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Settlement Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE BIOMARIN PHARMACEUTICAL  
INC. SECURITIES LITIGATION

Case No. 3:20-cv-06719-WHO

**DECLARATION OF KATHERINE M.  
SINDERSON IN SUPPORT OF  
(I) LEAD PLAINTIFF’S MOTION FOR  
FINAL APPROVAL OF SETTLEMENT  
AND PLAN OF ALLOCATION, AND  
(II) LEAD COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES AND LITIGATION  
EXPENSES**

Judge: Hon. William H. Orrick  
Date: November 8, 2023  
Time: 2:00 p.m.

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**EXHIBIT LIST**

<b>Ex. No.</b>	<b>Description</b>
1	Declaration of Michelle Yoshida in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement ("Yoshida Decl.")
2	Declaration of Torben Christensen on Behalf of Arbejdsmarkedets Tillægspension in Support of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses ("Christensen Decl.")
3	CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2022 REVIEW AND ANALYSIS (2023)
4	Declaration of Adam D. Walter Regarding (I) Mailing of Notice and Claim Form; (II) Publication of the Summary Notice; and (III) Report on Requests for Exclusion Received to Date ("Walter Decl.")
5	Summary of Lead Counsel's Hours and Lodestar
6	Summary Descriptions of Work Performed by Lead Counsel's Attorneys
7	Lead Counsel's Time by Litigation Category
8	BLB&G's Firm Resume
9	Lead Counsel's Expense Report
10	Compendium of Unpublished Authorities Cited in Fee and Expense Motion

1 I, KATHERINE M. SINDERSON, declare as follows:

2 1. I am partner in the law firm Bernstein Litowitz Berger & Grossmann LLP  
3 (“BLB&G”), counsel for Lead Plaintiff Arbejdsmarkedets Tillægspension (“Lead Plaintiff” or  
4 “ATP”) and Lead Counsel for the proposed Settlement Class in the above-captioned action. I submit  
5 this Declaration in support of Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of  
6 Allocation (the “Settlement Motion”) and Lead Counsel’s Motion for Attorneys’ Fees and Litigation  
7 Expenses (the “Fee and Expense Motion”). The following statements are based on my personal  
8 knowledge based on my active participation in all aspects of the prosecution and settlement of the  
9 Action, as well as information provided to me by other BLB&G attorneys working under my  
10 supervision, and if called on to do so, I could and would testify competently thereto.<sup>1</sup>

11 2. The proposed Settlement before the Court provides for the resolution of all claims in  
12 the Action in exchange for a cash payment of \$39,000,000, plus interest, for the benefit of the  
13 Settlement Class. The Settlement Amount has been paid into an escrow account and is earning  
14 interest. As detailed herein, the Settlement provides a significant benefit to the Settlement Class by  
15 conferring a substantial, certain, and near-term recovery while avoiding the significant risks of  
16 continued litigation, including the risk that the Settlement Class could recover nothing or less than  
17 the Settlement Amount after years of additional litigation, appeals, and delay.

18 3. The proposed Settlement is the result of extensive efforts by Lead Plaintiff and Lead  
19 Counsel, which included, among other things: (i) conducting an extensive investigation into the  
20 alleged fraud, including interviews with over 100 former employees of BioMarin and a thorough  
21 review of public information such as filings with the U.S. Securities and Exchange Commission  
22 (“SEC”), analyst reports, conference call transcripts, and news articles; (ii) drafting a detailed  
23

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24 <sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings provided in the  
25 Stipulation and Agreement of Settlement dated April 24, 2023 (ECF No. 139-1) (the “Stipulation”),  
26 and (ii) defendants BioMarin Pharmaceutical, Inc. (“BioMarin” or the “Company”), Jean-Jacques  
27 Bienaimé, and Dr. Henry Fuchs (collectively, the “Individual Defendants” and, with BioMarin,  
“Defendants”).

1 consolidated Complaint based on Lead Counsel’s extensive investigation; (iii) opposing Defendants’  
2 motion to dismiss the Complaint through detailed briefing and oral argument; (iv) conducting  
3 substantial fact discovery, including exchanging initial disclosures, document requests, and  
4 interrogatories, resolving discovery disputes, and obtaining and reviewing approximately 250,000  
5 pages of documents from Defendants and non-parties; and participating in four depositions;  
6 (v) drafting a motion for class certification, which included an expert report on market efficiency  
7 and class-wide damages; (vi) consulting extensively with experts on loss causation, damages, market  
8 efficiency, and FDA regulation throughout the Action; and (vii) engaging in extended arm’s-length  
9 settlement negotiations, which included two full-day mediation sessions with Michelle Yoshida of  
10 Phillips ADR Enterprises, an experienced mediator. As a result of these efforts, Lead Plaintiff and  
11 Lead Counsel were well-informed of the strengths and weaknesses of the claims and defenses in the  
12 Action at the time they achieved the proposed Settlement.

13 4. The \$39 million Settlement was based on a final mediator’s recommendation made  
14 by Ms. Yoshida at the conclusion of the second mediation session. Ms. Yoshida has submitted a  
15 declaration describing the mediation process (attached as Exhibit 1). Ms. Yoshida states in her  
16 declaration that “the negotiations between the Parties were vigorous and conducted at arm’s length  
17 and in good faith,” and that she believes “that the Settlement represents a recovery and outcome that  
18 is reasonable and fair for the Settlement Class and all Parties involved.” Yoshida Decl. ¶¶ 10, 11.

19 5. Lead Plaintiff ATP—a sophisticated institutional investor that actively participated in  
20 the Action—also strongly endorses the approval of the Settlement. *See* Declaration of Torben  
21 Christensen on behalf of ATP (“Christensen Decl.”), attached hereto as Exhibit 2, at ¶¶ 2-7.

22 6. As discussed in further detail below, the proposed Plan of Allocation, which was  
23 developed with the assistance of Lead Plaintiff’s damages expert, provides for the equitable  
24 distribution of the Net Settlement Fund to Settlement Class Members who submit Claim Forms that  
25 are approved for payment by the Court on a *pro rata* basis fairly based on losses attributable to the  
26 alleged fraud, calculated in the same manner as they would have been if Lead Plaintiff was successful  
27 at trial.

1           7.       For its efforts in achieving the Settlement, Lead Counsel requests a fee of 19% of the  
2 Settlement Fund. The requested fee is pursuant to an *ex ante* fee agreement negotiated by the Lead  
3 Plaintiff which is below the 25% benchmark percentage fee that courts within this Circuit apply in  
4 common fund cases and below the range of percentage fees typically awarded similarly sized class  
5 action settlements. Moreover, the requested percentage fee will result in a multiplier of just 1.1 on  
6 Lead Counsel’s lodestar, which further supports the reasonableness of the requested fee. As  
7 discussed in the Fee and Expense Motion and below, Lead Counsel respectfully submits that the  
8 requested 19% fee is fair and reasonable in light of the result achieved in the Action, the efforts of  
9 Lead Counsel, and the risks and complexity of the litigation.

## 10 **I. HISTORY OF THE ACTION**

### 11 **A. Background**

12           8.       Defendant BioMarin is a specialty pharmaceutical company based in Marin County,  
13 California. At all relevant times, BioMarin common stock traded on the Nasdaq Stock Market under  
14 the ticker symbol “BMRN.” In the years leading up to 2020, BioMarin developed a gene therapy  
15 known as valrox to treat hemophilia A, an inherited disorder in which the blood does not clot  
16 properly.

17           9.       On December 23, 2019, BioMarin filed a Biologics License Application (“BLA”)  
18 with the United States Food and Drug Administration (“FDA”) seeking approval to market valrox.  
19 Throughout early 2020, BioMarin made statements to investors concerning the FDA’s review of the  
20 valrox BLA. On August 19, 2020, BioMarin announced that the FDA issued a Complete Response  
21 Letter (“CRL”) indicating that it had not approved the BLA. The price of BioMarin common stock  
22 declined significantly on August 19, 2020 in response to this news.

### 23 **B. The Commencement of the Action and the** 24 **Appointment of Lead Plaintiff and Lead Counsel**

25           10.      On September 25, 2020, a putative class action was filed in the United States District  
26 Court for the Northern District of California (the “Court”) against Defendants alleging violations of  
27 the federal securities laws. (ECF No. 1.) In accordance with the PSLRA, a notice was published in

1 a national newswire service on September 25, 2020 advising potential class members of the  
2 pendency of the action, the claims asserted, and the deadline by which putative class members could  
3 move the Court for appointment as lead plaintiff. (ECF No. 30-4.)

4 11. On November 24, 2020, ATP moved for appointment as Lead Plaintiff. (ECF No.  
5 30.) Three other individual investors filed timely motions to be appointed Lead Plaintiff. (ECF Nos.  
6 20, 24, 27.) ATP's motion demonstrated that ATP had the largest financial interest of any of the  
7 movants, and all other movants either withdrew their motions or did not oppose ATP's appointment  
8 as Lead Plaintiff. (ECF Nos. 35, 36, 38.)

9 12. On December 22, 2020, the Court entered an order appointing ATP as Lead Plaintiff  
10 for the Action and approving ATP's selection of BLB&G as Lead Counsel. (ECF No. 40.)

### 11 **C. The Investigation and Filing of the Complaint**

12 13. In connection with this matter, Lead Counsel undertook an extensive investigation  
13 into the alleged fraud and potential claims that could be asserted in the Action. The investigation  
14 included a thorough review of public information such as BioMarin's SEC filings; Defendants'  
15 additional public statements, including those made in press releases, at investor conferences, and on  
16 earnings calls; analyst reports concerning BioMarin; and other publicly available information  
17 regarding the Company.

18 14. In connection with its investigation, Lead Counsel and its in-house investigators also  
19 conducted an extensive search to locate former employees of BioMarin and other industry  
20 participants who might have relevant information pertaining to the claims asserted in the Action.  
21 This included contacting over 400 former BioMarin employees believed to possess potentially  
22 relevant information. Lead Counsel and/or its in-house investigators spoke to 112 of these  
23 individuals, and Lead Counsel included detailed information received from one of these former  
24 BioMarin employees in the Complaint.

25 15. On February 22, 2021, Lead Plaintiff filed and served the Amended Class Action  
26 Complaint for Violations of the Federal Securities Laws (ECF No. 54) (the "Complaint") based on  
27 this thorough investigation. The detailed, 186-paragraph Complaint asserts claims against all



1 Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and  
2 Rule 10b-5 promulgated thereunder, and against Defendants Fuchs and Bienaimé under Section  
3 20(a) of the Exchange Act.

4 16. The Complaint alleges that during the period from March 3, 2020 through August 18,  
5 2020, inclusive (the “Class Period”), Defendants made materially false and misleading statements  
6 or omissions concerning BioMarin’s application to the FDA for approval of valrox. The Complaint  
7 alleged that such statements were false and misleading because (1) BioMarin subsequently had  
8 acknowledged that the FDA had been unusually non-responsive while the BLA was pending and  
9 (2) that the pre-approval inspection (“PAI”) of the facility built to produce valrox—a prerequisite to  
10 approval by the FDA—had been indefinitely postponed. The Complaint further alleged that the  
11 price of BioMarin’s common stock was artificially inflated during the Class Period, and declined  
12 when the truth was revealed following the FDA’s issuance of the CRL, indicating that it had not  
13 approved the BLA for valrox.

14 **D. Defendants’ Motion to Dismiss**

15 17. On April 22, 2021, Defendants filed and served the motion to dismiss the Complaint.  
16 (ECF No. 59.) The motion included 25 pages of briefing and was supported by over 450 pages of  
17 exhibits. In the motion, Defendants argued that the Complaint should be dismissed because Lead  
18 Plaintiff had not alleged any materially false and misleading statements made by Defendants during  
19 the Class Period; that certain challenged statements were non-actionable because they were puffery  
20 or forward-looking; and that the Complaint failed to allege facts giving rise to a strong inference of  
21 scienter. Specifically, Defendants argued, among other things, that (i) the alleged false and  
22 misleading statements concerned “future milestones” and were accordingly protected under the  
23 PSLRA safe-harbor for forward-looking statements, (ii) as far as Defendants knew when making the  
24 statements, the FDA review process was on track for the date established by FDA regulations,  
25 (iii) the former employee to whom Lead Plaintiff attributed allegations concerning BioMarin’s  
26 internal concerns early in the Class Period about the FDA’s silence was not sufficiently described,  
27 and (iv) Lead Plaintiff failed to sufficiently allege why differences in efficacy data in clinical trials

1 would materially worsen valrox's chances of approval. Defendants' motion included 40 exhibits  
2 including, among other documents, FDA industry guidance, transcripts of conference calls, and  
3 clinical research reports. (ECF Nos. 59-3 – 59-43.)

4 18. On June 22, 2021, Lead Plaintiff filed and served a 25-page memorandum of law in  
5 opposition to Defendants' motion to dismiss. (ECF No. 63.) Lead Plaintiff explained that the  
6 Complaint adequately identified the false and misleading statements and omissions, detailed the  
7 reasons why each challenged statement was false or omitted material facts, and raised a strong  
8 inference of scienter. Specifically, Lead Plaintiff argued that (i) the PSLRA safe-harbor did not apply  
9 as each of the statements concerned misstatements of historical fact, and were ultimately not  
10 accompanied by meaningful cautionary language, (ii) Defendants' admissions regarding the lack of  
11 communication with the FDA was evidence of Defendants' scienter regarding the status of the valrox  
12 BLA, (iii) the Complaint sufficiently alleged the former employee's position and responsibilities at  
13 the Company, and (iv) Lead Plaintiff alleged that the FDA cited the efficacy discrepancy as a concern  
14 during a Class Period meeting with BioMarin.

15 19. On July 22, 2021, Defendants filed and served reply papers in support of the motion  
16 to dismiss the Complaint. (ECF No. 65.) Defendants and Lead Plaintiff filed Statements of Recent  
17 Decisions related to the pending motion to dismiss on November 24, 2021 and November 29, 2021,  
18 respectively. (ECF Nos. 70, 71.)

19 20. On December 3, 2021, the Parties participated in oral argument by videoconference  
20 concerning Defendants' motion to dismiss. (ECF Nos. 73, 76.)

21 21. On January 6, 2022, the Court entered an Order denying Defendants' motion to  
22 dismiss the Complaint in its entirety. (ECF No. 77.) The Court concluded that the Complaint  
23 adequately pleaded that the alleged representations and omissions were false or misleading and  
24 plausibly alleged that Defendants acted with scienter in making the alleged misstatements. (*Id.*)

25 22. On January 28, 2022, Defendants filed a motion for reconsideration or, in the  
26 alternative, to certify question for interlocutory appeal, arguing that the Court failed to apply the  
27

1 correct law concerning whether Defendants' forward-looking statements were accompanied by  
2 meaningful cautionary language. (ECF No. 85.)

3 23. On February 15, 2022, Defendants filed their answer to the Complaint. (ECF No.  
4 86.) Among other things, Defendants' Answer denied Lead Plaintiff's allegations of wrongdoing  
5 and asserted various defenses to the claims asserted.

6 24. On February 28, 2022, the Court denied Defendants' motion for reconsideration.  
7 (ECF No. 88.)

8 **E. The Parties Conduct Extensive Fact Discovery**

9 25. Discovery in the Action commenced in January 2022, following the Court's decision  
10 on Defendants' motion to dismiss.

11 26. Lead Plaintiff served its First Set of Requests for the Production of Documents to  
12 Defendants on January 25, 2022. Meanwhile, Defendants served to Lead Plaintiff their First Set of  
13 Document Requests on March 3, 2022, and their Second Set of Document Requests on May 27,  
14 2022. Defendants served Lead Plaintiff with two subsequent document requests on June 30, 2022  
15 and July 21, 2022.

16 27. On February 9, 2022, the Parties exchanged their Initial Disclosure Statements  
17 pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure.

18 28. On February 23, 2022, following extensive meet-and-confers, the Parties submitted  
19 a Case Management Statement to the Court, including a proposed schedule. (ECF No. 87.) The  
20 Court did not enter a scheduling order at that time. On September 13, 2022, Lead Plaintiff filed a  
21 Motion for a Scheduling Order. (ECF No. 94.) The Parties filed an additional Case Management  
22 Statement on September 27, 2022. (ECF No. 100.) The Court held a case management conference  
23 on October 4, 2022 and entered a case schedule on October 12, 2022. (ECF Nos. 103-04, 106, 109.)  
24 The deadlines set forth in the case schedule required Lead Plaintiff to file its motion for class  
25 certification by October 17, 2022 and the Parties to complete fact discovery by April 14, 2023. (*Id.*)

26 29. The Parties also negotiated the terms of the protective order governing the treatment  
27 of documents and other information produced in discovery, which the Parties submitted to the Court

1 on March 23, 2022. (ECF No. 89.) The Court entered the stipulated protective order on March 30,  
2 2022. (ECF No. 90.)

3 **1. Document Discovery**

4 30. Defendants served their Responses and Objections to Lead Plaintiff's First Set of  
5 Requests for Production of Documents on February 28, 2022 and began the production of documents  
6 in April 2022. In the months that followed, Lead Counsel engaged in numerous meet-and-confers  
7 with counsel for Defendants and conducted extensive negotiations over the scope and adequacy of  
8 Defendants' discovery responses, including relating to the search terms to be used and the date range  
9 with which documents would be searched and produced. The Parties submitted multiple joint  
10 statements concerning discovery disputes, including concerning the scope of document production,  
11 to the Court. After hard-fought negotiations, Defendants agreed to produce many of the materials  
12 requested by Lead Plaintiff.

13 31. Lead Plaintiff also subpoenaed nine non-parties, including the FDA, various banks  
14 and consultants, and a former employee.

15 32. Lead Plaintiff served sets of interrogatories on Defendants on February 28, 2022, July  
16 22, 2022, and December 13, 2022, to which Defendants served responses and objections.

17 33. In response to Lead Plaintiff's requests for production of documents and subpoenas,  
18 Defendants and non-parties produced approximately 237,000 pages of documents to Lead Plaintiff.  
19 A team of attorneys at Lead Counsel reviewed, analyzed, and coded the documents received. In  
20 reviewing the documents, attorneys were tasked with making several analytical determinations as to  
21 the documents' importance and relevance. Specifically, they determined whether the documents  
22 were "hot," "relevant," "adverse hot," or "not relevant." They also assessed which specific key  
23 issues the documents concerned. Lead Counsel's partners structured the document review to include  
24 regular team meetings to discuss the documents of highest interest and other issues that arose during  
25 the document review. Through these meetings, Lead Counsel ensured that all attorneys involved in  
26 the review understood the developing nature of the evidence and focused document review on the  
27 key issues in the Action.

1           34.     Lead Counsel also assisted Lead Plaintiff in searching for and producing documents  
2 in its own files responsive to Defendants' requests for production of documents. Lead Plaintiff  
3 served several initial and supplemental responses and objections to Defendants' requests for  
4 production and began producing documents to Defendants in May 2022. In total, Lead Plaintiff  
5 produced over 5,000 pages of documents to Defendants in response to their requests. Lead Plaintiff  
6 also responded to interrogatories propounded by Defendants.

## 7                   **2.     Depositions**

8           35.     As discussed further below, Defendants took the depositions of two representatives  
9 of Lead Plaintiff and of Lead Plaintiff's expert on market efficiency and class-wide damages in  
10 November 2022 in connection with Lead Plaintiff's motion for class certification. In addition,  
11 Defendants and Lead Plaintiff cross-noticed the deposition of a former employee at BioMarin, whose  
12 statements to Lead Plaintiff's investigators had been included in the Complaint, and conducted that  
13 deposition on January 20, 2023. Lead Plaintiff had also noticed the depositions of three other fact  
14 witnesses in the Action before the Settlement was reached. These fact witnesses included the Vice  
15 President of Regulatory Affairs CMC, a Group Vice President, and the General Counsel of  
16 BioMarin. These depositions were ultimately not held because the Parties reached an agreement in  
17 principle to settle the Action before the dates the depositions were scheduled to occur.

## 18                   **3.     Discovery Disputes**

19           36.     Discovery in the Action was highly contested. Lead Counsel and Defendants'  
20 Counsel exchanged numerous letters and participated in numerous meet-and-confer sessions  
21 regarding, among other things, the scope of the documents collected and produced, the adequacy of  
22 the search terms and date range of productions, and the adequacy of responses to interrogatories.

23           37.     Despite many extensive and good-faith negotiations, the Parties could not resolve  
24 each of these disputes without Court intervention. Accordingly, the Parties filed several joint letter  
25 briefs concerning discovery disputes, including the following:

- 26           (a)     Defendants' position that Lead Plaintiff should provide additional information in  
27                   response to certain interrogatories and requests for production concerning whether

1 the trading model used by ATP was, in fact, driven by stock price when ATP  
2 transacted in BioMarin common stock. Lead Plaintiff argued that the discovery  
3 sought was not relevant to the *Basic* reliance inquiry. (ECF No. 97, Sept. 23, 2022.)  
4 The Court addressed this dispute during an October 4, 2022 case management  
5 conference, holding that Defendants' opportunity to depose an ATP employee  
6 familiar with the trading model would be sufficient to determine what, if any,  
7 discovery was outstanding. (ECF No. 107.)

8 (b) Lead Plaintiff's request that Defendants produce responsive text messages from nine  
9 custodians, and office and cellphone numbers and carriers of key employees.  
10 Defendants argued that only text messages sent or received by the Individual  
11 Defendants are relevant to the scienter inquiry, and that because the FDA had already  
12 produced a log of its communications with BioMarin, there was no indication that  
13 further call-log discovery would be relevant or non-duplicative. (ECF No. 112, Nov.  
14 9, 2022.) On November 18, 2022, the Court ordered that Defendants produce  
15 responsive text messages from each of the requested custodians, but denied Lead  
16 Plaintiffs' request regarding employee phone numbers and cell phone carriers. (ECF  
17 No. 113).

18 (c) Lead Plaintiff's contention that Defendants should produce unredacted versions of 29  
19 documents withheld for privilege, produce a privilege log within two weeks, and  
20 execute the Parties' negotiated ESI Protocol. Defendants argued that the withheld  
21 documents included requests for legal advice, and that they had already agreed to  
22 produce a privilege log one month from the date of the joint letter brief. (ECF No.  
23 114, Nov. 29, 2022.) On December 7, 2022, the Court issued an order on the dispute  
24 holding that Defendants were overinclusive in withholding "email threads where no  
25 attorney communicated" and requiring that defendants produce them but denying  
26 Lead Plaintiff's request as to draft press releases and email responses from attorneys.  
27

1 (ECF No. 118.) Further, the Court denied Lead Plaintiff’s request as to the timing of  
2 Defendants’ privilege log. (*Id.*)

3 (d) Defendants’ position that Lead Plaintiff should “provide reasonable access” to the  
4 software underlying ATP’s trading model such that they could test Lead Plaintiff’s  
5 assertion that the trading model was driven by stock price. Lead Plaintiff argued that  
6 Defendants deposed an ATP employee familiar with the trading model and underlying  
7 software, and that he (i) provided sufficient detail regarding the trading model  
8 software, and (ii) confirmed that the data currently available is not likely identical to  
9 the data relied on by the software at the time of the trades. (ECF No. 126, Feb. 10,  
10 2023.) The Court addressed this dispute during a case management conference on  
11 February 14, 2023, noting that Defendants’ argument was “a merits argument” rather  
12 than one relevant to class certification, but otherwise reserving its ruling. (ECF No.  
13 133.) On February 15, 2023, the Court issued an order requiring Lead Plaintiff to  
14 answer specifically enumerated questions Defendants set forth in the joint statement  
15 concerning the ranking and rebalancing of ATP’s stock portfolio and to provide access  
16 to ATP’s trading model to the extent ATP deponent Stig Harder was able to access it  
17 in preparation for his deposition. (ECF No. 132.)

18 38. In addition, the Parties submitted a joint case management statement on February 8,  
19 2023 that set forth several existing discovery disputes. Specifically, Lead Plaintiff (i) raised that  
20 Defendants had yet to produce any text messages in connection with the Court’s November 18, 2022  
21 order, (ii) noted that Defendants had yet to produce a material number of documents from three  
22 individuals that were agreed-to as custodians by the Parties on October 27, 2022, (iii) noted that  
23 Defendants had not yet produced the entire BLA, nor other documents contained on purported  
24 centrally-stored repositories; (iv) alerted the Court to the fact that all custodial data of the former  
25 employee referenced in the Complaint had been destroyed subsequent to his departure from  
26 BioMarin; and (v) requested that Defendants produce a legally sufficient privilege log by February  
27 24, 2023. Defendants responded that (i) the Court should require substantial completion of the

1 production of text messages by February 28, 2023, with completion by March 15, 2023, (ii) a  
2 deadline to produce additional custodial documents was unnecessary, but that the Court could enter  
3 a deadline of February 28, 2023 for completion, (iii) Defendants never agreed to produce the entire  
4 BLA, and that they had produced other documents from centrally-stored repositories,  
5 (iv) Defendants conducted a reasonable search for the former employee's custodial documents and  
6 produced everything that was responsive, but that BioMarin no longer possessed or controlled his  
7 mailbox, laptop, or mobile device, and (v) Defendants had already produced a legally sufficient  
8 privilege log that complied with the Parties' agreed-upon protocol. The Parties also previewed their  
9 arguments concerning the Defendants' requests for more discovery concerning ATP's trading  
10 model, as presented in detail in the February 10, 2023 joint statement regarding discovery dispute.  
11 (ECF No. 124.)

12 39. The Court addressed these disputes during a February 14, 2023 case management  
13 conference. First, the Court ordered that the production of text messages should be substantially  
14 completed by February 28, 2023, and completed by March 15, 2023, and that the BLA be produced  
15 on an "attorneys' eyes only" basis by February 28, 2023. Second, the Court ordered that Defendants  
16 provide clarification on the destruction of the former employee's custodial data, in response to  
17 questions raised by Lead Plaintiff. Third, the Court proposed that the Parties file the log with the  
18 Court and then identify 10 entries for in-camera review, allowing Defendants to justify the basis for  
19 the privilege. (ECF No. 133.)

20 **F. Lead Plaintiff's Motion for Class Certification**

21 40. On October 17, 2022, Lead Plaintiff filed its motion for class certification. (ECF No.  
22 110.) The motion was supported by an expert report by Dr. Michael L. Hartzmark, Lead Plaintiff's  
23 market efficiency expert. In his report, Dr. Hartzmark opined that BioMarin's common stock traded  
24 in an efficient market during the Class Period and that per-share damages could be measured for all  
25 class members using a common methodology. (ECF No. 110-2.)  
26  
27



1           41. In connection with the motion for class certification, Defendants took two Rule  
2 30(b)(6) depositions of representatives of ATP—Legal Director Torben Christensen and Senior  
3 Portfolio Manager Stig Harder—and the deposition of Dr. Hartzmark in November 2022.

4           42. On January 27, 2023, Defendants filed their opposition to Lead Plaintiff’s motion for  
5 class certification. (ECF No. 119.) In their opposition, Defendants argued that Lead Plaintiff’s  
6 claims for the first part of the class period (March 3 through June 8, 2020) were based entirely on a  
7 statement in the Complaint attributed to a BioMarin former employee that the FDA had told  
8 BioMarin in late February or early March 2020 that the pre-approval inspection of BioMarin’s  
9 manufacturing facility “would likely be delayed beyond the second quarter of 2020,” (which  
10 BioMarin failed to disclose). Defendants argued that the former employee in question testified under  
11 oath at his deposition that he did not have any basis to make any such statement. Thus, Defendants  
12 argued that the Class Period should be shortened to run only from June 8, 2020 to August 18, 2020.  
13 Defendants also argued that Lead Plaintiff and its counsel were not adequate class representatives  
14 and that Lead Plaintiff failed to propose a methodology capable of calculating damages on a class-  
15 wide basis consistent with its theory of liability.

16           43. While Lead Plaintiff had strong responses to each of these arguments, and believed it  
17 would be successful in its motion for class certification, the Parties reached an agreement to settle  
18 before Lead Plaintiff filed its response.

19           **G. Work with Experts**

20           44. Throughout the Action, Lead Plaintiff retained several highly qualified experts and  
21 consultants in disciplines including damages, loss causation, market efficiency, and FDA regulation  
22 to assist in the prosecution of this Action. Lead Counsel consulted extensively with these experts  
23 and consultants throughout the litigation, including both before and after filing the Complaint in this  
24 Action. Lead Plaintiff’s principal experts were: (a) Michael Hartzmark, a financial economist who  
25 served as Lead Plaintiff’s expert on market efficiency and class-wide damages and provided Lead  
26 Plaintiff with expert advice on damages and loss causation issues; and (b) Suzanne M. Sensabaugh,  
27

1 who provided expert advice on FDA regulation issues. Lead Counsel also consulted with additional  
2 consulting experts on both financial economics and FDA regulation.

3 45. Lead Counsel consulted with these experts in preparing the Complaint, in reviewing  
4 documents produced in discovery, and in preparation for settlement negotiations. In addition, after  
5 the Settlement was reached, Lead Counsel worked with Dr. Hartzmark's team to develop the Plan of  
6 Allocation.

#### 7 **H. The Parties' Mediation Efforts and the Settlement of the Action**

8 46. The Parties began exploring the possibility of a mediation in the summer of 2022.  
9 The Parties conferred and selected Michelle Yoshida of Phillips ADR Enterprises to serve as the  
10 mediator for the Action. Ms. Yoshida is an experienced mediator of securities class actions and other  
11 complex litigation. *See* Yoshida Decl. (Ex. 1) ¶¶ 3-5. On November 22, 2022, the Parties exchanged  
12 detailed mediation statements addressing issues of liability and damages. A mediation session with  
13 Ms. Yoshida was held on December 5, 2022. Despite several hours of good-faith negotiation, the  
14 Parties were unable to reach a resolution at the December 5 mediation session.

15 47. In January 2023, the Parties renewed their settlement discussions and agreed to  
16 engage in a second full-day session before Ms. Yoshida on March 8, 2023. At the conclusion of the  
17 mediation on March 8, 2023, Ms. Yoshida issued a final mediator's recommendation to the Parties  
18 that the Action be resolved in exchange for payment of \$39,000,000 in cash, which the Parties  
19 accepted.

20 48. Thereafter, the Parties' agreement-in-principle to settle the Action was memorialized  
21 in a term sheet executed on March 14, 2023. Over the next few weeks, the Parties negotiated the  
22 full terms of the Settlement and drafted the Stipulation and related papers, including the notices to  
23 be provided to the Settlement Class.

24 49. On April 24, 2023, the Parties executed the Stipulation (ECF No. 139-1), which sets  
25 forth the terms of the Parties' agreement to settle all claims asserted in the Action for \$39,000,000,  
26 subject to the Court's approval. That same day, Lead Plaintiff and BioMarin also entered into a  
27 Supplemental Agreement, which provides that BioMarin has the right to terminate the Settlement if

1 the persons who request exclusion from the Settlement Class reach a certain threshold. *See*  
2 Stipulation ¶ 35.

### 3 **I. The Court Grants Preliminary Approval of the Settlement**

4 50. On April 28, 2023, Lead Plaintiff filed a motion for preliminary approval of the  
5 Settlement. (ECF No. 139.)

6 51. Following a hearing on June 7, 2023, the Court entered the Order Granting  
7 Preliminary Approval on June 8, 2023 (ECF No. 146) (the “Preliminary Approval Order”) which,  
8 among other things: (a) preliminarily approved the Settlement; (b) approved the form of Notice,  
9 Summary Notice, and Claim Form; (c) authorized notice to be provided to Settlement Class  
10 Members through mailing of the Notice and Claim Form, posting of the Notice and Claim Form on  
11 a Settlement website, and publication of the Summary Notice in *The Wall Street Journal* and over  
12 the *PR Newswire*; (d) established procedures and deadlines by which Settlement Class Members  
13 could participate in the Settlement, request exclusion from the Settlement Class, or object to the  
14 Settlement, the proposed Plan of Allocation, and/or the fee and expense application; and (e) set a  
15 schedule for the filing of opening papers and reply papers in support of the proposed Settlement,  
16 Plan of Allocation, and the Fee and Expense Motion. The Court also scheduled the Settlement  
17 Hearing for November 8, 2023 at 2:00 p.m. to determine, among other things, whether the Settlement  
18 should be finally approved.

### 19 **II. RISKS OF CONTINUED LITIGATION**

20 52. The Settlement provides a certain and substantial benefit to the Settlement Class in  
21 the form of a \$39,000,000 cash payment. Lead Plaintiff and Lead Counsel believe that the proposed  
22 Settlement—which represents a significant portion of the realistically recoverable damages in the  
23 Action—is a very favorable result for the Settlement Class considering the risks of continuing to  
24 litigate. As explained below, Lead Plaintiff would face meaningful risks related to proving liability,  
25 establishing loss causation, and securing damages at the several remaining stages of litigation,  
26 including at class certification, summary judgment, and trial. Even if Lead Plaintiff defeated  
27 Defendants’ motion for summary judgment and prevailed at trial, Lead Plaintiff would have faced

1 post-trial motions, including a potential motion for judgment as a matter of law, as well as further  
2 appeals that might have prevented Lead Plaintiff from obtaining a recovery for the Settlement  
3 Class—or, at the very least, delayed recovery for years.

4 **A. General Risks in Prosecuting Securities Class Actions**

5 53. In recent years, securities class actions have faced greater risks than in prior years,  
6 and it is not uncommon for district courts to dismiss securities class actions at the summary judgment  
7 stage. *See, e.g., In re Mylan N.V. Sec. Litig.*, 2023 WL 2711552 (S.D.N.Y. Mar. 30, 2023).  
8 (defendants prevailed at summary judgment in a securities class action against Mylan arising out of  
9 misstatements concerning the company’s EpiPen product and other generic drugs); *Murphy v.*  
10 *Precision Castparts Corp.*, 2021 WL 2080016, at \*1 (D. Or. May 24, 2021) (granting defendants’  
11 renewed motion for summary judgment based on recent Ninth Circuit decision on forward-looking  
12 statements), *aff’d*, *AMF Pensionsforsakring AB v. Precision Castparts Corp.*, 2022 WL 2800825  
13 (9th Cir. July 18, 2022); *see also Fosbre v. Las Vegas Sands Corp.*, 2017 WL 55878, at \*28  
14 (D. Nev. Jan. 3, 2017), *aff’d Pompano Beach Police & Firefighters’ Ret. Sys. v. Las Vegas Sands*  
15 *Corp.*, 732 F. App’x 543 (9th Cir. 2018); *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546,  
16 554-55 (S.D.N.Y. 2008), *aff’d* 597 F.3d 501 (2d Cir. 2010); *In re Xerox Corp. Sec. Litig.*, 935 F.  
17 Supp. 2d 448, 496 (D. Conn. 2013), *aff’d Dalberth v. Xerox*, 766 F.3d 172 (2d Cir. 2014).

