weapon for investors.
- ◆ In *Howard v. Everex*, 228 F.3d 1057 (9th Cir. 2000), SS&B successfully advocated that a corporate officer can be liable in a private anti-fraud action for signing a document filed with the SEC that he knows (or is reckless in not knowing) contains misrepresentations, even if the officer was not involved in preparing the document. The Ninth Circuit decision was a precursor to Section 302(a) of the Sarbanes-Oxley Act of 2002 which now requires corporate officers that sign documents filed with the SEC to certify the accuracy of information therein.
- ◆ In *Lewis v. Black*, 74 F.R.D. 1 (E.D.N.Y. 1975), the firm established that neither the personality nor the motive of a proposed class representative was determinative of whether he would provide vigorous advocacy on behalf of the class, thereby preventing defendants from compelling representatives to respond to questions regarding motives and actions in past cases.
- ◆ In *In re Cabletron Sys., Inc. Sec. Litig.*, 311 F.3d 11 (1st Cir. 2002), the firm was instrumental in obtaining a reversal of a district court order dismissing a complaint under the pleading requirements of the Private Securities Litigation Reform Act. This case established in the First Circuit that plaintiffs are not required to name confidential sources in a complaint.
- ◆ In *In re Frontier Group Ins. Litig.*, Master File No. 94 Civ. 5213 (E.D.N.Y. 2002), the firm was instrumental in defeating a *Daubert* challenge, thereby enabling the expert to testify as to aggregate damages based on the use of a trading model.
- ◆ In *Harman v. Lyphomed, Inc.*, 122 F.R.D. 522 (N.D. Ill. 1988), the firm established the applicability of the fraud-on-the-market theory of reliance for stocks trading on the NASDAQ.
- ◆ The firm was instrumental in establishing new law on fraud-on-the-market theory in *Finkel v. Docutel/Olivetti Corp.*, 817 F.2d 356 (5th Cir. 1987), *cert. denied*, 485 U.S. 959 (1988), and *Mottoros v. Abrams*, 524 F. Supp. 254 (N.D. Ill. 1981).
- ◆ In *In re Wilmington Trust Corp. ERISA Litig.*, 2013 U.S. Dist. LEXIS 125891 (D. Del. Sept. 4, 2013), among the first reported decisions of its kind, the court granted

plaintiffs' motion to proceed without class certification, allowing plaintiffs to represent all participants in an ERISA plan because of the derivative nature of ERISA's fiduciary duties.

Serving in a leadership role, SS&B has obtained more than two billion dollars on behalf of class members. A sampling of such cases includes:

Settled Securities and Antitrust Class Action Cases

- ◆ *In re Merck & Co., Inc., Sec., Derivative & "ERISA" Litig.*, MDL No. 1658 (SRC), Case No. 2:05-CV-01151-SRC-MF (D.N.J.); Case No. 2:05-CV-02367-SRC-MF (D.N.J.) (recovery of \$1.062 billion).
- ◆ *In re Initial Public Offerings Sec. Litig.*, 21 MC 92 (S.D.N.Y.) (recovery of \$586 million, SS&B served on Plaintiffs' Executive Committee)
- ◆ *In re BankAmerica Corp. Sec. Litig.*, MDL No. 1264 (E.D. Mo.) (recovery of \$490 million)
- ◆ *In re Geodyne Resources, Inc. Sec. Litig.* (S.D.N.Y. and Harris County Tex.) (recovery of \$125 million cash settlement plus contingent benefits of additional \$75 million)
- ◆ *In re Computer Assoc. Sec. Litig.*, Master File No. 98-CV-4839 (TCP) (E.D.N.Y.) (recovery of 5.7 million shares valued at \$133.551 million))
- ◆ *Spahn v. Edward D. Jones & Co., L.P.*, 04-CV-00086 (E.D. Mo.) (recovery of \$72.5 million in credits for current Edward Jones customers and \$55 million in cash for former Edward Jones customers. In addition, defendants paid an estimated \$15 to \$18 million for class notice and settlement administration costs)
- ◆ *In re Peregrine Sys., Inc. Sec. Litig.*, Civil Action No. 02-CV-870 J (RBB) (S.D. Ca.) (recovery of \$117,567,922)
- ◆ *In re American Express Fin. Advisors Sec. Litig.*, 04-CV-1773 (S.D.N.Y.) (recovery of \$100 million in cash and implementation of significant remedial measures. In addition, defendants paid all class notice and settlement administration costs, which is estimated to be \$15 to 18 million)
- ◆ *In re Ikon Office Solutions, Inc. Sec. Litig.*, MDL No. 1318 (E.D. Pa.) (recovery of \$111 million)
- ◆ *In re Salomon Brothers Treasury Litig.*, Consolidated Action No. 91 Civ. 5471 (RPP) (S.D.N.Y. 1994) (recovery of \$100 million)
- ◆ *In re Priceline.com, Inc. Sec. Litig.*, Master File No. 3:00CV01884 (AVC) (D. Conn.) (recovery of \$80 million)

- ◆ *In re Westinghouse Sec. Litig.*, Civil Action No. 91-354 (W.D. Pa.) (recovery of \$67.25 million)
- ◆ *Bachman v. AG Edwards, Inc.*, Cause No. 22052-01266-02 (Mo. Cir. Ct.) (recovery of \$60 million)
- ◆ *In re Thomas & Betts Sec. Litig.*, Case No. 00-2127 (W.D. Tenn.) - related case: *Pifko v. KPMG LLP*, Civ. Action No. 01-CV-2553 (W.D. Tenn.) (recovery of \$51.15 million)
- ◆ *In re Tenneco Inc. Sec. Litig.*, Civ. Action No. H-91-2010 (S.D. Tex.) (recovery of \$50 million)
- ◆ *In re Apria Healthcare Group Sec. Litig.*, Master File No. 797060 (Cal. Super. Ct, Orange Cty) (recovery of \$42 million)
- ◆ *Levitan v. McCoy, Jr.*, Case No. 00 C 5096 (N.D. Ill.) (recovery of \$39.9 million)
- ◆ *In re Cannon Group Sec. Litig.*, 86-5559-WMB (JRx) (C.D. Ca.) (recovery of \$33 million)
- ◆ *Teichler v. DSC Commc'n Corp.*, CA 3-85-2005-T (N.D. Tex.) (recovery of \$30 million)
- ◆ *Berger v. Compaq Computer Corp.*, Civ. Action No. 98-1148 (S.D. Tex.) (recovery of \$28.65 million)
- ◆ *In re: Northeast Utilities Sec. Litig.*, Civil Action No. 397 CV 00189 AVC (D. Ct.) (recovery of \$25 million)
- ◆ *Lasky v. Brown (United Co. Fin. Corp.) Sec. Litig.*, Civil Action No. 99-1035-B-M2 (M.D. La.) (recovery of \$20.5 million)
- ◆ *Lasker v. Kanas* (North Fork Bancorporation), Index No. 103557/06 (NY Sup. Ct.) (recovery of \$20 million and other consideration)
- ◆ *Feinberg v. Hibernia Corp.*, Civil Action No. 90-4245 (E.D. La.) (recovery of \$20 million)
- ◆ *In re Dreyfus Aggressive Growth Mut. Fund Litig.*, Master File No. 98 Civ. 4318 (HB) (S.D.N.Y.) (recovery of \$18.5 million)
- ◆ *In re Rambus, Inc. Sec. Litig.*, Master File No. C-06-4346-JF (N.D. Cal.) (recovery of \$18.33 million)
- ◆ *In re C.R. Bard, Inc. Sec. Litig.*, Master File No. 90-948 (AMW) (D.N.J.) (recovery of \$17.9 million)
- ◆ *Spring v. Cont'l Illinois Corp.*, 84 C 4648 (N.D. Ill. 1987) (recovery of \$17.5 million)

- ◆ *In re Rhythms Sec. Litig.*, Civil Action No. 02-K-35 (GCL) (D. Co.) (recovery of \$17.5 million)
- ◆ *Morse v. Abbott Lab.*, C.A. No. 90 C 1982 (N.D. Ill.) (recovery of approximately \$14 million on a claims-made basis. SS&B served as co-lead trial counsel in representing a class of purchasers of common stock of Abbott Laboratories. On March 15, 1994, the jury returned a verdict in favor of the plaintiff class in the amount of \$15,279,219. The case was settled during the pendency of post-trial motions.)
- ◆ *In re Green Tree Fin. Corp. Stock Litig.*, Master File No. 97-2666 (JRT/RLE) (D. Minn.) (recovery of \$12.45 million)
- ◆ *In re Elscint Sec. Litig.*, Civ. Action No. 85-2662-K (D. Mass.) (recovery of \$12 million)
- ◆ *In re Nat'l Med. Enter. Sec. Litig. II*, Case No. CV 93-5224 TJH (Bx) (C.D. Ca.) (recovery of \$11.65 million)
- ◆ *Bash v. Diagnostic, Inc.*, Civil Action No. 94-784 (D.N.M.) (recovery of \$10.7 million)
- ◆ *In re Cybermedia, Inc. Sec. Litig.*, Master File No. 98-1811CBM (Ex) (C.D. Ca.) (recovery of \$10.5 million)
- ◆ *In re Cabletron Sys., Inc. Sec. Litig.*, C 97-542 (D.R.I.) (recovery of \$10.5 million)
- ◆ *In re Physicians Corp. of Am. Sec. Litig.*, Case No. 97-3678-CIV (S.D. Fla.) (recovery of \$10.2 million)
- ◆ *In re Complete Mgmt. Inc. Sec. Litig.*, Master File No. 99 Civ. 1454 (NRB) (S.D.N.Y.) (recovery of \$10.15 million)
- ◆ *In re U.S.A. Detergent Sec. Litig.*, 97-CV-2459 (D.N.J.) (recovery of \$10 million)
- ◆ *In Re: Biopure Corp. Sec. Litig.*, Docket No. 03-CV-12628 (NG) (D. Mass.) (cash recovery of \$10 million)
- ◆ *In re Nice Sys., Ltd. Sec. Litig.*, Master File No. 2:01 CV 737 (Judge Greenaway) (D.N.J.) (recovery of \$10 million)
- ◆ *Harman v. Lyphomed*, 88 C 476 (N.D. Ill.) (recovery of \$9.99 million)
- ◆ *In re Beverly Enter., Inc. Sec. Litig.*, Master File No. CV 88-01189-RSWL (Tx) (C.D. Ca.) (recovery of \$9.975 million)
- ◆ *Bharucha v. Reuters Holdings PLC*, Case. No. 90-cv-03838 (E.D.N.Y.) (recovery of \$9.5 million)