18 54. Even cases that have survived summary judgment can be dismissed prior to trial in  
19 connection with *Daubert* motions, such as those likely to be filed by Defendants here. *See, e.g.,*  
20 *Bricklayers & Trowel Trades Int’l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181,  
21 197-98 (D. Mass. 2012), *aff’d* 752 F.3d 82 (1st Cir. 2014) (granting summary judgment *sua sponte*  
22 in favor of the defendants after finding that the event study offered by plaintiffs’ expert was  
23 unreliable and that there was accordingly no evidence that the market reacted negatively to  
24 disclosures).

25 55. Even when securities class action plaintiffs successfully overcome multiple  
26 substantive and procedural hurdles before trial, there remain significant risks that a jury will not find  
27 the defendants liable or award expected damages. *See, e.g., In re Tesla Inc., Sec. Litig.*, 2023 WL

1 4032010 (N.D. Cal. June 14, 2023) (defense verdict in securities class action even though the court  
2 had already found the statements were false and defendant had acted recklessly in issuing them, and  
3 the same conduct had resulted in SEC charges and a settlement).

4 56. Further, post-trial motions, based on a complete record, also present substantial risks.  
5 For example, in *In re BankAtlantic Bancorp, Inc.*, following a jury verdict in the plaintiffs' favor, the  
6 district court granted the defendants' motion for judgment as a matter of law and entered judgment  
7 in favor of the defendants on all claims. 2011 WL 1585605, at \*14-22 (S.D. Fla. Apr. 25, 2011),  
8 *aff'd* 688 F.3d 713 (11th Cir. 2012) (finding that there was insufficient trial evidence to support a  
9 finding of loss causation). Intervening changes in the law may also impact a successful trial verdict.  
10 For example, a district court in Oregon reconsidered its order denying defendants' motion for  
11 summary judgment and granted the motion more than a year later based on a new decision by the  
12 Ninth Circuit. *See Precision Castparts*, 2021 WL 2080016, at \*6.

13 57. Accordingly, securities class actions face serious risks of dismissal and non-recovery  
14 at all stages of litigation.

## 15 **B. Specific Risks Concerning this Action**

16 58. Lead Plaintiff and Lead Counsel believe the claims asserted against Defendants in  
17 this action are meritorious. They recognize, however, that this Action presented meaningful risks to  
18 establishing liability. As discussed further below, Defendants vigorously argue that their challenged  
19 statements about the valrox BLA and BioMarin's communications with the FDA were not false or  
20 misleading when made, and, in any event, even if any of their statements were false or misleading,  
21 Defendants did not have any intent to mislead investors.

22 59. Therefore, the risks of continuing on with the litigation were significant, and the  
23 class's ultimate potential for recovery was always in question.

### 24 **1. Risks Concerning Liability**

25 60. As discussed further below, Defendants vigorously argued that their challenged  
26 statements about valrox were not false or misleading when made, and, in any event, Defendants did  
27 not have any intent to mislead investors.

1                   **a)     Falsity**

2           61.     Lead Plaintiff and Lead Counsel recognized that, while they prevailed at the motion  
3 to dismiss stage, they may have been unable to withstand some or all of Defendants' arguments at  
4 summary judgment or convince a jury of Defendants' liability. Among other things, Lead Plaintiff  
5 recognizes the challenges in proving that Defendants' statements were materially false and  
6 misleading when made. Defendants would contend that certain of the statements regarding the  
7 FDA's review process were made either prior to the FDA's delay of the pre-approval inspection or  
8 concurrent with the FDA's indications that the PAI could be rescheduled in time to meet the required  
9 deadlines. Thus, Defendants could present strong arguments that, at minimum, the earliest  
10 statements of the Class Period were made before Defendants had a reasonable basis to believe that  
11 approval would be denied or delayed.

12           62.     As discussed above, this Action involves a Class Period of less than six months  
13 (March 3, 2020-August 18, 2020). Ultimately, liability would be determined on a statement-by-  
14 statement basis, and Plaintiffs would have to had to establish falsity and scienter as to each  
15 statement—in particular the earliest statements during the Class Period—in order to fully capture all  
16 potential damages for the full Class Period.

17           63.     The risks relating to falsity were particularly acute with respect to statements made  
18 by Defendants before June 8, 2020. Plaintiffs alleged that these early statements were false and  
19 misleading based upon witness reports that the FDA had informed BioMarin that the inspection for  
20 the valrox facility would be delayed beyond the second quarter of 2020, thus jeopardizing approval  
21 of the valrox BLA by the August 2020 PDUFA date.

22           64.     Defendants argued vigorously that, as of the first challenged statement on March 3,  
23 the FDA had not definitively told BioMarin that the inspection would be delayed beyond the second  
24 quarter. Defendants would have also argued that, even if the FDA may have indicated some  
25 uncertainty as to the preapproval inspection after the March 3 statement, by the time of the next  
26 challenged statement on April 29, and at the time of all other challenged statements during this first  
27 part of the Class Period, the FDA had reaffirmed its plan to conduct the inspection in June (i.e.,

1 within the second quarter of 2020). Defendants would have arguments that it was not until June 8  
2 that the FDA notified BioMarin that it had to postpone the on-site inspection scheduled for June due  
3 to ongoing travel restrictions from COVID-19. Thus, there was a particularly substantial risk that  
4 Lead Plaintiff would not be able to establish falsity as to Defendants’ earlier alleged misstatements,  
5 which would have shortened the Class Period by 50%—and thus cutting Class Period damages  
6 commensurately.

7 65. Even for post-June statements, Defendants would have also challenged the falsity of  
8 statements that BioMarin was working “closely” and “collaboratively” with the FDA, which the  
9 Complaint argued was contradicted by Defendants’ September 2020 statement that there was “no  
10 dialogue whatsoever” between BioMarin and the FDA. Defendants would have argued that  
11 discovery revealed that there were at least some communications between BioMarin and the FDA  
12 throughout a large portion of the Class Period—some of which could have reasonably led Defendants  
13 to believe that the FDA’s review of the valrox BLA was going well and on-schedule—challenging  
14 Lead Plaintiff’s allegation that there were no communications between BioMarin and the FDA.  
15 Defendants would have argued that Defendants’ public statements that there was “no dialogue  
16 whatsoever” was in reference to communications with FDA senior management, rather than FDA  
17 officials who attended meetings regarding the CRL. While Lead Plaintiff would have argued that  
18 those communications were immaterial and not focused on the issues necessary to address pre-  
19 approval, these statements remained at risk at the summary judgment and trial stages of the litigation.

20 66. Defendants would have also argued that their statements were provably true. For  
21 example, Defendants would have claimed that the view within BioMarin was that the FDA was on  
22 track to make a decision regarding valrox, and that discovery reinforced this defense. Defendants  
23 would have also argued that any FDA concerns regarding clinical data did not render BioMarin’s  
24 statements false because Defendants had no reason to believe that discrepancies in the clinical studies  
25 posed an obstacle to approval.

26 67. As another example, Defendants would have argued that they never believed that  
27 postponement of the pre-approval inspection signaled a risk that the FDA would issue the CRL.

1 While Lead Plaintiff believes it would have had strong arguments that the cancellation damaged the  
2 prospect of valrox's approval, there was a risk that Lead Plaintiff would not be able to establish  
3 falsity as to statements regarding valrox's anticipated approval.

4 68. Finally, Defendants would argue that their statements at the end of the Class Period—  
5 in August 2020—were not false. In particular, Defendants would have argued that discovery showed  
6 that the statement that “our commercial team is preparing to launch” was true, and that a separate  
7 statement, claiming that valrox competitors were “so far behind,” was supported by internal  
8 documentation and research. In other words, Defendants would argue that they did not have a duty  
9 to disclose additional information, especially given their belief that they could address issues raised  
10 by the FDA and still obtain approval, putting the falsity of the August 2020 statements at risk.

11 **b) Scienter**

12 69. Even if Lead Plaintiff proved that Defendants' statements were false or misleading,  
13 Lead Plaintiff would still need to demonstrate to a jury that Defendants made the misstatements with  
14 scienter—*i.e.*, an intent to defraud or with deliberate recklessness. Defendants vigorously argued  
15 that they believed their statements to be true and that they had no intent to commit fraud.

16 70. Lead Counsel anticipates that Defendants would argue, among other things, that the  
17 stock sales made by Defendants Bienaimé and Fuchs were non-discretionary and pre-planned, and  
18 that in any event, the allegedly suspicious insider sales had no bearing on decision-making or  
19 knowledge within BioMarin. Defendants would also have argued that the timing of the trades and  
20 their amounts, as compared to Bienaimé and Fuchs' previous trading patterns, were not suspicious.

21 71. Defendants would have also relied on the unprecedented disruption of the COVID-  
22 19 pandemic as a reason why Defendants would not have believed that the FDA's unusual silence  
23 concerning the pendency of the valrox BLA or the FDA's inability to timely schedule a physical PAI  
24 necessarily meant that the valrox BLA was less likely to be approved. Indeed, Defendants would  
25 have argued that discovery concerning the postponement of the PAI suggested that travel  
26 complications caused by the pandemic played a substantial role in the FDA's decision not to conduct  
27 a physical inspection.



1           72.     Moreover, in June 2023, the FDA ultimately approved BioMarin’s gene therapy to  
2 treat hemophilia A, now known as Roctavian. While this occurred substantially after the end of the  
3 Class Period, the ultimate approval of the therapy would allow Defendants to argue that there were  
4 no fundamental problems with valrox underlying the FDA’s denial of the BLA, but only delays  
5 related to COVID travel restrictions and other issues, and thus BioMarin and its executives had no  
6 motive to mislead investors about the valrox approval process.

7                   **2.       Risks Related to Loss Causation and Damages**

8           73.     Even assuming that Lead Plaintiff and Lead Counsel overcame Defendants’  
9 arguments and established liability at trial, Lead Plaintiff would have still confronted additional  
10 challenges in establishing loss causation and damages.

11           74.     Lead Plaintiff and Lead Counsel anticipate that Defendants would argue at summary  
12 judgment, trial, and subsequent stages of the proceedings, that the declines in the price of BioMarin  
13 common stock were not caused entirely—or at all—by the alleged corrective disclosures. Rather,  
14 Defendants were expected to argue that investors’ losses were attributable to other factors, such as  
15 the FDA’s unanticipated two-year delay to valrox’s approval, which Defendants would have also  
16 argued was not reasonably foreseeable. Defendants would have argued that even with full disclosure  
17 of the allegedly withheld facts, no market participant would have anticipated that the FDA would  
18 require two years of additional data.

19           75.     Defendants would have also argued that, even if some portion of the price decline  
20 were caused by the revelation of the truth about the alleged misstatements, it was small compared to  
21 the decline resulting from other factors, including the unanticipated two-year delay, and any  
22 purported damages to Lead Plaintiff and the Settlement Class were minimal. Lead Plaintiff would  
23 have faced challenges in proving what portion of the BioMarin’s price decline on August 19, 2020  
24 resulted from the revelation of the alleged misstatements, rather than confounding non-fraud or  
25 “mismatching” information. Defendants also would have argued that, because BioMarin did not  
26 know about the FDA denial until after the last challenged statement, the stock drop at the end of the  
27 Class Period cannot be used to infer how much BioMarin’s stock would have dropped on any given

1 day during the Class Period, because the “truth”—the FDA denial—did not exist prior to the last  
2 challenged statement. Defendants would have argued that Lead Plaintiff’s expert would have had to  
3 demonstrate how much BioMarin’s stock price would have dropped had the risk of adverse FDA  
4 action been fully disclosed during the Class Period, and would have challenged the methodology  
5 used to calculate how much of BioMarin’s stock price was artificially inflated during the Class  
6 Period due to the alleged fraud. Thus, if the Court agreed with Defendants, any damages would be  
7 a fraction of the \$41.82 stock drop.

8 76. Accordingly, the falsity, scienter, and loss causation challenges would have provided  
9 Defendants with strong arguments for reducing the ultimate maximum damages Lead Plaintiff could  
10 seek. Defendants’ most credible arguments would have been to exclude a significant portion of the  
11 putative Class Period from the case, on the basis that discovery demonstrated that statements made  
12 before June 8, 2020 were not false. Had Defendants succeeded in narrowing the Class Period—just  
13 one of their challenges to liability—damages would have been reduced to at least \$395 million  
14 (assuming Lead Plaintiff fully prevailed on all other arguments). Defendants’ loss causation or  
15 “mismatch” arguments described above—that a significant portion of the decline in BioMarin stock  
16 was not “foreseeable”—also created the significant and credible risk that maximum damages would  
17 be reduced still further.

#### 18 **B. Risks Related to Class Certification**

19 77. Lead Plaintiff and Lead Counsel believe that the Court would have certified the class  
20 in this action. However, at the time that the Parties reached their agreement in principle to settle,  
21 Defendants’ opposition to Lead Plaintiff’s motion for class certification had been filed, and Lead  
22 Plaintiff was preparing to submit a reply brief. Thus, upon the completion of briefing class  
23 certification, there was some risk that the Court might adopt Defendants’ view and decline to certify  
24 the class, which would have precluded any recovery for the class, or could have certified a class for  
25 only for a shorter period.

26 78. In particular, Defendants argued at the class certification stage that they could rebut  
27 the fraud-on-the-market presumption of reliance. They argued that BioMarin’s stock price was not

1 the motivating driving force behind Lead Plaintiff’s decision to purchase BioMarin stock, and that  
2 Lead Plaintiff’s trading model did not consider what was known about BioMarin. Thus, Defendants  
3 argued, Lead Plaintiff would be subject to unique defenses that were atypical of the putative class.  
4 Defendants would have relied on *GAMCO Invs. Inc. v. Vivendi, S.A.*, 927 F. Supp. 2d 88 (S.D.N.Y.  
5 2013) as the legal support for this argument. While Lead Plaintiff believes that discovery  
6 contradicted Defendants’ arguments, and that *Vivendi* was inapposite because the trading model in  
7 that case relied on idiosyncratic measures of inherent value that were entirely untethered to the stock  
8 price, Defendants’ arguments nevertheless posed a risk to establishing typicality and adequacy, and  
9 therefore to certifying the class.

10 79. Even if the Court had certified the class, Lead Plaintiff also faced the risk of a  
11 shortened class period. Defendants’ opposition to class certification argued that Lead Plaintiff’s  
12 claims for the first part of the class period (March 3 through June 8, 2020) were based entirely on a  
13 statement in the Complaint attributed to a BioMarin former employee. Defendants argued that the  
14 former employee in question denied having made such statements to Lead Plaintiff’s investigators  
15 during his deposition and, in fact, had no basis to make any such statements. Had Defendants  
16 persuaded the Court not to rely on the allegations attributed to the former employee, the Class Period  
17 could have been shortened to begin on June 8, 2020, rather than March 3, 2020.

18 80. Additional risks to class certification included Defendants’ argument that Lead  
19 Plaintiff and its counsel were not adequate class representatives and that Lead Plaintiff failed to  
20 propose a methodology capable of calculating damages on a class-wide basis consistent with its  
21 theory of liability. Defendants’ challenge to Lead Plaintiff’s methodology argued that there was a  
22 “mismatch” between the alleged misrepresentations and the corrective disclosures. This challenge  
23 relied on the recent Supreme Court decision in *Goldman Sachs Grp. v. Arkansas Tchr. Ret. Sys.*, 141  
24 S. Ct. 1951 (2021). Following remand, in August 2023, the Second Circuit instructed the District  
25 Court to decertify the class on the basis of the “mismatch” between the alleged misrepresentations  
26 and corrective disclosures. Here, as noted, Defendants argued that there was a “mismatch” between  
27 omissions about the status of FDA communications and the corrective disclosure announcing that

1 the FDA denied approval of valrox—that because the alleged false and misleading statements and  
2 omissions were not specifically related to the likelihood of approval, the disclosure that valrox was,  
3 in fact, not approved did not correct the alleged false and misleading statements. Lead Plaintiff  
4 would have argued that *Goldman* is distinguishable, and that there is no “mismatch” concern here,  
5 as the statements and omissions concealing the state of valrox’s approval were corrected at the end  
6 of the Class Period by a corrective disclosure that revealed the true state of the approval process.  
7 Nevertheless, the *Goldman* argument posed a tangible risk to class certification.

8 **C. The Settlement Amount Compared to the Likely Maximum Damages**  
9 **that Could Be Proved at Trial**

10 81. The Settlement Amount—\$39 million in cash, plus interest—represents a significant  
11 recovery for the Settlement Class. The Settlement is more than five times the size of the median  
12 securities class-action settlement in the Ninth Circuit from 2013 to 2022 (\$7.6 million). *See*  
13 *CORNERSTONE RESEARCH, SECURITIES CLASS ACTION SETTLEMENTS: 2022 REVIEW AND ANALYSIS*  
14 (2023), attached hereto as Exhibit 3, at 19.

15 82. The \$39 million Settlement is also a favorable result when it is considered in relation  
16 to the maximum amount of damages that realistically could be established at trial—even assuming  
17 that Lead Plaintiff and the Settlement Class prevailed on all liability issues, including falsity and  
18 scienter. Lead Plaintiff’s damages expert has calculated that the theoretical maximum damages for  
19 the Settlement Class would be approximately \$650 million. This amount assume that investors  
20 would prevail over all liability and loss causation challenges noted above for the entire Class Period  
21 (including challenges in determining what portion of BioMarin’s stock price decline was attributable  
22 to the revelations of the lack of cooperation from the FDA, as opposed to other “mismatching”  
23 factors). This amount further assumes that a uniform high level of artificial inflation applied  
24 throughout the Class Period, and assumes that the entire stock price decline on August 19, 2020 was  
25 attributable to the alleged fraud and was foreseeable.

26 83. However, as discussed above, Lead Plaintiff faced real challenges to establishing the  
27 material falsity of Defendants’ statements concerning the status of BioMarin’s application for FDA

1 approval of valrox in the first half of the Class Period or, at the very least, would have been likely to  
2 show that level of artificial inflation was substantially lower during that initial period, and increased  
3 during the latter half of the Class Period. If Lead Plaintiff was unable to establish liability for that  
4 initial period and the Class Period began in June 2020 rather than March 2020, the maximum  
5 damages would be approximately \$395 million.<sup>2</sup> Moreover, all of these maximum damages  
6 estimates would have been still further reduced if Lead Plaintiff could not prove that all of  
7 BioMarin's price decline on August 19, 2020 was attributable to the alleged misstatements  
8 concerning BioMarin's communications with the FDA, as opposed to other factors.

9 84. In short, the maximum total damages that Lead Plaintiff could establish at trial would  
10 range from approximately \$395 million to a theoretical high of \$650 million. The \$39,000,000  
11 recovery under the Settlement therefore represents 6% to 10% of the maximum potential damages,  
12 which is a highly favorable result for the Settlement Class in this Action.

13 85. Given the meaningful litigation risks, and the immediacy and amount of the  
14 \$39,000,000 recovery for the Settlement Class, Lead Plaintiff and Lead Counsel believe that the  
15 Settlement is fair, reasonable, and adequate, and is in the best interest of the Settlement Class.

### 16 **III. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY** 17 **APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE**

18 86. The Court's Preliminary Approval Order directed that the Notice of (I) Pendency of  
19 Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees  
20 and Litigation Expenses (the "Notice") and Proof of Claim and Release Form ("Claim Form") be  
21 disseminated to potential members of the Settlement Class. The Preliminary Approval Order also  
22 set October 18, 2023 as the deadline for Settlement Class Members to submit objections to the  
23 Settlement, the Plan of Allocation, or the Fee and Expense Application or to request exclusion from  
24 the Settlement Class.

25 \_\_\_\_\_  
26 <sup>2</sup> Defendants, of course, dispute that Lead Plaintiff or investors were damaged at all, contest Lead  
27 Plaintiff's class-wide damage estimates, and believe Lead Plaintiff and investors are not entitled to  
any recovery through this Action.

1           87. In accordance with the Preliminary Approval Order, Lead Counsel instructed A.B.  
2 Data, Ltd. (“A.B. Data”), the Court-approved Claims Administrator, to begin disseminating copies  
3 of the Notice and the Claim Form by mail and to publish the Summary Notice. The Notice contained,  
4 among other things, a description of the Action, the Settlement, the proposed Plan of Allocation, and  
5 Settlement Class Members’ rights to participate in the Settlement, object to the Settlement, the Plan  
6 of Allocation, and/or the Fee and Expense Application, or exclude themselves from the Settlement  
7 Class. The Notice also informed Settlement Class Members of Lead Counsel’s intent to apply for  
8 an award of attorneys’ fees in an amount not to exceed 19% of the Settlement Fund, and for Litigation  
9 Expenses in an amount not to exceed \$650,000.

10           88. In order to disseminate the Notice and Claim Form (together, the “Notice Packet”),  
11 A.B. Data obtained information from BioMarin and from banks, brokers, and other nominees  
12 regarding the names and addresses of potential Settlement Class Members. The accompanying  
13 Declaration of Adam D. Walter, attached hereto as Exhibit 4, provides additional information about  
14 the Claims Administrator’s distribution of the Notice Packet. *See* Walter Decl. ¶¶ 2-9.

15           89. A.B. Data began mailing copies of the Notice Packet to potential Settlement Class  
16 Members and nominee owners on June 30, 2023. *Id.* ¶¶ 2-5. As of October 2, 2023, A.B. Data had  
17 mailed a total of 103,153 Notice Packets to potential Settlement Class Members and nominees. *Id.*  
18 ¶ 9.

19           90. On July 12, 2023, in accordance with the Preliminary Approval Order, A.B. Data  
20 caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over  
21 the *PR Newswire*. *Id.* ¶ 11.

22           91. Lead Counsel also caused A.B. Data to establish a dedicated settlement website,  
23 [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), to provide potential Settlement Class Members with  
24 information concerning the Settlement and access to copies of the Notice and Claim Form, as well  
25 as copies of the Stipulation, Preliminary Approval Order, and other relevant documents. *See* Walter  
26 Decl. ¶ 14. That website became operational on June 30, 2023. *Id.* Lead Counsel also made copies  
27 of the Notice and Claim Form and other documents available on its own website, [www.blbglaw.com](http://www.blbglaw.com).

1 Lead Counsel and A.B. Data will continue to monitor and to update the settlement website as needed  
2 as the settlement process continues. For example, Lead Plaintiff's papers in support of its motion  
3 for final approval of the Settlement and Lead Counsel's papers in support of its motion for attorneys'  
4 fees and litigation expenses will be made available on the website after they are filed, and any orders  
5 entered by the Court in connection with the motions will also be posted.

6 92. As noted above, the deadline for Settlement Class Members to file objections to the  
7 Settlement, Plan of Allocation, or Fee and Expense Application, or to request exclusion from the  
8 Settlement Class is October 18, 2023. To date, one request for exclusion has been received, *see*  
9 Walter Decl. ¶ 15, and no objections to the Settlement, Plan of Allocation, or Lead Counsel's Fee  
10 and Expense Application have been received. Lead Counsel will file reply papers on or before  
11 November 1, 2023, that will address all requests for exclusion and any objections that may be  
12 received.

#### 13 **IV. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT**

14 93. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all  
15 Settlement Class Members who want to be eligible to participate in the distribution of the Net  
16 Settlement Fund must submit a valid Claim Form with all required information postmarked (if  
17 mailed) or submitted online no later than October 30, 2023. As set forth in the Notice, the Net  
18 Settlement Fund will be distributed among Settlement Class Members who submit eligible claims  
19 according to a plan of allocation approved by the Court.

20 94. Lead Counsel consulted with Lead Plaintiff's damages expert in developing the  
21 proposed plan of allocation for the Net Settlement Fund (the "Plan of Allocation" or "Plan"). Lead  
22 Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably  
23 allocate the Net Settlement Fund among Settlement Class Members who suffered economic losses  
24 as result of the conduct alleged in the Action.

25 95. The Plan of Allocation is set forth at pages 11 to 14 of the Notice. *See* Walter Decl.,  
26 Ex. A at pp. 11-14. As described in the Notice, the calculations under the Plan of Allocation are  
27

1 intended as a method to weigh the claims of Settlement Class Members against one another for the  
2 purposes of making an equitable *pro rata* allocation of the Net Settlement Fund. Notice ¶ 74.

3 96. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted  
4 material facts during the Class Period (from March 3, 2020 through August 18, 2020), which had  
5 the effect of artificially inflating the price of BioMarin common stock, and that corrective  
6 information allegedly revealing the truth concerning Defendants' alleged misrepresentations and  
7 omissions was released to the market on August 19, 2020, which had the effect of removing the  
8 artificial inflation from the price of BioMarin common stock that day. Notice ¶ 75. The estimated  
9 artificial inflation in BioMarin common stock at the end of the Class Period has been calculated by  
10 considering the price change to BioMarin common stock on August 19, 2020 and adjusting for price  
11 changes attributable to market or industry factors that day. Based on these calculations, there was a  
12 total of \$41.68 in estimated artificial inflation per share in the BioMarin common stock price that  
13 was removed on August 19, 2020. *Id.* In addition, Lead Plaintiff alleges that the gap between the  
14 Defendants' statements about the FDA approval process for valrox and the underlying truth widened  
15 substantially during the course of the Class Period. Accordingly, for the purposes of the Plan of  
16 Allocation, the amount of artificial inflation in BioMarin common stock increases threefold after  
17 June 8, 2020. Therefore, the estimated artificial inflation under the Plan from March 3, 2020 through  
18 June 8, 2020 is \$13.89 per share and from June 9, 2020 through August 18, 2020 is \$41.68 per share.  
19 *Id.*

20 97. Recognized Loss Amounts are calculated under the Plan of Allocation for each  
21 purchase or acquisition of BioMarin common stock during the Class Period that is listed on a  
22 Claimant's Claim Form and for which adequate documentation is provided. In general, Recognized  
23 Loss Amounts are calculated as the lesser of: (a) the difference between the amount of alleged  
24 artificial inflation at the time of purchase or acquisition and the time of sale, or (b) the difference  
25 between the purchase price and the sale price for the shares. *See* Notice ¶ 76. Claimants who  
26 purchased and sold all their BioMarin shares during the Class Period (that is, they did not hold any  
27 shares purchased during the Class Period until August 19, 2020, when artificial inflation was



1 allegedly removed from the stock price), will have no Recognized Loss Amount under the Plan of  
2 Allocation because any loss suffered on those sales would not be the result of the alleged  
3 misstatements in the Action. *See id.* ¶¶ 76, 78.A.

4 98. As stated in the Notice, and in accordance with the PSLRA, Recognized Loss  
5 Amounts for shares of BioMarin common stock sold during the 90-day period after the end of the  
6 Class Period are further limited to the difference between the purchase price and the average closing  
7 price of the stock from the end of the Class Period to the date of sale. Notice ¶ 78.B(ii). Recognized  
8 Loss Amounts for shares of BioMarin common stock still held as of the close of trading on  
9 November 16, 2020, the end of the 90-day period, will be the lesser of (a) the amount of artificial  
10 inflation on the date of purchase or (b) the difference between the purchase price and \$76.42, the  
11 average closing price for the stock during that 90-day period. *Id.* ¶ 78.C.

12 99. The sum of a Claimant's Recognized Loss Amounts for all of his, her, or its purchases  
13 of BioMarin common stock during the Class Period is the Claimant's "Recognized Claim." Notice  
14 ¶ 79. The Plan of Allocation also limits Claimants' Recognized Claim based on whether they had  
15 an overall market loss in their transactions in BioMarin common stock during the Class Period. A  
16 Claimant's Recognized Claim will be limited to the amount of his, her, or its market loss in BioMarin  
17 common stock transactions during the Class Period, and Claimants who have an overall market gain  
18 are not eligible for a recovery. *Id.* ¶¶ 86-87.

19 100. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata*  
20 basis based on the relative size of their Recognized Claims. Notice ¶¶ 88-89. If an Authorized  
21 Claimant's *pro rata* distribution amount calculates to less than ten dollars, no payment will be made  
22 to that Authorized Claimant. *Id.* ¶ 90. Those funds will be included in the distribution to the  
23 Authorized Claimants whose payments exceed the ten-dollar minimum.

24 101. One hundred percent of the Net Settlement Fund will be distributed to Authorized  
25 Claimants. If any funds remain after the initial *pro rata* distribution, as a result of uncashed or  
26 returned checks or other reasons, subsequent cost-effective distributions to Authorized Claimants  
27 will be conducted. Notice ¶ 91. Only when the residual amount left for re-distribution to Settlement

1 Class Members is so small that a further re-distribution would not be cost effective (for example,  
2 where the administrative costs of conducting the additional distribution would largely subsume the  
3 funds available), will those funds be donated to the Investor Protection Trust, a 501(c)(3) nonprofit  
4 organization devoted to investor education. *Id.*

5 102. In sum, the Plan of Allocation was designed to fairly and rationally allocate the  
6 proceeds of the Net Settlement Fund among Settlement Class Members based on damages they  
7 suffered on purchases of BioMarin common stock that were attributable to the misconduct alleged  
8 in the Action in the same way that Lead Plaintiff would propose if it were successful at trial. To  
9 date, no objections to the proposed Plan of Allocation have been received.

## 10 **V. THE FEE AND EXPENSE APPLICATION**

11 103. Lead Counsel is applying to the Court for an award of attorneys' fees of 19% of the  
12 Settlement Fund. Lead Counsel also requests payment for litigation expenses that it incurred in  
13 connection with the prosecution of the Action from the Settlement Fund in the amount of  
14 \$397,052.78 (the "Expense Application"). In accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4),  
15 Lead Counsel further requests reimbursement to Lead Plaintiff ATP the amount of \$127,400 for the  
16 value of the time that Lead Plaintiff's employees dedicated to the Action. The legal authorities  
17 supporting the requested fee and expenses are discussed in Lead Counsel's Fee and Expense Motion.  
18 The primary factual bases for the requested fee and expenses are summarized below.

### 19 **A. The Fee Application**

20 104. For its efforts on behalf of the Settlement Class, Lead Counsel is applying for a fee  
21 award to be paid from the Settlement Fund on a percentage basis. The percentage method is the  
22 standard and appropriate method of fee recovery because it aligns the lawyers' interest in being paid  
23 a fair fee with the interests of Lead Plaintiff and the Settlement Class in achieving the maximum  
24 recovery in the shortest amount of time required under the circumstances. Use of the percentage  
25 method has been recognized as appropriate by the Supreme Court and Ninth Circuit for cases of this  
26 nature where an all-cash common fund has been recovered for the class.

1           105. Based on the quality of the result achieved, the extent and quality of the work  
2 performed, the significant risks of the litigation, and the fully contingent nature of the representation,  
3 Lead Counsel respectfully submits that the requested fee award is reasonable and should be  
4 approved. As discussed in the Fee and Expense Motion, a 19% fee award is substantially below the  
5 25% benchmark for percentage fee awards in the Ninth Circuit, is below the range of percentage  
6 fees typically awarded in securities class actions in this Circuit in comparable cases, and is fair and  
7 reasonable in light of all the circumstances in this case.

### 8                   **1. Lead Plaintiff Has Authorized and Supports the Fee Application**

9           106. Lead Plaintiff ATP is a sophisticated institutional investor that closely supervised and  
10 monitored the prosecution and settlement of this Action. *See* Christensen Declaration ¶¶ 2-6. Lead  
11 Plaintiff has evaluated the Fee Application and fully supports the fee requested. *See id.* ¶¶ 8-9.

12           107. The 19% fee requested is consistent with the *ex ante* retainer agreement entered into  
13 between Lead Counsel BLB&G and Lead Plaintiff ATP at the outset of the litigation, which provided  
14 for different levels of percentage fees based on the state of litigation at which settlement was reached.  
15 *See* Christensen Decl. ¶ 8. Following the agreement to settle the Action, Lead Plaintiff has again  
16 evaluated the proposed fee and believes it is fair and reasonable in light of the result obtained for the  
17 Settlement Class, the quality of the work performed by Lead Counsel, and the risks undertaken by  
18 counsel in this Action. *Id.* ¶ 9.

### 19                   **2. The Work Performed by Lead Counsel**

20           108. Lead Counsel devoted substantial time to the prosecution of the Action. The work  
21 that Lead Counsel performed in this Action included, among other things: (i) conducting an  
22 extensive investigation into the claims asserted, which included a detailed review of public  
23 documents, interviews with over 100 former BioMarin employees, and consultation with experts;  
24 (ii) drafting the detailed consolidated Complaint; (iii) researching, briefing, and arguing Lead  
25 Plaintiff's opposition to Defendants' motion to dismiss the Complaint; (iv) researching and briefing  
26 Lead Plaintiff's motion for class certification; (v) undertaking substantial fact discovery, including  
27 obtaining and reviewing approximately 250,000 pages of documents, briefing 11 distinct discovery

1 disputes, litigating discovery disputes, and taking or defending four depositions; (vi) consulting  
2 extensively with experts and consultants; and (vii) engaging in extensive arm's-length settlement  
3 negotiations to achieve the Settlement, including two formal mediation sessions.

4 109. Attached hereto as Exhibit 5 is a schedule summarizing the amount of time spent by  
5 the attorneys and professional support staff employees of Lead Counsel BLB&G on the Action from  
6 its inception through September 15, 2023, and a lodestar calculation for those individuals. As set  
7 forth in Exhibit 5, the number of hours expended by BLB&G on the Action from its inception  
8 through September 15, 2025 is 12,564.75, with a total lodestar, based on these individuals' current  
9 hourly rates, of \$6,702,525. The requested fee of 19% of the Settlement Fund (or \$7,410,000, plus  
10 interest) therefore represents a modest multiplier of approximately 1.1 of Lead Counsel's lodestar.  
11 Such a request is well below the fee multipliers typically awarded in comparable securities class  
12 actions and in other class actions such as this involving significant contingency fee risks.

13 110. The information in this declaration and its exhibits regarding the time spent on the  
14 Action by Lead Counsel's attorneys and other professional staff is based on contemporaneous daily  
15 time records regularly prepared and maintained by BLB&G, which are available at the request of  
16 the Court. BLB&G attorneys reviewed these time records in connection with the preparation of this  
17 Declaration to confirm the accuracy of the time entries and the necessity for, and reasonableness of,  
18 the time committed to the litigation. All time expended in preparing this application for fees and  
19 expenses was excluded. In addition, all time incurred by any timekeeper who spent fewer than ten  
20 hours working on the Action has been excluded. Certain other time entries were also removed in the  
21 exercise of Lead Counsel's billing judgment.

22 111. I believe that the time reflected in the firm's lodestar calculation is reasonable in  
23 amount and was necessary for the effective and efficient prosecution and resolution of the litigation.

24 112. The hourly rates for the attorneys and professional support staff in my firm included  
25 in Exhibit 5 and the other exhibits to this declaration are the usual and customary rates set by the  
26 firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by  
27 courts, including courts in this Circuit, in other contingent-fee securities-class-action litigation or

1 shareholder litigation. The firm's rates are set based on an annual analysis of rates that are charged  
2 by firms performing comparable work and that have been approved by courts. Different timekeepers  
3 within the same employment category (*e.g.*, partners, associates, paralegals, etc.) may have different  
4 rates based on a variety of factors, including years of practice, years at the firm, year in the current  
5 position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly  
6 experienced peers at our firm or other firms. For personnel who are no longer employed by my firm,  
7 the current rate used for the lodestar calculation is based upon the rate for that person in his or her  
8 final year of employment with the firm.

9 113. Throughout the litigation, Lead Counsel maintained an appropriate level of staffing  
10 that ensured the efficient prosecution of this litigation. To that end, in addition to partners and  
11 associates, Lead Counsel also relied upon its staff attorneys in prosecuting this Action, whose work  
12 included (among other things) a review and analysis of the documents produced by Defendants,  
13 preparation of substantive memoranda on issues in the case, and assisting in preparation for  
14 depositions. The work these attorneys conducted was substantive and crucial to Lead Plaintiff's  
15 successful prosecution of the case. The attorneys who participated in discovery in this Action had  
16 significant credentials and experience, as set forth in their biographies included in BLB&G's firm  
17 resume. *See* Exhibit 8 at 33-35. The staff attorneys are full-time W-2 employees of the firm, not  
18 independent contractors or employees of a staffing firm; they were each supervised by the firm's  
19 partners and associates and had access to secretarial and paralegal support; and had firm email  
20 addresses, access to the firm's 401(k) program, and eligibility to receive year-end bonuses.

21 114. Attached hereto as Exhibit 6 are summary descriptions of the principal tasks in which  
22 each attorney from my firm were involved in this Action.

23 115. Attached hereto as Exhibit 7 is a chart that reflects the hours spent by each timekeeper  
24 on each of the following task categories during the course of the Action:

- 25 (1) **Investigation and Pre-Filing Case Analysis:** includes time spent on Lead Counsel's  
26 thorough investigation into the claims asserted in the Action, including reviewing the  
27 voluminous public record and identifying, contacting, and interviewing potential  
witnesses; initial case development; and analysis of clients' and class losses;

- 1 (2) **Lead Plaintiff Motion:** includes time spent researching and drafting motion papers  
2 for appointment of ATP as Lead Plaintiff and BLB&G as Lead Counsel;
- 3 (3) **Complaint:** includes time incurred by Lead Counsel in researching and preparing the  
4 Complaint, including associated legal and factual research;
- 5 (4) **Motion to Dismiss:** includes time incurred by Lead Counsel in researching and  
6 drafting Lead Plaintiff's opposition to Defendants' motion to dismiss the Complaint  
7 and the related motion for reconsideration; and preparing for and participating in oral  
8 argument on the motion to dismiss;
- 9 (5) **Class Certification:** includes the time Lead Counsel spent on the motion for class  
10 certification, including related legal research and briefing;
- 11 (6) **Discovery Communications & Disputes:** includes time spent by Lead Counsel on  
12 discovery correspondence, numerous meet and confers with Defendants' Counsel,  
13 preparing Lead Plaintiff's Initial Disclosure Statement under Rule 26(a), drafting and  
14 negotiating the proposed protective order and protocol for electronically stored  
15 information ("ESI"), discovery disputes, and strategy and planning related to  
16 discovery efforts;
- 17 (7) **Written/Document Discovery:** includes the time incurred by Lead Counsel in  
18 drafting requests for production of documents, interrogatories, requests for  
19 admission, and subpoenas; preparing responses and objections to requests for  
20 production of documents, interrogatories, and requests for admission served on Lead  
21 Plaintiff; reviewing client documents for production; and reviewing and analyzing  
22 documents produced by Defendants and third parties;
- 23 (8) **Depositions:** includes the time incurred by Lead Counsel in preparing a deposition  
24 plan; and preparing to take fact depositions, including document review specifically  
25 for purposes of deposition preparation; and taking and defending the deposition of  
26 Lead Plaintiff's representatives and the former BioMarin employee that was deposed;
- 27 (9) **Expert Work:** includes the time Lead Counsel spent communicating with experts  
28 and consultants; working on preparing expert reports; and engaging in expert  
discovery, including preparing to defend and defending the deposition of Lead  
Plaintiff's expert on market efficiency and damages;
- (10) **Mediation & Settlement:** includes time incurred by Lead Counsel in extended  
settlement negotiations with Defendants; preparing for and attending the mediation  
session; drafting the mediation statement; drafting and negotiating the Term Sheet  
and Stipulation of Settlement and related documents; selecting a Claims  
Administrator; and drafting the motions for preliminary and final approval of the  
Settlement (but does not include work related to Lead Counsel's motion for fees and  
expenses);
- (11) **Case Management:** includes time incurred by Lead Counsel in preparing status  
reports to the Court, participating in case management conferences and status

1 hearings, and negotiating and preparing stipulations and proposed scheduling orders  
and other related tasks;

2 (12) **Case Strategy & Analysis:** includes time incurred by Lead Counsel devoted to  
3 overall case strategy and analysis, including litigation strategy and damages issues;

4 (13) **Docket/News Monitoring:** includes time incurred in reviewing docket updates on  
5 case or related cases and monitoring of news on company or industry; and

6 (14) **Client Communications:** includes time incurred in communications with Lead  
7 Plaintiff ATP, including preparing status reports and memoranda at various stages of  
the case.

### 8 **3. The Experience and Standing of Lead Counsel**

9 116. A copy of Lead Counsel BLB&G's firm resume, which includes information about  
10 the standing of the firm and brief biographical summaries for each attorney listed in Exhibit 5,  
11 including information about their position, education, and relevant experience, is attached as Exhibit  
12 8 hereto. As demonstrated by the firm resume, BLB&G is among the most experienced and skilled  
13 law firms in the securities litigation field, with a long and successful track record representing  
14 investors in such cases. BLB&G is consistently ranked among the top plaintiffs' firms in the country.  
15 As reflected in ISS/Securities Class Action Services' latest report on the "Top 100 U.S. Class Action  
16 Settlements of All Time," BLB&G has been lead or co-lead counsel in more top recoveries than any  
17 other firm in U.S. history. BLB&G has taken complex cases such as this Action to trial, and it is  
18 among the few firms with experience doing so on behalf of plaintiffs in securities class actions. As  
19 reflected in its firm resume, BLB&G has obtained numerous significant settlements. BLB&G served  
20 as Lead Counsel in *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.), in which  
21 recoveries obtained for the class totaled in excess of \$6 billion. BLB&G also secured a resolution  
22 of \$2.43 billion for the class in *In re Bank of America Corp. Securities, Derivative & "ERISA"*  
23 *Litigation*, No. 09-md-2058 (S.D.N.Y.); a \$1.06 billion recovery for the class in *In re Merck & Co.,*  
24 *Inc. Securities, Derivative & "ERISA" Litigation*, No. 05-cv-1151 (D.N.J.); a \$1 billion dollar  
25 recovery for the class this year in *In re Wells Fargo & Co. Securities Litigation*, No. 1:20-cv-04494-  
26 JLR-SN (S.D.N.Y.), and a \$730 million settlement on behalf of the class in *In re Citigroup Inc. Bond*  
27 *Action Litigation*, No. 08-cv-9522 (S.D.N.Y.).

1                   **4. Standing and Caliber of Defendants' Counsel**

2           117. Defendants were represented in the Action by a team of extremely able counsel from  
3 Cooley LLP, who vigorously litigated the Action. In the face of this skillful and well-financed  
4 opposition, Lead Counsel was nonetheless able to develop a case that was sufficiently strong to  
5 persuade Defendants and their counsel to settle the case on terms that will benefit the Settlement  
6 Class.

7                   **5. The Risks of Litigation and the Need to Ensure the Availability of**  
8                   **Competent Counsel in High-Risk Contingent Cases**

9           118. The prosecution of these claims was undertaken entirely on a contingent-fee basis,  
10 and the considerable risks assumed by Lead Counsel in bringing this Action to a successful  
11 conclusion are described above. The risks assumed by Lead Counsel here, and the time and expenses  
12 incurred by Lead Counsel without any payment, were extensive.

13           119. From the outset, Lead Counsel understood that it was embarking on a complex,  
14 expensive, lengthy, and hard-fought litigation with no guarantee of ever being compensated for the  
15 substantial investment of time and the outlay of money that the prosecution of the case would require.  
16 In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources (in  
17 terms of attorney and support staff time) were dedicated to the litigation, and that Lead Counsel  
18 would further advance all of the costs necessary to pursue the case vigorously on a fully contingent  
19 basis, including funds to compensate vendors and consultants and to cover the considerable out-of-  
20 pocket costs that a case such as this typically demands. Because complex shareholder litigation  
21 often proceeds for several years before reaching a conclusion, the financial burden on contingent-  
22 fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Lead Counsel has  
23 received no compensation during the course of this Action and no reimbursement of out-of-pocket  
24 expenses, yet they have incurred over \$390,000 in expenses in prosecuting this Action for the benefit  
25 of BioMarin investors.

26           120. Lead Counsel also bore the risk that no recovery would be achieved in the Action.  
27 As discussed above, this case presented a number of significant trial risks and uncertainties from the



1 outset, including challenges in proving the materiality and falsity of Defendants' statements,  
2 establishing scienter, and establishing loss causation and damages. These risks were elevated in this  
3 case, given that BioMarin never restated any of its financial statements or admitted to any  
4 wrongdoing whatsoever and there was no parallel SEC enforcement action or any criminal  
5 prosecution concerning the claims asserted. In addition, as discussed above, valrox was ultimately  
6 approved by the FDA.

7 121. The Settlement was reached only after Lead Plaintiff had got past the motion to  
8 dismiss and engaged in substantial discovery. Lead Counsel's persistent efforts in the face of  
9 significant risks and uncertainties have resulted in a significant and certain recovery for the  
10 Settlement Class.

#### 11 **6. The Reaction of the Settlement Class to the Fee Application**

12 122. As noted above, as of October 2, 2023, over 103,000 Notice Packets had been sent to  
13 potential Settlement Class Members advising them that Lead Counsel would apply for attorneys'  
14 fees in an amount not to exceed 19% of the Settlement Fund. *See* Walter Decl. ¶ 9 and Ex. A (Notice  
15 ¶¶ 5, 55). In addition, the Court-approved Summary Notice was published in *The Wall Street Journal*  
16 and transmitted over the *PR Newswire* on July 12, 2023. *See* Walter Decl. ¶ 11. To date, no  
17 objections to the request for attorneys' fees have been received.

#### 18 **C. The Expense Application**

19 123. Lead Counsel also respectfully seeks \$397,052.78 in litigation expenses from the  
20 Settlement Fund that it reasonably incurred in connection with the prosecution of the Action.

21 124. From the outset of the Action, Lead Counsel has been cognizant of the fact that it  
22 might not recover any of the expenses it incurred, and, further, if there were to be reimbursement of  
23 expenses, it would not occur until the Action was successfully resolved, often a period lasting several  
24 years. Lead Counsel also understood that, even assuming that the case were ultimately successful,  
25 reimbursement of expenses would not necessarily compensate them for the lost use of funds  
26 advanced by them to prosecute the Action. Consequently, Lead Counsel was motivated to, and did,  
27

1 take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous  
2 and efficient prosecution of the case.

3 125. As set forth in Exhibit 9 hereto, Lead Counsel has paid or incurred a total of  
4 \$397,052.78 in unreimbursed litigation expenses in connection with the prosecution of the Action.  
5 The expenses are summarized in Exhibit 9, which identifies each category of expense (*e.g.*, experts  
6 and consultants, online legal and factual research, court fees, telephone charges, and printing and  
7 copying) and the amount incurred for each category. These expenses are reflected in the books and  
8 records maintained by Lead Counsel, which are prepared from expense vouchers, check records, and  
9 other source materials and are an accurate record of the expenses incurred. These expenses are  
10 submitted separately by Lead Counsel and are not duplicated by the firm's hourly rates.

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

12 127. **Experts.** Approximately 72% of the total expenses, or \$284,177.50, was expended  
13 for the retention of Lead Plaintiff's experts or consultants. These included (a) Dr. Michael  
14 Hartzmark, a financial economist who served as Lead Plaintiff's expert on market efficiency and  
15 class-wide damages methodologies, and who also provided expert advice on loss causation and  
16 damages issues; (b) Chad Coffman, of Global Economics Group, Lead Plaintiff's consulting expert  
17 on damages and loss causation; (c) Suzanne M. Sensabaugh of HartmannWillner, LLC, who  
18 provided expert advice on FDA regulatory issues; and (d) Joshua Sharlin, who also provided advice  
19 on FDA regulation issues. As discussed above, Lead Counsel consulted extensively with these  
20 experts throughout the Action.

21 128. **Online Legal and Factual Research.** The combined costs of on-line legal and  
22 factual research were \$58,054.22, or approximately 14.6% of the total expenses. The charges  
23 reflected are for out-of-pocket payments to vendors such as Westlaw, Lexis/Nexis, Thomson  
24 Reuters, Court Alert, and PACER for online legal and factual research done in connection with this  
25 litigation. These resources were used to obtain access to court filings, to conduct legal research and  
26 cite-checking of briefs, and to obtain factual information regarding the claims asserted through  
27 access to various financial databases and other factual databases. These expenses represent the

1 actual expenses incurred by BLB&G for use of these services in connection with this litigation.  
2 There are no administrative charges included in these figures. Online research is billed to each case  
3 based on actual usage at a charge set by the vendor. When BLB&G utilizes online services provided  
4 by a vendor with a flat-rate contract, access to the service is by a billing code entered for the specific  
5 case being litigated. At the end of each billing period, BLB&G's costs for such services are allocated  
6 to specific cases based on the percentage of use in connection with that specific case in the billing  
7 period.

8       **129. Document Hosting & Management.** BLB&G seeks \$9,550.08 for document  
9 management and litigation supports costs, which represent approximately 2.4% of the overall  
10 expenses. This represents the costs associated with establishing and maintaining the internal  
11 document database that BLB&G employed to process and review the documents produced to Lead  
12 Plaintiff by Defendants and third parties in the Action. BLB&G charges a rate of \$4 per gigabyte of  
13 data per month and \$17 per user to recover the costs associated with maintaining its document  
14 database management system, which includes the costs to BLB&G of necessary software licenses  
15 and hardware. BLB&G has conducted a review of market rates charged for the similar services  
16 performed by third-party document management vendors and found that its rate was at least 80%  
17 below the market rates charged by these vendors, resulting in a savings to the class.

18       **130. Mediation Costs.** Lead Plaintiff's share of the mediation fees paid to Phillips ADR  
19 Enterprises for the services of Ms. Yoshida amounted to \$13,700 or 3.5% of the total expenses.

20       **131.** The other expenses for which Lead Counsel seeks payment are also the types of  
21 expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour.  
22 These expenses include, among others, court costs, service of process costs, printing and copying  
23 costs, long distance telephone charges, postage and delivery expenses, and travel costs. Airfare for  
24 Lead Counsel's travel is at coach rates, hotel charges per night are capped at \$350; and travel and  
25 other out-of-office meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and  
26 \$50 per person for dinner. In-office working meals are capped at \$25 per person for lunch and \$40  
27 per person for dinner.

1           132. In addition, Lead Plaintiff seeks reimbursement for the reasonable costs and expenses  
 2 that it incurred directly in connection with its representation of the Settlement Class. Such payments  
 3 are expressly authorized and anticipated by the PSLRA, as more fully discussed in the Fee and  
 4 Expense Motion at 20-21. In accordance with the PSLRA, Lead Plaintiff ATP seeks reimbursement  
 5 of \$127,400 for the time expended in connection with the Action by its employees, including its  
 6 Legal Director, Head of Legal, Senior Portfolio Manager and other employees, who devoted a  
 7 substantial amount of time communicating with Lead Counsel, reviewing pleadings and motion  
 8 papers, and gathering and reviewing documents in response to discovery requests, and sitting for  
 9 depositions. *See* Christensen Decl. ¶¶ 5, 12-15.

10           133. The total amount requested by Lead Plaintiff and Lead Counsel for expenses,  
 11 \$524,452.78, is below the \$650,000 that Settlement Class Members were advised could be sought  
 12 in the Notice. To date, no objection has been raised as to the maximum amount of expenses set forth  
 13 in the Notice.

14           134. Attached hereto as Exhibit 10 is a compendium of true and correct copies of the  
 15 following documents cited in the Fee and Expense Motion:

16           Ex. 10A *In re Sandisk LLC Sec. Litig.*, Case No. 3:15-cv-01455-VC, slip op. (N.D.  
 17 Cal. Oct. 23, 2019), ECF No. 284

18           Ex. 10B *In re Intuitive Surgical Sec. Litig.*, Case No. 5:13-cv-01920 EJD (HRL), slip  
 19 op. (N.D. Cal. Dec. 20, 2018), ECF No. 317

20           Ex. 10C *In re Snap Inc. Sec. Litig.*, Case No. 2:17-cv-03679-SVW-AGR, slip op.  
 21 (C.D. Cal. Mar. 9, 2021), ECF No. 400

22           Ex. 10D *In re Allergan, Inc. Proxy Violation Sec. Litig.*, No. 8:14-cv-02004-DOC-  
 23 KES, slip op. (C.D. Cal. Aug. 14, 2018), ECF No. 637

24           Ex. 10E *In re Brocade Sec. Litig.*, No. 3:05-CV-02042-CRB, slip op. (N.D. Cal. Jan.  
 25 26, 2009), ECF No. 496-1

26           Ex. 10F NERA Economic Consulting, *Recent Trends in Securities Class Action*  
 27 *Litigation: 2022 Full-Year Review (2023)*

28           Ex. 10G Sixth Interim Application of Cooley LLP, *In re Mallinckrodt PLC*, Case No.  
 20-125222 (JTD) (Bankr. D. Decl. May 17, 2022), ECF No. 7392

1 Ex. 10H *In re HP Sec. Litig.*, No. 3:12-cv-05980-CRB, slip op. (N.D. Cal. Nov. 16,  
2015), ECF No. 279

2 Ex. 10I *In re Kraft Heinz Sec. Litig.*, Case No. 1:19-cv-01339, slip op. (N.D. Ill.  
3 Sept. 19, 2023), ECF No. 493

4 Ex. 10J *In re Equifax Inc. Sec. Litig.*, No. 1:17-cv-03463-TWT, slip op. (N.D. Ga.  
5 June 26, 2020), ECF No. 17

6  
7 I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day  
8 of October, 2023.

9  
10                   /s/ Katherine M. Sinderson                    
                  KATHERINE M. SINDERSON

# **Exhibit 1**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE BIOMARIN PHARMACEUTICAL  
INC. SECURITIES LITIGATION

Case No. 3:20-cv-06719-WHO

**DECLARATION OF MICHELLE  
YOSHIDA IN SUPPORT OF LEAD  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Judge: Hon. William H. Orrick  
Date: November 8, 2023  
Time: 2:00 p.m.

1 I, I, MICHELLE YOSHIDA, declare:

2 1. I submit this Declaration in my capacity as the mediator in the above-captioned  
3 securities class action (“Action”) and in connection with the proposed settlement of claims asserted  
4 in the Action (the “Settlement”). I make this Declaration based on personal knowledge and am  
5 competent to so testify.

6 2. While the mediation process is confidential, the Parties have authorized me to inform  
7 the Court of the matters set forth herein in support of final approval of the Settlement. My statements  
8 and those of the Parties during the mediation process are subject to a confidentiality agreement and  
9 Federal Rule of Evidence 408, and there is no intention on either my part or the Parties’ part to waive  
10 the agreement or the protections of Rule 408.

11 **I. BACKGROUND AND QUALIFICATIONS**

12 3. I have worked as a full-time mediator and arbitrator since 2007. I currently work as  
13 a mediator at the alternative dispute resolution company, Phillips ADR Enterprises (“Phillips  
14 ADR”), which is based in Corona Del Mar, California. I joined Phillips ADR at its founding in  
15 November 2014. Prior to joining Phillips ADR, I worked primarily with former Judge Daniel  
16 Weinstein and his team of mediators.

17 4. Over the past 16 years, I have served as a mediator and arbitrator in connection with  
18 numerous large, complex cases, including securities cases such as this one. I have been involved in  
19 the mediation of over five hundred disputes, involving a myriad of diverse matters, including  
20 financial and accounting cases, securities and derivative matters, insurance coverage, regulatory  
21 matters, professional liability, ERISA, and trustee issues.

22 5. Prior to becoming a mediator, I worked as a trial attorney in private practice, litigating  
23 complex business matters including contract, insurance coverage, intellectual property, real estate,  
24 regulatory, and white-collar matters.

25 **II. THE ARM’S-LENGTH SETTLEMENT NEGOTIATIONS**

26 6. On December 5, 2022, the Parties participated in a full-day mediation session before  
27 me via Zoom conference.



1           7.       In advance of this mediation session, the Parties prepared and exchanged detailed  
2 confidential mediation statements addressing liability and damages, and submitted those mediation  
3 statements to me together with numerous exhibits. During the mediation, counsel for Lead Plaintiff  
4 and the Defendants presented arguments regarding their clients' positions. The work that went into  
5 the mediation statements and competing presentations and arguments was substantial.

6           8.       During the mediation session, I engaged in extensive discussions with counsel on  
7 both sides in an effort to find common ground between the Parties' respective positions and  
8 separately challenged each side to address potential weaknesses in or counterarguments to their key  
9 positions and arguments. However, no agreement among the Parties was reached at that mediation.

10          9.       The Parties scheduled a second mediation session with me for March 8, 2023. At the  
11 full-day mediation session on March 8, 2023, counsel for the Parties again engaged in robust  
12 negotiations regarding their clients' positions in the litigation. At the conclusion of that mediation  
13 session, I made a mediator's recommendation that the Parties settle the Action in return for a cash  
14 payment for the benefit of the Settlement Class of \$39,000,000, which the Parties accepted.

15          10.       Because the Parties submitted their mediation statements and arguments in the  
16 context of a confidential mediation process pursuant to Federal Rule of Evidence 408, I cannot reveal  
17 their content. I can say, however, that the arguments and positions asserted by all involved were the  
18 product of substantial work, they were complex and adversarial and reflected a detailed  
19 understanding of the strengths and potential weaknesses of the claims and defenses at issue in this  
20 case. The mediation process was a hard-fought negotiation from beginning to end and was  
21 conducted by experienced and able counsel on both sides. Throughout the mediation process, the  
22 negotiations between the Parties were vigorous and conducted at arm's length and in good faith.

23 **III. CONCLUSION**

24          11.       Based on my experience as a mediator, I believe that the Settlement represents a  
25 recovery and outcome that is reasonable and fair for the Settlement Class and all Parties involved. I  
26 support the Court's approval of the Settlement in all respects.  
27

1 12. Lastly, the advocacy on both sides of the case was excellent. All counsel displayed  
2 the highest level of professionalism in zealously and capably representing their respective clients.

3 I declare under penalty of perjury that the foregoing facts are true and correct and that this  
4 Declaration was executed this 4th day of October, 2023.

5  
6 /s Michelle Yoshida \*  
MICHELLE YOSHIDA

7  
8 \*Electronically signed with permission.  
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# **Exhibit 2**

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

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*Counsel for Lead Plaintiff Arbejdsmarkedets  
Tillægspension and Lead Counsel for the  
Settlement Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE BIOMARIN PHARMACEUTICAL  
INC. SECURITIES LITIGATION

Case No. 3:20-cv-06719-WHO

**DECLARATION OF TORBEN  
CHRISTENSEN ON BEHALF OF  
ARBEJDSMARKEDETS  
TILLÆGSPENSION IN SUPPORT OF  
(I) LEAD PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF SETTLEMENT  
AND PLAN OF ALLOCATION, AND  
(II) LEAD COUNSEL'S MOTION FOR  
ATTORNEYS' FEES AND LITIGATION  
EXPENSES**

Judge: Hon. William H. Orrick  
Date: November 8, 2023  
Time: 2:00 p.m.

1 I, TORBEN CHRISTENSEN, declare as follows:

2 1. I serve as Legal Director for Arbejdsmarkedets Tillægspension (“ATP” or “Lead  
3 Plaintiff”), the Court-appointed Lead Plaintiff in the above-captioned action (the “Action”).<sup>1</sup> I  
4 submit this declaration in support of: (a) Lead Plaintiff’s motion for final approval of the proposed  
5 settlement of the Action for \$39 million in cash (the “Settlement”) and approval of the proposed Plan  
6 of Allocation; (b) Lead Counsel’s motion for attorneys’ fees and litigation expenses; and (c) ATP’s  
7 request to recover its reasonable costs and expenses incurred in connection with the prosecution of  
8 this litigation. I am authorized to make this Declaration on behalf of ATP. I have personal  
9 knowledge about the information in this Declaration and, if called upon, I could and would  
10 competently testify thereto.

11 **I. Background**

12 **A. ATP**

13 2. ATP is a Denmark-based pension fund founded in 1964. ATP provides retirement  
14 allowances and other benefits to Danish citizens. At the end of 2022, ATP managed more than 677  
15 billion DKK (approximately \$97 billion USD), benefiting more than five and a half million  
16 members.

17 3. As set forth in prior pleadings in this Action, ATP purchased over 177,000 shares of  
18 common stock issued by BioMarin Pharmaceutical Inc. (“BioMarin”) during the Class Period and  
19 suffered substantial losses when BioMarin’s stock price declined following the corrective disclosures  
20 alleged in the Amended Class Action Complaint for Violations of the Federal Securities Laws (ECF  
21 No. 54) (the “Complaint”).

22 4. On December 22, 2020, the Court issued an Order appointing ATP as the Lead  
23 Plaintiff in the Action pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”),  
24 and approving ATP’s selection of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”) as Lead  
25 Counsel in the Action.

26  
27  
28 <sup>1</sup> Unless otherwise indicated, capitalized terms shall have the meanings set forth in the Stipulation  
and Agreement of Settlement, dated April 24, 2023 (ECF No. 139-1) (the “Stipulation”).

**B. ATP's Extensive Participation  
in the Prosecution and Settlement of this Action**

5. Since its appointment as Lead Plaintiff, ATP has closely monitored the prosecution of this Action through the active and continuous involvement of myself, as well as Tomas Kruger Andersen, ATP's Head of Legal, and other ATP employees. We have had regular communications with BLB&G concerning the prosecution and settlement of this case. We have communicated with BLB&G throughout the litigation, including in connection with each material event in the case and when important decisions needed to be made. When necessary, we briefed other representatives of ATP on the status of the Action.

6. Throughout the litigation, ATP engaged in frequent discussions with BLB&G concerning case developments and strategy, and received frequent status reports from BLB&G. Among other things, in its role as a Lead Plaintiff, ATP has:

a. Analyzed the merits of the potential case prior to seeking appointment as Lead Plaintiff in this Action, including evaluating: (i) the potential alleged wrongdoing of and securities claims against BioMarin and the other Defendants; and (ii) the critical legal and procedural issues involved in prosecuting the Action;

b. Reviewed and commented on pleadings filed in the Action, including the Complaint;

c. Reviewed and commented on briefs filed in the Action, including the documents filed in opposition to Defendants' motion to dismiss the Complaint and in support of Lead Plaintiff's motion to certify the class;

d. Searched for and collected documents for production in response to Defendants' requests and consulted with BLB&G regarding the same;

e. Consulted with BLB&G regarding counsel's review and assessment of the document discovery obtained from Defendants;

f. Representatives of ATP, including myself and Senior Portfolio Manager, Stig Harder, prepared and sat for depositions taken by Defendants' Counsel;

1 g. Participated in the mediation process and consulted with Lead Counsel  
2 concerning the settlement negotiations that ultimately led to the agreement in principle to  
3 settle the Action; and

4 h. Evaluated and approved the mediator's recommendation issued by the  
5 mediator, Michelle Yoshida, that the Action be settled for \$39 million in cash.

6 **II. ATP Strongly Endorses Approval of the Settlement and the Plan of Allocation**

7 7. Based on ATP's oversight of the prosecution and negotiations for the proposed  
8 settlement of this Action, ATP strongly endorses the Settlement and believes it provides a favorable  
9 recovery for the Settlement Class, especially when measured against the substantial risks of  
10 establishing liability and damages. ATP also endorses the proposed Plan of Allocation, and believes  
11 that it represents a fair and reasonable method for valuing claims submitted by Settlement Class  
12 Members, and for distributing the Net Settlement Fund to Settlement Class Members who submit  
13 valid and timely proof of claim forms.

14 **III. ATP Supports Lead Counsel's Motion  
15 for Attorneys' Fees and Litigation Expenses**

16 8. ATP also supports Lead Counsel's requested fee of 19% of the Settlement Fund. ATP  
17 takes seriously its role as a Lead Plaintiff to ensure that the attorneys' fees are fair in light of the  
18 result achieved for the Settlement Class and reasonably compensate counsel for the work involved  
19 and the substantial risks they undertook in litigating the Action. ATP negotiated and approved  
20 that fee, subject to Court approval, pursuant to a retention agreement entered into at the outset of the  
21 action, which provided for different levels of percentage fees based on the state of litigation at which  
22 settlement or other recovery was reached. Under the retainer agreement, ATP agreed that BLB&G  
23 could seek a 19% fee if a settlement was reached after resolution of the motion to dismiss and before  
24 the completion of fact discovery.

25 9. Following the agreement to settle the Action, ATP has again reviewed the proposed  
26 fee and believes it is fair and reasonable in light of the excellent result obtained for the Settlement  
27 Class, the high quality of the work performed by Lead Counsel, and the risks undertaken by counsel  
28 in this Action. Based on its active participation in the prosecution of this Action, ATP was able to

1 directly observe the substantial efforts undertaken by Lead Counsel to obtain a favorable proposed  
2 recovery for the Settlement Class and the meaningful litigation risks they faced.

3 10. ATP further believes that Lead Counsel's litigation expenses are reasonable and  
4 represent costs and expenses necessary for the prosecution and resolution of this securities class  
5 action. As a result, ATP has approved the request for payment of expenses submitted by Lead  
6 Counsel.

7 11. Based on the foregoing, and consistent with its obligation to the Settlement Class to  
8 obtain the best result at the most efficient cost, ATP supports Lead Counsel's motion for attorneys'  
9 fees and expenses.

#### 10 **IV. ATP's Request for Reimbursement of Costs and Expenses**

11 12. ATP understands that reimbursement of a lead plaintiff's reasonable costs and  
12 expenses is authorized under the PSLRA. For this reason, in connection with Lead Counsel's request  
13 for payment of Litigation Expenses, ATP seeks reimbursement for the time that it dedicated to the  
14 representation of the Settlement Class in the Action.

15 13. One of my responsibilities as Legal Director of ATP is to monitor outside litigation  
16 matters, including ATP's activities in securities class actions where (as here) it has been appointed  
17 lead plaintiff. In addition to me, the following ATP employees also participated in the prosecution  
18 and settlement of this Action: Tomas Kruger Andersen, ATP's Head of Legal; Stig Harder, Senior  
19 Portfolio Manager; Benjamin Henriksen, Chief Information Security Officer; and Peter Staehre,  
20 Security Officer. The work that we performed is summarized in paragraphs 5 and 6 above. In  
21 addition, employees with ATP's external data housing provider, KMD, also assisted ATP in gathering  
22 documents and electronically stored information in response to Defendants' requests for documents.

23 14. The time that I and other ATP employees devoted to the representation of the  
24 Settlement Class in this Action was time that we otherwise would have expected to spend on other  
25 work for ATP and, thus, represented a cost to ATP. ATP seeks reimbursement in the amount of  
26 \$127,400 for the time of the following personnel:

Personnel	Hours	Hourly Rate	Total
Tomas Kruger Andersen, Head of Legal	30	\$500	\$15,000



Torben Christensen, Legal Director	106	\$500	\$53,000
Stig Harder, Senior Portfolio Manager	73	\$500	\$36,500
Benjamin Henriksen, Chief Information Security Officer	20	\$500	\$10,000
Peter Staehr, Security Officer	43	\$300	\$12,900
<b>TOTAL</b>			<b>\$127,400</b>

15. While ATP devoted a significant amount of time to this Action, its request for reimbursement of costs, as set forth in the table above, is based on a conservative estimate of the number of hours we spent on this litigation. The hourly rates used for purposes of this request are based on comparable rates for lawyers or other professionals of similar experience working in the Copenhagen market.

#### V. Conclusion

16. In conclusion, ATP was closely involved with the prosecution and settlement of this Action, strongly endorses the proposed Settlement as fair, reasonable, and adequate, and believes that it represents a highly favorable recovery for the Settlement Class in light of the risks of continued litigation. We have reviewed and endorse the proposed Plan of Allocation as fair and reasonable for the Settlement Class. ATP further respectfully requests that the Court approve Lead Counsel's motion for attorneys' fees and litigation expenses. Finally, ATP requests reimbursement for its costs and expenses under the PSLRA as set forth above.