- ♦ *Greenfield v. Compuserve Corp.*, Case No. 96-CV-06-4810 (Franklin County, Ohio) (recovery of \$9.5 million)
- ♦ *In re Stratosphere Sec. Litig.*, Master File No. CV-S-96-00708-PMP (RLH) (D. Nev.) (recovery of \$9 million)
- ♦ *In re Steven Madden Ltd. Sec. Litig.*, No. 00-CV-3676 (JG) (E.D.N.Y.) (recovery of \$9 million)
- ♦ *In re Gibraltar Fin. Corp. Sec. Litig.*, CV 87-07876 MRP (Gx) (C.D. Ca.) (recovery of \$8.5 million)
- ♦ *In re FHP Sec. Litig.*, Master File No. SACV 91-580-GLT (RWRx) (C.D. Ca.) (recovery of \$8.25 million)
- ♦ *Zucker v. Maxicare Health Plans, Inc.*, Case No. 88-02499-LEW (Tx) (C.D. Ca.) (recovery of \$8.1 million)
- ♦ *In re Orion Pictures Corp. Sec. Litig.*, Master File No. 91 CV 1903 (CBA) (E.D.N.Y.) (recovery of \$8 million)
- ♦ *Berlinsky v. Alcatel*, 94-CIV-9084 CBM (S.D.N.Y.) (recovery of \$8 million)
- ♦ *In re Triton Energy Corp. Sec. Litig.*, Master File No. 3:92-CV-1069-H (N.D. Tex.) (recovery of \$8 million)
- ♦ *Ganesh v. Computer Learning Ctr.*, Civil Action No. 98-CV-00859 (E.D. Va.) (recovery of \$7.5 million)
- ♦ *In re Metris Co., Inc. Sec. Litig.*, Civil Action No. 02-CV-3677 JMR/FLN (D. Minn.) (recovery of \$7.5 million)
- ♦ *In re Cityscape*, CV 97 5668 (E.D.N.Y.) (recovery of \$7 million)
- ♦ *In re Dime Savings Bank of New York Sec. Litig.*, MDL Docket No. 846 (E.D.N.Y.) (recovery of \$6.8 million)
- ♦ *In re Western Digital Sec. Litig.*, SACV 91-375(A) GLT (RWRx) (C.D. Ca.) (recovery of \$6.75 million)
- ♦ *In re Bank of New England Corp. Class Action and S'holder Litig.*, C.A. Nos. 89-2582-S, 89-2811-S (D. Mass.) (recovery of \$6.5 million)
- ♦ *Bobbitt v. Andrew J. Filipowski*, No. 06-11072-PBS (D. Mass.) (recovery of \$6.3 million)
- ♦ *In re Berkshire Realty Co., Inc. S'holder Litig.*, C.A. No. 17242 (Del. Ch.) (recovery of \$6.25 million)

- ◆ *Gerstein v. Micron Tech., Inc.*, Civil No. 89-1262 (D. Id.) (recovery of \$6 million)
- ◆ *In re Ziff-Davis, Inc. Sec. Litig.*, Master File No. 98-CIV-7158 (SWK) (S.D.N.Y.) (recovery of \$6 million)
- ◆ *Dynegy Inc. v. Bernard V. Shapiro*, No. 2002-00080 (129th Judicial District, Harris Cty, TX) (recovery of \$6 million)
- ◆ *In re FleetBoston Fin. Corp. Sec. Litig.*, Civ. No. 02-4561 (WGB) (D.N.J.) (recovery of \$5.5 million)
- ◆ *In re Ascend Commc'n Sec. Litig.*, Case No. 97-9376 MRP (AN) (C.D. Ca.) (recovery of \$5.45 million)
- ◆ *Miller v. Int'l Murex Tech. Corp.*, Civ. No. 93 Civ. 336 (E.D.N.Y.) (recovery of \$5.4 million)
- ◆ *In re Brightpoint, Inc. Sec. Litig.*, Case No. IP 01 1796 C-T/K (recovery of \$5.25 million)
- ◆ *Kushner v. Wang Lab.*, Civil Action No. 89-1963-Y (D. Mass.) (recovery of \$5 million)
- ◆ *In re SouthEast Banking Corp. Sec. Litig.*, Master File No. 90-0760-CIV-MOORE (S.D. Fla.) (recovery of \$5 million)
- ◆ *Wells v. Southmark Corp.*, CA3-85-1518-G (N.D. Tex.) (recovery of \$5 million)
- ◆ *In Re: Interlink Elec. Inc. Sec. Litig.*, 05-CV 08133 (AG) (SH) (C.D. Cal.) (recovery of \$5 million)
- ◆ *Chilton v. Smith Barney Fund Mgmt. LLC*, 1:05-cv-07583-WHP (S.D.N.Y.) (recovery of \$4.95 million)
- ◆ *In re Regeneron Pharma., Inc. Sec. Litig.*, Civil Action No. 03 CV 311 (RWS) (S.D.N.Y.) (recovery of \$4.7 million)
- ◆ *In re Sunglass Hut Intl., Inc. Sec. Litig.*, Case No. 97-0191-CIV-MOORE (S.D. Fl.) (recovery of \$4.5 million)
- ◆ *Clive T. Miller v. Apropos Tech., Inc.*, No. 01 C 8406 (N.D. Ill.) (recovery of \$4.5 million)
- ◆ *In re Fidelity Holdings Sec. Litig.*, Case No. CV 00 5078 (CPS) (VVP) (E.D.N.Y.) (recovery of \$4.45 million)
- ◆ *Adam Burstyn v. Worldwide Xceed Group, Inc.*, Case No. 01 CV 1125 (GEL) (S.D.N.Y.) (recovery of \$4.4 million)

- ♦ *In re NetEase.com Sec. Litig.*, Civil Action No. 01-CV-9405 (RO) (S.D.N.Y.) (recovery of \$4.35 million)
- ♦ *In re Flextronics, Inc. Sec. Litig.*, No. C-03-2102 PJH (N.D. Ca.) (recovery of \$4.25 million)
- ♦ *Schaffer v. Timberland Co.*, 94-634-JD (D.N.H.) (recovery of \$4.2 million)
- ♦ *In re HMO Am. Sec. Litig.*, Civ. No. 92 C 3305 (CPK) (N.D. Ill.) (recovery of \$4 million)
- ♦ *In re Nanophase Tech. Corp. Sec. Litig.*, Case No. 98 C 3450 (N.D. Ill.) (recovery of \$4 million)
- ♦ *In re Quintex Sec. Litig.*, Master File No. CV-89-6182-R (C.D. Ca.) (recovery of \$4 million)
- ♦ *Walsingham v. Biocontrol Tech. Inc.*, Civil Action No. 96-809 (W.D. Pa.) (recovery of \$3.7 million)
- ♦ *In re Irvine Sensors Corp. Sec. Litig.*, Master File No. SA 02-00159 GLT (MLGx) (C.D. Ca.) (recovery of \$3.5 million)
- ♦ *Miller v. Material Sci. Corp.*, Civil Action No. 97-CV-2450 (N.D. Ill.) (recovery of \$3.25 million)
- ♦ *In re iTurf Inc. S'holder Litig.*, Consolidated Civil Action No. 18242 NC (Del. Ch.) (recovery of \$3.25 million)
- ♦ *In re Safety Kleen Rollins S'holder Litig.*, Case No. 3:00-1343-17 (D.S.C.) (recovery of \$3.15 million)
- ♦ *In re Kay Jewelers Sec. Litig.*, Civil Action No. 90-1663A (E.D. Va.) (recovery of \$3 million)
- ♦ *Clarkson v. Greyhound Lines, Inc.*, 96-11329-C (Dist. Ct., Dallas Cty, Tex.) (recovery of \$3 million)
- ♦ *In re TwinLab Corp. Sec. Litig.*, Master File No. 00-CV-6975 (DRH) (E.D.N.Y.) (recovery of \$3 million)
- ♦ *In re Spectrian Corp. Sec. Litig.*, Master File No. C-97-4672-CW (N.D. Ca.) (recovery of \$2.975 million)
- ♦ *In re Arotech Corp. Sec. Litig.*, Master File No. 07-CV-1838 (E.D.N.Y.) (RJD) (VVP) (recovery of \$2.9 million)

- ◆ *In re Mut. Funds Inv. Litig.*, MDL 1586, Case No. 04-MD-15863 (JFM) (D. Md.); *Parthasarathy v. RS Inv. Mgmt., L.P.*, Case No. 04-cv-3798-JFM (D. Md.) (recovery of \$2.83 million)
- ◆ *Moriarty v. Molina*, Case No. 99-0255-CIV-MORENO (S.D. Fla. 2003) (recovery of \$2.8 million)
- ◆ *In re Peritus Software Serv., Inc. Sec. Litig.*, Civ. Action No. 98CV10955 WGY (D. Mass.) (recovery of \$2.8 million)
- ◆ *In re 2TheMart.com, Inc. Sec. Litig.*, Case No. 99-1127 DOC (ANx) (C.D. Ca.) (recovery of \$2.7 million)
- ◆ *McBride v. Vision Twenty-One, Inc.*, Case No. 99-138-CIV-T-25F (M.D. Fl.) (recovery of \$2.5 million)
- ◆ *In re Pharmaprint Inc. Sec. Litig.*, Civ. No. 00-61 (AJL) (D.N.J.) (recovery of \$2.3 million)
- ◆ *In Re: Columbia Entities Litig.*, 04-CV-11704 (D. Mass.) (settled for a reduction in the overall rate charged as advisory fees (i.e., “breakpoints) when a mutual funds advised by the advisers reach certain levels of assets under management, enhanced shareholder communications, and a \$100,000 contribution to research expenses for the benefit of the settling funds).

Settled ERISA Cases

- ◆ *In re AOL Time Warner ERISA Litig.*, Civil Action No. 02 CV 8853 (SWK) (S.D.N.Y.) (recovery of \$100 million in cash to the company’s 401(k) plan in what the court noted was “one of the largest ERISA settlements to date”)
- ◆ *In re Global Crossing Ltd. ERISA Litig.*, Master File No. 02-cv-7453 (GEL) (S.D.N.Y.) (recovery of \$79 million in cash to the company’s 401(k) plan; SS&B served as liaison counsel))
- ◆ *Overby v. Tyco Int’l, Ltd.*, Case No. 02-CV-1357-B (D.N.H.) (recovery of \$70.525 million in cash to the company’s 401(k) plan; over 80 million pages of discovery were produced to counsel and over 250 days of deposition were taken)
- ◆ *In re Lucent Tech., Inc. ERISA Litig.*, Civil Action No. 01-cv-3491 (JAP) (D.N.J.) (recovery of \$69 million in cash and stock to the company’s 401(k) plan)
- ◆ *In re WorldCom, Inc. ERISA Litig.*, Master File No. 02-4816 (DLC) (S.D.N.Y.) (recovery of \$47.15 million in cash to the company’s 401(k) plan; SS&B served as local counsel)

- ◆ *Harrington v. Household Int'l, Inc.*, Civil Action No. 02 C 8257 (SY) (N.D. Ill.) (recovery of \$46.5 million in cash to the company's 401(k) plan)
- ◆ *Nat'l City Corp. Sec., Derivative & ERISA Litig.*, 1:08-cv-07000-PAG (N.D. Ohio) (recovery of \$43 million in cash to the company's 401(k) plan)
- ◆ *In re Cardinal Health, Inc. ERISA Litig.*, No. C2-04-643 (ALM) (S.D. Ohio) (recovery of \$40 million in cash to the company's 401(k) plan)
- ◆ *Zilhaber v. UnitedHealth Group, Inc.*, Case No. 06-cv-2237 (JMR) (D. Minn.) (recovery of \$17 million in cash to the company's 401(k) plan)
- ◆ *In re Sears, Roebuck & Co. ERISA Litig.*, No. 02 C 8324 (JWD) (N.D. Ill.) (recovery of \$14.5 million in cash to the company's 401(k) plan)
- ◆ *Kenney v. State St. Corp.*, No. 09-10750-PBS (D. Mass.) (recovery of \$10 million in cash to the company's 401(k) plan)
- ◆ *Russell v. Consecro Serv., LLC* 1:02-cv-1639-LJM (S. D. Ind.) (recovery of \$9.975 million in cash to the company's 401(k) plan)
- ◆ *In re 2014 Avon Prod., Inc. ERISA Litig.*, 1:14-cv-10083-LGS (S.D.N.Y) (recovery of \$6.25 million in cash to the company's 401(k) plan is pending preliminary approval)
- ◆ *In Re SunTrust Banks, Inc. ERISA Litigation*, Docket No. 1:08-cv-03384-RWS (N.D. Ga. Oct 31, 2008) (recovery of \$4.75 million in cash to the company's 401(k) plan)
- ◆ *In re: Diebold ERISA Litig.*, Case No. 06-cv-00170 (SEL) (N.D. Ohio) (recovery of \$4.5 million in cash to the company's 401(k) plan)
- ◆ *In re Sprint Corp. ERISA Litig.*, Master File No. 2:03-CV-02202-JWL (D. Kan.) (recovery of \$4 million in cash to the company's 401(k) plan, and increased benefits to participants in the company's 401(k) plans including: increased vesting of employee accounts; increased company matching of employer contributions; participant-friendly plan amendments; and improved participant communications)
- ◆ *Walter v. Level 3 Commc'n, Inc.*, 1:09-cv-00658-REB (D. Colo.) (recovery of \$3.2 million in cash to the company's 401(k) plan)
- ◆ *In Re: Wilmington Trust Corp. ERISA Litig.*, 1:11-cv-00101-SD (D. Del.) (recovery of \$3 million in cash to the company's 401(k) plan and recognizing that "SS&B's ERISA litigation experience, particularly litigation appearing similar to the issue at bar, indicates extensive experience and knowledge of applicable law.")