I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed this 4th day of October, 2023.

TORBEN CHRISTENSEN

# **Exhibit 3**



# CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

## Securities Class Action Settlements

2022 Review and Analysis

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Analyses in this report are based on 2,116 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2022. See page 16 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

# 2022 Highlights

In 2022, the number of settled cases reached its highest level in 15 years, increasing 21% relative to 2021. The median settlement amount, median “simplified tiered damages,” and median total assets of the defendant issuer also rose dramatically.<sup>1</sup>

- In 2022, the number of securities class action settlements increased to 105 with a total settlement value of over \$3.8 billion, compared to 87 settlements in 2021 with a total value of \$1.9 billion. (page 3)
- The median settlement amount of \$13.0 million represents an increase of 46% from 2021, while the average settlement amount (\$36.2 million) increased by 63%. (page 4)
- The \$3.8 billion total settlement dollars were 97% higher than the prior year. (page 3)
- There were eight mega settlements (equal to or greater than \$100 million), ranging from \$100 million to \$809.5 million. (page 3)
- The increase in the proportion of “midsize” settlement amounts (\$10 million to \$50 million) was accompanied by a decrease in the proportion of cases that settled for less than \$10 million. (page 4)
- Median “simplified tiered damages” increased more than 125% and reached a record high.<sup>2</sup> (page 5)
- Median “disclosure dollar losses”<sup>3</sup> grew by more than 160%, also reaching an all-time high. (page 5)
- Compared to defendant firms involved in cases that settled in 2021, defendant firms involved in 2022 settlements were 97% larger, as measured by median total assets. (page 5)
- The historically low rate of settled cases involving a corresponding action by the U.S. Securities and Exchange Commission (SEC) observed in 2021 persisted in 2022, remaining below 9%. (page 11)

Figure 1: Settlement Statistics

(Dollars in millions)

	2017–2021	2021	2022
Number of Settlements	395	87	105
Total Amount	\$16,714.3	\$1,932.4	\$3,805.5
Minimum	\$0.3	\$0.7	\$0.7
Median	\$10.2	\$8.9	\$13.0
Average	\$42.3	\$22.2	\$36.2
Maximum	\$3,496.8	\$202.5	\$809.5

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

# Author Commentary

## Findings

The year 2022 was a record year for settlement activity. The number of securities class action settlements in 2022 increased sharply from 2021 and reached levels not observed since 2007. This sharp increase was accompanied by dramatic growth in case settlement amounts, “simplified tiered damages” (our rough proxy for potential shareholder losses), and the size of issuer defendant firms.

The historically high number of settlements in 2022 can be explained by the elevated number of case filings in 2018–2020, when over 70% of these settled cases were filed.

The median settlement amount is the highest since 2018. This was likely driven by the record-high level of “simplified tiered damages,” an estimate of potential shareholder losses that our research finds is the single most important factor in explaining settlement amounts.

The all-time-high median “simplified tiered damages” reflects a number of factors such as larger issuer defendants (measured by the company’s total assets) and larger disclosure dollar losses (a measure of the change in the issuer defendant’s market capitalization following the class-ending alleged corrective disclosure). Institutional investors are more likely to serve as lead plaintiffs in larger cases, i.e., cases with relatively high “simplified tiered damages.” Consistent with this observation, institutional investor involvement as lead plaintiffs for 2022 settled cases was higher than the prior year and the 2017–2021 average. Larger cases also tend to take longer to settle, and accordingly, we observe an increase in the median time to settlement in 2022 relative to prior years.

---

*2022 was an interesting year as settlement activity reached historically high levels across several dimensions, including the number and size of settlements, and a record-high for our proxy for potential shareholder losses.*

*Dr. Laarni T. Bulan  
Principal, Cornerstone Research*

---

In contrast to the historic highs, settlements in relation to our proxy for potential shareholder losses declined sharply. In particular, both the median and average settlement as a percentage of “simplified tiered damages” in 2022 fell to their lowest levels among post–Reform Act years. These low levels are consistent with a low presence in 2022 of factors often associated with higher settlement amounts, such as the presence of an SEC action, criminal charges, or accounting irregularities.<sup>4</sup>

---

*Securities class action settlements in 2022 involved substantially larger cases with larger issuer defendant firms. Overall, these cases took longer to resolve and reached more advanced litigation stages before settlement than in prior years.*

*Dr. Laura E. Simmons  
Senior Advisor, Cornerstone Research*

---

## Looking Ahead

In light of the reduced level in the number of securities class action case filings in 2021–2022, we may begin to see a slowdown or flattening out in settlement activity in the upcoming years,<sup>5</sup> absent a decrease in dismissal rates.

Given that SEC enforcement actions have tended to increase subsequent to when a new SEC Chair is sworn in (which last occurred in 2021), we may also begin to see a reversal in the frequency of corresponding SEC actions among settled cases in the near term. For additional details, see Cornerstone Research’s *SEC Enforcement Activity: Public Company and Subsidiaries—FY 2022 Update*.

As discussed in Cornerstone Research’s *Securities Class Action Filings—2022 Year in Review*, certain issues have emerged as focus areas in securities class actions. In particular, 26% of all core federal filings in 2020–2022 were related to special purpose acquisition company (SPAC), COVID-19, or cryptocurrency matters. While very few of these types of cases have settled to date, we expect increased settlement activity for these cases in the future.

—Laarni T. Bulan and Laura E. Simmons

# Total Settlement Dollars

As has been observed in prior years, the presence or absence of just a few very large settlements can have a substantial effect on total settlement dollars for a given year.

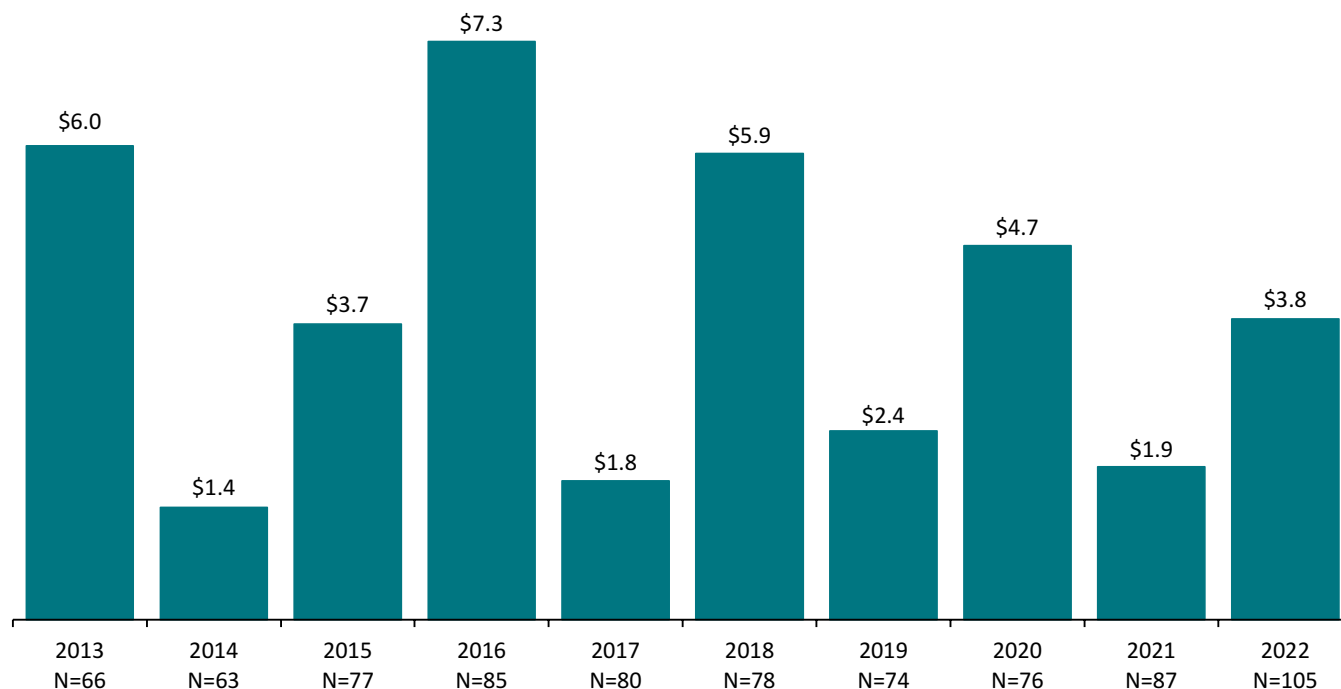
- The number of settlements in 2022 (105 cases) continued the upward trend since 2019 and represented a 38% increase from the prior nine-year average (76 cases).
- An increase in the number of mega settlements (i.e., settlements equal to or greater than \$100 million) contributed to total settlement dollars nearly doubling in 2022 compared to the prior year.

- There were eight mega settlements in 2022, ranging from \$100 million to \$809.5 million. Eight such settlements is the highest number since 2016.
- A decline in the proportion of very small settlements further contributed to the growth in total settlement dollars. Only 23% of settlements in 2022 were for less than \$5 million, compared to 33% of cases settled in the prior nine years.

*The number of settlements in 2022 was the highest number since 2007.*

Figure 2: Total Settlement Dollars 2013–2022

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases.



# Settlement Size

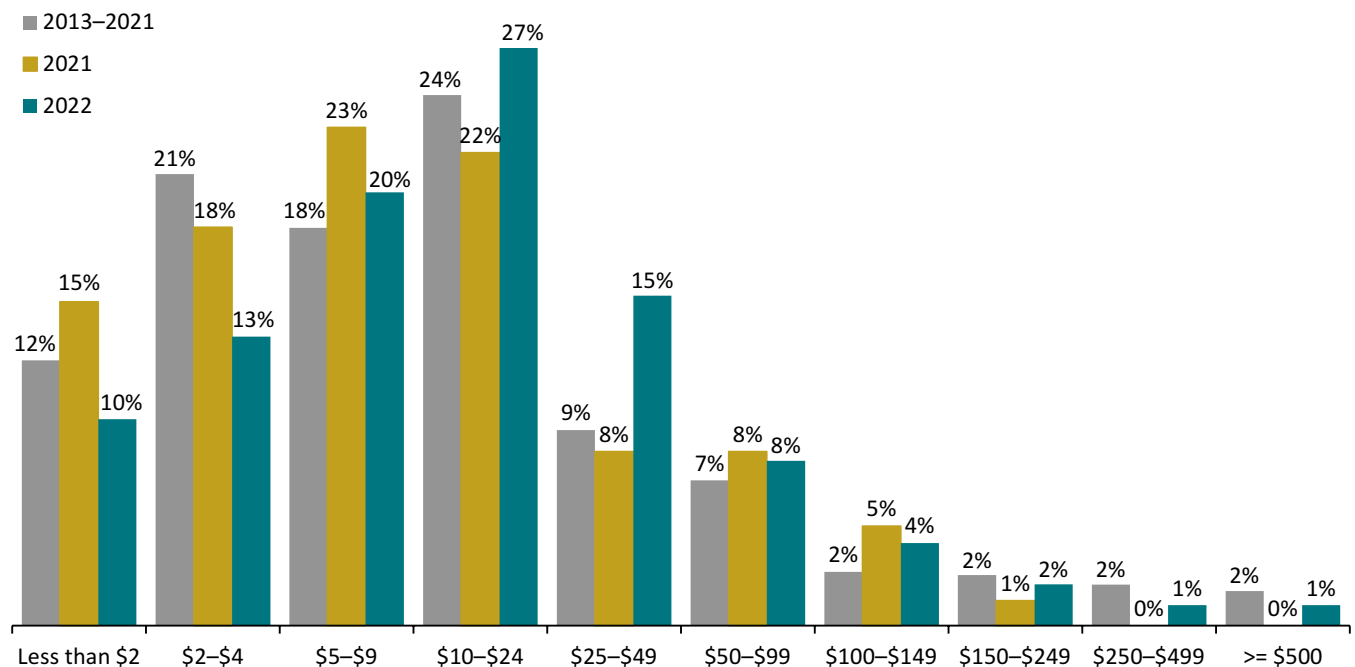
- The median settlement amount in 2022 was \$13.0 million, a 46% increase from 2021 and a 34% increase from the prior nine-year median. Median values provide the midpoint in a series of observations and are less affected than averages by outlier data.
- The average settlement amount in 2022 was \$36.2 million, a 63% increase from 2021. (See [Appendix 1](#) for an analysis of settlements by percentiles.)
- In 2022, 42% of cases settled for between \$10 million and \$50 million, compared to only 30% in 2021 and 34% in 2013–2021.

*The median settlement amount in 2022 was the highest since 2018.*

- The increase in the proportion of these “midsize” settlement amounts (\$10 million to \$50 million) was accompanied by a decrease in the proportion of cases that settled for less than \$10 million—43% in 2022 compared to 56% in 2021 and 51% in the prior nine years.

**Figure 3: Distribution of Settlements 2013–2022**

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

# Type of Claim

## Rule 10b-5 Claims and “Simplified Tiered Damages”

“Simplified tiered damages” uses simplifying assumptions to estimate per-share damages and trading behavior for cases involving Rule 10b-5 claims. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.<sup>6</sup>

Cornerstone Research’s analysis finds this measure to be the most important factor in estimating settlement amounts.<sup>7</sup> However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

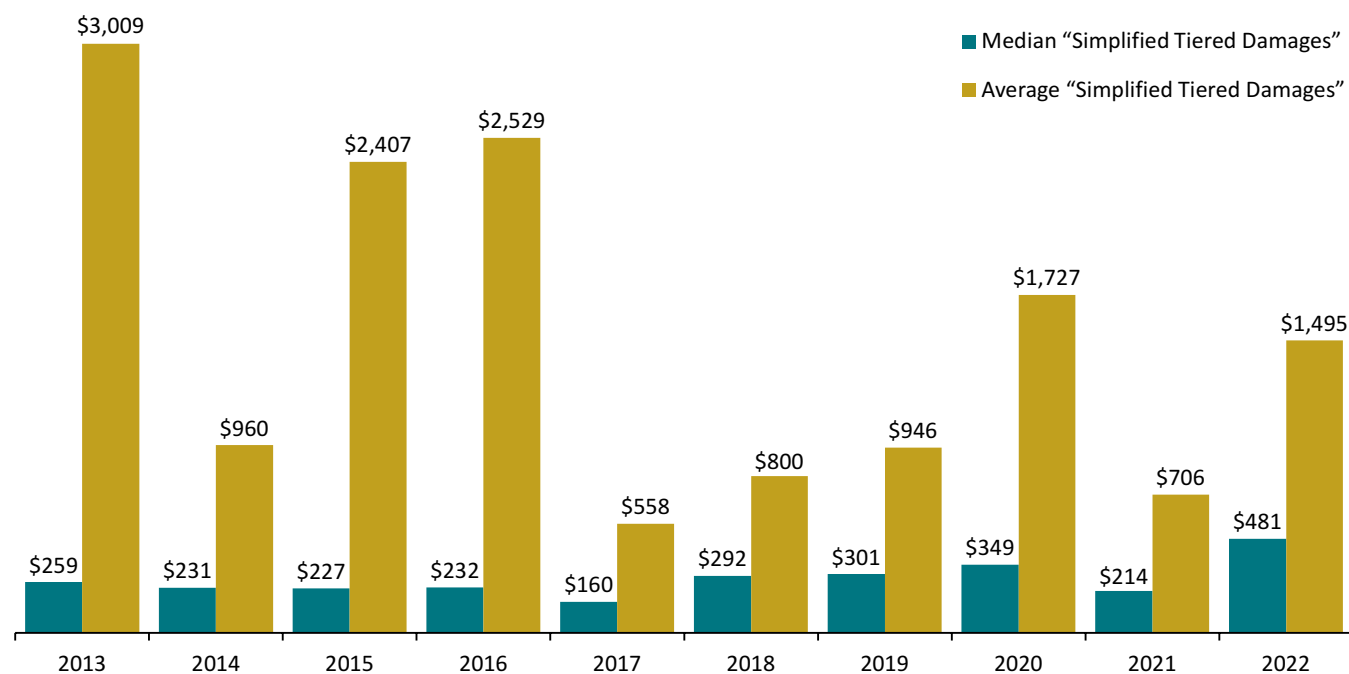
- Similar to settlement amounts, the median “simplified tiered damages” in 2022 increased 125% compared to 2021 and was over 100% higher than the median of settled cases for the prior nine years.

- In 2022, nearly half of settlements with Rule 10b-5 claims involved “simplified tiered damages” over \$500 million, an all-time high.
- Higher “simplified tiered damages” are typically associated with larger issuer defendants. Consistent with this, the median total assets of issuer defendants in 2022 settled cases was 97% higher than the median total assets for 2021 settled cases.
- Higher “simplified tiered damages” are also generally associated with larger disclosure dollar losses. In 2022, the median DDL grew by more than 160% compared to 2021, reaching an all-time high.

*Median “simplified tiered damages” reached an all-time high in 2022.*

Figure 4: Median and Average “Simplified Tiered Damages” in Rule 10b-5 Cases 2013–2022

(Dollars in millions)

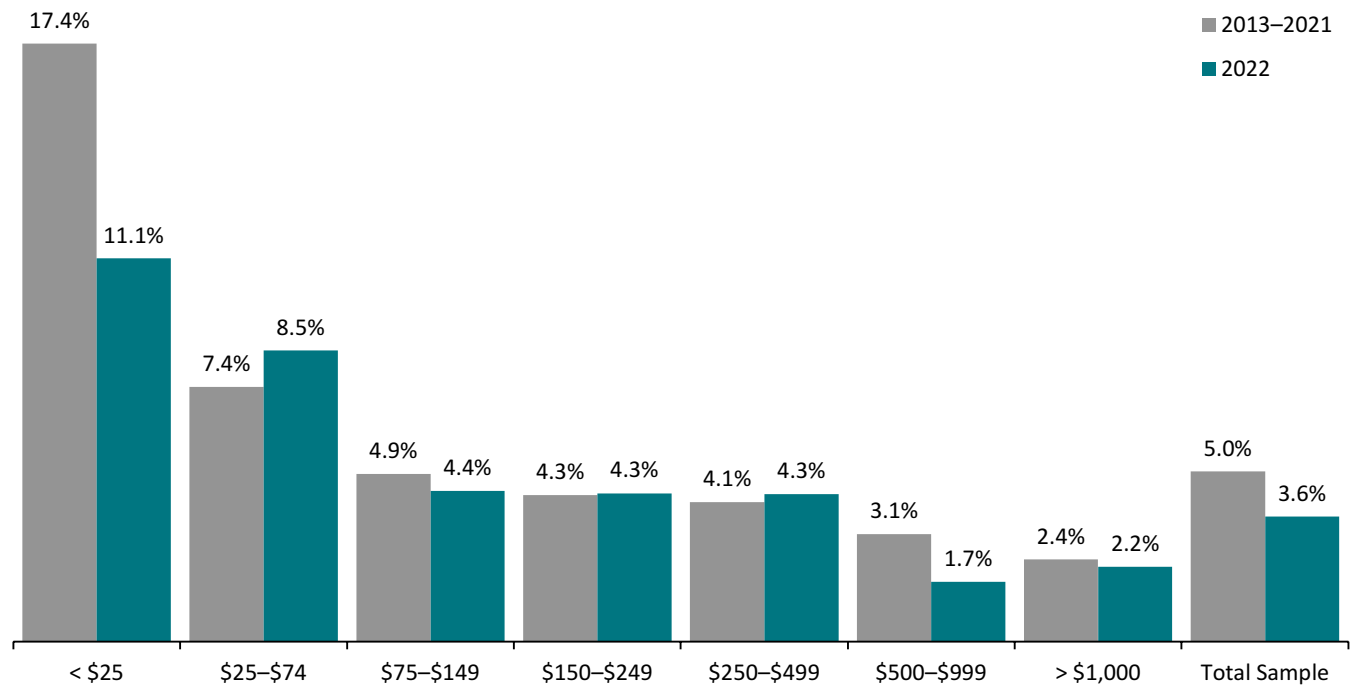


Note: “Simplified tiered damages” are adjusted for inflation based on class period end dates for common stock only; 2022 dollar equivalent figures are presented. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

- Only 4% of settlements in 2022 had “simplified tiered damages” less than \$25 million, the lowest observed to date.
- Cases with smaller “simplified tiered damages” are more likely to be associated with issuers that had been delisted from a major exchange and/or declared bankruptcy prior to settlement. In 2022, the percentage of such issuers for settled cases was at an all-time low (11%).
- The 2022 median and average settlement as a percentage of “simplified tiered damages” of 3.6% and 5.4%, respectively, are all-time lows. (See [Appendix 5](#) for additional information on median and average settlements as a percentage of “simplified tiered damages.”)

Figure 5: Median Settlement as a Percentage of “Simplified Tiered Damages” by Damages Ranges in Rule 10b-5 Cases 2013–2022

(Dollars in millions)



Note: Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

## '33 Act Claims and "Simplified Statutory Damages"

For Securities Act of 1933 ('33 Act) claim cases—those involving only Section 11 and/or Section 12(a)(2) claims—potential shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as "simplified statutory damages." Only the offered shares are assumed to be eligible for damages.<sup>8</sup>

- In 2022, there were nine settlements for cases with only '33 Act claims, in line with the average from 2017 to 2020 and well below the historically high number of 16 settlements observed in 2021.

- The median settlement as a percentage of simplified statutory damages in 2022 and 2021 were 4.7% and 4.4%, respectively—the lowest levels since 2002. (See *Appendix 6* for additional information on median and average settlements as a percentage of "simplified statutory damages.")
- The average settlement amount for cases with only '33 Act claims was \$7.3 million in 2022, compared to \$14.9 million during 2013-2021.

*In 2022, the median settlement amount for cases with only '33 Act claims was \$7.0 million, the lowest since 2013.*

Figure 6: Settlements by Nature of Claims  
2013–2022

(Dollars in millions)

	Number of Settlements	Median Settlement	Median "Simplified Statutory Damages"	Median Settlement as a Percentage of "Simplified Statutory Damages"
Section 11 and/or Section 12(a)(2) Only	82	\$9.2	\$145.2	8.7%

	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	123	\$15.4	\$355.7	6.3%
Rule 10b-5 Only	581	\$9.0	\$250.1	4.5%

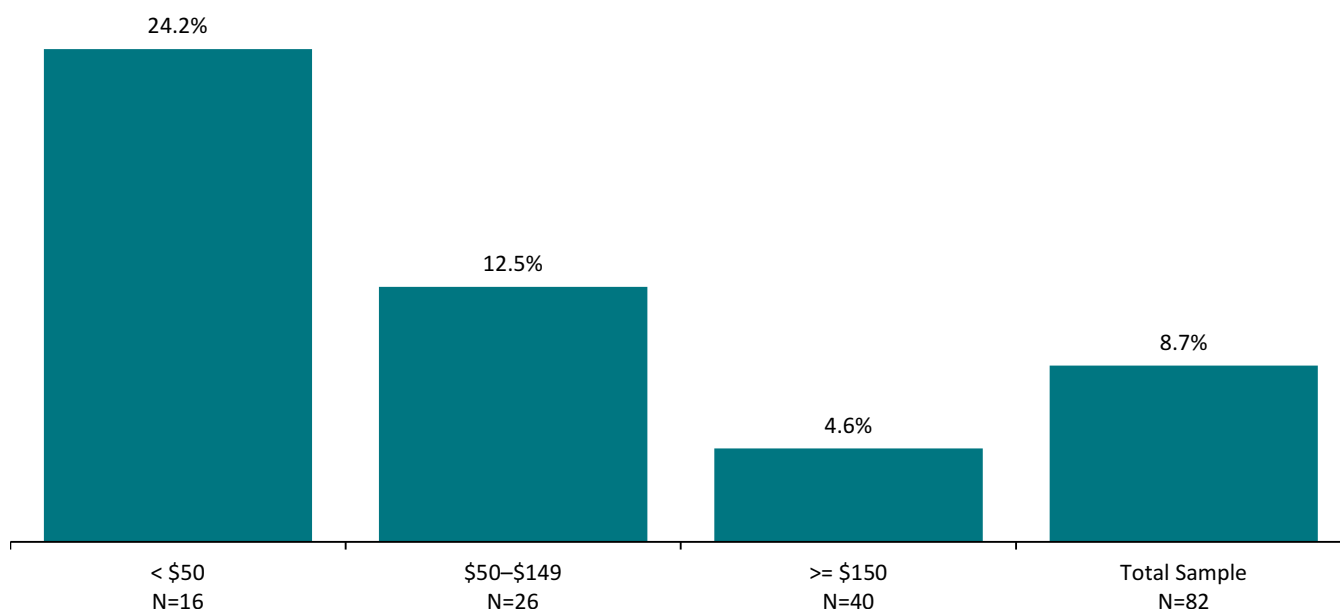
Note: Settlement dollars and damages are adjusted for inflation; 2022 dollar equivalent figures are presented.

- Settlements as a percentage of the simplified proxies for potential shareholder losses used in this report are typically smaller for cases that have larger estimated damages. As with cases with Rule 10b-5 claims, this finding holds for cases with only '33 Act claims.
- In the past decade, over 85% of the settled '33 Act claim cases involved an underwriter (or underwriters) as a named codefendant.
- Over 80% of '33 Act claim cases that settled in 2013–2022 involved an initial public offering (IPO).

*Consistent with the lower median settlement amount among '33 Act claim cases, the median “simplified statutory damages” in 2022 declined by 61% from the median in 2021 and was the lowest since 2016.*

Figure 7: Median Settlement as a Percentage of “Simplified Statutory Damages” by Damages Ranges in '33 Act Claim Cases 2013–2022

(Dollars in millions)



Jurisdictions of Settlements of '33 Act Claim Cases

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
State Court	1	0	2	4	5	4	4	7	6	6
Federal Court	7	2	2	6	3	4	5	1	10	3

Note: “N” refers to the number of cases. This analysis excludes cases alleging Rule 10b-5 claims..

# Analysis of Settlement Characteristics

## GAAP Violations

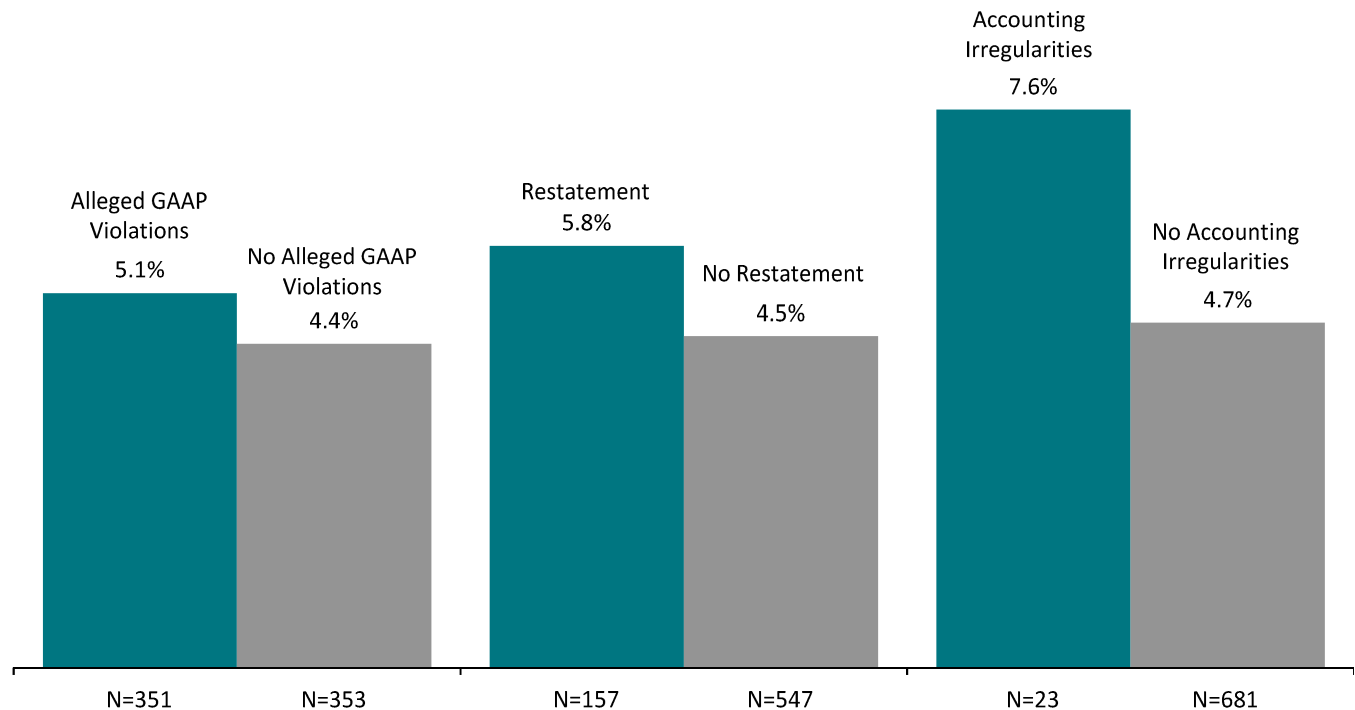
This analysis examines allegations of GAAP violations in settlements of securities class actions involving Rule 10b-5 claims, including two sub-categories of GAAP violations—financial statement restatements and accounting irregularities.<sup>9</sup> For further details regarding settlements of accounting cases, see Cornerstone Research’s annual report on *Accounting Class Action Filings and Settlements*.<sup>10</sup>

- For the first time since 2017, the median settlement amount for cases involving GAAP allegations was larger than that for non-GAAP cases. Notably, in 2022 the median settlement amount for GAAP cases was more than double that of non-GAAP cases.
- As noted in prior years, settlements as a percentage of “simplified tiered damages” for cases involving GAAP allegations are typically higher than for non-GAAP cases. This result has continued despite a relatively low number of cases involving a financial restatement. For example, only 11% of settlements in 2022 involved a restatement of financial statements.

- Auditor codefendants were involved in only 3% of settled cases, consistent with 2021 but substantially lower than the average from 2013 to 2021.
- The infrequency of cases alleging accounting irregularities continued in 2022 at less than 2% of settled cases.

*The proportion of settled cases in 2022 with Rule 10b-5 claims alleging GAAP violations remained at a historically low level.*

Figure 8: Median Settlement as a Percentage of “Simplified Tiered Damages” and Allegations of GAAP Violations 2013–2022



Note: “N” refers to the number of cases. This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

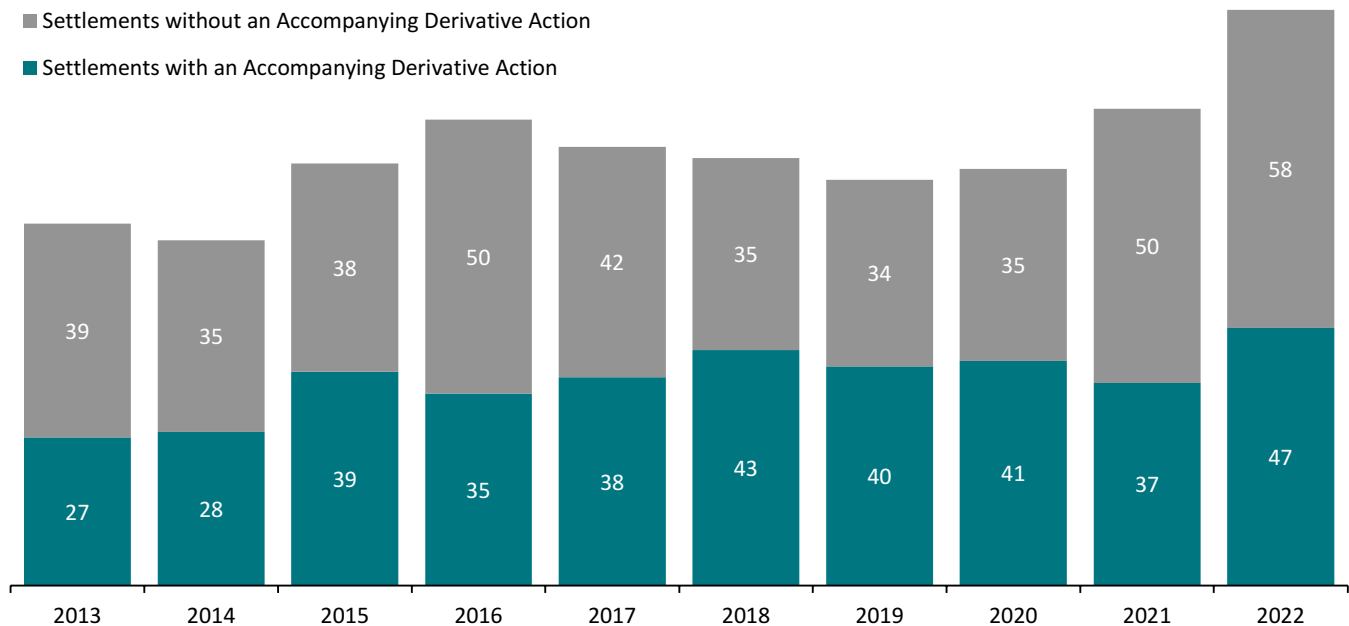
## Derivative Actions

- Securities class actions often involve accompanying (or parallel) derivative actions with similar claims, and such cases have historically settled for higher amounts than securities class actions without corresponding derivative matters.<sup>11</sup>
- In 2022, the median settlement amount for cases with an accompanying derivative action was approximately 28% higher than for cases without (\$14.1 million versus \$11.0 million, respectively).
- For cases settled during 2018–2022, 38% of parallel derivative suits were filed in Delaware. California and New York were the next most common venues for such actions, representing 22% and 15% of such settlements, respectively.

*Although the proportion of cases involving accompanying derivative actions in 2022 was higher compared to 2021, it was below the average for 2018–2021.*

- It is commonly understood that most parallel derivative suits do not settle for monetary amounts (other than plaintiffs’ attorney fees). However, the likelihood of a monetary settlement among parallel derivative actions is higher when the securities class action settlement is large, as shown in Cornerstone Research’s *Parallel Derivative Action Settlement Outcomes*.<sup>12</sup>

Figure 9: Frequency of Derivative Actions 2013–2022

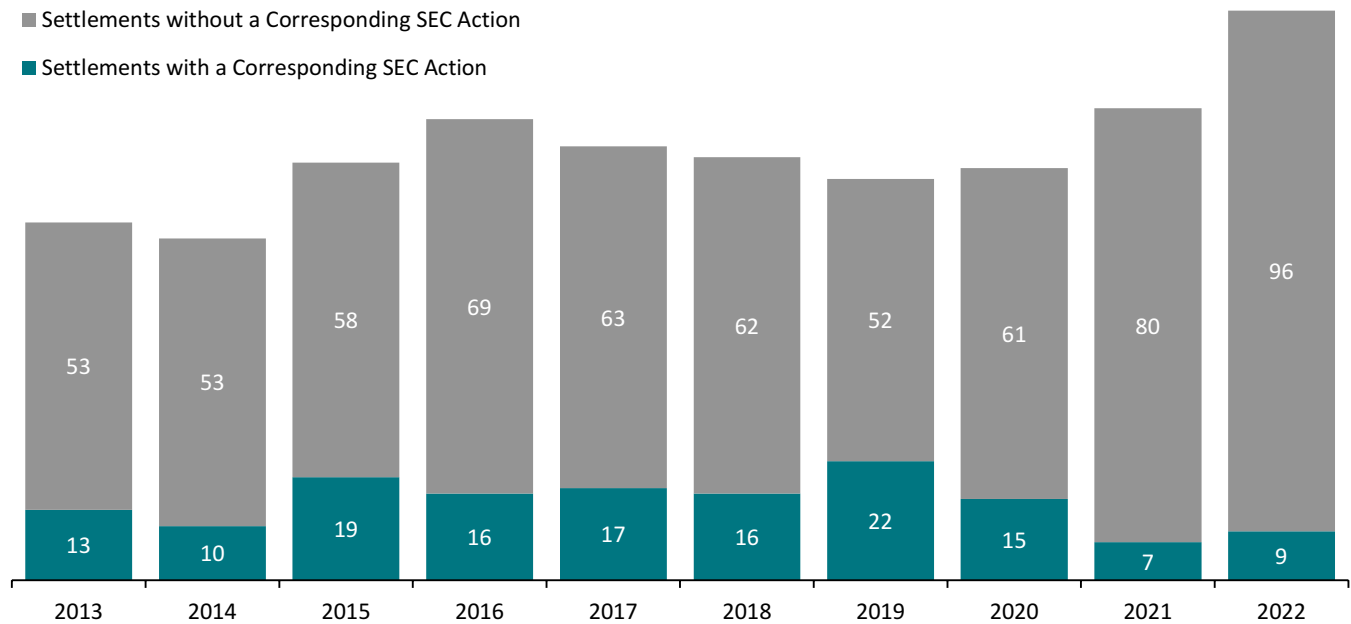


## Corresponding SEC Actions

- Historically, cases with an accompanying SEC action have typically been associated with substantially higher settlement amounts.<sup>13</sup> However, this pattern did not hold in 2022.
- The median settlement amount in 2022 for cases that involved a corresponding SEC action was less than 5% higher than the median for cases without such an action. In contrast, in 2021, the median settlement amount for cases with an accompanying SEC action was more than double that for cases without such an action.
- Both “simplified tiered damages” and DDL were lower in 2022 for cases with a corresponding SEC action when compared to those without, at 72% and 83% lower, respectively.
- Settled cases in 2022 with a corresponding SEC action were nearly 10% quicker to reach settlement, on average, compared to cases without such an action. In contrast, in 2021, cases with corresponding SEC actions took over 20% longer to reach a settlement than cases without corresponding SEC actions.
- The number of settled cases in 2022 involving either a corresponding SEC action or criminal charge remained below 13%, compared to an average of 24% for the years 2013–2021.

*Settled cases involving SEC actions in 2022 were considerably smaller than cases without accompanying SEC actions.*

Figure 10: Frequency of SEC Actions  
 2013–2022





## Institutional Investors

As discussed in prior reports, increasing institutional participation as lead plaintiffs in securities litigation was a focus of the Reform Act.<sup>14</sup> Indeed, in years following passage of the Reform Act, institutional investor involvement as lead plaintiffs did increase, particularly in larger cases, that is, cases with higher “simplified tiered damages.”

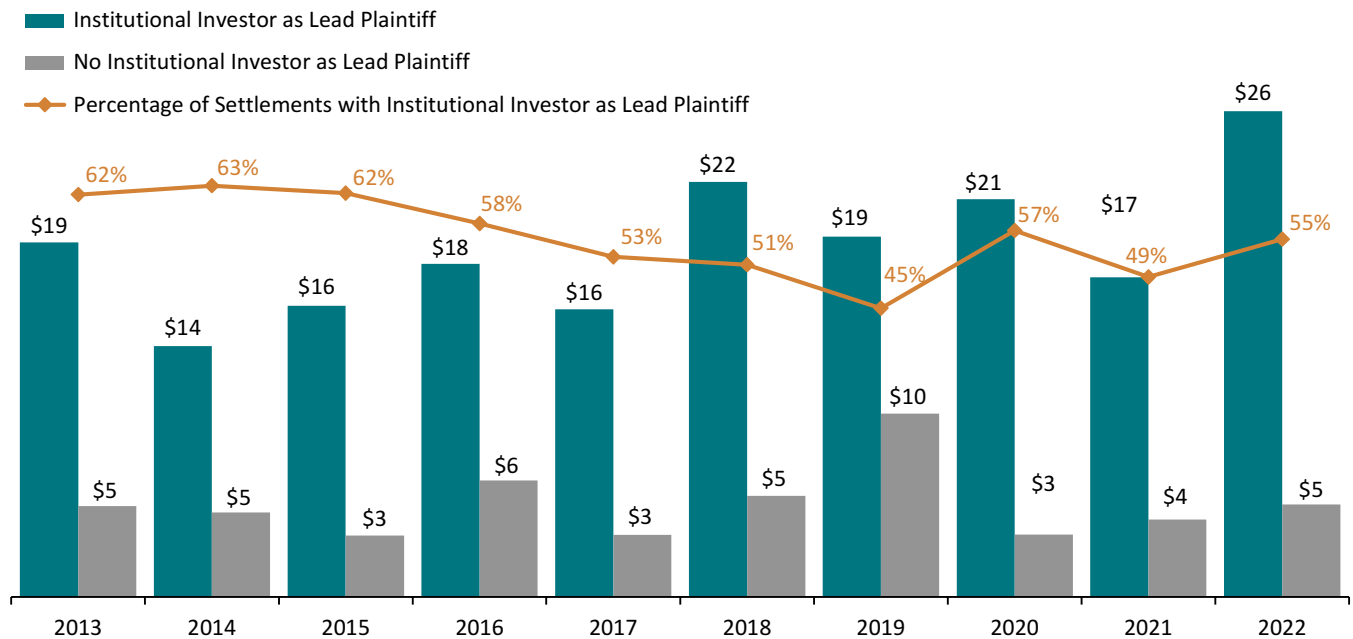
- In 2022, for cases involving an institutional investor as lead plaintiff, median “simplified tiered damages” and median total assets were five times and eight times higher, respectively, than the median values for cases without an institutional investor as a lead plaintiff.
- Since passage of the Reform Act, public pension plans have been the most frequent type of institutional lead plaintiff.

- In 2022, a public pension plan served as lead plaintiff in two-thirds of cases with an institutional lead plaintiff. Moreover, in six of the seven mega settlement cases in 2022 involving an institutional lead plaintiff, the institutional investor was a public pension plan.
- Institutional participation as lead plaintiff continues to be associated with particular plaintiff counsel. For example, an institutional investor served as a lead plaintiff in 2022 in over 85% of settled cases in which Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP served as lead plaintiff counsel. In contrast, institutional investors served as lead plaintiffs in 21% of cases in which The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP served as lead plaintiff counsel.

*Of the eight mega settlement cases in 2022, seven included an institutional lead plaintiff.*

Figure 11: Median Settlement Amounts and Institutional Investors 2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

# Time to Settlement and Case Complexity

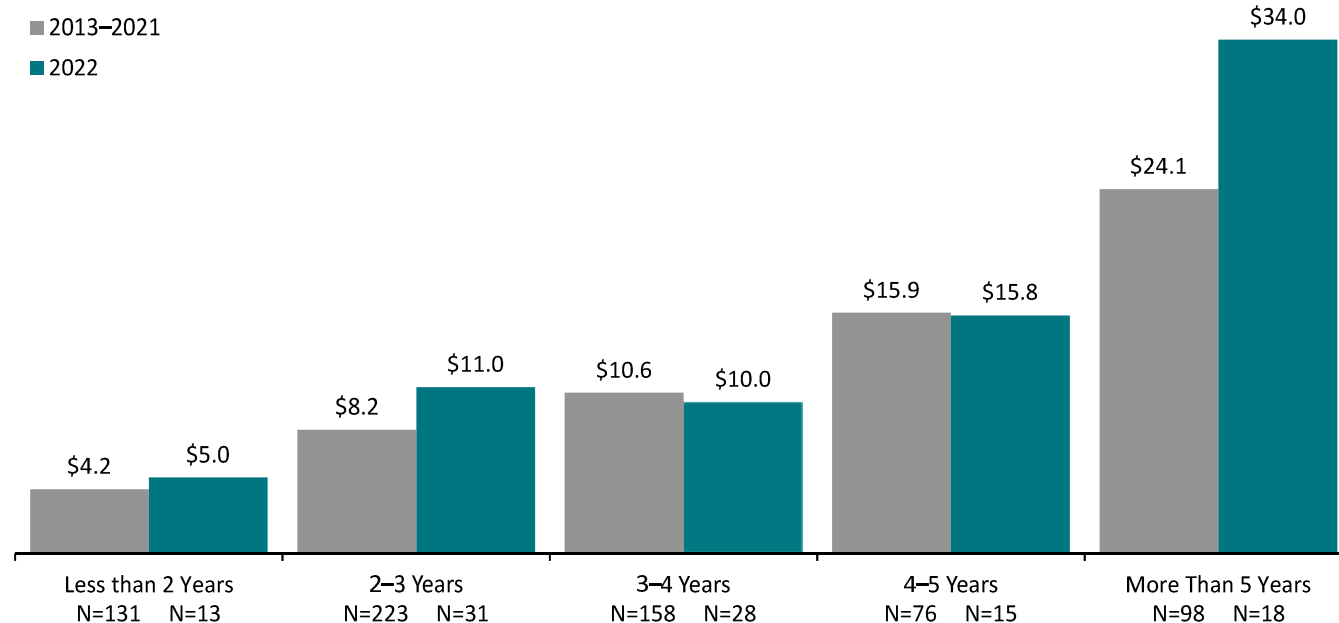
- Overall, the median time from filing to settlement hearing date in 2022 was longer—3.2 years for 2022 settlements, compared to 2.9 years for 2013–2021 settlements.
- Cases involving an institutional lead plaintiff continued to take longer to settle. In particular, settlements in 2022 with institutional lead plaintiffs took 33% longer to settle than cases not involving an institutional lead plaintiff.

*Only 42% of cases in 2022 reached a settlement hearing date within three years of filing, the lowest percentage in the prior nine years.*

- Larger cases (as measured by higher “simplified tiered damages”) often take longer to resolve. Consistent with this, in 2022, the median time to settlement for cases that settled for at least \$100 million was over 5.5 years—an all-time high for such cases.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date 2013–2022

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases.

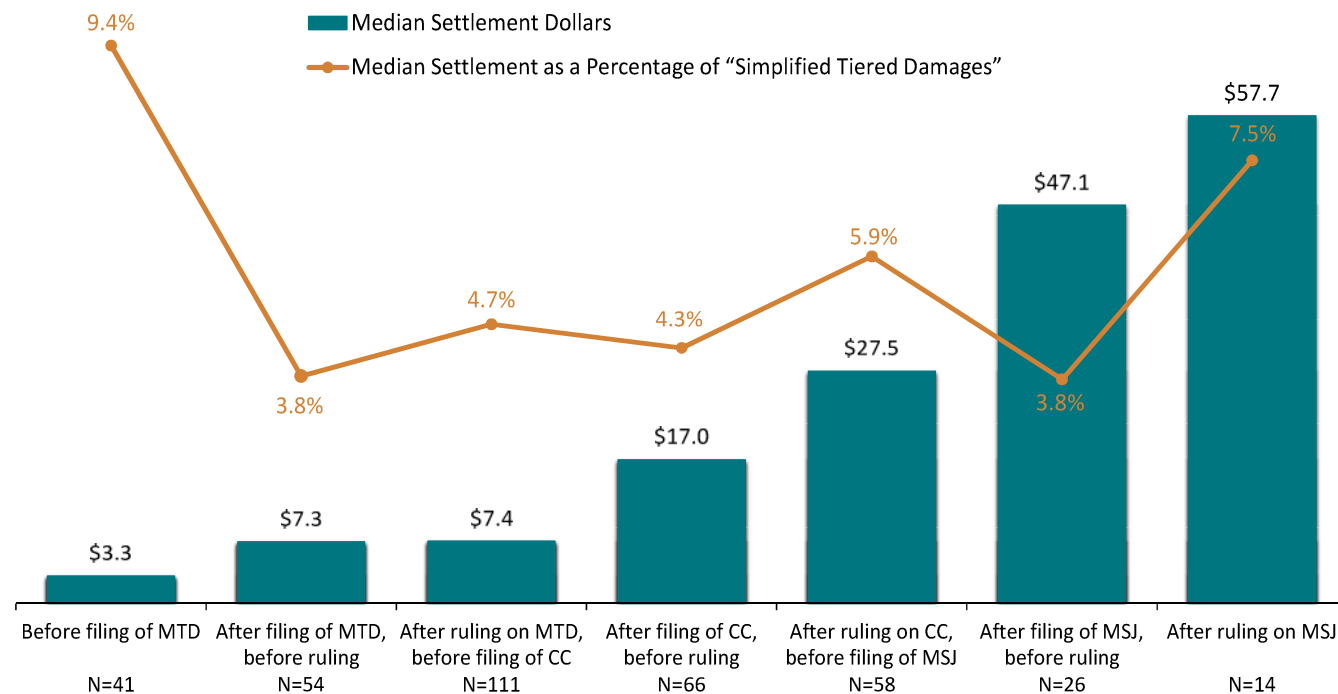
# Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),<sup>15</sup> this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

- Cases settling at later stages continue to be larger in terms of total assets and “simplified tiered damages.”
- In particular, the median issuer defendant total assets for 2022 cases that settled after the ruling on a motion for class certification was over four times the median for cases that settled prior to such a motion being ruled on.
- In 2022, cases where a motion for class certification was filed were nearly three times as likely to have either Robbins Geller Rudman & Dowd LLP and/or Bernstein Litowitz Berger & Grossmann LLP as lead plaintiff counsel than The Rosen Law Firm, Pomerantz LLP, or Glancy Prongay & Murray LLP.
- Cases settling at later stages often included an institutional investor lead plaintiff. For example, in 2022, an institutional investor served as lead plaintiff 69% of the time for cases that settled after the filing of a motion for class certification (slightly higher than the percentage over the prior four years), compared to 44% for cases that settled prior to the filing of a motion for class certification (38% in the prior four years)
- Overall, compared to settlements in 2021, a larger proportion of cases in 2022 did not reach settlement until after a motion for class certification was filed. In addition, 14% of 2022 settled cases were resolved after a summary judgment motion, compared to less than 9% for 2018–2021 settlements.

**Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement 2018–2022**

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. “N” refers to the number of cases. MTD refers to “motion to dismiss,” CC refers to “class certification,” and MSJ refers to “motion for summary judgment.” This analysis is limited to cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

# Cornerstone Research's Settlement Analysis

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This research applies regression analysis to examine the relations between settlement outcomes and certain securities case characteristics. Regression analysis is employed to better understand the factors that are important for estimating what cases might settle for, given the characteristics of a particular securities class action.

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## Determinants of Settlement Outcomes

Based on the research sample of cases that settled from January 2006 through December 2022, important determinants of settlement amounts include the following:

- “Simplified tiered damages”
- Maximum Dollar Loss (MDL)—the dollar-value change in the defendant firm’s market capitalization from its class period peak to the trading day immediately following the end of the class period.
- Most recently reported total assets of the issuer defendant firm
- Number of entries on the lead case docket
- Whether there were accounting allegations
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether there were criminal charges against the issuer, other defendants, or related parties with similar allegations to those included in the underlying class action complaint
- Whether there was an accompanying derivative action

- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether an institution was a lead plaintiff
- Whether securities other than common stock/ADR/ADS, were included in the alleged class

Cornerstone Research analyses show that settlements were higher when “simplified tiered damages,” MDL, issuer defendant asset size, or the number of docket entries was larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving accounting allegations, a corresponding SEC action, criminal charges, an accompanying derivative action, an institution involved as lead plaintiff, or securities in addition to common stock included in the alleged class.

Settlements were lower if the issuer was distressed.

More than 75% of the variation in settlement amounts can be explained by the factors discussed above.

## Research Sample

- The database compiled for this report is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. The sample contains only cases alleging fraudulent inflation in the price of a corporation's common stock.
- Cases with alleged classes of only bondholders, preferred stockholders, etc., cases alleging fraudulent depression in price, and mergers and acquisitions cases are excluded. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 2,116 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2022. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).<sup>16</sup>
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.<sup>17</sup> Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.<sup>18</sup>

## Data Sources

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, the Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, Refinitiv Eikon, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, Stanford Securities Litigation Analytics (SSLA), Securities Class Action Clearinghouse (SCAC), and public press.

# Endnotes

- <sup>1</sup> Reported dollar figures and corresponding comparisons are adjusted for inflation; 2022 dollar equivalent figures are analyzed.
- <sup>2</sup> “Simplified tiered damages” are calculated for cases that settled in 2006 or later, following the U.S. Supreme Court’s 2005 landmark decision in *Dura Pharmaceuticals Inc. v. Broudo*, 544 U.S. 336. “Simplified tiered damages” is based on the stock-price drops on alleged corrective disclosure dates as described in the settlement plan of allocation.
- <sup>3</sup> Disclosure Dollar Loss or DDL is the dollar-value change in the defendant firm’s market capitalization between the end of the class period and the trading day immediately following the end of the class period.
- <sup>4</sup> Accounting irregularities reflect those cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.
- <sup>5</sup> *Securities Class Action Filings—2022 Year in Review*, Cornerstone Research (2023).
- <sup>6</sup> The “simplified tiered damages” approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the “true value” of the stock during the alleged class period (or “value line”). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant’s common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may differ substantially from damages estimates developed in conjunction with case-specific economic analysis.
- <sup>7</sup> Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).
- <sup>8</sup> The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to “simplified tiered damages,” the estimation of “simplified statutory damages” makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity.
- <sup>9</sup> The two sub-categories of accounting issues analyzed in Figure 8 of this report are (1) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (2) accounting irregularities.
- <sup>10</sup> *Accounting Class Action Filings and Settlements—2022 Review and Analysis*, Cornerstone Research (2023), forthcoming in spring 2023.
- <sup>11</sup> To be considered an accompanying or parallel derivative action, the derivative action must have underlying allegations that are similar or related to the underlying allegations of the securities class action and either be active or settling at the same time as the securities class action.
- <sup>12</sup> *Parallel Derivative Action Settlement Outcomes*, Cornerstone Research (2022).
- <sup>13</sup> As noted previously, it could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on [www.sec.gov](http://www.sec.gov) involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.
- <sup>14</sup> See, for example, *Securities Class Action Settlements—2006 Review and Analysis*, Cornerstone Research (2007) and Michael A. Perino, “Have Institutional Fiduciaries Improved Securities Class Actions? A Review of the Empirical Literature on the PSLRA’s Lead Plaintiff Provision,” St. John’s Legal Studies Research Paper No. 12-0021 (2013).
- <sup>15</sup> Stanford Securities Litigation Analytics (SSLA) tracks and collects data on private shareholder securities litigation and public enforcements brought by the SEC and the U.S. Department of Justice. The SSLA dataset includes all traditional class actions, SEC actions, and DOJ criminal actions filed since 2000. Available on a subscription basis at <https://sla.law.stanford.edu/>.
- <sup>16</sup> Available on a subscription basis. For further details see <https://www.issgovernance.com/securities-class-action-services/>.
- <sup>17</sup> Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- <sup>18</sup> This categorization is based on the timing of the settlement hearing date. If a new partial settlement equals or exceeds 50% of the then-current settlement fund amount, the entirety of the settlement amount is re-categorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50% of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

# Appendices

## Appendix 1: Settlement Percentiles

(Dollars in millions)

Year	Average	10th	25th	Median	75th	90th
2013	\$90.8	\$2.4	\$3.8	\$8.2	\$27.9	\$103.6
2014	\$22.5	\$2.1	\$3.5	\$7.4	\$16.3	\$61.8
2015	\$48.6	\$1.6	\$2.7	\$8.0	\$20.1	\$116.1
2016	\$86.1	\$2.3	\$5.1	\$10.4	\$40.2	\$178.0
2017	\$22.0	\$1.8	\$3.1	\$6.3	\$18.2	\$42.3
2018	\$75.6	\$1.8	\$4.2	\$13.1	\$28.8	\$57.3
2019	\$32.3	\$1.7	\$6.4	\$12.6	\$22.9	\$57.2
2020	\$62.3	\$1.6	\$3.6	\$11.1	\$22.9	\$60.3
2021	\$22.2	\$1.9	\$3.4	\$8.9	\$19.3	\$63.3
2022	\$36.2	\$2.0	\$5.0	\$13.0	\$33.0	\$71.8

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented.

## Appendix 2: Settlements by Select Industry Sectors

2013–2022

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Financial	92	\$14.8	\$293.3	5.0%
Healthcare	20	\$14.2	\$189.4	6.4%
Pharmaceuticals	119	\$7.6	\$237.6	3.8%
Retail	50	\$13.2	\$294.2	4.8%
Technology	103	\$9.3	\$315.9	4.6%
Telecommunication	26	\$10.5	\$311.0	4.4%

Note: Settlement dollars and “simplified tiered damages” are adjusted for inflation; 2022 dollar equivalent figures are presented. “Simplified tiered damages” are calculated only for cases involving Rule 10b-5 claims (whether alone or in addition to other claims).

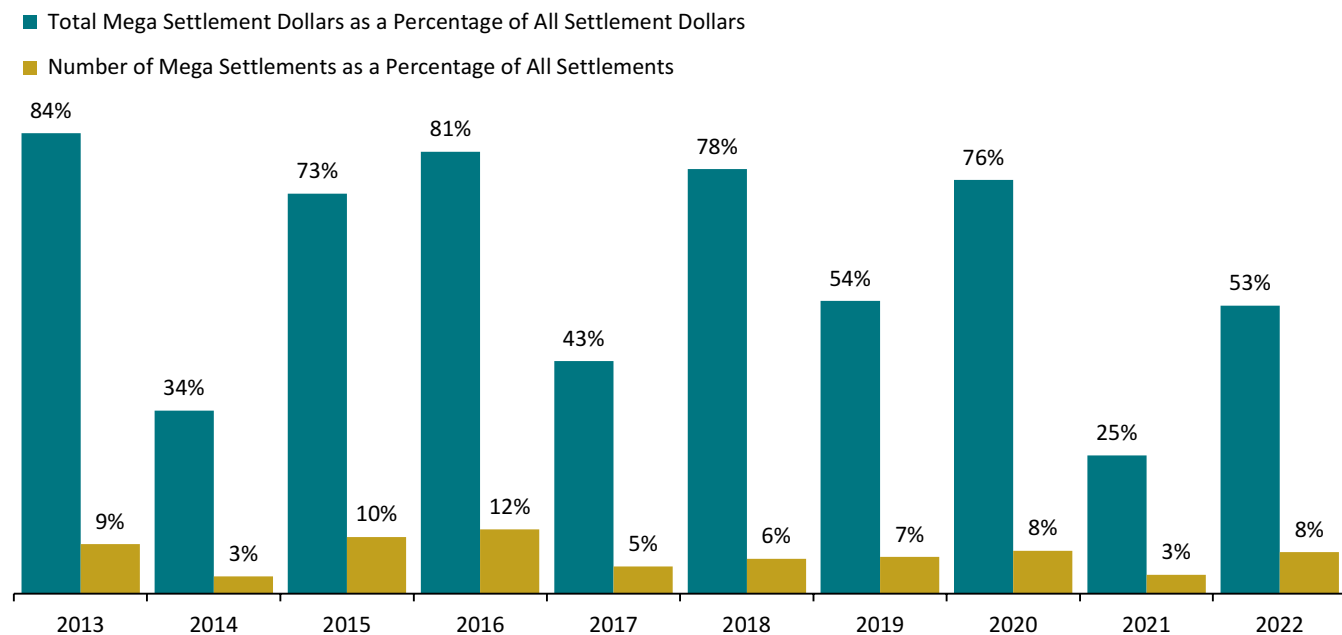
### Appendix 3: Settlements by Federal Circuit Court 2013–2022

(Dollars in millions)

Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of “Simplified Tiered Damages”
First	21	\$12.4	3.0%
Second	202	\$9.0	5.0%
Third	81	\$7.5	4.9%
Fourth	26	\$22.9	3.8%
Fifth	38	\$10.7	4.9%
Sixth	32	\$13.5	7.4%
Seventh	37	\$15.5	3.6%
Eighth	14	\$46.4	5.1%
Ninth	191	\$7.6	4.6%
Tenth	17	\$10.2	5.8%
Eleventh	37	\$11.9	4.9%
DC	5	\$33.7	2.4%

Note: Settlement dollars are adjusted for inflation; 2022 dollar equivalent figures are presented. Settlements as a percentage of “simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

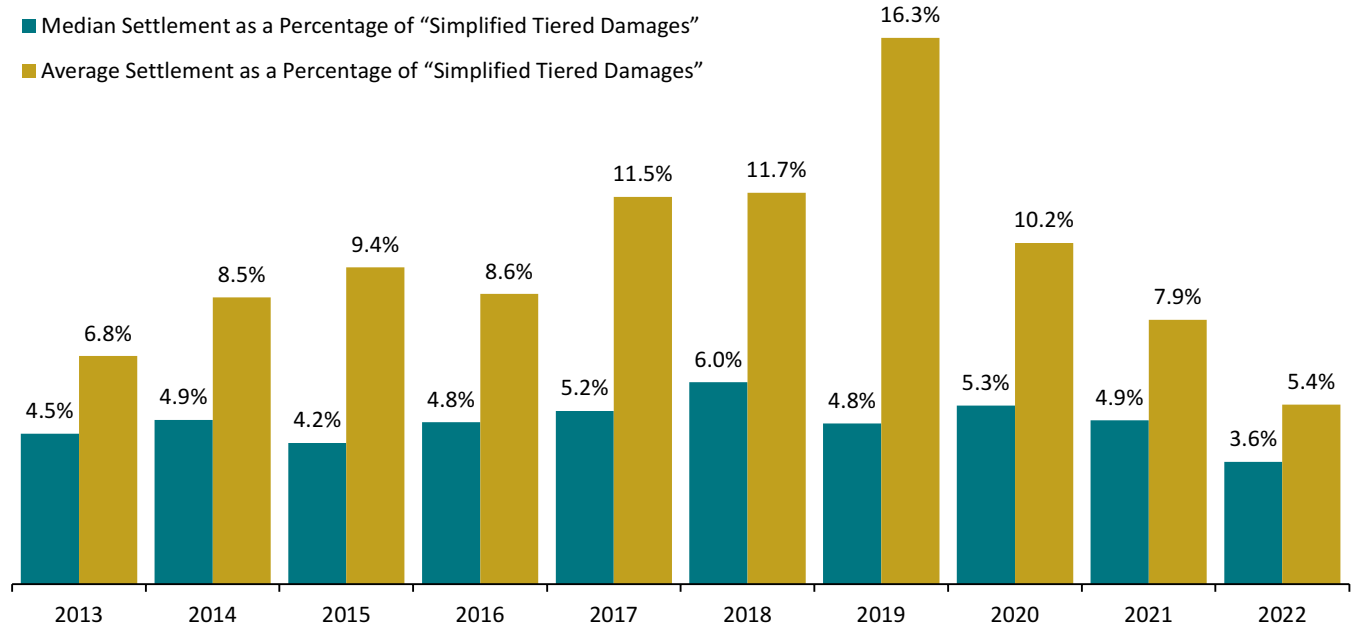
### Appendix 4: Mega Settlements 2013–2022



Note: Mega settlements are defined as total settlement funds equal to or greater than \$100 million.

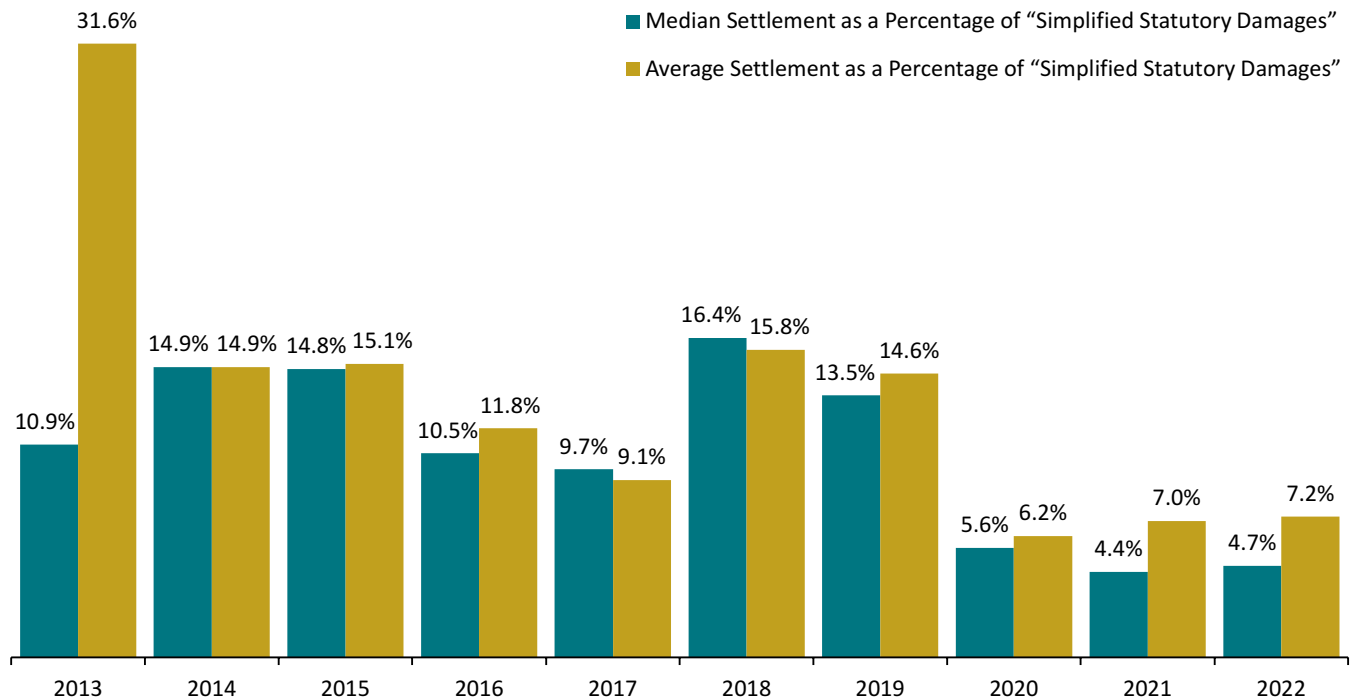


**Appendix 5: Median and Average Settlements as a Percentage of “Simplified Tiered Damages”  
2013–2022**



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

**Appendix 6: Median and Average Settlements as a Percentage of “Simplified Statutory Damages”  
2013–2022**

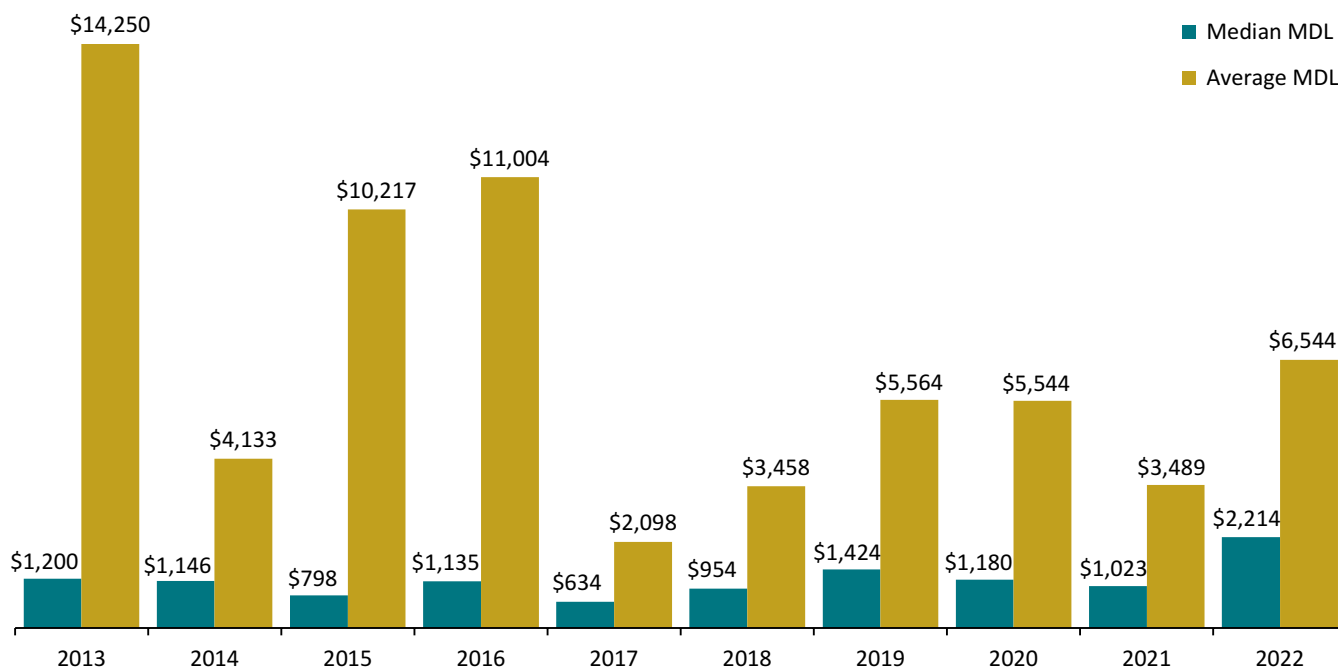


Note: “Simplified statutory damages” are calculated only for cases alleging Section 11 (‘33 Act) claims and no Rule 10b-5 claims.