- ♦ *Griffin v. Flagstar Bancorp, Inc.*, 2:10-cv-10610-PDB-MKM (E.D. Mich) (recovery of \$3 million in cash to the company's 401(k) plan, representing 85% of likely recoverable damages, was recognized as "excellent" by the court)
- ♦ *Lipman v. Terex Corp.*, 3:10-cv-00006-RNC (D. Conn.) (recovery of \$2.5 million in cash to the company's 401(k) plan)

SS&B's advocacy in these and other ERISA actions, which have been brought on behalf of 401(k) retirement plan participants and beneficiaries, has also yielded new law in the ERISA field, including the *Lucent* and *Wilmington Trust* opinions cited in the Seminal Cases section above.

Settled Consumer Class Action Cases

- ♦ *Szymczak v. Nissan North Am. Inc.*, 10-cv-07493-VB (S.D.N.Y.)(recovery including cash and direct monetary benefits of over \$14 million on behalf of multi-state nationwide class of car owners of certain Nissan vehicles for damage to vehicles' transmissions caused by leaking radiator fluid)
- ♦ *Lubitz, et al. v. DaimlerChrysler Corp.*, BER-L-4883-04 (NJ Super., Bergen Cty) (recovery valued at \$14.5 million to owners of Jeep Grand Cherokees, model years 1999 through 2004 for defective brake assemblies on behalf of a nationwide settlement class)
- ♦ *In re: The Home Depot, Inc. Data Sec. Breach Litig.*, Case No.: 1:14-md-02583-TWT (N.D. Ga) (SS&B served as a member of the court appointed Consumer Plaintiffs' Steering Committee, recovery of \$13 million to the settlement class and provision for 18 months of Identity Guard® Essentials monitoring services for settlement class members who had information compromised, plus attorneys' fees, costs, and expenses and Home Depot the costs of notifying the class and administering the settlement)
- ♦ *In Re Anthem, Inc. Data Breach Litig.*, Case No. 15-MD-02617-LHK (N.D. Ca.) (SS&B developed unique claims on behalf of current and former federal employees in a massive data breach of health insurer Anthem, Inc. and its multiple state subsidiaries involving theft of Anthem insureds' PHI and PII, including social security numbers and medical records; a proposed settlement between the plaintiffs and Anthem set up a \$115 million settlement fund and required Anthem to enhance its cybersecurity)
- ♦ *Spillman v. Hiko Energy, LLC*, Docket No. 651798/2015 (N.Y. Sup Ct. May 21, 2015) (recovery of \$2.1 million as part of *Chen v. Hiko Energy LLC*, Case No. 7:14-cv-01771 (SDNY))

Settled Derivative Cases

- ◆ *In re Trump Hotels S'holder Derivative Litig.*, 98-Civ-7820 (GEL) (S.D.N.Y.) (recovery of assets for corporation valued at approximately \$10 million)
- ◆ *Esther Sadowsky Testamentary Trust v. Brendsel (Federal Home Loan Mortgage Corp.)*, 05-cv-2596 (S.D.N.Y.) (recovery of approximately \$100 million for the company as well as significant corporate governance measures)
- ◆ *In re Bank of New York Corp. Derivative Litig.*, Index No. 604465/99 (Sup. Ct. NY) (recovery of \$26.5 million for the company and the adoption of significant corporate governance measures)
- ◆ *In re FirstEnergy S'holder Derivative Litig.*, 03-CV-1826 (N.D. Oh.) (recovery of approximately \$25 million for the company and the adoption of significant corporate governance measures)
- ◆ *In re Hewlett-Packard Co. Derivative Litig.*, 1:06-cv-071186 (Cal. Super. Ct., Santa Clara County), 2426-VCN (Del. Ch.) (resulted in numerous widespread and substantial corporate governance changes directed toward HP's code of business ethics and guidelines were implemented as a result of a derivative action stemming from the board of directors' alleged leak of an investigation that ultimately led to the firing/resignation of various high level officers and directors of HP.)
- ◆ *Molloy v. Boynton*, No. 3:17-cv-01157-TJC-MCR (S.D. FL.) (alleging wrongful demand refusal on behalf of holders of Rayonier, Inc.) (settlement effecting significant corporate governance measures was approved)
- ◆ *In re Emerson S'holder Litig.*, 87-CV-4046 (JBW) (E.D.N.Y.) (recovery of \$7.5 million for the company and the adoption of significant corporate governance measures)
- ◆ *Gallic v. Appelbaum*, 3:06-cv-5523-FLW-TJB (D.N.J.) (recovery for the company of \$1,387,471 as a repayment for backdated stock options received; repricing of stock options worth potentially \$8,113,847; and significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Hirt v. United States Timberlands Serv. Co., LLC*, C.A. No. 19575 (Del. Ch.) (recovery for the company of \$3.1 million in the form of an offer increase of about 9%, from \$2.75 per partnership unit to \$3.00 per partnership unit)
- ◆ *In re Foundry Networks, Inc. Deriv. Litig.*, 1:06-cv-068878 (Cal. Super. Ct., Santa Clara Cty) (recovery for the company of \$2.1 million, repricing of certain allegedly backdated stock options, and significant corporate governance reforms)
- ◆ *Lasker v. Massengill (In re State Court Western Digital Corp. Deriv. Litig.)*, 06-CC-00159 (Cal. Super. Ct., Orange Cty) (recovery of \$522,680 for the company and significant corporate governance changes designed to strengthen its granting of, and accounting for, stock options)

- ◆ *In re Titan Corp. Derivative Litig.*, GIC 832018 (Cal. Super. Ct., San Diego Cty) (recovery of increased merger consideration from \$22.76 to \$23.10 per share of Titan common stock, a reduction in the termination fee; and, additional disclosures relating to the merger)
- ◆ *Ekas v. Burris (Citrix Sys., Inc.)*, 07-016114-11 (Fla. Cir. Ct., Broward Cty) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *In Re Jabil Circuit Options Backdating Litig.*, 06-CV-01257 (M.D. Fla.) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Edelstein v. Brodie*, Case No. 3:07-cv-00596-FLW-JJH (D.N.J.) (resulted in significant corporate governance changes designed to strengthen the granting of, and accounting for, stock options)
- ◆ *Soojian v. Jacobs f/b/o Royal Dutch Petroleum Co.*, No. 04-cv-4160 (D.N.J.) (resulted in the adoption of significant corporate governance changes)

Attorneys

The below sets forth basic educational information and select legal experience for SS&B attorneys in the New York and Beverly Hills offices.

New York Office

Jules Brody was named by *Super Lawyers* magazine as a Super Lawyer in 2010, 2013, and 2014. Mr. Brody is a graduate of Brooklyn College, magna cum laude, and received his LL.B. from the New York University School of Law in 1964. Mr. Brody was named to the Dean's List and was an editor of the Law Review. Mr. Brody was the author of "The Equitable Power to Assess Counsel Fees" which was published in the New York University Intramural Law Review in May 1964. At NYU, Mr. Brody was a John Norton Pomeroy Scholar and received the American Jurisprudence Prize in Commercial Law and graduated in the top 10% of his class. He was admitted to the New York State Bar in 1964. Mr. Brody received his LL.M. in taxation from the graduate division of the NYU School of Law in 1967. Mr. Brody is also admitted to practice before the United States District Court for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Fourth and Fifth Circuits, and has been specially admitted to practice before various U.S. District Courts throughout the United States.

Howard T. Longman was named by *Super Lawyers* magazine as a Super Lawyer in 2014-2017. Mr. Longman who grew up in Virginia, received his undergraduate degree from the University of Virginia and his J.D. from New York Law School in 1982. Mr. Longman is a member of the New York and New Jersey State Bars and has also been admitted to practice before the United States District Court for the Southern and Eastern Districts of New York and other courts around the country on a *pro hac vice* basis.

Some of the notable cases which Mr. Longman developed from inception and acted as co-lead counsel or in a lead role through conclusion include: *In Re Peregrine Sec. Litig.*, Civil Action No. 02-CV-870 J (RBB) (S.D. Ca.) (recovery of \$117,567,922); *In Re Rambus Sec. Class Action Litig.*, Master File No. C-06-4346-JF (N.D.Ca.) (\$18 million settlement); *In Re Biopure Sec. Litig.*, 1:03-cv-12628-NG(D. Mass.)(\$10 million settlement); *In re Geodyne Sec. Litig.*, Harris County Texas (No. 94-052860) and in the Southern District of New York (Master File 94 Civ. 8547 (SHS)) (\$125 million cash settlement plus contingent benefits of additional \$75 million); *In Re Dreyfus Aggressive Growth Mut. Fund Litig.*, Master File No. 98 Civ. 4318 (HB) (S.D.N.Y.) (\$18.5 million settlement resulting in a recovery to class members of over 80% of class members' losses); and *Szymczak v. Nissan North Am. Inc.*, 10-cv-07493-VB (S.D.N.Y.) (co-lead counsel in case which resulted in cash recovery and direct monetary benefits valued at over \$14 million obtained on behalf of a multi-state nationwide class of owners and leasees of certain Nissan vehicles with damage to transmissions as the result of radiator fluid leakage).

Patrick Slyne received his J.D. from the University of Wyoming in 1988. He is a member of the Colorado, Connecticut, New York and Wyoming state bars, and is admitted to practice before the United States District Courts for Wyoming, Connecticut, Eastern District of New York, and Southern District of New York, and the United States Court of Appeals for the First Circuit and Ninth Circuit. Notable cases for which Mr. Slyne had substantial responsibility include: *In re Hewlett-Packard Co. Deriv. Litig.* (Del. 2008) (conferred substantial benefit on HP through corporate governance changes to improve the functioning, interaction and working relationships among senior HP officers and outside members of the HP board of directors); *Esther Sadowsky Testamentary Trust v. Brendsel (Federal Home Loan Mortgage Corporation)* (S.D.N.Y. 2006) (assisted Freddie Mac in securing \$100 million cash from D&O carriers and \$9 million cash from certain counter parties for alleged breaches of fiduciary duties in accounting for and reporting of complex multi-billion dollar derivatives transactions); *In re Computer Assoc. Sec. Litig.* (E.D.N.Y. 2003) (recovered 5.7 million CA shares worth \$133.551 million for alleged improper revenue recognition on multi-year enterprise software license contracts); *In re IKON Office Solutions, Inc. Sec. Litig.* (E.D. Pa. 2000) (recovered \$111 million cash for alleged misrepresentation of earnings and prospects in office equipment leasing and services business); *In re Westinghouse Sec. Litig.* (W.D. Pa. 1999) (recovered \$67.25 million cash for alleged overstatement of financial position due to unrecognized losses in real estate portfolios); *In re Salomon Brothers Treasury Litig.* (S.D.N.Y. 1994) (recovered \$100 million cash for alleged manipulation of public market prices of U.S. Treasury securities); *In re Tenneco Inc., Sec. Litig.* (S.D. Tex. 1992) (recovered \$50 million cash for alleged overstatement of financial results for failure to mark-to-market dealer inventories of heavy machinery and equipment).

Aaron L. Brody received his undergraduate degree, *summa cum laude*, in 1990, and his J.D. from New York University School of Law in 1995. At NYU, Aaron Brody concentrated on securities law and was a staff editor on the Review of Law and Social Change. Aaron Brody is a member of the New York State Bar and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York. Cases in which Aaron Brody had substantial responsibility include: *In re Initial*

Public Offerings Sec. Litig. (recovery of \$586 million); *In re BankAmerica Corp. Sec. Litig.*, MDL No. 1264 (recovery of \$490 million); *Spahn v. Edward D. Jones & Co. L.P.*, 04-CV-00086 (recovery of \$127.5 million); and *In re American Express Fin. Advisors Sec. Litig.*, Civil Action No. 04-CV-1773 (S.D.N.Y.) (recovery of \$118 million).

Tzivvia Brody received her undergraduate degree, *magna cum laude*, in 1992, and her J.D. from the Benjamin M. Cardozo School of Law in 1995. Ms. Brody is a member of the New York State Bar and is admitted to practice before the United States District Court for the Southern and Eastern Districts of New York. Cases in which Ms. Brody had substantial responsibility include *In re Computer Assoc. Sec. Litig.*, (recovery estimated at \$133.551 million) and *In re Ikon Office Solutions, Inc. Sec. Litig.* (recovery of \$111 million).

California Office

Patrice L. Bishop received her undergraduate degree from New York University and her J.D. from Loyola Law School - Los Angeles in 1994. Ms. Bishop is a member of the California State Bar and is admitted to practice before the Supreme Court of the United States, United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern and Central Districts of Illinois, and the United States Court of Appeals for the Second, Eighth and Ninth Circuits. Ms. Bishop has been with the firm for over 20 years. During that time, among other cases, Ms. Bishop was one of the two primary attorneys from SS&B who worked as court appointed co-lead counsel on *In Re Peregrine Sec. Litig.*, Southern District of California (recovery of \$117,567,922), on behalf of shareholders alleging violations of, *inter alia*, Section 11 of the Securities Act and Section 14(a) of the Exchange Act. She was also the lead attorney in *In re Metris Co., Inc. Sec. Litig., District of Minnesota* (recovery of \$7.5 million), taking nearly every percipient and expert witness deposition for plaintiffs and making nearly every argument in court. Her work in *Kimeldorf, et al. v. First Union Real Estate Equity and Mortg. Inv., et al.* resulted in a temporary restraining order and preliminary injunction restraining a proposed merger, and significantly enhanced terms for preferred shareholders. She has also participated in, including examining and cross-examining witnesses, two separate federal securities law trials.

PAUL E. GILLMOR
5TH DISTRICT, OHIO

COUNTIES: ASHLAND (PART), CRAWFORD,
DEFIANCE, FULTON, HENRY, HURON, LUCAS (PART),
MERCER (PART), PAULDING, PUTNAM, SANDUSKY, SENECA,
VAN WERT, WILLIAMS, WOOD, WYANDOT (PART)

DEPUTY MAJORITY WHIP



Congress of the United States
House of Representatives

Washington, DC 20515-3505

January 2, 2007

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEES:

ENVIRONMENT AND HAZARDOUS MATERIALS
CHAIRMAN

TELECOMMUNICATIONS AND THE INTERNET
HEALTH

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEES:

CAPITAL MARKETS, INSURANCE AND
GOVERNMENT SPONSORED ENTERPRISES

FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

Via Federal Express and ECF

The Honorable Stanley R. Chesler
United States District Judge
Martin Luther King, Jr. Federal Building
and United States Courthouse
50 Walnut Street
Newark, NJ 08608

Re: In re Merck & Co, Inc., Securities, Shareholder Derivative and ERISA Litig.
(MDL 1658); Case No. 3:05-cv-01151 SRC-MF

Dear Judge Chesler:

I was one of the court appointed lead plaintiffs in *In re Safety-Kleen Rollins Shareholders Litigation*, Civil Action No. 3:00-CV1343-17, which was pending before Judge Joseph Anderson in the District of South Carolina. In that case, which alleged, among other things, violation of the Securities Exchange Act of 1934, I and the other court appointed lead plaintiffs selected Stull, Stull & Brody to be one of the lead counsel for the plaintiffs. That case resulted in a settlement recovery for the class of a very substantial portion of the money that could have been recovered if the case had gone to trial, net of attorneys fees, expenses and administrative fees.

During the course of that litigation, which lasted for about five years, Stull, Stull & Brody kept me apprised of all significant developments in the action such as class certification, settlement negotiations, litigation strategy, pending motions, court rulings and trial preparation. I would regularly speak to counsel by telephone at which time the foregoing topics would typically be discussed and I would have the opportunity to ask questions and provide input.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul E. Gillmor", written over a horizontal line.

Paul E. Gillmor

Exhibit H

1 AVI WAGNER (SBN 226688)
2 THE WAGNER FIRM
3 1925 Century Park East, Suite 2100
4 Los Angeles, CA 90067
5 Telephone: (310) 201-9150

6 *Attorney for Plaintiffs*

7 [Additional Counsel on Signature Page]

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 IN RE CAPSTONE TURBINE CORP.
11 STOCKHOLDER DERIVATIVE
12 LITIGATION

13 THIS DOCUMENT RELATES TO:
14 All Actions

Master File No.: 2:16-cv-01569

15 **DECLARATION OF AVI WAGNER**
16 **IN SUPPORT OF PLAINTIFFS'**
17 **MOTION FOR FINAL APPROVAL**
18 **OF DERIVATIVE SETTLEMENT,**
19 **FEE AWARD,**
20 **AND SERVICE AWARD**

21 HEARING DATE: October 30, 2020
22 TIME: 9:30 A.M.
23 CTRM: 8C
24 JUDGE: Hon. Dolly M. Gee
25
26
27
28

1 I, Avi Wagner, declare and state, under penalty of perjury, that the following
2 is true and correct to the best of my knowledge, information and belief:

3 1. I am an attorney duly licensed to practice law in the State of
4 California and in this district.

5
6 2. I am a member of The Wagner Firm, which has served as court-
7 appointed Liaison Counsel for plaintiffs in the Actions.¹ I have personal
8 knowledge of the matters set forth herein and, if called upon, I could and would
9 completely testify thereto.

10
11 3. A copy of The Wagner Firm's résumé is annexed hereto as Exhibit A.

12
13 4. The Wagner Firm has been involved in the Actions since its inception,
14 when Plaintiff Isaac Haber filed his Complaint on March 7, 2016.

15
16 5. The Wagner Firm, as counsel for Plaintiff Haber and as Court
17 appointed Liaison Counsel in the Actions (Docket Entry 31) has committed 63.2
18 hours to litigating the Actions from the initial investigation to its resolution, which
19 includes time spent on: revising the initial complaint and preparing it for filing;
20 preparing and filing pro hac vice motions; preparing and filing stipulations and
21 orders; reviewing and revising motions; and, attending court hearings.

22
23 6. The chart below is a summary of time expended by the attorneys and
24 professional staff of The Wagner Firm on the Actions, and the lodestar calculation

25
26 ¹ Unless defined herein, all capitalized terms have the same definitions as set forth
27 in the Stipulation of Settlement dated July 14, 2020 ("Stipulation").

based on their current billing rate. These hourly rates are my firm's customary rates and are well within the range of hourly rates that have been accepted by courts as reasonable in other securities or shareholder litigation. The chart was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.

Professional (position)*	Years in Practice	Hourly Rate	Hours Worked	Lodestar
(P)	16	\$615	52.2	\$32,103
(PL)	15	\$225	11.0	\$2,475
Total				\$ 34,573

* Partner (P), Senior Attorney (SA), Paralegal (PL).

7. From Plaintiff Haber filing his complaint through July 14, 2020, the signing of the Stipulation, my firm performed a total of 60.2 professional work hours in the prosecution of the Actions. The total lodestar amount for my firm during this time is \$32,733. The hours reported excludes the time spent by my firm: (1) negotiating the Fee and Expense Amount; and (2) preparing the briefs and declarations in support of preliminary and final approval of the Settlement.

8. The Wagner Firm expended a total of \$1,758.54 in un-reimbursed expenses that were reasonably and necessarily incurred in connection with prosecution of the Actions broken down as follows:

LIST OF UNREIMBURSED EXPENSES

<u>Category</u>	<u>Amount</u>
-----------------	---------------

<u>Category</u>	<u>Amount</u>
Photocopying/Reproduction	\$ 148.40
Postage/Messenger/Federal Express	\$ 160.14
Filing Fees (initial and pro hac vice)	\$ 1,450.00
TOTAL:	\$ 1,758.54

9. The expenses set forth above are reflected in counsel's books and records. These books and records are prepared from expense vouchers, check records, and financial statements prepared in the normal course of business for my firm and are an accurate record of the expenses incurred in the prosecution of the Actions.

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

Executed this 21st day of September 2020.

/s/Avi Wagner

Avi Wagner

Exhibit A

THE WAGNER FIRM

1925 Century Park East, Suite 2100
Los Angeles, CA 90067
(310) 491-7949
info@thewagnerfirm.com

The Wagner Firm has a broad based business litigation practice encompassing a variety of contract and business tort disputes. Since his graduation from Georgetown University Law Center in 2002, where he was fortunate enough to work for the SEC, firm principal Avi Wagner has successfully litigated in state and federal trial courts, federal bankruptcy courts, and state and federal appellate courts across the United States, including California, New York, New Jersey, Texas and Indianapolis. He has also pursued arbitrations before AAA and FINRA.

The firm's practice is principally focused on investment and insurance related disputes:

Securities Arbitration and Litigation:

Mr. Wagner has been involved as an attorney in investment disputes from multiple different angles, representing plaintiffs/claimants, defendants, and insurers in investment and partnership related disputes. He has represented broker-dealers, private equity funds, investment funds, pension plans and individuals in securities litigation and arbitration, as well as shareholder derivative litigation. He also represented investors in claims of stock fraud and stock broker misconduct. The ability to see a case cogently from each of these views is a significant component in his ability to formulate a case strategy.