## Appendix 7: Median and Average Maximum Dollar Loss (MDL)

2013–2022

(Dollars in millions)

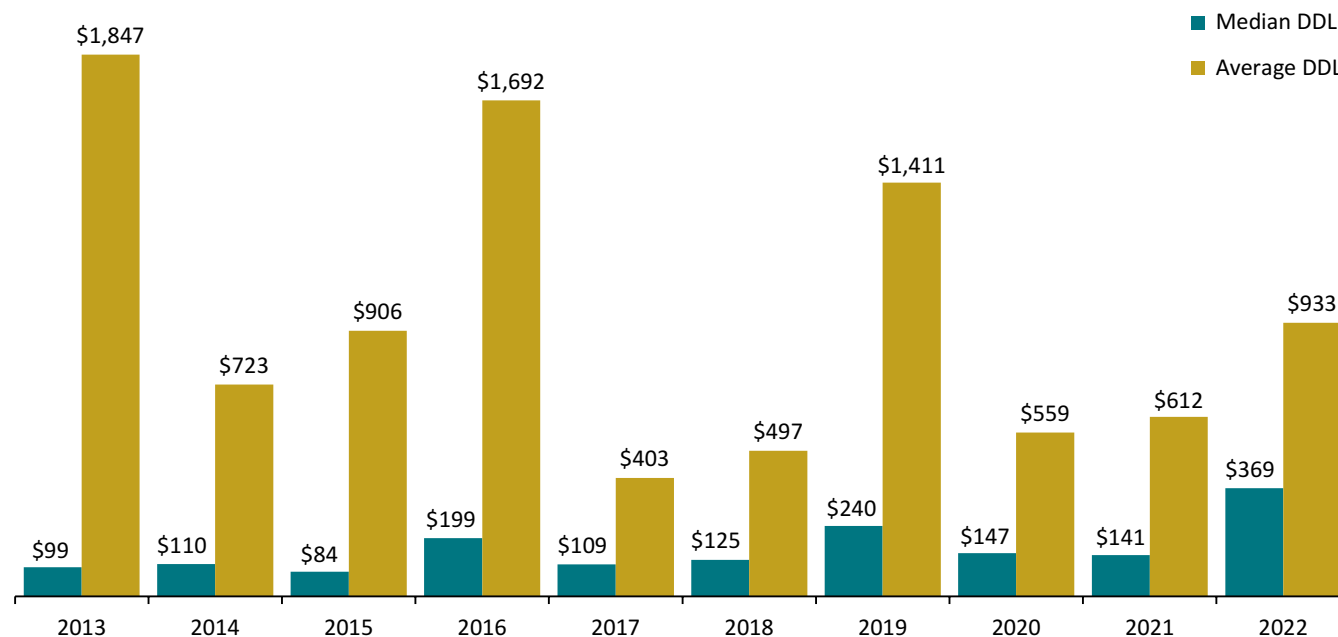


Note: MDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. This analysis excludes cases alleging '33 Act claims only.

## Appendix 8: Median and Average Disclosure Dollar Loss (DDL)

2013–2022

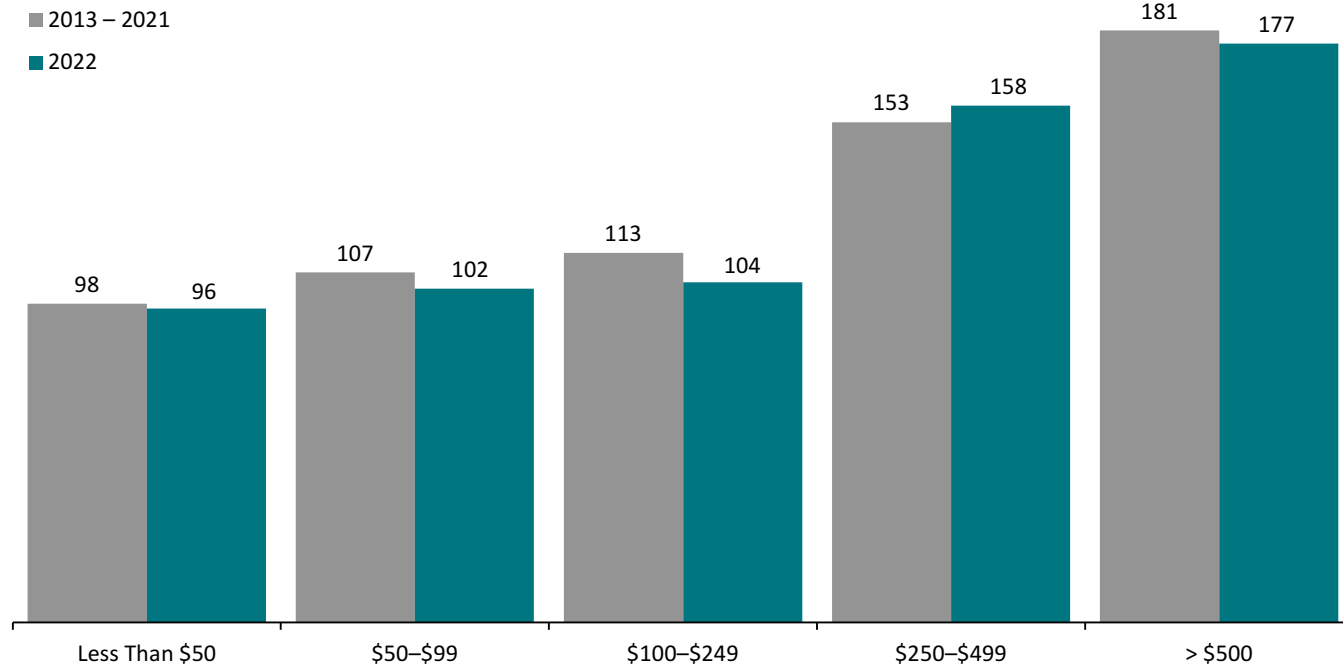
(Dollars in millions)



Note: DDL is adjusted for inflation based on class period end dates; 2022 dollar equivalents are presented. DDL is the dollar-value change in the defendant firm's market capitalization between the end of the class period and the trading day immediately following the end of the class period. This analysis excludes cases alleging '33 Act claims only.

Appendix 9: Median Docket Entries by “Simplified Tiered Damages” Range  
2013–2022

(Dollars in millions)



Note: “Simplified tiered damages” are calculated only for cases alleging Rule 10b-5 claims (whether alone or in addition to other claims).

# About the Authors

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Laarni Bulan is a principal in Cornerstone Research's Boston office, where she specializes in finance. Her work has focused on securities and other complex litigation addressing class certification, damages, and loss causation issues, firm valuation, and corporate governance, executive compensation, and risk management issues. She has also consulted on cases related to insider trading, market manipulation and trading behavior, financial institutions and the credit crisis, derivatives, foreign exchange, and securities clearing and settlement.

Dr. Bulan has published notable academic articles in peer-reviewed journals. Her research covers topics in dividend policy, capital structure, executive compensation, corporate governance, and real options. Prior to joining Cornerstone Research, Dr. Bulan had a joint appointment at Brandeis University as an assistant professor of finance in its International Business School and in the economics department.

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Laura Simmons is a senior advisor with Cornerstone Research. She has more than 25 years of experience in economic consulting. Dr. Simmons has focused on damages and liability issues in securities class actions, as well as litigation involving the Employee Retirement Income Security Act (ERISA). She has also managed cases involving financial accounting, valuation, and corporate governance issues. She has served as a testifying expert in litigation involving accounting analyses, securities case damages, ERISA matters, and research on securities lawsuits.

Dr. Simmons's research on pre- and post-Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, including research focusing on the intersection of accounting and litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors gratefully acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update. The views expressed herein do not necessarily represent the views of Cornerstone Research.

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Please direct any questions and requests for additional information to the settlement database administrator at [settlementdatabase@cornerstone.com](mailto:settlementdatabase@cornerstone.com).

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**San Francisco**

415.229.8100

**Silicon Valley**

650.853.1660

**Washington**

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# **Exhibit 4**

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*Counsel for Lead Plaintiff Arbejdsmarkedets  
Tillægspension and Lead Counsel for the  
Settlement Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE BIOMARIN PHARMACEUTICAL  
INC. SECURITIES LITIGATION

Case No. 3:20-cv-06719-WHO

**DECLARATION OF ADAM D.  
WALTER REGARDING (I) MAILING  
OF NOTICE AND CLAIM FORM;  
(II) PUBLICATION OF THE  
SUMMARY NOTICE; AND  
(III) REPORT ON REQUESTS FOR  
EXCLUSION RECEIVED TO DATE**

Dept: Courtroom 2, 17th Floor  
Judge: Hon. William H. Orrick  
Date: November 8, 2023  
Time: 2:00 p.m.

1 ADAM D. WALTER, declares as follows:

2 1. I am a Client Services Director of A.B. Data, Ltd.’s Class Action Administration  
3 Company (“A.B. Data”). Pursuant to the Court’s June 8, 2023 Order Granting Preliminary  
4 Approval (ECF No. 146) (“Preliminary Approval Order”), the Court approved the retention of  
5 A.B. Data as Claims Administrator in connection with the proposed Settlement of the above-  
6 captioned Action.<sup>1</sup> The following statements are based on my personal knowledge and  
7 information provided by other A.B. Data employees working under my supervision, and if called  
8 on to do so, I could and would testify competently thereto.

9 **DISSEMINATION OF THE NOTICE PACKET**

10 2. Pursuant to the Preliminary Approval Order, A.B. Data mailed to potential  
11 Settlement Class Members the Notice of (I) Pendency of Class Action and Proposed Settlement;  
12 (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (the  
13 “Notice”) and the Proof of Claim and Release Form (the “Claim Form”) (collectively, the “Notice  
14 Packet”). A copy of the Notice Packet is attached hereto as Exhibit A.

15 3. On June 26, 2023, A.B. Data received an electronic file from Lead Counsel  
16 containing the names and addresses of record holders of BioMarin common stock during the Class  
17 period provided by Defendants’ Counsel. A.B. Data extracted these records from the file and,  
18 after de-duplication, there remained 680 unique names and addresses. A.B. Data formatted the  
19 Notice Packet, and caused it to be printed, personalized with the name and address of each potential  
20 Settlement Class Member, posted for first-class mail, postage prepaid, and mailed to these 680  
21 potential Settlement Class Members on June 30, 2023.

22 4. As in most class actions of this nature, where the class members consist of  
23 purchasers of shares of publicly traded common stock, a large majority of the potential Settlement  
24 Class Members are beneficial purchasers whose securities were held in “street name”—*i.e.*, the  
25 securities were purchased by brokerage firms, banks, institutions, and other third-party nominees

26 \_\_\_\_\_  
27 <sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings set forth  
28 in the Stipulation and Agreement of Settlement, dated April 24, 2023 (ECF No. 139-1) (the  
“Stipulation”).



1 (“Nominees”) in the name of the Nominee, on behalf of the beneficial purchasers. To provide  
2 individual notice to those beneficial owners, A.B. Data disseminates the notice via the Nominees  
3 who possess the information regarding the identification and trading of the beneficial owners. A.B.  
4 Data maintains and updates an internal database of the largest and most common banks, brokers  
5 and other Nominees, including national and regional offices of certain Nominees (the “Nominee  
6 Database”). A.B. Data’s Nominee Database is updated from time to time as new Nominees are  
7 identified, and others merge or cease to exist. At the time of the initial mailing, the Nominee  
8 Database contained 4,967 mailing records. On June 30, 2023, A.B. Data caused Notice Packets to  
9 be mailed to the 4,967 mailing records contained in the Nominee Database.

10 5. In total, 5,647 copies of the Notice Packet were mailed to potential Settlement Class  
11 Members and Nominees by first-class mail on June 30, 2023.

12 6. The Notice itself and a cover letter that accompanied the Notice Packet mailed to  
13 brokers and other Nominees (as well as an email sent to brokers and Nominees) directed that  
14 persons or entities that purchased or otherwise acquired shares of BioMarin common stock during  
15 the Class Period (*i.e.*, the period from March 3, 2020 through August 18, 2020, inclusive), for the  
16 beneficial interest of persons or entities other than themselves, must, no later than seven (7)  
17 calendar days after such Nominees’ receipt of the Notice, either: (i) provide A.B. Data with the  
18 names and addresses of such beneficial owners; or (ii) request additional copies of the Notice  
19 Packet for such beneficial owners from A.B. Data, and then send a copy of the Notice Packet to  
20 such beneficial owners, no later than seven (7) calendar days after such Nominees’ receipt of the  
21 additional copies of the Notice Packet.

22 7. A.B. Data also provided a copy of the Notice to the Depository Trust Company  
23 (“DTC”) for posting on its Legal Notice System (“LENS”). The LENS may be accessed by any  
24 Nominee that participates in DTC’s security settlement system. The Notice was posted on DTC’s  
25 LENS on July 3, 2023.

26 8. A.B. Data monitored the responses received from brokers and other Nominees and  
27 followed up by email and, if necessary, phone calls to ensure that Nominees provided timely  
28 responses to A.B. Data’s mailing and that Nominees provide names and addresses of beneficial

1 owners or request notice packets for forwarding. Following the initial mailing, through October  
2 2, 2023, A.B. Data has mailed an additional 8,691 Notice Packets to potential members of the  
3 Settlement Class whose names and addresses were received from individuals, entities, or  
4 Nominees requesting that Notice Packets be mailed to such persons, and mailed another 88,815  
5 Notice Packets to Nominees who requested Notice Packets to forward to their customers. Each of  
6 the requests was responded to in a timely manner, and A.B. Data will continue to timely respond  
7 to any additional requests received.

8 9. As of October 2, 2023, A.B. Data has mailed a total of 103,153 Notice Packets to  
9 potential Settlement Class Members and Nominees by first-class mail. In addition, A.B. Data has  
10 re-mailed 963 Notice Packets to persons whose original mailing was returned by the U.S. Postal  
11 Service and for whom updated addresses were either provided to A.B. Data by the Postal Service  
12 or were obtained through further research. The U.S. Postal Service has returned 224 Notice  
13 Packets as undeliverable for which A.B. Data has not obtained an updated address.

14 10. The process for disseminating the Notice Packet by mail to potential Settlement  
15 Class Members is intended to reach the maximum number of potential Settlement Class Members  
16 who can reasonably be identified. As a result, the process is expected to result in the mailing of  
17 Notice Packets to a number of persons and entities who are not or may not be Settlement Class  
18 Members. For example, A.B. Data's internal list of 4,967 Nominees is intended to be reasonably  
19 broad and includes a number of smaller or specialty brokerage firms and international firms who  
20 may not have any clients who were beneficial purchasers of BioMarin common stock during the  
21 Class Period. Similarly, although the Notice and cover letter request that Nominees identify  
22 purchasers or acquirors of BioMarin common stock during the Class Period, A.B. Data is aware  
23 from experience that some Nominees provide reasonably over-inclusive lists of potential  
24 Settlement Class Members. In addition, even where the names provided are limited to persons  
25 who purchased or acquired the stock during the Class Period, such lists will include investors who  
26 purchased and sold their shares before the alleged corrective disclosure or were otherwise not  
27 damaged and therefore not eligible for a payment in the Settlement. Due to A.B. Data's efforts to  
28 reach the highest possible number of potential Settlement Class Members through reasonable

1 means and as a result of the process of dissemination through Nominees, A.B. Data expects that a  
2 substantial number of the total Notice Packets mailed will be mailed to persons and entities who  
3 are not Settlement Class Members or are not eligible for a recovery in the Settlement.

4 **PUBLICATION OF THE SUMMARY NOTICE**

5 11. Pursuant to the Preliminary Approval Order, A.B. Data caused the Summary  
6 Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and  
7 (III) Motion for Attorneys' Fees and Litigation Expenses (the "Summary Notice") to be published  
8 in *The Wall Street Journal* and transmitted over *PR Newswire* on July 12, 2023. Attached hereto  
9 as Exhibits B and C are confirmations of such publication and transmittal.

10 **TELEPHONE HOTLINE**

11 12. A.B. Data established and continues to maintain a toll-free telephone number  
12 (1-877-390-3369) for potential Settlement Class Members to call and obtain information about the  
13 Settlement, request a Notice Packet, and/or seek assistance from an operator during regular  
14 business hours. During other hours, callers may leave a message for an A.B. Data representative  
15 to call them back. The toll-free telephone number is set forth in the Notice, Claim Form, Summary  
16 Notice, and on the Settlement Website. The toll-free telephone number became operational on  
17 June 30, 2023, the same date A.B. Data began mailing the Notice Packets.

18 13. The toll-free number connects callers with an Interactive Voice Recording ("IVR").  
19 The IVR provides callers with pre-recorded information, including a brief summary about the  
20 Action and the option to request a copy of the Notice Packet. The toll-free telephone line with  
21 pre-recorded information is available 24 hours a day, 7 days a week. In addition, from 8:00 a.m.  
22 to 5:00 p.m. Central time, callers are able to speak to a live operator regarding the status of the  
23 Action and/or obtain answers to questions about the Settlement or how to submit a claim. During  
24 non-business hours, callers may leave a message for an agent to call them back.

25 **SETTLEMENT WEBSITE**

26 14. To further assist potential Settlement Class Members, A.B. Data, in coordination  
27 with Lead Counsel, designed, implemented, and currently maintains a website dedicated to the  
28 Settlement, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com) ("Settlement Website"). The address for the


1 Settlement Website is set forth in the Notice, Claim Form, and Summary Notice. The Settlement  
2 Website became operational on June 30, 2023, and is accessible 24 hours a day, seven days a week.  
3 The Settlement Website lists the exclusion, objection, and Claim submission deadlines, as well as  
4 the date and time of the Court's final Settlement Hearing. In addition, the Settlement Website  
5 contains links to copies of the Notice, Claim Form, Stipulation, the Preliminary Approval Order,  
6 and the Complaint, all of which can be downloaded by potential Settlement Class Members. The  
7 Settlement Website also enables potential Settlement Class Members to submit a Claim online,  
8 and contains detailed instructions for entities that wish to submit Claims electronically. A.B. Data  
9 will continue operating, maintaining and, as appropriate, updating the Settlement Website until the  
10 conclusion of the administration.

11 **REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

12 15. The Notice informed potential Settlement Class Members that requests for  
13 exclusion from the Settlement Class must be addressed to *BioMarin Securities Litigation,*  
14 EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173001, Milwaukee, WI 53217, such that they are  
15 received no later than October 18, 2023. The Notice also sets forth the information that must be  
16 included in each request for exclusion. As of October 2, 2023, A.B. Data has received one (1)  
17 request for exclusion from the Settlement Class. A.B. Data will submit a supplemental declaration  
18 after the October 18, 2023 deadline for requesting exclusion that will address all requests for  
19 exclusion that are received.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed this 3rd day of October, 2023.

22  
23  
24  
25   
26 ADAM D. WALTER  
27  
28

# EXHIBIT A

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE BIOMARIN PHARMACEUTICAL INC.  
SECURITIES LITIGATION

Case No. 3:20-cv-06719-WHO

CLASS ACTION

**NOTICE OF (I) PENDENCY OF CLASS ACTION  
AND PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING; AND  
(III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights will be affected by the above-captioned securities class action ("Action") if you purchased or otherwise acquired the common stock of BioMarin Pharmaceutical Inc. ("BioMarin" or the "Company") from March 3, 2020 through August 18, 2020, inclusive ("Class Period"), and were damaged thereby ("Settlement Class").<sup>1</sup>

**NOTICE OF PROPOSED SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff Arbejdsmarkedets Tillægspension ("Lead Plaintiff"), on behalf of itself and the Settlement Class, has reached a proposed settlement of the Action for **\$39,000,000** in cash ("Settlement").

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of a payment from the Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

- Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by Lead Plaintiff, on behalf of itself and other members of the Settlement Class, against BioMarin, its Chairman and Chief Executive Officer, Jean-Jacques Bienaimé, and its President of Worldwide Research & Development, Dr. Henry Fuchs. (Mr. Bienaimé and Dr. Fuchs are referred to as the "Individual Defendants" and, together with BioMarin, as "Defendants"). In the Action, Lead Plaintiff alleges that Defendants violated the federal securities laws by making materially false and misleading statements to investors during the Class Period concerning BioMarin's application to the Food and Drug Administration ("FDA") for approval of a gene therapy for hemophilia called valrox. A more detailed description of the Action is set forth in ¶¶ 11-24 below. As noted below, Defendants have denied and continue to deny all claims and allegations of wrongdoing asserted against them in the Action. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in ¶ 32 below.
- Statement of the Settlement Class's Recovery:** Subject to Court approval, Lead Plaintiff, on behalf of the Settlement Class, has agreed to settle the Action in exchange for a cash payment of \$39,000,000 ("Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (as defined below at ¶ 46) will be distributed to eligible Settlement Class Members in accordance with a plan of allocation approved by the Court. The plan of allocation being proposed by Lead Plaintiff ("Plan of Allocation") is attached hereto as Appendix A.
- Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiff's damages consultant's estimate of the number of shares of BioMarin common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate do so, the estimated average recovery (before deduction of any Court-approved fees and expenses, such as attorneys' fees and expenses, taxes, and administration costs) will be approximately \$1.41 per eligible share. **Settlement Class Members should note, however, that the foregoing is only an estimate.** Some Settlement Class Members may recover more or less than this amount per share depending on: (i) when and the price at which they purchased/acquired shares of BioMarin common stock; (ii) whether they sold their shares of BioMarin common stock; (iii) the total number and value of valid Claims submitted; (iv) the amount of Notice and Administration Costs; and (v) the amount of attorneys' fees and Litigation Expenses awarded by the Court.
- Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share of BioMarin common stock that would be recoverable if Lead Plaintiff prevailed in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of Defendants' conduct.

<sup>1</sup> All capitalized terms not defined in this Notice have the meanings provided in the Stipulation and Agreement of Settlement dated April 24, 2023 ("Stipulation"). The Stipulation can be viewed at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com).

5. **Attorneys' Fees and Expenses Sought:** Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, has prosecuted this Action on a wholly contingent basis and have not received any attorneys' fees (or payment of expenses) for its representation of the Settlement Class. For its efforts, Lead Counsel will apply to the Court for attorneys' fees in an amount not to exceed 19% of the Settlement Fund. Lead Counsel will also apply for payment of Litigation Expenses incurred in connection with the institution, prosecution, and resolution of the Action, in an amount not to exceed \$650,000, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class. If the Court approves the maximum amount of the foregoing fees and expenses, the estimated average cost per eligible share of BioMarin common stock will be approximately \$0.29 per share. **Please note that this amount is only an estimate.**

6. **Identification of Attorneys' Representatives:** Lead Plaintiff and the Settlement Class are represented by Katherine M. Sinderson, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, New York, NY 10020, 1-800-380-8496, settlements@blbglaw.com.

7. **Reasons for the Settlement:** For Lead Plaintiff, the principal reason for the Settlement is the guaranteed cash benefit for the Settlement Class without the risk, delays, and increased costs inherent in further litigation. Moreover, the cash benefit provided under the Settlement must be considered against the risk that a smaller recovery—or indeed no recovery at all—might be achieved after further litigation, including summary judgment, trial and possible appeals. For Defendants, who deny all allegations of wrongdoing or liability whatsoever and deny that Settlement Class Members were damaged, the principal reasons for entering into the Settlement are to end the burden, expense, uncertainty, risk, and distraction of further litigation.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN OCTOBER 30, 2023.</b>	This is the only way to be eligible to receive a payment from the Settlement.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN OCTOBER 18, 2023.</b>	Get no payment from the Settlement. This is the <i>only</i> option that may allow you to ever bring or be part of any <i>other</i> lawsuit against Defendants or the other Defendants' Releasees about the claims being released by the Settlement.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS FILED OR POSTMARKED NO LATER THAN OCTOBER 18, 2023.</b>	Write to the Court about why you do not like the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's request for attorneys' fees and Litigation Expenses. This will not exclude you from the Settlement Class.
<b>GO TO A HEARING ON NOVEMBER 8, 2023 AT 2:00 P.M. PACIFIC TIME</b>	Ask to speak in Court at the Settlement Hearing, at the discretion of the Court, about the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's request for attorneys' fees and Litigation Expenses.
<b>DO NOTHING.</b>	Get no payment from the Settlement. You will, however, remain a member of the Settlement Class, which means that you give up any right you may have to sue about the claims that are being resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

These rights and options—and the deadlines to exercise them—are further explained in this Notice. **Please Note:** The date and time of the Settlement Hearing, currently scheduled for November 8, 2023 at 2:00 p.m. Pacific Time, is subject to change without further written notice to the Settlement Class. It is also within the Court's discretion to hold the hearing by video or telephonic conference. If you plan to attend the hearing, you should check [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com) or with Lead Counsel to confirm no change to the date and/or time of the hearing has been made.

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## WHY DID I GET THIS NOTICE?

8. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired BioMarin common stock during the Class Period. The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator selected by Lead Plaintiff and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and payment of Litigation Expenses (the "Settlement Hearing"). See ¶¶ 62-63 below for details about the Settlement Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a plan of allocation, then payments to Authorized Claimants will be made after any appeals are resolved and after the completion of all claims processing. Please be patient, as this process can take some time to complete.

## WHAT IS THIS CASE ABOUT?

11. BioMarin is a pharmaceutical company. BioMarin's common stock trades on the Nasdaq Stock Market under the ticker symbol "BMRN." In this Action, Lead Plaintiff alleges that Defendants made materially false and misleading statements during the Class Period concerning BioMarin's application to the FDA for approval of a gene therapy for hemophilia called valrox.

12. This Action was initially brought in September 2020, as a putative class action, Case No. 3:20-cv-06719-WHO, in the United States District Court for the Northern District of California (the "Court"), against BioMarin and certain of its executives, alleging violations of the Securities Exchange Act of 1934 (the "Exchange Act").

13. On December 22, 2020, the Court (the Honorable William H. Orrick) appointed Arbejdsmarkedets Tillægspension, a Denmark-based pension fund, as Lead Plaintiff for the Action and approved Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel under the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4.



14. On February 22, 2021, Lead Plaintiff filed an Amended Class Action Complaint (the “Complaint”). The Complaint putatively asserted claims on behalf of all person and entities who purchased the publicly traded common stock of BioMarin from March 3, 2020 through August 18, 2020, inclusive (the “Class Period”) and were damaged thereby. The Complaint alleged that Defendants made materially false and misleading statements or omissions concerning BioMarin’s application to the FDA for approval of valrox. The Complaint asserted (i) claims under Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5 against all Defendants and (ii) claims under Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a) against the Individual Defendants.

15. On April 22, 2021, Defendants moved to dismiss the Complaint asserting (among other things) that Lead Plaintiff failed to sufficiently allege: (i) any actionable misrepresentation or (ii) that Defendants acted with scienter in making any alleged misrepresentation. On June 22, 2021, Lead Plaintiff filed its opposition, and on July 22, 2021 Defendants filed their reply. The Court held oral argument on Defendants’ motion to dismiss on December 2, 2021.

16. On January 6, 2022, the Court denied Defendants’ motion to dismiss in its entirety. Defendants filed a motion for reconsideration of the Court’s order sustaining the Complaint on January 28, 2022, and the Court denied the motion on February 28, 2022.

17. Defendants filed their answer to the Complaint on February 15, 2022.

18. On October 17, 2022, Lead Plaintiff filed a motion for class certification and appointment of class representative and class counsel, which was accompanied by an expert report from Lead Plaintiff’s expert, Dr. Michael Hartzmark, on market efficiency and common damages methodologies. In connection with Lead Plaintiff’s motion for class certification, Defendants deposed two representatives of Lead Plaintiff and Dr. Hartzmark.

19. The Parties began exploring the possibility of a settlement in the summer of 2022. The Parties agreed to engage in private mediation and retained Michelle Yoshida to act as mediator in the Action (the “Mediator”). On December 5, 2022, counsel for the Parties participated in a full-day mediation session before the Mediator. In advance of that session, the Parties exchanged and submitted detailed mediation statements to the Mediator. The session ended without any agreement being reached.

20. The Parties met and conferred as their discovery efforts continued—exchanging numerous letters, including joint statements concerning discovery disputes that they submitted to the Court, concerning disputed discovery issues over several months. Over the course of discovery, Defendants produced more than 675,000 pages of documents, and Lead Counsel reviewed those documents on a rolling basis as Defendants produced them. The Parties deposed BioMarin’s former Senior Director of Business Development & Strategy in January 2023, and had noticed or were scheduling the dates for 15 additional depositions.

21. Defendants filed their opposition to Lead Plaintiff’s motion for class certification on January 27, 2023.

22. In January 2023, the Parties renewed their settlement discussions and agreed to engage in a second full-day session before the Mediator on March 8, 2023. At the conclusion of the mediation, the Parties reached an agreement in principle to settle the Action, pursuant to a recommendation from the Mediator. The agreement’s terms were memorialized in a term sheet executed on March 14, 2023 (the “Term Sheet”). The Term Sheet set forth, among other things, the Parties’ agreement to settle and release all claims against Defendants in the Action in return for a cash payment of \$39,000,000 for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of a customary “long form” stipulation and agreement of settlement and related papers.

23. After additional negotiations regarding the specific terms of their agreement, the Parties entered into the Stipulation on April 24, 2023. The Stipulation, which sets forth the terms and conditions of the Settlement, can be viewed at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com).

24. On June 8, 2023, the Court preliminarily approved the Settlement, authorized notice of the Settlement to be provided to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

#### WHY IS THIS CASE A CLASS ACTION?

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

#### WHY IS THERE A SETTLEMENT?

26. Lead Plaintiff and Lead Counsel believe that Lead Plaintiff’s claims against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue Lead Plaintiff’s claims, through the conclusion of complex merits and expert discovery, resolution of Lead Plaintiff’s motion for class certification, an expected motion for summary judgment, and trial. Throughout the litigation, Lead Plaintiff would face substantial challenges in establishing liability and the Settlement Class’s full amount of damages.

27. Lead Plaintiff faced potential challenges associated with proving that there were material misstatements in Defendants' public statements and that Defendants deliberately misled investors. For example, Defendants would have argued that the timing of the FDA's delay of the Pre-Approval Inspection of BioMarin's Novato facility, and the timing of the FDA's indication that the inspection would be indefinitely delayed, would justify dismissal of a substantial portion of the Class Period. Defendants also would argue that while Lead Plaintiff had alleged that BioMarin had "no dialogue whatsoever" with the FDA, in fact, there were communications between BioMarin and the FDA throughout a large part of the Class Period and this was supported by documents in discovery.

28. Lead Plaintiff also faced substantial challenges in proving that the revelation of the truth about Defendants' allegedly false and misleading statements caused the declines in the price of BioMarin's stock, and in establishing the amount of class-wide damages. Defendants would have argued that the decline in BioMarin's stock price was not caused by revelation of the truth about the alleged misstatements, but by various other factors, such as the FDA's denial of BioMarin's application to license valrox. Defendants would have also argued that, even if some portion of the price decline were caused by revelation of the truth about the alleged misstatements, it was small compared to the decline resulting from other factors, and any purported damages to Lead Plaintiff and the Settlement Class were minimal. Lead Plaintiff would have faced challenges in proving what portion of the BioMarin's price decline on August 19, 2020 resulted from the revelation of the alleged misstatements, rather than confounding non-fraud information. Had any of these arguments been accepted in whole or in part, they could have eliminated or, at a minimum, drastically limited any potential recovery.

29. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Settlement Class, Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. Lead Plaintiff and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, as compared to the risk that the claims in the Action might produce a smaller recovery, or no recovery, after continued and costly litigation, possibly years in the future.

30. Defendants have denied and continue to deny each and all of the claims asserted against them in the Action, and deny that the Settlement Class was harmed or suffered any damages as a result of the conduct alleged in the Action. Defendants have agreed to the Settlement solely to eliminate the burden, expense, uncertainty, risk, and distraction of continued litigation. Accordingly, the Settlement may not be construed as, and is not, an admission of any wrongdoing by any Defendant.

#### WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

31. If there were no Settlement and Lead Plaintiff failed to establish any essential legal or factual element of its claims against Defendants, neither Lead Plaintiff nor the other members of the Settlement Class would recover anything from Defendants. If Defendants were successful in proving any of their defenses, either at summary judgment, at trial, or on appeal, the Settlement Class could recover substantially less than the amount provided in the Settlement, or nothing at all.

#### HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT? WHO IS INCLUDED IN THE SETTLEMENT CLASS?

32. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

**all persons and entities who purchased or otherwise acquired BioMarin common stock during the period from March 3, 2020 through August 18, 2020, inclusive, and were damaged thereby.**

Excluded from the Settlement Class are: (1) Defendants; (2) any current or former Officers or directors of BioMarin; (3) the Immediate Family members of any Defendant or any current or former Officer or director of BioMarin; (4) any entity that any Defendant owns or controls, or owned or controlled during the Class Period; and (5) the plaintiffs in *Alger Capital Appreciation Fund et al. v. BioMarin Pharmaceutical Inc. et al.*, Case 3:23-cv-00826 (N.D. Cal.) and any of their successors in interest. Also excluded from the Settlement Class are any persons and entities who or which submit a request for exclusion from the Settlement Class that is accepted by the Court. See "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself," on page 8 below.

**PLEASE NOTE: Receipt of this Notice does not mean that you are a Settlement Class Member or that you will be entitled to a payment from the Settlement. If you are a Settlement Class Member and you wish to be eligible to receive a payment from the Settlement, you are required to submit a Claim Form and the required supporting documentation as set forth in the Claim Form postmarked (if mailed), or online at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), no later than October 30, 2023.**

**HOW ARE SETTLEMENT CLASS MEMBERS AFFECTED  
BY THE ACTION AND THE SETTLEMENT?**

33. As a Settlement Class Member, you are represented by Lead Plaintiff and Lead Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

34. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section below entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?” on page 8.

35. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel’s request for attorneys’ fees and Litigation Expenses, you may present your objections by following the instructions in the section below entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?” on page 8.

36. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court in the Action. If the Settlement is approved, the Court will enter a judgment (“Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs’ Claim (as defined in ¶ 37 below) against Defendants and the other Defendants’ Releasees (as defined in ¶ 38 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees.

37. “Released Plaintiffs’ Claims” means all claims and causes of action of every nature and description, known or unknown (including Unknown Claims, defined below), whether arising from federal, state, foreign, or common law, (i) alleged by Lead Plaintiff in the Action, or (ii) that have been, could have been, or in the future can or might be asserted in the Action or any action or proceeding in any forum against Defendants’ Releasees arising from, or based upon, or relating in any way to the allegations, acts, transactions, facts, events, matters, representations or omissions involved, set forth, alleged or referred to in the Action and the purchase or acquisition of BioMarin common stock during the Class Period. This release does not cover, include, or release (i) any claims asserted in *Berlinger v. BioMarin Pharmaceutical Inc. et al.*, No. 3:21-cv-08254-MMC (N.D. Cal.); (ii) any claims asserted in any shareholder derivative action, including *Wang v. Bienaimé et al.*, No. 2023-0058-NAC (Del. Ch.); (iii) any claims related to enforcement of the Settlement; or (iv) any claims of any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

38. “Defendants’ Releasees” means Defendants and their current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family members, insurers, reinsurers, and attorneys, in their capacities as such.

39. “Unknown Claims” means any Released Plaintiffs’ Claims which Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

Lead Plaintiff and Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

40. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants’ Claim (as defined in ¶ 41 below) against Lead Plaintiff and the other Plaintiffs’ Releasees (as defined in ¶ 42 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants’ Claims against any of the Plaintiffs’ Releasees.

41. “Released Defendants’ Claims” means all claims and causes of action of every nature and description, known or unknown (including Unknown Claims) whether arising under federal, state, common, or foreign law, that arise out of or are based upon the institution, prosecution, or settlement of the claims against Defendants. This release does not cover, include, or release (i) any claims relating to the

enforcement of the Settlement; or (ii) any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

42. “Plaintiffs’ Releasees” means Lead Plaintiff, all other plaintiffs in the Action, and all other Settlement Class Members, and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family members, insurers, reinsurers, and attorneys, in their capacities as such.

#### HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

43. To be eligible for a payment from the Settlement, you must be a member of the Settlement Class and you must timely complete and return a Claim Form with adequate supporting documentation *postmarked (if mailed), or submitted online at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), no later than October 30, 2023*. A Claim Form is included with this Notice, or you may obtain a copy from the website maintained by the Claims Administrator for the Settlement, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at 1-877-390-3369, or by emailing the Claims Administrator at [info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com). Please retain all records of your ownership of and transactions in BioMarin common stock, as they may be needed to document your Claim. The Parties and Claims Administrator do not have information about your transactions in BioMarin common stock.

44. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

#### HOW MUCH WILL MY PAYMENT BE?

45. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

46. Pursuant to the Settlement, Defendants shall pay or cause to be paid a total of \$39,000,000 in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the “Net Settlement Fund” (that is, the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

47. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to the Plan of Allocation set forth in Appendix A, or another plan of allocation, will not affect the Settlement, if approved.

48. Once the Court’s order or judgment approving the Settlement becomes Final and the Effective Date has occurred, no Defendant, Defendants’ Releasee, or any other person or entity who or which paid any portion of the Settlement Amount on Defendants’ behalf are entitled to get back any portion of the Settlement Fund. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the plan of allocation.

49. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form postmarked or received on or before October 30, 2023 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the Releases given.

50. Participants in, and beneficiaries of, a BioMarin employee benefit plan covered by the Employee Retirement Income Security Act of 1974 (“ERISA Plan”) should NOT include any information relating to their transactions in BioMarin common stock held through the ERISA Plan in any Claim Form that they submit in this Action. They should include ONLY those shares that they purchased or acquired outside of the ERISA Plan. Claims based on any ERISA Plan’s purchases or acquisitions of BioMarin common stock during the Class Period may be made by the plan’s trustees.

51. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

52. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its Claim.

53. Only Settlement Class Members, *i.e.*, persons and entities who purchased or otherwise acquired BioMarin common stock during the Class Period and were damaged as a result of such purchases or acquisitions, will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

54. **Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by Lead Plaintiff and Lead Counsel. At the Settlement Hearing, Lead Counsel will request the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Settlement Class.**

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

55. Lead Counsel has not received any payment for its services in pursuing claims against the Defendants on behalf of the Settlement Class, nor has Lead Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 19% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for payment of Litigation Expenses in an amount not to exceed \$650,000, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class.

56. Lead Counsel's motion for attorneys' fees and Litigation Expenses will be filed by October 4, 2023. A copy of Lead Counsel's motion for attorneys' fees and Litigation Expenses will be available for review at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com) once it is filed. The Court will determine the amount of any award of attorneys' fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. *Settlement Class Members are not personally liable for any such fees or expenses.*

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?  
HOW DO I EXCLUDE MYSELF?**

57. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a letter requesting exclusion addressed to: *BioMarin Securities Litigation*, EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173001, Milwaukee, WI 53217. The request for exclusion must be **received no later than October 18, 2023**. You will not be able to exclude yourself from the Settlement Class after that date. Each letter requesting exclusion must: (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity "requests exclusion from the Settlement Class in *In re BioMarin Pharmaceutical Inc. Securities Litigation*, Case No. 3:20-cv-06719-WHO (N.D. Cal.)"; (iii) state the number of shares of BioMarin common stock that the person or entity requesting exclusion (A) owned as of the opening of trading on March 3, 2020 and (B) purchased/acquired and/or sold during the Class Period (*i.e.*, from March 3, 2020 through August 18, 2020, inclusive), as well as the dates, number of shares, and prices of each such purchase/acquisition and/or sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A letter requesting exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

58. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants' Releasees. Excluding yourself from the Settlement Class is the only option that may allow you to be part of any other current or future lawsuit against Defendants or any of the other Defendants' Releasees concerning the Released Plaintiffs' Claims. Please note, however, if you decide to exclude yourself from the Settlement Class, Defendants and the other Defendants' Releasees will have the right to assert any and all defenses they may have to any claims that you may seek to assert.

59. If you ask to be excluded from the Settlement Class, you will not be eligible to receive any payment from the Net Settlement Fund.

60. BioMarin has the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Lead Plaintiff and BioMarin.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?  
DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

61. **Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

62. **Please Note:** The date and time of the Settlement Hearing may change without further written notice to the Settlement Class. In addition, the Court may decide to conduct the Settlement Hearing by video or telephonic conference, or otherwise allow Settlement Class Members to appear at the hearing by video or phone, without further written notice to the Settlement Class. **In order to determine whether the date and time of the Settlement Hearing have changed, or whether Settlement Class Members must or may participate by phone or video, it is important that you monitor the Court's docket and the website, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted**

to [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com). If the Court requires or allows Settlement Class Members to participate in the Settlement Hearing by telephone or video conference, the information for accessing the telephone or video conference will be posted to [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com).

63. The Settlement Hearing will be held on **November 8, 2023 at 2:00 p.m. Pacific Time**, before the Honorable William H. Orrick, United States District Court Judge for the Northern District of California, either in person at the Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 2 – 17th Floor, or by telephone or videoconference (in the discretion of the Court). At the Settlement Hearing, the Court will determine, among other things, (i) whether, for purposes of settlement, the Action should be certified as a class action on behalf of the Settlement Class, Lead Plaintiff should be appointed as the class representative for the Settlement Class, and Lead Counsel should be appointed as class counsel for the Settlement Class; (ii) whether the Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be finally approved by the Court; (iii) whether the Action should be dismissed with prejudice against Defendants and the releases specified and described in the Stipulation (and in this Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (v) whether Lead Counsel's motion for attorneys' fees and Litigation Expenses should be approved. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's request for attorneys' fees and Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

64. Any Settlement Class Member may object to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's request for attorneys' fees and Litigation Expenses. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, then you should object.

65. Any objection to the proposed Settlement must be in writing. If you submit a timely written objection, you may, but are not required to, appear at the Settlement Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must: (a) clearly identify the case name and number (*In re BioMarin Pharmaceutical Inc. Securities Litigation*, Case No. 3:20-cv-06719 (N.D. Cal.)); (b) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102; and (c) be filed or postmarked on or before **October 18, 2023**.

66. Any objection must: (a) identify the name, address, and telephone number of the person or entity objecting; (b) state with specificity the grounds for the Settlement Class Member's objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of BioMarin common stock that the objecting Settlement Class Member (i) owned as of the opening of trading on March 3, 2020 and (ii) purchased/acquired and/or sold during the Class Period (*i.e.*, from March 3, 2020 through August 18, 2020, inclusive), as well as the dates, number of shares, and prices of each such purchase/acquisition and sale. **You may not object to the Settlement, Plan of Allocation, or Lead Counsel's request for attorneys' fees and Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a Settlement Class Member.**

67. If you wish to appear and speak about your objection at the Settlement Hearing, you must state that you intend to appear at the hearing in your objection or send a letter stating that you intend to appear at the Settlement Hearing in *In re BioMarin Pharmaceutical Inc. Securities Litigation*, Case No. 3:20-cv-06719-WHO (N.D. Cal.) to the Clerk of Court at the address set forth in ¶ 65 above so that it is **filed or postmarked on or before October 18, 2023**. Persons who intend to object and desire to present evidence at the Settlement Hearing should include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

68. **Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's request for attorneys' fees and Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

#### WHAT IF I DO NOTHING?

69. If you do nothing, all of your Released Plaintiffs' Claims (*see* ¶ 37 above) against Defendants and the other Defendants' Releasees will be released, and you will not receive any payment from the Settlement because it is necessary that you submit a Claim Form in order to be eligible to share in the Settlement proceeds.

**WHAT IF I BOUGHT SHARES OF BIOMARIN COMMON STOCK ON  
SOMEONE ELSE'S BEHALF?**

70. If you purchased or otherwise acquired shares of BioMarin common stock from March 3, 2020 through August 18, 2020, inclusive, for the beneficial interest of persons or entities other than yourself, you must either (i) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names, addresses, and e-mail addresses, if available, of all such beneficial owners to *BioMarin Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 170400, Milwaukee, WI 53217. If you choose the second option, the Claims Administrator will send a copy of the Notice Packet to the beneficial owners you have identified. Upon full compliance with these directions, nominees may seek reimbursement of their reasonable expenses actually incurred in complying with these directions by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Reasonable expenses shall not exceed \$0.10 per mailing record provided to the Claims Administrator; \$0.10 per unit for each Notice Packet actually mailed plus postage at the rate used by the Claims Administrator; and \$0.10 per Notice Packet sent via email. Such properly documented expenses incurred by nominees in compliance with these directions shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

71. Copies of the Notice and the Claim Form may be obtained from the website for the Settlement, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), by calling the Claims Administrator toll-free at 1-877-390-3369, or by emailing the Claims Administrator at [info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com).

**CAN I SEE THE COURT FILE? WHO SHOULD I CONTACT IF I HAVE QUESTIONS?**

72. This Notice contains only a summary of the terms of the proposed Settlement. For the full terms and conditions of the Settlement, please review the Stipulation at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com). Copies of any related orders entered by the Court and certain other filings in this Action will also be posted on the website, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com). The Stipulation and additional information regarding the Settlement can also be obtained by contacting Lead Counsel at the contact information set forth above, by accessing the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

73. All inquiries concerning this Notice and the Claim Form should be directed to:

*BioMarin Securities Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 170400  
Milwaukee WI, 53217  
1-877-390-3369

[info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com)  
[www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com)

Bernstein Litowitz Berger & Grossmann LLP  
Salvatore J. Graziano, Esq.  
Katherine M. Sinderson, Esq.  
1251 Avenue of the Americas  
New York, NY 10020  
1-800-380-8496  
[settlements@blbglaw.com](mailto:settlements@blbglaw.com)  
[www.blbglaw.com](http://www.blbglaw.com)

**PLEASE DO NOT CALL OR WRITE THE COURT,  
THE COURT'S CLERK'S OFFICE, DEFENDANTS, OR  
DEFENDANTS' COUNSEL REGARDING THIS NOTICE.**

DATED: June 30, 2023

BY ORDER OF THE COURT  
United States District Court  
Northern District of California

APPENDIX APROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

74. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund to those Settlement Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

75. In this case, Lead Plaintiff alleges that Defendants made false statements and omitted material facts during the Class Period (from March 3, 2020 through August 18, 2020), which had the effect of artificially inflating the price of BioMarin common stock. Lead Plaintiff further alleges that corrective information allegedly revealing the truth concerning Defendants' alleged misrepresentations and omissions was released to the market on August 19, 2020, which had the effect of removing the artificial inflation from the price of BioMarin common stock that day. The estimated artificial inflation in BioMarin common stock has been calculated by considering the price change on August 19, 2020 and adjusting for price changes attributable to market or industry factors that day. Based on these calculations, there was a total of \$41.68 in estimated artificial inflation per share in the BioMarin common stock price that was removed on August 19, 2020. In addition, Lead Plaintiff alleges that the gap between the Defendants' statements about the FDA approval process for valrox and the underlying truth widened substantially during the course of the Class Period. Accordingly, for the purposes of the Plan, the amount of artificial inflation in BioMarin common stock increases threefold after June 8, 2020. Therefore, the estimated artificial inflation under the Plan from March 3, 2020 through June 8, 2020 is \$13.89 per share and from June 9, 2020 through August 18, 2020 is \$41.68 per share.

76. Recognized Loss Amounts under this Plan of Allocation are based primarily on the difference in the amount of alleged artificial inflation in the price of BioMarin common stock at the time of purchase or acquisition and at the time of sale, or the difference between the actual purchase price and sale price (or average closing price during the 90-day period after the Class Period under the PSLRA). In order to have recoverable damages under the claims asserted, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of BioMarin common stock. Accordingly, in order to have a Recognized Loss Amount under the Plan of Allocation, a Settlement Class Member must have held shares purchased or acquired during the Class Period until at least August 19, 2020, when the corrective information was released to the market.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

77. Based on the formula stated below, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of BioMarin common stock that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formula below, that number will be zero.

78. For each share of BioMarin common stock purchased or otherwise acquired during the Class Period (from March 3, 2020 through August 18, 2020), and:

- A. Sold before August 19, 2020, the Recognized Loss Amount will be \$0.00;
- B. Sold from August 19, 2020 through the close of trading on November 16, 2020, the Recognized Loss Amount will be ***the least of:*** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; (ii) the purchase/acquisition price *minus* the average closing price from August 19, 2020 through the date of sale as stated in Table B below; or (iii) the purchase/acquisition price *minus* the sale price; or
- C. Held as of the close of trading on November 16, 2020, the Recognized Loss Amount will be ***the lesser of:*** (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table A; or (ii) the purchase/acquisition price *minus* \$76.42.<sup>2</sup>

<sup>2</sup> Pursuant to Section 21D(e)(1) of the Exchange Act, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of BioMarin common stock during the "90-day look-back period," August 19, 2020 through November 16, 2020. The mean (average) closing price for BioMarin common stock during this 90-day look-back period was \$76.42.



**ADDITIONAL PROVISIONS**

79. **Calculation of Claimant's "Recognized Claim":** A Claimant's "Recognized Claim" will be the sum of his, her, or its Recognized Loss Amounts as calculated under ¶ 78 above.

80. **FIFO Matching:** If a Settlement Class Member made more than one purchase/acquisition or sale of BioMarin common stock during the Class Period, all purchases/acquisitions and sales will be matched on a First In, First Out ("FIFO") basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

81. **"Purchase/Sale" Prices:** For the purposes of calculations under this Plan of Allocation, "purchase/acquisition price" means the actual price paid, excluding all fees, taxes, and commissions, and "sale price" means the actual amount received, not deducting any fees, taxes, and commissions.

82. **"Purchase/Sale" Dates:** Purchases or acquisitions and sales of BioMarin common stock will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of BioMarin common stock during the Class Period shall not be deemed a purchase, acquisition, or sale of BioMarin common stock for the calculation of a Claimant's Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of BioMarin common stock unless (i) the donor or decedent purchased or otherwise acquired or sold such BioMarin common stock during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to shares of BioMarin common stock.

83. **Short Sales:** The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the BioMarin common stock. The date of a "short sale" is deemed to be the date of sale of the BioMarin common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on "short sales" and the purchases covering "short sales" is zero.

84. In the event that a Claimant has an opening short position in BioMarin common stock, the earliest purchases or acquisitions of BioMarin common stock during the Class Period will be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

85. **Common Stock Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to BioMarin common stock purchased or sold through the exercise of an option, the purchase/sale date of the security is the exercise date of the option and the purchase/sale price is the exercise price of the option.

86. **Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a "Market Gain" or a "Market Loss" with respect to his, her, or its overall transactions in BioMarin common stock during the Class Period (that is, from March 3, 2020 through August 18, 2020). For purposes of making this calculation, the Claims Administrator shall determine the difference between (i) the Claimant's Total Purchase Amount<sup>3</sup> and (ii) the sum of the Claimant's Total Sales Proceeds<sup>4</sup> and the Claimant's Holding Value.<sup>5</sup> If the Claimant's Total Purchase Amount *minus* the sum of the Claimant's Total Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain.

87. If a Claimant had a Market Gain with respect to his, her, or its overall transactions in BioMarin common stock during the Class Period, the value of the Claimant's Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. If a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in BioMarin common stock during the Class Period but that Market Loss was less than the Claimant's Recognized Claim, then the Claimant's Recognized Claim will be limited to the amount of the Market Loss.

88. **Determination of Distribution Amount:** If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share will be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

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<sup>3</sup> The "Total Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes, and commissions) for all shares of BioMarin common stock purchased or acquired during the Class Period.

<sup>4</sup> The Claims Administrator shall match any sales of BioMarin common stock during the Class Period first against the Claimant's opening position in BioMarin common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (not deducting any fees, taxes and commissions) for sales of the remaining shares of BioMarin common stock sold during the Class Period is the "Total Sales Proceeds."

<sup>5</sup> The Claims Administrator shall ascribe a "Holding Value" of \$76.72 to each share of BioMarin common stock purchased or acquired during the Class Period that was still held as of the close of trading on August 18, 2020.

89. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund will be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

90. If an Authorized Claimant's Distribution Amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant.

91. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator, no less than seven (7) months after the initial distribution, will conduct another distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such distribution. Additional distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determine that additional distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such distributions, would be cost-effective. At such time as it is determined that further distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to the Investor Protection Trust, a 501(c)(3) organization dedicated to investor education and support of investor protection efforts.

92. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, will be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Lead Counsel, Lead Plaintiff's damages or consulting experts, Defendants, Defendants' Counsel, or any of the other Plaintiffs' Releasees or Defendants' Releasees, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiff, Defendants, and their respective counsel, and all other Defendants' Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the Plan of Allocation (or other plan of allocation approved by the Court); the determination, administration, calculation, or payment of any Claim or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

93. The Plan of Allocation stated herein is the plan that is being proposed to the Court for approval by Lead Plaintiff after consultation with its damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the case website, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com).

**TABLE A**

**Estimated Artificial Inflation in BioMarin Common Stock  
from March 3, 2020 through and including August 18, 2020**

<b>Date Range</b>	<b>Artificial Inflation Per Share</b>
March 3, 2020 – June 8, 2020	\$13.89
June 9, 2020 – August 18, 2020	\$41.68
August 19, 2020 and later	\$0

TABLE B

**90-Day Look-Back Table for BioMarin Common Stock**  
**(Closing Price and Average Closing Price: August 19, 2020 – November 16, 2020)**

Date	Closing Price	Average Closing Price Between August 19, 2020 and Date Shown	Date	Closing Price	Average Closing Price Between August 19, 2020 and Date Shown
8/19/2020	\$76.72	\$76.72	10/5/2020	\$77.00	\$76.02
8/20/2020	\$74.85	\$75.78	10/6/2020	\$75.55	\$76.00
8/21/2020	\$75.03	\$75.53	10/7/2020	\$77.71	\$76.05
8/24/2020	\$73.00	\$74.90	10/8/2020	\$79.61	\$76.15
8/25/2020	\$74.40	\$74.80	10/9/2020	\$78.85	\$76.22
8/26/2020	\$74.89	\$74.81	10/12/2020	\$79.85	\$76.32
8/27/2020	\$75.43	\$74.90	10/13/2020	\$79.88	\$76.41
8/28/2020	\$76.38	\$75.09	10/14/2020	\$78.79	\$76.47
8/31/2020	\$78.03	\$75.41	10/15/2020	\$77.67	\$76.50
9/1/2020	\$76.00	\$75.47	10/16/2020	\$79.25	\$76.57
9/2/2020	\$77.99	\$75.70	10/19/2020	\$77.33	\$76.58
9/3/2020	\$75.84	\$75.71	10/20/2020	\$77.91	\$76.61
9/4/2020	\$76.00	\$75.74	10/21/2020	\$77.50	\$76.63
9/8/2020	\$74.49	\$75.65	10/22/2020	\$79.17	\$76.69
9/9/2020	\$74.49	\$75.57	10/23/2020	\$77.53	\$76.71
9/10/2020	\$71.87	\$75.34	10/26/2020	\$76.88	\$76.71
9/11/2020	\$72.05	\$75.14	10/27/2020	\$76.18	\$76.70
9/14/2020	\$75.34	\$75.16	10/28/2020	\$74.39	\$76.65
9/15/2020	\$75.51	\$75.17	10/29/2020	\$74.42	\$76.61
9/16/2020	\$75.64	\$75.20	10/30/2020	\$74.43	\$76.57
9/17/2020	\$78.36	\$75.35	11/2/2020	\$73.42	\$76.51
9/18/2020	\$79.38	\$75.53	11/3/2020	\$72.61	\$76.44
9/21/2020	\$77.28	\$75.61	11/4/2020	\$76.37	\$76.43
9/22/2020	\$79.36	\$75.76	11/5/2020	\$75.05	\$76.41
9/23/2020	\$78.43	\$75.87	11/6/2020	\$76.74	\$76.42
9/24/2020	\$76.58	\$75.90	11/9/2020	\$75.09	\$76.39
9/25/2020	\$77.39	\$75.95	11/10/2020	\$76.18	\$76.39
9/28/2020	\$77.99	\$76.03	11/11/2020	\$76.22	\$76.39
9/29/2020	\$76.00	\$76.02	11/12/2020	\$76.91	\$76.39
9/30/2020	\$76.08	\$76.03	11/13/2020	\$77.52	\$76.41
10/1/2020	\$75.82	\$76.02	11/16/2020	\$77.11	\$76.42
10/2/2020	\$74.98	\$75.99			

***BioMarin Securities Litigation***  
c/o A.B. Data, Ltd.  
P.O. Box 170400  
Milwaukee, WI 53217

Toll-Free Number: (877) 390-3369  
Email: [info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com)  
Website: [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com)

## **PROOF OF CLAIM AND RELEASE FORM**

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must complete and sign this Proof of Claim and Release Form (“Claim Form”) and mail it by first-class mail to the address below, or submit it online at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), with supporting documentation, *postmarked (if mailed) or received no later than October 30, 2023*.

### **Mail to:**

***BioMarin Securities Litigation***  
c/o A.B. Data, Ltd.  
P.O. Box 170400  
Milwaukee, WI 53217

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to receive any money in connection with the Settlement.

**Do not mail or deliver your Claim Form to the Court, the Parties to the Action, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above.**

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<b>PART III – SCHEDULE OF TRANSACTIONS IN BIOMARIN COMMON STOCK (NASDAQ: BMRN, CUSIP: 09061G101)</b>	<b>5</b>
<b>PART IV – RELEASE OF CLAIMS AND SIGNATURE</b>	<b>6</b>

**PART I – CLAIMANT INFORMATION**

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

Beneficial Owner’s Name

First Name

Last Name

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Joint Beneficial Owner’s Name (if applicable)

First Name

Last Name

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

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

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

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Last 4 digits of Social Security Number or Taxpayer Identification Number

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Street Address

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Address (Second line, if needed)

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City

State/Province

Zip Code

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Foreign Postal Code (if applicable)

Foreign Country (if applicable)

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Telephone Number (Day)

Telephone Number (Evening)

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

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**Type of Beneficial Owner:**

Specify one of the following:

<input type="checkbox"/>	Individual(s)
<input type="checkbox"/>	Partnership

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Estate

<input type="checkbox"/>	UGMA Custodian
<input type="checkbox"/>	Trust

<input type="checkbox"/>	IRA
<input type="checkbox"/>	Other (describe):

**PART II – GENERAL INSTRUCTIONS**

1. It is important that you completely read the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (the “Notice”) that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Notice. The Notice describes the proposed Settlement, how Settlement Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Notice. If you are not a Settlement Class Member (see the definition of the Settlement Class on page 5 of the Notice), or if you, or someone acting on your behalf, submitted a request for exclusion from the Settlement Class, do not submit a Claim Form. **You may not, directly or indirectly, participate in the Settlement if you are not a Settlement Class Member.** Thus, if you are excluded from the Settlement Class, any Claim Form that you submit, or that may be submitted on your behalf, will not be accepted.

3. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice or by such other plan of allocation as the Court approves.**

4. On the Schedule of Transactions in Part III of this Claim Form, provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of BioMarin Pharmaceutical Inc. (“BioMarin”) common stock (including free transfers and deliveries), whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

5. **Please note:** Only purchases or acquisitions of BioMarin common stock from March 3, 2020, through August 18, 2020 are eligible under the Settlement and the proposed Plan of Allocation set forth in the Notice. However, under the “90-day look-back period” (described in the Plan of Allocation), sales of BioMarin common stock during the period from August 19, 2020 through the close of trading on November 16, 2020 will be used for purposes of calculating Recognized Loss Amounts under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase information during this period must also be provided.

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of BioMarin common stock set forth in the Schedule of Transactions in Part III. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in BioMarin common stock. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS.**

7. **Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

8. Use Part I of this Claim Form entitled “CLAIMANT INFORMATION” to identify the beneficial owner(s) of BioMarin common stock. The complete name(s) of the beneficial owner(s) must be entered. If you held the BioMarin common stock in your own name, you were the beneficial owner as well as the record owner. If, however, your shares of BioMarin common stock were registered in the name of a third party, such as a nominee or brokerage firm, you were the beneficial owner of these shares, but the third party was the record owner. The beneficial owner, not the record owner, must sign this Claim Form to be eligible to participate in the Settlement. If there were joint beneficial owners each must sign this Claim Form and their names must appear as “Claimants” in Part I of this Claim Form.

9. **One Claim should be submitted for each separate legal entity or separately managed account.** Separate Claim Forms should be submitted for each separate legal entity (e.g., an individual should not combine his or her IRA transactions with transactions made solely in the individual’s name). Generally, a single Claim Form should be submitted on behalf of one legal entity including all holdings and transactions made by that entity on one Claim Form. However, if a single person or legal entity had multiple accounts that were separately managed, separate Claims may be submitted for each such account. The Claims Administrator reserves the right to request information on all the holdings and transactions in BioMarin common stock made on behalf of a single beneficial owner.

10. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, Social Security Number (or taxpayer identification number), address, and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the BioMarin common stock; and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

11. By submitting a signed Claim Form, you will be swearing that you:

- (a) own(ed) the BioMarin common stock you have listed in the Claim Form; or
- (b) are expressly authorized to act on behalf of the owner thereof.

12. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

13. Payments to eligible Authorized Claimants will be made only if the Court approves the Settlement, after any appeals are resolved, and after the completion of all claims processing.

14. **PLEASE NOTE:** As set forth in the Plan of Allocation, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation, and no distribution will be made to that Authorized Claimant.

15. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, A.B. Data, Ltd., at the above address, by email at [info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com), or by toll-free phone at (877) 390-3369, or you can visit the website, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), where copies of the Claim Form and Notice are available for downloading.

16. **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the *mandatory* electronic filing requirements and file layout, you may visit the settlement website at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com) or you may email the Claims Administrator's electronic filing department at [info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com). **Any file not in accordance with the required electronic filing format will be subject to rejection.** The *complete* name of the beneficial owner of the securities must be entered where called for (*see* ¶ 8 above). No electronic files will be considered to have been submitted unless the Claims Administrator issues an email confirming receipt of your submission. **Do not assume that your file has been received until you receive that email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com) to inquire about your file and confirm it was received.**

**IMPORTANT: PLEASE NOTE**

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL, WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL-FREE AT (877) 390-3369.**

**PART III – SCHEDULE OF TRANSACTIONS IN BIOMARIN COMMON STOCK**

The only eligible security is the common stock of BioMarin Pharmaceutical Inc. (“BioMarin”) (Ticker: NASDAQ: BMRN, CUSIP: 09061G101). Do not include information regarding any other securities. Include proper documentation with your Claim Form as described in detail in Part II – General Instructions, ¶ 6, above.

<b>1. HOLDINGS AS OF MARCH 3, 2020</b> – State the total number of shares of BioMarin common stock held as of the opening of trading on March 3, 2020. (Must be documented.) If none, write “zero” or “0.” _____				Confirm Proof of Position Enclosed <input type="checkbox"/>
<b>2. PURCHASES/ACQUISITIONS FROM MARCH 3, 2020 THROUGH AUGUST 18, 2020</b> – Separately list each and every purchase or acquisition (including free receipts) of BioMarin common stock from March 3, 2020 through the close of trading on August 18, 2020. (Must be documented.)				
Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding any taxes, commissions, and fees)	Confirm Proof of Purchase Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
<b>3. PURCHASES/ACQUISITIONS FROM AUGUST 19, 2020 THROUGH NOVEMBER 16, 2020</b> – State the total number of shares of BioMarin common stock purchased or acquired (including free receipts) from August 19, 2020, through the close of trading on November 16, 2020. If none, write “zero” or “0.” _____				
<b>4. SALES FROM MARCH 3, 2020 THROUGH NOVEMBER 16, 2020</b> – Separately list each and every sale or disposition (including free deliveries) of BioMarin common stock from March 3, 2020, through the close of trading on November 16, 2020. (Must be documented.)				<b>IF NONE, CHECK HERE</b> <input type="checkbox"/>
Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (not deducting any taxes, commissions, and fees)	Confirm Proof of Sale Enclosed
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
/ /		\$	\$	<input type="checkbox"/>
<b>5. HOLDINGS AS OF NOVEMBER 16, 2020</b> – State the total number of shares of BioMarin common stock held as of the close of trading on November 16, 2020. (Must be documented.) If none, write “zero” or “0.” _____				Confirm Proof of Position Enclosed <input type="checkbox"/>
<b>IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER’S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX.</b> —————> <input type="checkbox"/>				



**PART IV – RELEASE OF CLAIMS AND SIGNATURE**

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 7 OF THIS CLAIM FORM.**

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) (the claimant(s)') heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

**CERTIFICATION**

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;
3. that the claimant(s) did *not* submit a request for exclusion from the Settlement Class;
4. that I (we) own(ed) the BioMarin common stock identified in the Claim Form and have not assigned the claim against any of the Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of BioMarin common stock and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;
8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the determination by the Court of the validity or amount of this Claim, and waive(s) any right of appeal or review with respect to such determination;
9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (i) the claimant(s) is (are) exempt from backup withholding or (ii) the claimant(s) has (have) not been notified by the IRS that he, she, or it is subject to backup withholding as a result of a failure to report all interest or dividends or (iii) the IRS has notified the claimant(s) that he, she, or it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she, it, or they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

---

Signature of claimant

Date

---

Print claimant name here

---

Signature of joint claimant, if any

Date

---

Print joint claimant name here

***If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:***

---

Signature of person signing on behalf of claimant

Date

---

Print name of person signing on behalf of claimant here

---

Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see ¶ 10 on page 4 of this Claim Form.)

**REMINDER CHECKLIST**

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Attach only *copies* of acceptable supporting documentation as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and documentation for your own records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll-free at (877) 390-3369.**
6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, contact the Claims Administrator at the address below, by email at [info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com), or by toll-free phone at (877) 390-3369, or you may visit [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com). **DO NOT** call BioMarin or its counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL OR SUBMITTED ONLINE AT [WWW.BIOMARINSECURITIESLITIGATION.COM](http://WWW.BIOMARINSECURITIESLITIGATION.COM), **POSTMARKED (OR RECEIVED) NO LATER THAN OCTOBER 30, 2023**. IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:

*BioMarin Securities Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 170400  
Milwaukee, WI 53217

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before **October 30, 2023**, is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

# EXHIBIT B

## BUSINESS &amp; FINANCE

## Accountant Shortage Hits Corporations

By MARK MAURER

The widening shortage of accountants has begun showing up in financial statements.

U.S.-listed companies such as car-parts provider **Advance Auto Parts**, electric-air-taxi firm **Joby Aviation** and German biotech company **Evotec** in recent months have disclosed efforts to address material weaknesses due at least in part to a lack of accounting staff. These names are larger than the typically smaller companies that historically might have had trouble attracting accounting expertise.

Companies must disclose a material weakness in their internal control over financial reporting, or ICFR, if there is a reasonable possibility that a

material misstatement could occur and couldn't be prevented or detected by them on a timely basis. Such flaws are one of the key predictors of restatements, both major and minor, and generally lead companies to address the problems and improve their controls.

The disclosures come as fewer people are pursuing degrees in accounting and entering the field, resulting in more positions open and for longer periods. What's more, academics say, the shortage will likely be compounded as more accountants retire without a robust pipeline of replacements.

Smaller companies in need of accounting staff often decide not to fill the jobs because they either can't afford

to or can't justify the cost-benefit trade-off, while their bigger counterparts might be unable to find the right people, said Andrew Imdieke, an assistant professor of accounting at the University of Notre Dame.

"This is an economic shock where larger companies are not able to fill these roles as opposed to choosing not to fill these roles," he said. "It's definitely a cause for concern."

One of the most explicit examples of the fallout came from **Advance Auto Parts**, which said it had identified a

material weakness in its ICFR due to turnover in key accounting positions during the fiscal quarter ended April 22.