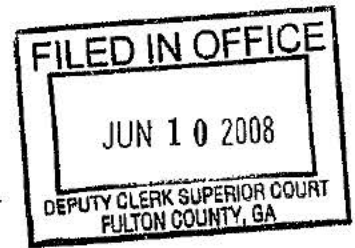
Insurance Litigation:

Mr. Wagner has represented both insurers and insureds in insurance coverage disputes, related third-party claims, rescission, interpleader and subrogation issues. Mr. Wagner also assists clients in assessing the scope and sufficiency of their insurance program. Mr. Wagner has extensive experience in dealing with issues relating to Directors and Officers liability and Errors and Omissions liability insurance, having represented bank, broker-dealer and registered investment advisor clients in this respect. He has also provided counseling and the successful resolution of a dispute to a fashion wholesaler and to individuals associated with an educational non-profit, ensuring they received a defense under an employment practices liability policy.

On the pro bono side, Mr. Wagner has been involved in the favorable resolution of several landlord-tenant disputes and has provided pro bono counseling to Holocaust victims seeking restitution from the German government.

For more information please contact Avi Wagner at (310) 491-7949 x 1 or by email at avi@thewagnerfirm.com

Exhibit I



IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

CITY OF PONTIAC GENERAL
EMPLOYEES' RETIREMENT SYSTEM,
STEVEN STARK, NICHOLAS WEIL and
ARNOLD WANDEL, Derivatively on Behalf
of THE HOME DEPOT, INC.,

Plaintiffs,

vs.

KENNETH G. LANGONE, ROBERT L.
NARDELLI, CAROL B. TOMÉ, LABAN P.
JACKSON, JR., DENNIS M. DONOVAN,
FRANK L. FERNANDEZ, THOMAS V.
TAYLOR, JOHN L. CLENDENIN,
CLAUDIO X. GONZÁLEZ, BONNIE G.
HILL, GREGORY D. BRENNEMAN,
MILLEDGE A. HART, III, ANGELO R.
MOZILO, THOMAS J. RIDGE, LAWRENCE
R. JOHNSTON, BERRY R. COX, RICHARD
H. BROWN and RICHARD A. GRASSO,

Defendants,

-- and --

THE HOME DEPOT, INC., a Delaware
corporation,

Nominal Defendant.

Civil Action No. 2006-cv-122302

[PROPOSED] ORDER AND FINAL
JUDGMENT

A hearing having been held before this Court on June 10, 2008, pursuant to the Court's Order of April 3, 2008 (the "Scheduling Order"), upon the Stipulation of Settlement entered into by the parties, dated as of March 28, 2008 (the "Stipulation"), providing for the settlement of the above-captioned actions (the "Litigation"), which is incorporated herein by reference; it appearing that due notice of said hearing has been given in accordance with the Scheduling Order; the respective parties having appeared by their attorneys of record; the Court having heard and considered evidence in support of the proposed settlement and dismissal with prejudice of the Litigation upon the terms and conditions set forth in the Stipulation (the "Settlement"); the attorneys for the respective parties having been heard; an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to the Company's stockholders was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this ____ day of _____, 2008, that:

1. Unless otherwise defined herein, all defined terms shall have the meaning set forth in the Stipulation.
2. The Notice of Settlement of Derivative Action (the "Notice") informing the Company's stockholders of the settlement has been published in *Investor's Business Daily* and via Form 8-K furnished to the Securities and Exchange Commission pursuant to and in the manner directed by the Scheduling Order, and full opportunity to be heard has been offered to all parties and persons in interest. The form and manner of the Notice is hereby determined to have been given in full compliance with O.C.G.A. §14-2-745 and the requirements of other applicable state law and due process, and it is further determined that the Plaintiffs, the Company, the Individual Defendants, and the Company's stockholders are bound by this Order and Final Judgment.

3. The Stipulation and the Settlement provided therein are found to be fair, reasonable, and in the best interests of the Company and its stockholders and are hereby approved. The parties to the Stipulation are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Clerk of Court is directed to enter and docket this Order and Final Judgment.

4. This Order and Final Judgment shall not constitute any evidence of or admission by any party herein that any acts of wrongdoing have been committed by any of the parties to the Litigation and shall not be deemed to create any inference that there is any liability therefrom.

5. The Litigation is hereby dismissed with prejudice on the merits and, except as explicitly provided in the Stipulation, without costs.

6. (a) "Released Claims" shall collectively mean all claims, demands, rights, actions or causes of action of every nature and description whatsoever, rights, liabilities, damages, losses, obligations, judgments, suits, matters, and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that have been, could have been, or in the future could or might be asserted in the Litigation or in any court, tribunal, or proceeding (including, but not limited to, any claims arising under federal or state statute, rule, regulation, or principle of common law relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise) by the Plaintiffs, by Home Depot, or by any Home Depot stockholder derivatively on behalf of Home Depot, against the Released Persons, or any of them, which have arisen, could have arisen, arise now, or hereafter arise out of, or relate in any manner to the facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, omissions, or failures to act which were alleged or could have been alleged in the Litigation, including, but not limited to (1) the allegations, facts, events, transactions, acts, occurrences, statements, representations, misrepresentations,

omissions or any other matter, thing or cause whatsoever, or any series thereof, embraced by, involved with, referred to, set forth in or otherwise related to any of the complaints filed at any time in the Litigation; (2) the alleged backdating or misdating of stock options, RTV practices, and/or executive compensation; or (3) the disclosure obligations or alleged insider trading of any of the Released Persons related to any of the foregoing, subject to the RTV Investigation Carve-Out set forth below.

(b) “Released Persons” means the Individual Defendants and Home Depot’s past or present directors, officers, employees, agents, or representatives, including any of their families, employees, attorneys, accountants, financial advisors, consultants, agents, estates, partners, predecessors, successors, and assigns, heirs, and entities in which he or she has a controlling interest. The categories described in the preceding sentence are sufficiently descriptive as to leave no question of the identity of the parties released within the meaning of *Lackey v. McDowell*, 262 Ga. 185, 415 S.E.2d 902 (1992).

(c) Upon the Effective Date, and subject to the RTV Investigation Carve-Out described in paragraph 6(d) below, the Plaintiffs, on their own behalf and derivatively on behalf of Home Depot and Home Depot stockholders shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons.

(d) The release described above is subject to the following conditional carve-out: in the event one or more current or former executive officers of the Company makes a financial payment to a governmental agency in connection with the alleged wrongdoing relating to RTV matters or is convicted of any wrongdoing in connection with the pending RTV investigation, the release referenced above shall not bar Plaintiffs’ assertion of a claim for breach of fiduciary duty against such current or former executive officers with respect to any damage caused to the Company by such individual in connection with their role in RTV practices. The Defendants agree that they

will not contest the standing (*e.g.*, their failure to make a demand or their adequacy to sue in a representative capacity) of the Plaintiffs in the *City of Pontiac* Action to assert such a claim, and the Company agrees that it will cooperate with the Plaintiffs in discovery, as may be reasonable. Notwithstanding the foregoing, nothing herein shall be deemed to limit or alter the terms or scope of, or to revive any claims released by, the mutual releases contained in the January 2, 2007 Separation Agreement between the Company and Mr. Nardelli.

7. Upon the Effective Date, each of the Defendants shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Plaintiffs, and the Plaintiffs' counsel, from all claims arising out of, relating to, or in connection with the institution, prosecution, settlement, or resolution of the Litigation or the Released Claims.

8. The releases set forth herein extend to claims that any person granting a release (each, a "Releasing Person") does not know or suspect to exist at the time of the release, which if known, might have affected the Releasing Person's decision to enter into the release; the Releasing Persons shall be deemed to relinquish, to the extent applicable and to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code; and the Releasing Persons shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, federal law, or principle of common law, which is similar, comparable or equivalent to California Civil Code Section 1542.

9. Plaintiffs, Home Depot, and past or present Home Depot stockholders, and anyone claiming through or for the benefit of any of them, are hereby permanently enjoined from asserting, commencing, prosecuting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claims against the Released Persons.

10. Notwithstanding any other provision of this Order and Final Judgment to the contrary, nothing in this Order and Final Judgment shall be construed to (i) release, discharge, extinguish, or otherwise compromise any claims or potential claims that Home Depot or any person who is or was a defendant in the Litigation may have for indemnity or under or relating to any policy of liability or other insurance, (ii) release any insurer, co-insurer, or reinsurer from any obligation owed to Home Depot or any person who is or was a defendant in the Litigation for indemnity or coverage under or relating to any policy of liability or other insurance, or (iii) release any claims to enforce the terms of the Stipulation.

11. The Court finds that the Litigation was filed in good faith and that the parties and their counsel at all times complied with requisite state laws during the course of the Litigation.

12. Counsel for the Plaintiffs are awarded attorneys' fees and expenses (including costs and disbursements) in the total amount of (a) \$6 million in cash; and (b) \$8.5 million in freely tradable Home Depot common stock, the number of shares of which shall be determined based upon the closing price of the stock on the date of entry of this Order and Final Judgment. The Court finds this award to be reasonable and fair within the meaning of Section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. §77c(a)(10). The award shall be transferred by the Company within ten (10) business days of the entry of this Order and Final Judgment to Coughlin Stoia Geller Rudman & Robbins LLP ("Coughlin Stoia"), which shall be solely responsible for the allocation of the award to Plaintiffs' counsel based upon Coughlin Stoia's good faith determination of each such counsel's contribution to the initiation, prosecution, and/or resolution of the Litigation.

13. If the Effective Date does not occur, then this Order and Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

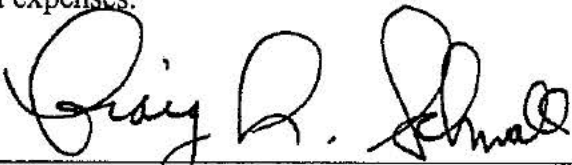
14. If the Effective Date does not occur, or if the award to Plaintiffs' counsel of attorneys' fees and expenses is reversed or modified on appeal, then the award of fees and expenses (or any portion disallowed) shall be refunded to Home Depot by Plaintiffs' counsel, together with the amount of any dividends paid on the stock received as part of the award of fees and expenses, with interest at the federal rate of interest from the date of payment and any dividend to the date of refund. The refund shall be made within ten (10) business days after written notification of such event is sent by Home Depot's counsel to Plaintiffs' Settlement Counsel. Each firm that receives any portion of the award of fees and expenses, and each partner or member of that firm, shall be jointly and severally liable for repayment should the award need to be refunded as set forth herein. In the event the refund is not made in a timely manner after written notification, Home Depot shall be entitled to an award of all reasonable fees and expenses incurred by it in pursuing legal action to collect the refund. Each such Plaintiffs' counsel's law firm, as a condition of receiving a portion of the award of fees and expenses, on behalf of itself and each partner and/or shareholder, agrees that the law firm and its partners, members, and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the Stipulation.

15. The effectiveness of this Order and Final Judgment and the obligations of Plaintiffs, the Company, and the Individual Defendants under the Stipulation and the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of the award of attorneys fees and expenses to Plaintiff counsel.

16. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters relating to the administration and consummation of the Settlement, including attorneys' fees and expenses.

IT IS SO ORDERED.

DATED: JUNE 10, 2008



THE HONORABLE JUDGE CRAIG SCHWALL
JUDGE, SUPERIOR COURT OF FULTON COUNTY

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Exhibit J

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

IN RE MOTOROLA, INC. DERIVATIVE
LITIGATION

) Lead Case No. 07CH23297

) (Derivative Action)

This Document Relates To:

ALL ACTIONS.

~~PROPOSED~~ ORDER AND FINAL JUDGMENT

This matter came before the Court for hearing on November 29, 2012, to consider approval of the proposed settlement ("Settlement") set forth in the Stipulation of Settlement dated September 12, 2012, and the exhibits thereto (the "Stipulation"). The Court has reviewed and considered all documents, evidence, objections (if any), and arguments presented in support of or against the Settlement. Good cause appearing therefore, the Court enters this Judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Unless otherwise stated herein, all capitalized terms contained in this Judgment shall have the same meaning and effect as stated in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Action and over the Settling Parties to the Action.
3. This Court hereby approves the Settlement set forth in the Stipulation and finds that the Settlement is, in all respects, fair, reasonable, and adequate to each of the Settling Parties, Motorola Solutions, Inc., formerly known as Motorola, Inc. ("Motorola"), and Motorola shareholders, and hereby directs the Settling Parties to perform the terms of the Settlement as set forth in the Stipulation.
4. This Court hereby dismisses the Action with prejudice and without costs to Defendants, except as otherwise provided below.
5. Upon the Effective Date, the Plaintiffs (both individually and derivatively on behalf of Motorola), any other Motorola shareholder on behalf of Motorola, and Plaintiffs' Counsel shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Released Claims (including Unknown Claims) against the Released Persons and any and all claims arising out of, relating to, or in connection with the defense, settlement, or resolution of

the Action against the Released Persons. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

6. Upon the Effective Date hereof, the Releasing Parties are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims against any of the Released Persons as set forth in and in accordance with the terms of the Stipulation. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

7. Upon the Effective Date, each of the Defendants shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

8. The Court finds that the Notice of Pendency and Proposed Settlement of Derivative Action was given in accordance with the Preliminary Approval and Scheduling Order entered on September 18, 2012, and that such Notice was reasonable, constituted the most practicable notice under the circumstances to Current Motorola Shareholders, and complied with the requirements of Illinois law and due process.

9. The Court hereby approves the Fee and Expense Amount of \$9,500,000 and directs payment to Plaintiffs' Counsel of the Fee and Expense Amount in accordance with the terms of the Stipulation.

10. The Court hereby approves the Incentive Awards of \$5,000 for each of the Plaintiffs, to be paid from Plaintiffs' Counsels' Fee and Expense Amount in recognition of Plaintiffs' participation and effort in the prosecution of the Action.

11. During the course of the litigation of the Action, all Settling Parties and their counsel acted in good faith and complied with Illinois Supreme Court Rule 137 and any similar rule or statute.

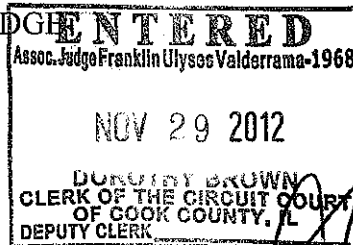
12. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement, is or may be deemed to be or may be used as: (a) an admission of, or evidence of, the validity of any Released Claim or any wrongdoing or liability of the Defendants, or the Court's jurisdiction over the Released Persons for purpose of the Released Claims or for any other purpose; (b) an admission or concession by Plaintiffs or any Motorola shareholder of any infirmity in the claims asserted in the Complaint; or (c) an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Released Persons may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, equitable estoppel, judicial estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement; and (b) all Settling Parties and the Settling Parties' counsel hereto for the sole purpose of construing, enforcing, and administering the Stipulation and this Judgment.

14. There is no reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed by the Court.

Dated: _____, 2012

THE HONORABLE FRANKLIN U. VALDERRAMA
CIRCUIT COURT JUDGE



Edward T. Joyce
Rowena T. Parma
The Law Offices of
Edward T. Joyce + Assoc. P.C.
135 S. LaSalle St.
#2200
Chicago, IL 60603
Atty. I.D. 47922

Exhibit K

WHEREAS, the Court held a Fairness Hearing on October 1, 2012 to determine, among other things, whether to finally approve the Stipulation of Settlement.

NOW THEREFORE, based on the submissions of the Settling Parties, on the argument of counsel at the Fairness Hearing and on this Court's Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. ***Incorporation of Agreement*** – To the extent not defined in this Order Approving Settlement and Judgment (the “Order and Judgment”), this Court adopts and incorporates the definitions in the Agreement.

2. This Order and Judgment incorporates and makes a part hereof:

- a. The Stipulation of Settlement entered into on June 11, 2012 and
- b. Exhibits A through D to the Stipulation of Settlement.

The Stipulation of Settlement and all exhibits thereto shall be referred to collectively as the “Agreement.”

3. ***Jurisdiction*** – The Court has personal jurisdiction over all Securities Holders of Halliburton Company (the “Company”) and has subject matter jurisdiction over this Action, including jurisdiction to, among other things, approve the Settlement and dismiss the Action with prejudice.

4. ***Adequacy of Petitioners and Demanding Shareholder*** – The Petitioner has held stock in Halliburton continuously since the commencement of the Action and otherwise has standing to prosecute this Action on behalf of Halliburton and its Securities Holders.

5. The Petitioner and her counsel have fully and adequately represented Securities Holders for purposes of entering into and implementing the Agreement and the proposed settlement.

6. ***Proof of Notice*** – The Settling Parties filed with the Court adequate proof regarding the publication of the Publication Notice materially consistent with directives in the Preliminary Approval Order.

7. ***Notice to Securities Holders*** – The Court finds that the Publication Notice provided to Securities Holders regarding the Agreement was simply written and readily understandable, and the Publication Notice and notice methodology: (i) constituted the best practicable notice, (ii) were reasonably calculated, under the circumstances, to apprise Securities Holders of the pendency of the Action and the claims in the Action, and their ability to object to the proposed settlement and to appear at the Fairness Hearing, (iii) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice and (iv) met all applicable requirements of Texas Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Local Rules of this Court and any other applicable law.

8. ***Final Settlement Approval*** – The terms and provisions of the Agreement have been entered into in good faith under the auspices of an experienced mediator who has filed an affidavit in support of the Agreement. The terms and provisions of the Agreement are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, the Company and its Securities Holders, and in full compliance with all applicable requirements of the Texas Rules of Civil Procedure, the

Texas Business Corporation Act, the Texas Business Organizations Code, the United States Constitution (including the Due Process Clause), the Local Rules of the Court and any other applicable law.

9. **Implementation of the Agreement** – The Settling Parties and their counsel are directed to implement and consummate the Agreement according to its terms and conditions.

10. **Binding Effect** – The Agreement and this Order and Judgment shall be forever binding on the Releasors and Releasees as to all claims and issues that have been, could have been or could be raised in the Action. As to all such claims and issues, the Order and Judgment have *res judicata* and other preclusive effect in all pending and future lawsuits or other proceedings maintained by or behalf of the Company.

11. **Termination of the Agreement** – In the event the Agreement is terminated as provided under its terms, all terms and conditions set out in the Agreement other than those in Section IX.B, shall become null and void and of no further force and effect. In such event, the Agreement shall not be used or referred to for any purpose whatsoever in this or any proceeding (other than to enforce Section IX.F), and all negotiations and proceedings relating to the Agreement shall be deemed to be withdrawn without prejudice as to the rights of each of the Settling Parties, all of whom shall be restored to their respective positions existing immediately before the Execution Date, except with respect to the payment of Notice and Administrative Expenses as described in Section IX.F.9 of the Agreement.

12. **Release** – The Release as set forth in Section III.E of the Agreement and its relevant definitions (a copy of which is attached as Appendix A to this Order and Judgment) is expressly incorporated herein in all respects. The Release shall be effective as of the Final Settlement Date. The Settling Parties agree and acknowledge that the provisions of the Release together constitute an essential term of the Agreement.

13. **Permanent Injunction** – The Court hereby permanently bars and enjoins the Petitioner, all other Securities Holders and the Company (whether acting on its own behalf or by and through its shareholders, or any of them), or any of their respective representatives, trustees, successors, heirs, agents and assignees, and anyone else purporting to act on behalf of or derivatively for any of the above from filing, commencing, prosecuting, intervening in, participating (as a nominal defendant or otherwise) or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding (as well as filing a complaint in intervention in these proceedings in which the person or entity filing such complaint in intervention purports to be acting on behalf of or derivatively for any of the above) or order as to Releasees in any jurisdiction or forum based on or relating to (i) the claims and causes of action, or the facts and circumstances thereto, asserted in this Action and/or (ii) any claims that have been released in the Agreement.

14. **Complete Bar Order** – The Court finds that the Agreement represents a good faith settlement of all Released Shareholder/Company Claims sufficient to discharge the Releasees of all Released Securities Holder/Company Claims of all

Releasers. In order to effectuate such settlement, the Court hereby enters the following bar:

a. Any and all persons and entities are permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim against any Releasee arising under state, federal or common law, however styled (whether for indemnification or contribution or otherwise denominated, including, without limitation, claims for breach of contract, breach of fiduciary duty or misrepresentation) where the alleged injury of the person or entity is that person's or entity's alleged liability to the Company, where such claim is based upon, arises out of, or relates to any Released Claim belonging to the Company, including, without limitation any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences that are alleged in the Petition, whether such claim is legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which a person or entity seeks to recover from any of the Releasees (i) any amounts such person or entity may become liable to pay to the Company and/or (ii) any costs, expenses or attorneys' fees from defending any claim by the Company. All such claims are hereby extinguished, discharged, satisfied and unenforceable, subject to a hearing to be held by the Court, if necessary. For the avoidance of doubt, the provisions of this paragraph 14.a are intended to preclude any liability on the part of any of the Releasees to any person or entity for indemnification, contribution or otherwise respecting any claim based upon, arising out of, or relating to any Released Securities Holder/Company Claim belonging to the Company where the alleged injury or damage to

such person or entity is that person's or entity's alleged liability to the Company, including but not limited to, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences that are alleged in the Petition; *provided* that, with respect to any judgment against any person or entity on behalf of the Company or a shareholder bringing a claim derivatively on behalf of the Company based upon, arising out of, or relating to any Released Securities Holder/Company Claim, including, without limitation, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences that are alleged in the Petition, that person or entity shall be entitled to a credit of an amount that corresponds to the percentage of responsibility of the Releasee for the loss to the Company. If any provision of this paragraph 14.a is subsequently held to be unenforceable, such provision shall be substituted with such other provision as may be necessary to afford all of the Releasees the fullest protection permitted by law from any claim that arises out of or relates to any Released Securities Holder/Company Claim belonging to the Company, including, without limitation, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences that are alleged in the Petition.

b. Each and every Releasee is permanently barred, enjoined and restrained from commencing, prosecuting or asserting any claim against any person or entity (including any other Releasee) arising under state, federal or common law, however styled (whether for indemnification or contribution or otherwise denominated, including, without limitation, claims for breach of contract, breach of fiduciary duty or misrepresentation), where the alleged injury or damage to the Releasee is the Releasee's

alleged liability to the Company, where such claim is based upon, arises out of, or relates to any Released Securities Holder/Company Claim belonging to the Company, including, without limitation, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences alleged in the Petition, whether such claim is legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, including, without limitation, any claim in which the Releasee seeks to recover from any person or entity, including another Releasee, (i) any amounts such Releasee has or may become liable to pay to the Company and/or (ii) any costs, expenses or attorneys' fees from defending any claim by the Company. All such claims are hereby extinguished, discharged, satisfied and unenforceable. However, notwithstanding anything stated in this Complete Bar Order or in the Agreement, if any person or entity commences against any Releasee any action asserting a claim that is based upon, arises out of, or relates to any Released Securities Holder/Company Claim belonging to the Company, including, without limitation, any claim that is based upon, arises out of or relates to the Action, or the transactions and occurrences alleged in the Petition, and if such claim is not barred by a court pursuant to paragraph 14.a of this Order and Judgment or is otherwise not barred the Complete Bar Order, neither the Complete Bar Order nor the Agreement shall bar claims by that Releasee against such person or entity.

c. Notwithstanding the Complete Bar Order or any other provision of this Order and Judgment, each Releasee shall be deemed to have, and by operation of this Order and Judgment, shall have fully, finally and forever released, relinquished and discharged each and all of the Petitioner, Petitioner's Counsel, Company Counsel,

Committee Counsel, Individual Defendants' Counsel, Halliburton and the Securities Holders from all Claims arising out of, relating to or in connection with the institution, prosecution, assertion, settlement or resolution of the Action or the Released Securities Holder/Company Claims. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the term of the Agreement or this Order and Judgment.

15. ***Reservation of Certain Rights*** – Notwithstanding the permanent injunction or complete bar set out in paragraphs 13 and 14, respectively, of this Order and Judgment, neither the Releasees nor the Company shall be barred from asserting any defense or any claim against any non-Releasee in any pending or future judicial, administrative, regulatory, arbitration or other proceeding other than the Action.

16. ***No Admissions*** – None of the Agreement, this Order and Judgment, any of the provisions of the Agreement, the negotiation of the Agreement, the statements or court proceedings relating to the Agreement, any document referred to in this Order and Judgment, any action taken to carry out this Order and Judgment, or any prior orders in this Action shall be (i) construed as, offered as, received as, used as or deemed to be evidence of any kind in this Action, any other action, or any judicial, administrative, regulatory or other proceeding or (ii) construed as, offered as, received as, used as or deemed to be evidence of an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, without limitation, the Company and the individual defendants; *provided however*, that this Order and Judgment and the Agreement may be used as evidence of the terms of the Agreement or to enforce the provisions of this Order and Judgment or the Agreement; *provided further* that this

Order and Judgment and the Agreement may be filed in any action against or by the Company or other Releasees to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any theory of claim preclusion, issue preclusion or similar defense or counterclaim.

17. ***Enforcement of Settlement*** – Nothing in this Order and Judgment shall preclude any action to enforce the terms of the Agreement.

18. ***Attorneys' Fees and Expenses Award*** – Consistent with Tex. Bus. Corp. Act Art. 5.14.J(1)(a), Petitioner's and the Demanding Shareholder's counsel are hereby awarded an Attorneys' Fees and Expenses Award in the amount of \$7,750,000.00.

19. ***No Other Payments*** – Paragraph 18 of this Order and Judgment covers, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by the Petitioner's counsel or by any other counsel of record representing Securities Holders in this Action.

20. ***Modification of Agreement*** – The Settling Parties are hereby authorized, without further notice to or approval by the Court, to agree to and adopt such amendments, modifications and expansions of the Agreement and its implementing documents (including all exhibits to the Agreement) that are not materially inconsistent with this Order and Judgment and do not limit the rights of the Petitioner, any other Securities Holders, the Company, Individual Defendants or any other Releasees under the Agreement.

21. ***Findings of Fact and Conclusions of Law*** – The Settling Parties have been directed jointly to prepare proposed findings of fact and conclusions of law in support of the Court’s Order and Judgment.

22. ***Retention of Jurisdiction*** – The Court has jurisdiction to enter this Order and Judgment. Without in any way affecting the finality of this Order and Judgment and subject to the dispute resolution provisions found at Section III.D of the Agreement, this Court expressly retains exclusive and continuing jurisdiction over the Agreement, the Settling Parties, all Securities Holders and all Releasees to adjudicate all issues relating to this Agreement, including, without limitation, any issues relating to this Order and Judgment; *provided however*, that nothing in this paragraph 22 shall restrict the ability of the Settling Parties to exercise their rights under paragraph 20. Any action arising under or to enforce this Agreement or this Order and Judgment shall be commenced and maintained only in this Court.

23. ***Good Faith Findings*** – The Court finds that the Petition was filed as to all defendants (including the Company as a nominal defendant) on a good faith basis and in accordance with Rule 13 of the Texas Rules of Civil Procedure based upon all publicly available information. The Court finds that all parties to the Action and their counsel have acted in good faith and have complied with each requirement of Rule 13 with respect to all proceedings herein.

24. ***Dismissal of Action*** – This Action is hereby dismissed on the merits and with prejudice as to all defendants, without fees or costs to any party except as otherwise provided in this Order and Judgment and in the Agreement.

So ordered this 1 day of October, 2012.

OCT 01 2012



THE HONORABLE PATRICIA KERRIGAN

Unofficial Copy Office of Chris D'Amico District Clerk

Exhibit L

F I L E D
Clerk of the Superior Court

AUG 18 2014

By: M. GARLAND, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

In re ALPHATEC HOLDINGS, INC.
DERIVATIVE SHAREHOLDER
LITIGATION

) Case No. 37-2010-00058586-CU-BT-NC
)
) (Consolidated with Case No. 37-2010-
) 00062262-CU-BT-NC)

This Document Relates To:

ALL ACTIONS.

) ~~PROPOSED~~ ORDER AND FINAL
) JUDGMENT

) Judge: Jacqueline M. Stern
) Dept: N-27
) Date Action Filed: August 25, 2010

) Hearing Date: August 15, 2014
) Hearing Time: 1:30 p.m.

1 This matter came before the Court for hearing pursuant to the Order of this Court, dated April
2 25, 2014 ("Order"), on the motion of the parties for approval of the proposed settlement ("Settlement")
3 set forth in the Stipulation of Settlement dated March 25, 2014, and the Exhibits thereto (the
4 "Stipulation").

5 The Court has reviewed and considered all documents, evidence, objections (if any), and
6 arguments presented in support of or against the Settlement; the Court being fully advised of the
7 premises and good cause appearing therefore, the Court enters this Judgment.

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

9 1. This Judgment incorporates by reference the definitions in the Stipulation, and all
10 capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

11 2. This Court has jurisdiction over the subject matter of the Action, including all matters
12 necessary to effectuate the Settlement, and over all Settling Parties.

13 3. The Court finds that the Notice and Summary Notice provided to Alphatec Holdings,
14 Inc. ("Alphatec" or the "Company") shareholders constituted the best notice practicable under the
15 circumstances. The Notice and Summary Notice fully satisfied the requirements of California law and
16 due process.

17 4. The Court finds that, during the course of the litigation of the Action, the Settling Parties
18 and their respective counsel at all times complied with the requirements of California Code of Civil
19 Procedure Section 128.7, and all other similar laws.

20 5. The Court finds that the terms of the Stipulation and Settlement are fair, reasonable, and
21 adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and Settlement in
22 all respects, and orders the Settling Parties to perform its terms to the extent the Settling Parties have
23 not already done so.

24 6. Pursuant to entry of this Judgment, the Action and all claims contained therein against
25 Defendants, as well as all of the Released Claims against each of the Defendants and their Related
26 Persons, are hereby dismissed with prejudice. As among the Plaintiffs, Defendants and Alphatec, the
27 parties are to bear their own costs, except as otherwise provided in the Stipulation.
28

1 7. Upon the Effective Date, as defined in the Stipulation, Alphatec, Plaintiffs (acting on
2 their own behalf and derivatively on behalf of Alphatec), and each of Alphatec's shareholders (solely in
3 their capacity as Alphatec shareholders) shall be deemed to have, and by operation of this Judgment
4 shall have, fully, finally, and forever released, relinquished, and discharged the Released Claims against
5 the Released Persons and any and all claims (including Unknown Claims) arising out of, relating to, or
6 in connection with, the defense, settlement or resolution of the Action against the Released Persons,
7 provided that nothing herein shall in any way impair or restrict the rights of any Settling Party to
8 enforce the terms of the Stipulation or this Judgment.

9 8. Upon the Effective Date, as defined in the Stipulation, Alphatec, Plaintiffs (acting on
10 their own behalf and derivatively on behalf of Alphatec), and each of Alphatec's shareholders (solely in
11 their capacity as Alphatec shareholders) shall be forever barred and enjoined from commencing,
12 instituting or prosecuting any of the Released Claims or any action or other proceeding against any of
13 the Released Persons based on the Released Claims or any action or proceeding arising out of, related
14 to, or in connection with the settlement or resolution of the Action, provided that nothing herein shall in
15 any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation or this
16 Judgment.

17 9. Upon the Effective Date, as defined in the Stipulation, each of the Released Persons shall
18 be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released,
19 relinquished, and discharged each and all of the Plaintiffs, Plaintiffs' Counsel, Alphatec, and all of the
20 Alphatec shareholders (solely in their capacity as Alphatec shareholders) from all claims (including
21 Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution,
22 assertion, settlement or resolution of the Action or the Released Claims. Nothing herein shall in any
23 way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation or this
24 Judgment.

25 10. Nothing herein constitutes or reflects a waiver or release of any rights or claims of
26 Defendants and/or Alphatec against their insurers, or their insurers' subsidiaries, predecessors,
27 successors, assigns, affiliates, or representatives, including, but not limited to, any rights or claims by
28 the Defendants and/or Alphatec under any directors' and officers' liability insurance or other applicable

1 insurance coverage maintained by the Company. Nothing herein constitutes or reflects a waiver or
2 release of any rights or claims of the Defendants relating in any way to indemnification or advancement
3 of attorneys' fees relating to the Action or the Released Claims, whether under any written
4 indemnification or advancement agreement, or under the Company's charter, by-laws or operating
5 agreement, or under applicable law.

6 11. The Court hereby approves the Fees and Expenses in accordance with the Stipulation
7 and finds that such fee is fair and reasonable.

8 12. Neither the Stipulation nor the Settlement, nor any act performed or document executed
9 pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be, or may
10 be offered, attempted to be offered or used in any way by the Settling Parties or any other Person as a
11 presumption, a concession or an admission of, or evidence of, any fault, wrongdoing or liability of the
12 Settling Parties; or of the validity of any Released Claims; or (b) is intended by the Settling Parties to be
13 offered or received as evidence or used by any other person in any other actions or proceedings,
14 whether civil, criminal or administrative. The Released Persons may file the Stipulation and/or this
15 Judgment in any action that may be brought against them in order to support a defense or counterclaim
16 based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith
17 settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or
18 similar defense or counterclaim, and any of the Settling Parties may file the Stipulation and documents
19 executed pursuant and in furtherance thereto in any action to enforce the Settlement.

20 13. Without affecting the finality of this Judgment in any way, this Court hereby retains
21 continuing jurisdiction with respect to implementation and enforcement of the terms of the Stipulation.

22 14. In the event that the Settlement does not become effective in accordance with the terms
23 of the Stipulation, this Judgment shall be vacated, and all Orders entered and releases delivered in
24 connection with the Stipulation and this Judgment shall be null and void, except as otherwise provided
25 for in the Stipulation.

1 15. This Judgment is a final, appealable judgment and should be entered forthwith by the
2 Clerk.

3 IT IS SO ORDERED.

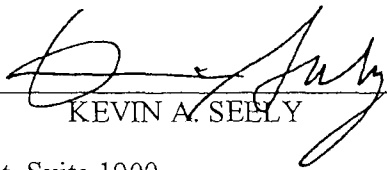
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5 DATED: **AUG 18 2014**

JACQUELINE M. STERN

6 THE HONORABLE JACQUELINE M. STERN
7 JUDGE OF THE SUPERIOR COURT

8 Submitted by:

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21 Lead Counsel for Plaintiffs
22
23
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25
26

27 972401
28

Exhibit M

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re F5 NETWORKS, INC. DERIVATIVE
LITIGATION

Master File No. C06-794 RSL

ORDER AND FINAL JUDGMENT

This matter comes before the Court on the parties' motion for final approval of derivative settlement. Dkt. #145. Having reviewed the memoranda, all documents, evidence, the record herein and oral argument, the Court enters this Order and Final Judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Federal Action, including all matters necessary to effectuate the Settlement, and over all Settling Parties.
3. The Court finds that the Notice provided to F5 stockholders constituted the best notice practicable under the circumstances. The Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23.1 and the requirements of due process.
4. The Court finds that, during the course of the litigation of the Federal Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11 and all other similar laws.

1 5. The Court finds that the terms of the Stipulation and Settlement are fair,
2 reasonable and adequate as to each of the Settling Parties, and hereby finally approves the
3 Stipulation and Settlement in all respects, and orders the Settling Parties to perform its terms to
4 the extent the Settling Parties have not already done so.

5 6. The Court finds that the corporate governance measures implemented and/or
6 maintained through the Settlement provide substantial benefits to F5 and its shareholders. Dkt.
7 #147 ¶¶20-24, 31-39.

8 7. The Court finds that an award of attorney's fees to Plaintiffs is appropriate. Mills
9 v. Elec. Auto-Lite Co., 396 U.S. 375, 396 (1970) ("Where an action by a stockholder results in
10 a substantial benefit to a corporation he should recover his costs and expenses. . . . [A]
11 substantial benefit must be . . . one that accomplishes a result which corrects or prevents an
12 abuse which would be prejudicial to the rights and interests of the corporation or affect the
13 enjoyment or protection of an essential right to the stockholder's interest."); Lewis v. Chiles,
14 719 F.2d 1044, 1049 (9th Cir. 1983) (in a derivative suit, a "court may make [an attorney's fees]
15 award even when the benefit is non-pecuniary and there is no fund out of which to pay the
16 fees."); Interlake Porsche + Audi, Inc. v. Blackburn, 45 Wn. App. 502, 521 (1986) (In a
17 shareholder derivative action, litigant may recover fees where he/she "confers a substantial
18 benefit on an ascertainable class, such as corporate stockholders").

19 8. The Court finds that the Fee Award of \$5,000,000.00 is fair and reasonable, and
20 hereby approves the Fee Award. Dkt. #137 ¶7.

21 9. The Federal Action and all claims contained therein against Defendants, as well
22 as all of the Released Claims against each of the Defendants and their Related Persons, are
23 hereby dismissed with prejudice. As among the Federal Lead Plaintiff and the Defendants, the
24 parties are to bear their own costs, except as otherwise provided in the Stipulation.

25 10. Upon the Effective Date, as defined in the Stipulation, Plaintiffs (acting on their
26

1 own behalf and derivatively on behalf of F5), and each of F5's shareholders (solely in their
2 capacity as F5 stockholders) shall be deemed to have, and by operation of the Judgment shall
3 have, fully, finally, and forever released, relinquished and discharged the Released Claims
4 against the Released Persons and any and all claims (including Unknown Claims) arising out
5 of, relating to, or in connection with, the defense, settlement or resolution of the Actions,
6 against the Released Persons, provided that nothing herein shall in any way impair or restrict
7 the rights of any Settling Party to enforce the terms of the Stipulation or the Judgment.

8 11. Upon the Effective Date, as defined in the Stipulation, F5, Plaintiffs (acting on
9 their own behalf and derivatively on behalf of F5), and each of F5's stockholders (solely in
10 their capacity as F5 stockholders) will be forever barred and enjoined from commencing,
11 instituting or prosecuting any of the Released Claims or any action or other proceeding against
12 any of the Released Persons based on, arising out of, related to, or in connection with, the
13 Released Claims or the Settlement or resolution of the Actions, provided that claims to enforce
14 the terms of the Stipulation are not released.

15 12. Upon the Effective Date, as defined in the Stipulation, and except as set forth in
16 §IV(D)(4) of the Stipulation, each of the Released Persons shall be deemed to have, and by
17 operation of the Judgment shall have, fully, finally, and forever released, relinquished and
18 discharged each and all of the Plaintiffs, Plaintiffs' Counsel, F5, and all of the F5 stockholders
19 (solely in their capacity as F5 stockholders) from all claims (including Unknown Claims)
20 arising out of, relating to, or in connection with, the institution, prosecution, assertion,
21 settlement or resolution of the Actions or the Released Claims. Nothing herein shall in any
22 way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation or
23 the Judgment.

24 13. Neither the Stipulation nor the Settlement, nor any act performed or document
25 executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be
26

1 deemed to be or may be offered, attempted to be offered or used in any way by the Settling
2 Parties or any other Person as a presumption, a concession or an admission of, or evidence of,
3 any fault, wrongdoing or liability of the Settling Parties; or of the validity of any Released
4 Claims; or (b) is intended by the Settling Parties to be offered or received as evidence or used
5 by any other person in any other actions or proceedings, whether civil, criminal or
6 administrative. The Released Persons may file the Stipulation and/or the Judgment in any
7 action that may be brought against them in order to support a defense or counterclaim based on
8 principles of res judicata, collateral estoppel, full faith and credit, release, standing, good faith
9 settlement, judgment bar or reduction or any other theory of claim preclusion or issue
10 preclusion or similar defense or counterclaim, and any of the Settling Parties may file the
11 Stipulation and documents executed pursuant and in furtherance thereto in any action to
12 enforce the Settlement.

13 14. Without affecting the finality of this Judgment in any way, this Court hereby
14 retains continuing jurisdiction with respect to implementation and enforcement of the terms of
15 the Stipulation.

16 15. In the event that the Settlement does not become effective in accordance with the
17 terms of the Stipulation, this Order and Final Judgment shall be vacated, and all Orders entered
18 and releases delivered in connection with the Stipulation and this Order and Final Judgment
19 shall be null and void, except as otherwise provided for in the Stipulation.

20 16. This Judgment is a final, appealable judgment and should be entered forthwith by
21 the Clerk in accordance with Rule 58, Federal Rules of Civil Procedure.

22 DATED this 6th day of January, 2011.

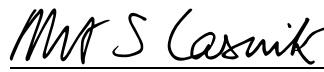
23 
24 Robert S. Lasnik
25 United States District Judge
26

Exhibit N

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

CATHERINE RUBERY, Derivatively on)	Case No. 2:12-cv-00844-DWA
Behalf of ALCOA INC.,)	
)	
Plaintiff,)	Electronically Filed
)	
v.)	
)	
KLAUS KLEINFELD, JUDITH M.)	
GUERON, KATHRYN S. FULLER,)	
ERNESTO ZEDILLO, JAMES W. OWENS,)	
RATAN N. TATA, MICHAEL G. MORRIS,)	
E. STANLEY O'NEAL, PATRICIA F.)	
RUSSO, ALAIN J. P. BELDA, FRANKLIN)	
A. THOMAS, HENRY B. SCHACHT,)	
JOSEPH T. GORMAN, CARLOS GHOSN,)	
VICTOR DAHDALEH, and WILLIAM J.)	
RICE,)	
)	
Defendants,)	
)	
-and-)	
)	
ALCOA INC., a Pennsylvania corporation,)	
)	
Nominal Defendant.)	

JUDGMENT AND FINAL ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, this matter came before the Court for hearing pursuant to the Preliminary Approval Order of this Court dated October 22, 2014 (the "Preliminary Approval Order"), on Plaintiff's unopposed motion for approval of the proposed derivative settlement (the "Settlement") set forth in the Stipulation of Settlement dated October 20, 2014, and the exhibits thereto (the "Stipulation"); and

WHEREAS, the Court has reviewed and considered all documents, evidence, objections (if any), and arguments presented in support of or against the Settlement; and

WHEREAS, the Court, having been fully advised of the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED this 20th day of Jan., 2015, as follows:

1. This Judgment incorporates by reference the definitions in the Stipulation. All capitalized terms used herein shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Actions, including all matters necessary to effectuate the Settlement, and over all Settling Parties.
3. The Court finds that the Notice and Summary Notice provided to Alcoa stockholders fully satisfied the requirements of Rule 23.1 of the Federal Rules of Civil Procedure, due process, and all other applicable laws, and constitutes due and sufficient notice to all persons entitled thereto.
4. The Court finds that, during the course of the litigation of the Actions, the Settling Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure and all other similar laws.
5. The Court finds that the terms of the Stipulation and Settlement are fair, reasonable, and adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and Settlement in all respects, and orders the Settling Parties to perform its terms to the extent the Settling Parties have not already done so.
6. The Federal Action and all claims contained therein, as well as all of the Released Claims, are hereby dismissed with prejudice with respect to the Settling Parties. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

7. Upon the Effective Date, Alcoa, Plaintiffs (acting on their own behalf and derivatively on behalf of Alcoa) and each of Alcoa's stockholders (solely in their capacity as Alcoa stockholders) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Claims against the Released Persons and any and all claims, rights, demands, causes of action, obligations, liabilities, and damages whatsoever arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Actions against the Released Persons. Alcoa, Plaintiffs (acting on their own behalf and derivatively on behalf of Alcoa) and each of Alcoa's stockholders (solely in their capacity as Alcoa stockholders) shall be deemed to have, and by operation of the Judgment shall have, covenanted not to sue any Released Person with respect to such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting the Released Claims against the Released Persons except to enforce the releases and other terms and conditions contained in the Stipulation and/or this Judgment entered pursuant thereto.

8. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of Alcoa, Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Actions or the Released Claims.

9. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

10. The Court hereby approves the Fee and Expense Amount in accordance with the Stipulation and finds that such fee is fair and reasonable.

11. This Judgment shall not be deemed a presumption, concession, or admission by any Settling Party of any fault, liability, or wrongdoing as to any facts or claims that have been or might be alleged or asserted in the Actions, or any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Actions, or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein. The Released Persons may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; and any of the Settling Parties may file the Stipulation and documents executed pursuant and in furtherance thereto in any action to enforce the Settlement.

12. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction with respect to implementation and enforcement of the terms of the Stipulation.

13. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, this Judgment shall be vacated, and all Orders entered and releases delivered in connection with the Stipulation and this Judgment shall be null and void, except as otherwise provided for in the Stipulation.

14. The Federal Action and all claims contained therein are hereby dismissed without prejudice with respect to Victor Dahdaleh.

15. This Judgment is a final, appealable judgment and should be entered forthwith by the Clerk in accordance with Rule 58(b)(2) of the Federal Rule of Civil Procedure.

IT IS SO ORDERED.

DATED:

1/20/15

Donetta G. Andrade

HONORABLE DONETTA W. AMBROSE
UNITED STATES DISTRICT JUDGE