The company said it wasn't able to attract and retain enough qualified people to fulfill internal-control responsibilities.

So much so, that the Raleigh, N.C.-based company said June 2 it wouldn't be able to file its 10-Q quarterly report

on schedule because it needed more time to assess the control deficiency and its remediation. It filed the 10-Q four days later.

**Advance Auto Parts** is

working to address the shortcoming, in part by tapping temporary outside help with the requisite accounting knowledge and experience, it said in its June 6 filing. The company didn't respond to a request for comment.

Big and midsize firms like **Advance Auto** have a higher regulatory bar to clear than smaller companies do: In 2020, the Securities and Exchange Commission exempted public companies with less than \$100 million in annual revenue from retaining an outside auditor to verify their internal controls.

Companies with longstanding ICFR gaps rarely face SEC charges for that recurrence alone, but they can risk higher borrowing rates, a falling

stock price and an investor exodus if they don't make fixes. In 2019, the SEC settled charges with four public companies, including health-food company **Lifeway Foods**, for failing to maintain ICFR for seven to 10 consecutive years.

Another company that has struggled with an accountant shortage is **Joby Aviation**, a maker of electric vertical take-off and landing aircraft. In a May 5 quarterly filing, the company said it was continuing to fix the control deficiencies that led to its material weakness. The remaining aspect of the material weakness, as of Dec. 31, related to the lack of sufficient accounting personnel, the Santa Cruz, Calif.-based company said. **Joby Aviation** declined to comment.

## Deal Activity Declines as Pricing Turns More Uncertain

By JENNIFER WILLIAMS-ALVAREZ

Deal activity has slumped considerably from the highs reached during the pandemic as companies grapple with inflation, an uncertain economic outlook, increased regulatory scrutiny and a division on prices.

For some companies, the turbulence creates an opening for a good deal, and some finance chiefs say they are looking for opportunities in mergers and acquisitions. But sellers aren't eager to lower valuations and sell at the bottom of the market. The disconnect, in some cases, is significant enough that companies are walking away from deals, observers say.

"Buyers are seeing signs of uncertainty: Where are interest rates going? Where is inflation going? How do I account for inflation in the

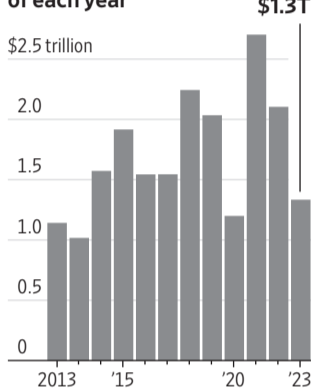
revenue growth of this target over the past couple of years?" said Suzanne Kumar, vice president of the merger and acquisition practice at consulting firm **Bain & Co.** "And sellers, equally, can take the opposite view of, you know, we've grown this business, it's solid...and we're going to price with pride here."

"That's the untold story right now," she added, pointing to a limbo in deal making that is showing up through lower volumes and a decline in values.

During the first six months of the year, companies globally announced deals worth \$1.3 trillion, down 37% from a year earlier and the slowest first-half period since 2020, according to data provider **Refinitiv**.

Bain estimates the value of deal making globally is on track to reach \$2.7 trillion in

Value of mergers and acquisitions announced globally for first half of each year



Note: Values are through June 30 of each year. Source: Refinitiv

2023, a roughly 39% decline from the year before and the lowest annual value for global deal making in a decade. The number of announced deals through June, at 18, is down

20% compared with a year earlier, Bain said.

The pricing disconnect is coming from both sides of a deal, said Eric Swedenburg, head of the M&A practice at law firm **Simpson Thacher & Bartlett**. In the back half of 2022, sellers were more often the ones in a deal that expected higher price tags than were possibly realistic, he said. Now, sellers still have that approach but buyers are looking for bargains given economic headwinds, according to Swedenburg, adding that discrepancies in deal valuations are "way more pronounced" now than in 2021 or the beginning of 2022.

What was perceived as a low offer factored in a deal rejection for storage company **Life Storage**.

The Buffalo, N.Y.-based real-estate investment trust in February rejected an \$11 bil-

lion unsolicited proposal from industry giant **Public Storage** because the proposal, according to **Life Storage**, "significantly" undervalued the company.

"We anticipate a significant improvement in our [valuation] as the markets better understand the superior growth **Life Storage** is poised to deliver over the next two years," **Life Storage** Chief Executive **Joseph Saffire** told analysts in February, discussing the board's decision to reject the proposal. "Public Storage's proposal fails to account for this industry-leading growth and instead seems to be opportunistically timed to transfer **Life Storage's** upside value to **Public Storage**."

**Life Storage**, which declined to comment on the **Public Storage** proposal, struck a \$12.7 billion deal in April to combine with **Extra Space**

**Storage**. **Public Storage** Chief Executive **Joseph Russell** told analysts in May that the deal between **Life Storage** and **Extra Space Storage**, if it goes through, wouldn't change the competitive landscape.

Finance chiefs, meanwhile, are feeling the impact of pricing disconnects.

**Autodesk** is seeing asymmetry on deal-valuation expectations, said **Debbie Clifford**, chief financial officer at the San Francisco-based software company. "Sellers are always wanting more than buyers are willing to pay," she said.

"I don't think that's a new dynamic, but our expectations around the multiples we'd be willing to pay have come down or are more tempered," **Clifford** said. "So as long as we have this valuation disconnect, we've been slightly less acquisitive."

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**Financial Services**  
**Morgan Stanley & Co. LLC** hiring for following roles thruout facilities in NY, NY: Associate to analyze implications of news & industry dvlpmts in Fin's & REIT (RE Investment Trust) sector (3236563, sal range \$200,000 to \$200,000); Associate to provide trading desks w/ innovative product solutions to generate revenue & manage risk for portfolios (3236568, sal range \$175,000 to \$200,000); Associate to identify, analyze, & prioritize new & existing bus. opp'tys w/ Prime Brokerage clients (3229514, sal range \$167,000 to \$200,000); Vice President to work as Quantitative Analyst on Structured Rates, FX Strategist team (3229540, sal range \$225,000 to \$250,000); Associate to model, price, trade, book, & risk manage exotic equity derivatives for Morgan Stanley Institutional Equities trading division (3236503, sal range \$200,000 to \$200,000); Associate to model various aspects of electronic options mkt making incl risk mgmt, volatility surfaces fitting, mkt impact, & microstructure filtering (3229542, salary range \$225,000 to \$250,000). All positions req rel degree &/or exp &/or skills. Multiple open positions at various prof'l levels. For more info & to apply, visit https://ms.taleo.net/careersection/2/jobsearch.ft?lang=en Scroll down to "Join our team" heading & search for these opp'tys. No calls pls. EOE

**Associate**  
**Morgan Stanley Fund Services, Inc.** hiring for following role in NY, NY: Associate to respond to client & investor queries & coord. w/ internal teams to obtain resolutions (salary range \$105,000 to \$120,000). Position req's rel degree &/or exp &/or skills. For more info & to apply, visit https://ms.taleo.net/careersection/2/jobsearch.ft?lang=en Scroll down to "Join our team" heading & click "Search jobs". No calls pls. EOE

## CAREERS

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**Financial Services**  
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**Financial Services**  
**Morgan Stanley & Co. LLC** hiring for following roles thruout facilities in NY, NY: Associate to analyze implications of news & industry dvlpmts in Fin's & REIT (RE Investment Trust) sector (3236563, sal range \$200,000 to \$200,000); Associate to provide trading desks w/ innovative product solutions to generate revenue & manage risk for portfolios (3236568, sal range \$175,000 to \$200,000); Associate to identify, analyze, & prioritize new & existing bus. opp'tys w/ Prime Brokerage clients (3229514, sal range \$167,000 to \$200,000); Vice President to work as Quantitative Analyst on Structured Rates, FX Strategist team (3229540, sal range \$225,000 to \$250,000); Associate to model, price, trade, book, & risk manage exotic equity derivatives for Morgan Stanley Institutional Equities trading division (3236503, sal range \$200,000 to \$200,000); Associate to model various aspects of electronic options mkt making incl risk mgmt, volatility surfaces fitting, mkt impact, & microstructure filtering (3229542, salary range \$225,000 to \$250,000). All positions req rel degree &/or exp &/or skills. Multiple open positions at various prof'l levels. For more info & to apply, visit https://ms.taleo.net/careersection/2/jobsearch.ft?lang=en Scroll down to "Join our team" heading & search for these opp'tys. No calls pls. EOE

## CLASS ACTION

**UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION**

**IN RE BIOMARIN PHARMACEUTICAL INC. SECURITIES LITIGATION**

**CLASS ACTION**  
 Case No. 3:20-cv-06719-WHO

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT HEARING; AND (III) MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

**TO: All persons who purchased or otherwise acquired BioMarin Pharmaceutical Inc. ("BioMarin") common stock from March 3, 2020 through August 18, 2020, inclusive (the "Class Period"), and were damaged thereby ("Settlement Class");**

**PLEASE READ THIS NOTICE CAREFULLY; YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

**YOU ARE HEREBY NOTIFIED**, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of California ("Court"), that the above-captioned action ("Action") has been provisionally certified as a class action for purposes of settlement, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the Stipulation and Agreement of Settlement dated April 24, 2023 ("Stipulation") and the detailed Notice of (i) Pendency of Class Action and Proposed Settlement; (ii) Settlement Hearing; and (iii) Motion for Attorneys' Fees and Litigation Expenses ("Notice"). The Stipulation and Notice can be viewed at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com). In the Action, Lead Plaintiff alleges that Defendants violated the federal securities laws by making materially false and misleading statements to investors during the Class Period concerning BioMarin's application to the Food and Drug Administration for approval of a gene therapy for hemophilia called Valrox.

**YOU ARE ALSO NOTIFIED** that Lead Plaintiff Arbejdsmarkedet Tillægspension and Defendants BioMarin, Jean-Jacques Bienaimé, and Dr. Henry Fuchs have reached a proposed settlement of the Action on behalf of the Settlement Class for **\$39,000,000** in cash (the "Settlement"). If approved by the Court, the Settlement will resolve all claims in the Action.

A hearing ("Settlement Hearing") will be held on **November 8, 2023 at 2:00 p.m. Pacific Time**, before the Honorable William H. Orrick, United States District Court Judge for the Northern District of California, either in person at the Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 2 - 17th Floor, or by telephone or videoconference (in the discretion of the Court), to determine, among other things: (i) whether, for purposes of settlement, the Action should be certified as a class action on behalf of the Settlement Class, Lead Plaintiff should be appointed as the class representative for the Settlement Class, and Lead Counsel should be appointed as class counsel for the Settlement Class; (ii) whether the Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be finally approved by the Court; (iii) whether the Action should be dismissed with prejudice against Defendants and the releases specified and described in the Stipulation (and in the Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (v) whether Lead Counsel's motion for attorneys' fees in an amount not to exceed 19% of the Settlement Fund and payment of expenses in an amount not to exceed \$650,000 (which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class) should be approved. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the website for the Settlement, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com).

**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement proceeds.** This notice provides only a summary of the information contained in the detailed Notice. You may obtain a copy of the

**Notice**, along with the Claim Form, by: (i) contacting the Claims Administrator at *BioMarin Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 170400, Milwaukee, WI, 53217, 1-877-390-3369, [info@BioMarinSecuritiesSettlement.com](mailto:info@BioMarinSecuritiesSettlement.com); or (ii) downloading them from the website for the Settlement, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), or from Lead Counsel's website, [www.blbglaw.com](http://www.blbglaw.com).

To be eligible to receive a payment from the Settlement, you must be a member of the Settlement Class and submit a Claim Form *postmarked (if mailed), or online, no later than October 30, 2023*, in accordance with the instructions set forth in the Claim Form. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the Settlement proceeds, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is *received no later than October 18, 2023*, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not receive any benefits from the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and expenses, must be submitted to the Court. Objections must be *filed or postmarked (if mailed) no later than October 18, 2023*, in accordance with the instructions set forth in the Notice.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.** All questions about this notice, the Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.

Requests for the Notice and Claim Form should be made to the Claims Administrator:

*BioMarin Securities Litigation*  
 c/o A.B. Data, Ltd.  
 P.O. Box 170400  
 Milwaukee, WI 53217  
 1-877-390-3369  
[info@BioMarinSecuritiesLitigation.com](mailto:info@BioMarinSecuritiesLitigation.com)  
[www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com)

All other inquiries should be made to Lead Counsel:

Bernstein Litowitz Berger & Grossmann LLP  
 Katherine M. Sinderon, Esq.  
 1251 Avenue of the Americas  
 New York, NY 10020  
 1-800-380-8496  
[settlements@blbglaw.com](mailto:settlements@blbglaw.com)

BY ORDER OF THE COURT  
 United States District Court  
 Northern District of California

**CAREERS**  
**VP, Private Credit & Equity**  
**Morgan Stanley Investment Management Inc.** hiring for following role in NY, NY: Vice President, Private Credit & Equity responsible for value creation process for new investments in collab. w/investmt team & portfolio co. mgmt (salary range \$250,000 to \$250,000). Position req's rel degree &/or exp &/or skills. For more info & to apply, visit <https://ms.taleo.net/careersection/2/jobsearch.ft?lang=en> Scroll down to "Join our team" heading & enter 3229499 as "Job Number" & click "Search jobs." No calls pls. EOE

**COMMERCIAL REAL ESTATE**  
**Seeking \$2.5 Million**  
**36-month participation bridge loan secured by Historic American Lighthouse**  
**Excellent Yield.**  
**Tobetterworld@msn.com**

**COMMERCIAL REAL ESTATE**  
**FLORIDA LAND SALE - EAST COAST HOMESTEAD-RANCH-FARM - 27 LOTS of 12 to 120 Acres Prices \$5,500/ac to \$16,500/ac**  
**COMMERCIAL - 14 LOTS 3 to 17 Acres Prices \$125K/ac to \$150K/ac**  
**Act Today! Limited Time Sale**  
**130 Ac Airport, 24 Hangars \$9M**  
**Contact Bob Brewster, Watson Realty**  
**Phone / Text 386-341-0423**

# EXHIBIT C

# Bernstein Litowitz Berger & Grossmann LLP Announces Pendency of Class Action and Proposed Settlement For Purchasers of BioMarin Pharmaceutical Inc. Common Stock from March 3, 2020 through August 18, 2020, Inclusive

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NEWS PROVIDED BY

**Bernstein Litowitz Berger & Grossmann LLP →**

12 Jul, 2023, 10:00 ET

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NEW YORK, July 12, 2023 /PRNewswire/ --

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE BIOMARIN PHARMACEUTICAL  
INC. SECURITIES LITIGATION

CLASS ACTION

Case No. 3:20-cv-06719-WHO

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENT; (II) SETTLEMENT HEARING; AND (III) MOTION FOR  
ATTORNEYS' FEES AND LITIGATION EXPENSES**


**TO: All persons who purchased or otherwise acquired BioMarin Pharmaceutical Inc.**

**("BioMarin") common stock from March 3, 2020 through August 18, 2020, inclusive (the "Class Period"), and were damaged thereby ("Settlement Class"):**

**PLEASE READ THIS NOTICE CAREFULLY; YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

**YOU ARE HEREBY NOTIFIED**, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of California ("Court"), that the above-captioned action ("Action") has been provisionally certified as a class action for purposes of settlement, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the Stipulation and Agreement of Settlement dated April 24, 2023 ("Stipulation") and the detailed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses ("Notice"). The Stipulation and Notice can be viewed at [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com). In the Action, Lead Plaintiff alleges that Defendants violated the federal securities laws by making materially false and misleading statements to investors during the Class Period concerning BioMarin's application to the Food and Drug Administration for approval of a gene therapy for hemophilia called valrox.

**YOU ARE ALSO NOTIFIED** that Lead Plaintiff Arbejdsmarkedets Tillægspension and Defendants BioMarin, Jean-Jacques Bienaimé, and Dr. Henry Fuchs have reached a proposed settlement of the Action on behalf of the Settlement Class for **\$39,000,000** in cash (the "Settlement"). If approved by the Court, the Settlement will resolve all claims in the Action.

A hearing ("Settlement Hearing") will be held on **November 8, 2023 at 2:00 p.m. Pacific Time**, before the Honorable William H. Orrick, United States District Court Judge for the Northern District of California, either in person at the Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 2 - 17th Floor, or by telephone or videoconference (in the discretion of the Court), to determine, among other things: (i) whether, for purposes of settlement, the Action should be certified as a class action on behalf of the Settlement Class, Lead Plaintiff should be appointed as the class representative for the Settlement Class, and Lead Counsel should be appointed as class counsel for the Settlement Class; (ii) whether the Settlement on the terms and conditions 



provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be finally approved by the Court; (iii) whether the Action should be dismissed with prejudice against Defendants and the releases specified and described in the Stipulation (and in the Notice) should be granted; (iv) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (v) whether Lead Counsel's motion for attorneys' fees in an amount not to exceed 19% of the Settlement Fund and payment of expenses in an amount not to exceed \$650,000 (which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiff directly related to its representation of the Settlement Class) should be approved. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the website for the Settlement, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com).

**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement proceeds.** This notice provides only a summary of the information contained in the detailed Notice. You may obtain a copy of the Notice, along with the Claim Form, by: (i) contacting the Claims Administrator at *BioMarin Securities Litigation*, c/o A.B. Data, Ltd., P.O. Box 170400, Milwaukee, WI, 53217, 1-877-390-3369, [info@BioMarinSecuritiesSettlement.com](mailto:info@BioMarinSecuritiesSettlement.com); or (ii) downloading them from the website for the Settlement, [www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com), or from Lead Counsel's website, [www.blbgllaw.com](http://www.blbgllaw.com).

To be eligible to receive a payment from the Settlement, you must be a member of the Settlement Class and submit a Claim Form **postmarked (if mailed), or online, no later than October 30, 2023**, in accordance with the instructions set forth in the Claim Form. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the Settlement proceeds, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is **received no later than October 18, 2023**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not receive any benefits from the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and expenses, must be submitted to the Court. Objections must be **filed or postmarked (if mailed) no later than October 18, 2023**, in accordance with the instructions set forth in the Notice.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.** All questions about this notice, the Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.

Requests for the Notice and Claim Form should be made to the Claims Administrator:

*BioMarin Securities Litigation*  
c/o A.B. Data, Ltd.  
P.O. Box 170400  
Milwaukee, WI 53217  
1-877-390-3369  
info@BioMarinSecuritiesLitigation.com  
[www.BioMarinSecuritiesLitigation.com](http://www.BioMarinSecuritiesLitigation.com)

All other inquiries should be made to Lead Counsel:

Bernstein Litowitz Berger & Grossmann LLP  
Katherine M. Sinderson, Esq.  
1251 Avenue of the Americas  
New York, NY 10020  
1-800-380-8496  
  
settlements@blbglaw.com

BY ORDER OF THE COURT  
United States District Court  
Northern District of California



## PRN Top Stories Newsletters

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Select Country

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By signing up, you agree to receive content from us. Our newsletters contain tracking pixels to help us deliver unique content based on each subscriber's engagement and interests. For more information on how we will use your data to ensure we send you relevant content please visit our PRN Consumer Newsletter Privacy Notice. You can withdraw your consent at any time in the footer of every email you'll receive.



# **Exhibit 5**

**EXHIBIT 5**

*In re BioMarin Pharmaceutical Inc. Securities Litigation,*  
Case No. 3:20-cv-06719-WHO (N.D. Cal.)

**SUMMARY OF LEAD COUNSEL'S HOURS AND LODESTAR**

From Inception to September 15, 2023

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Abe Alexander	859.25	\$900	\$773,325.00
Scott Foglietta	64.00	\$900	\$57,600.00
Salvatore J. Graziano	201.75	\$1,250	\$252,187.50
Gerald Silk	120.00	\$1,250	\$150,000.00
Katherine M. Sinderson	825.00	\$975	\$804,375.00
<b>Senior Counsel</b>			
David L. Duncan	88.25	\$825	\$72,806.25
Catherine van Kampen	17.50	\$775	\$13,562.50
<b>Associates</b>			
Girolamo Brunetto	127.75	\$650	\$83,037.50
William Freeland	875.00	\$525	\$459,375.00
Benjamin Horowitz	17.75	\$475	\$8,431.25
Rebecca Kim	10.50	\$500	\$5,250.00
Christopher Miles	282.25	\$575	\$162,293.75
Thomas Sperber	665.00	\$475	\$315,875.00
<b>Senior Staff Attorney</b>			
Lawrence Hosmer	594.50	\$425	\$252,662.50
<b>Staff Attorneys</b>			
Claudia Carten	288.50	\$400	\$115,400.00
Jerome Mitchell	1,452.25	\$425	\$617,206.25
Yeruchem Neiman	1,768.00	\$425	\$751,400.00
Stephen Roehler	845.00	\$425	\$359,125.00
Ruben Sindahl	116.50	\$375	\$43,687.50

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
Lewis Smith	1,406.25	\$425	\$597,656.25
Juan Vera	238.00	\$400	\$95,200.00
<b>Financial Analysts</b>			
Nick DeFilippis	28.00	\$650	\$18,200.00
Rachel Graf	18.50	\$400	\$7,400.00
Adam Weinschel	17.75	\$600	\$10,650.00
<b>Investigators</b>			
Robin Barnier	208.00	\$425	\$88,400.00
Amy Bitkower	77.25	\$600	\$46,350.00
Jacob Foster	142.00	\$325	\$46,150.00
Jenna Goldin	452.25	\$425	\$192,206.25
Joelle Sfeir	63.75	\$475	\$30,281.25
<b>Case Managers &amp; Paralegals</b>			
Khristine de Leon	29.25	\$325	\$9,506.25
Janielle Lattimore	52.75	\$400	\$21,100.00
Michelle Leung	184.25	\$375	\$69,093.75
Matthew Mahady	24.75	\$375	\$9,281.25
Nycol Morrissey	10.25	\$375	\$3,843.75
Preya Rodriguez	198.75	\$375	\$74,531.25
Gary Weston	9.75	\$400	\$3,900.00
<b>Litigation Support</b>			
Robert Santamarina	110.50	\$450	\$49,725.00
<b>Managing Clerk</b>			
Mahiri Buffong	74.00	\$425	\$31,450.00
<b>TOTALS:</b>	<b>12,564.75</b>		<b>\$6,702,525.00</b>

# **Exhibit 6**



## EXHIBIT 6

*In re BioMarin Pharmaceutical Inc. Securities Litigation,*  
Case No. 3:20-cv-06719-WHO (N.D. Cal.)

### SUMMARY DESCRIPTIONS OF WORK PERFORMED BY LEAD COUNSEL'S ATTORNEYS

#### PARTNERS

**Abe Alexander** (859.25 hours): Mr. Alexander was extensively involved in all aspects of the litigation including investigating the claims and researching and drafting the Complaint, Lead Plaintiff's opposition to Defendants' motion to dismiss, Lead Plaintiff's motion for class certification, advising Lead Plaintiff, and preparing and defending the depositions of the two representatives of Lead Plaintiff and Lead Plaintiff's expert. Mr. Alexander also played a central role in discovery efforts and deposition preparation, including discovery directed at the FDA, and worked extensively with Lead Plaintiff's experts. Mr. Alexander also participated in preparing Lead Plaintiff's mediation submission, and participated in the mediation and settlement negotiations.

**Scott Foglietta** (64 hours): Mr. Foglietta is a member of the Firm's New Matters department. Mr. Foglietta was primarily responsible for analyzing Lead Plaintiff's potential claims during the early stages of the litigation, advising ATP regarding the merits of the matter and the role of the Lead Plaintiff, and in drafting the submissions made in support of the motion for appointment of ATP as Lead Plaintiff.

**Salvatore J. Graziano** (201.75 hours): Mr. Graziano is a member of BLB&G's management committee and was the partner responsible for supervising the litigation as a whole and overseeing all aspects of case management and prosecution. Mr. Graziano was involved in the drafting and the investigation of the Complaint and the briefing of Defendants' motion to dismiss. Mr. Graziano also appeared on behalf of Lead Plaintiff in oral argument related to Defendants' motion to dismiss and oversaw Lead Plaintiff's motion for class certification and discovery efforts. Mr. Graziano was principally responsible for the mediation and settlement negotiations on behalf of Lead Plaintiff.

**Gerald Silk** (120 hours): Mr. Silk is a member of BLB&G's management committee, and the head of the Firm's New Matters department. Mr. Silk participated in the initial analysis of the case, advising ATP regarding the merits of the matter and the role of the Lead Plaintiff, and in strategic and tactical decisions throughout the litigation.

**Katherine M. Sinderson** (825 hours): Ms. Sinderson was the partner responsible for supervising the day-to-day handling and strategy of the litigation and, together with Mr. Graziano, overseeing all aspects of case management and prosecution. Ms. Sinderson was involved in drafting the Complaint, the briefing of Lead Plaintiff's opposition to Defendants' motion to dismiss, and Lead Plaintiff's motion for class certification. Ms. Sinderson also oversaw discovery efforts on Defendants and third parties, including numerous meet and confers and discovery disputes before

the Court and took the deposition of a former BioMarin employee. She was responsible for strategy relating to case management issues. Ms. Sinderson also participated in preparing Lead Plaintiff's mediation submission, and she attended and actively participated in the mediation and settlement negotiations.

### **SENIOR COUNSEL**

**David L. Duncan** (88.25 hours): Mr. Duncan is a member of the Firm's Settlement Department. Mr. Duncan's primary role at the Firm is to manage and implement class action settlements. In that capacity, Mr. Duncan participated in drafting, editing, and coordinating the settlement documentation, including the Term Sheet and the Stipulation of Settlement and related exhibits. Mr. Duncan was also responsible for coordinating with the administrator regarding dissemination of notice to the Settlement Class and for drafting Lead Plaintiff's motions for preliminary and final approval of the Settlement.

**Catherine Van Kampen** (17.5 hours): Ms. Van Kampen is also a member of the Settlement Department. Ms. van Kampen had responsibility for coordinating the process of selecting the claims administrator through a bidding process, as well as other matters related to the administration of the Settlement, including responsibility for banking matters and administration of the escrow account.

### **ASSOCIATES**

**Girolamo "Jimmy" Brunetto** (127.75 hours): Mr. Brunetto, an associate in the Firm's New Matters department, was involved in analyzing Lead Plaintiff's potential claims during the early stages of the litigation. Mr. Brunetto prepared a detailed memorandum to ATP concerning the claims at the outset of the litigation and assisted in preparing the briefing in support of ATP's motion for appointment as Lead Plaintiff.

**William Freeland** (875 hours): Mr. Freeland was involved in multiple aspects of the case, including many aspects of the discovery process, including (i) drafting requests for production of documents and interrogatories and responses to same; (ii) overseeing the review of document produced; (iii) participating in meet and confers with Defendants concerning discovery issues; (iv) drafting submissions concerning discovery disputes and conducting related legal research; and (v) preparing for depositions. Mr. Freeland was also involved in researching and drafting the class certification motion; preparing the mediation statement; and preparing the final settlement papers.

**Benjamin Horowitz** (17.75 hours): Mr. Horowitz, a former associate at BLB&G, was involved in researching and drafting Lead Plaintiff's reply brief in support of class certification.

**Rebecca Kim** (10.5 hours): Ms. Kim, a former associate at BLB&G in the New Matters department, was involved in the initial assessment of the case.

**Christopher Miles** (282.25 hours): Mr. Miles, a former associate at BLB&G, was primarily involved in researching and drafting the Complaint and Lead Plaintiff's opposition to Defendants' motion to dismiss.

**Thomas Sperber** (665 hours): Mr. Sperber was involved in multiple aspects of the case, including: (i) researching and drafting the opposition to Defendants’ motion to dismiss the Complaint; (ii) various aspects of discovery, including drafting document requests, initial disclosures, and a proposed protective order; drafting responses to Defendants’ document requests and interrogatories; and reviewing and analyzing documents produced by Defendants and third parties; (iii) participating in meet and confers with Defendants concerning discovery issues and drafting submissions concerning discovery disputes; (iv) preparing for and participating in depositions; (v) assisting in drafting of Lead Plaintiff’s motion for class certification; and (vi) assisting in mediation and settlement efforts.

### **SENIOR STAFF ATTORNEYS**

**Lawrence Hosmer** (594.5 hours): Mr. Hosmer was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and various third parties, preparing a proposed deposition plan, and coordinating the work of the other Staff Attorneys.

### **STAFF ATTORNEYS**

**Claudia Carten** (288.5 hours): Ms. Carten was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and preparing a list of potential fact deponents based on documents reviewed.

**Jerome Mitchell** (1,452.25 hours): Mr. Mitchell was primarily involved in fact discovery, including review and analysis of documents produced by Defendants, ATP, and third parties; assisting in preparation of a deposition plan and reviewing documents in preparation for depositions; and the targeted review and analysis of documents to create timelines, prepare the mediation statement, and analyze certain substantive issues.

**Yeruchem Neiman** (1,768 hours): Mr. Neiman was primarily involved in fact discovery, including review and analysis of documents produced by Defendants; reviewing documents to prepare “deposition kits” for upcoming depositions, as well as the targeted review and analysis of documents to analyze certain substantive issues.

**Stephen Roehler** (845 hours): Mr. Roehler was primarily involved in fact discovery, including review and analysis of documents produced by Defendants; reviewing documents to prepare “deposition kits” for upcoming depositions, as well as the targeted review and analysis of documents to analyze certain substantive issues.

**Ruben Sindahl** (116.5 hours): Mr. Sindahl, a Danish-speaking attorney, was primarily involved in the review and analysis of Lead Plaintiff’s documents, including Danish-language documents, for relevance and privilege.

**Lewis Smith** (1,406.25 hours): Mr. Smith was primarily involved in fact discovery, including review and analysis of documents produced by Defendants and assisting in preparation for depositions.

**Juan Vera** (238 hours): Mr. Vera was primarily involved in fact discovery, including review and analysis of documents produced by Defendants.

# **Exhibit 7**

## EXHIBIT 7

In re BioMarin Pharmaceutical Inc. Securities Litigation,  
Case No. 3:20-cv-06719-WHO

## LEAD COUNSEL'S TIME BY LITIGATION CATEGORY

Inception through September 15, 2023

**Categories:**

- |                                   |   |                               |                                     |
|-----------------------------------|---|-------------------------------|-------------------------------------|
| (1) Investigation & Case Analysis | (5) Class Certification                 | (9) Expert Work               | (13) Docket/News Monitoring Updates |
| (2) Lead Plaintiff Motion         | (6) Discovery Communications & Disputes | (10) Mediation & Settlement   | (14) Client Communications          |
| (3) Complaint                     | (7) Written/Document Discovery          | (11) Case Management          |                                     |
| (4) Motion to Dismiss             | (8) Depositions                         | (12) Case Strategy & Analysis |                                     |

Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total Hours	Rate	Total Lodestar
<b>Partners</b>																	
Abe Alexander	42.75		250.50	164.75	7.50	119.25	114.75	43.25	56.25	38.25	8.25			13.75	859.25	\$900	\$773,325.00
Scott Foglietta	10.00	25.00							1.00		2.00			26.00	64.00	\$900	\$57,600.00
Salvatore J. Graziano	3.75		6.00	86.25	3.50	23.75	3.00	0.75	1.25	66.50	1.50	2.50		3.00	201.75	\$1,250	\$252,187.50
Gerald Silk	55.50	6.00	21.00	4.00								29.75		3.75	120.00	\$1,250	\$150,000.00
Katherine M. Sinderson	20.25		148.00	137.25	17.50	186.50	162.50	55.25	6.75	56.25	12.25	4.25		18.25	825.00	\$975	\$804,375.00
<b>Senior Counsel</b>																	
David L. Duncan										88.25					88.25	\$825	\$72,806.25
Catherine van Kampen										17.50					17.50	\$775	\$13,562.50
<b>Associates</b>																	
Girolamo Brunetto	42.75	7.00							5.00					73.00	127.75	\$650	\$83,037.50
William Freeland	2.75			9.25	62.75	267.25	337.75	85.00	13.25	58.25	24.50	1.75	2.25	10.25	875.00	\$525	\$459,375.00
Benjamin Horowitz					17.75										17.75	\$475	\$8,431.25
Rebecca Kim	10.50														10.50	\$500	\$5,250.00
Christopher Miles	8.50		123.25	149.00					0.75		0.75				282.25	\$575	\$162,293.75
Thomas Sperber				85.75	27.00	250.00	163.75	26.75	13.00	46.25	35.50	1.75		15.25	665.00	\$475	\$315,875.00
<b>Senior Staff Attorney</b>																	
Lawrence Hosmer					10.00		397.25	184.25		3.00					594.50	\$425	\$252,662.50
<b>Staff Attorneys</b>																	
Claudia Carten							230.00	58.50							288.50	\$400	\$115,400.00
Jerome Mitchell						1.00	1,088.25	352.00		11.00					1,452.25	\$425	\$617,206.25
Yeruchem Neiman							1,608.00	160.00							1,768.00	\$425	\$751,400.00
Stephen Roehler							500.25	308.25		36.50					845.00	\$425	\$359,125.00
Ruben Sindahl							116.50								116.50	\$375	\$43,687.50
Lewis Smith					4.50	3.00	1,190.25	206.50		2.00					1,406.25	\$425	\$597,656.25
Juan Vera							238.00								238.00	\$400	\$95,200.00
<b>Financial Analysts</b>																	
Nick DeFilippis	28.00														28.00	\$650	\$18,200.00
Rachel Graf	18.50														18.50	\$400	\$7,400.00
Adam Weinschel	6.75	8.50		0.50								1.00		1.00	17.75	\$600	\$10,650.00
<b>Investigators</b>																	
Robin Barnier	208.00														208.00	\$425	\$88,400.00
Amy Bitkower	71.25					4.75	0.75			0.50					77.25	\$600	\$46,350.00
Jacob Foster	142.00														142.00	\$325	\$46,150.00
Jenna Goldin	446.25						6.00								452.25	\$425	\$192,206.25
Joelle Sfeir	63.00					0.75									63.75	\$475	\$30,281.25

Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Total Hours	Rate	Total Lodestar
<b>Case Managers &amp; Paralegals</b>																	
Khristine de Leon	1.00	17.00					0.25		1.00	2.00	3.50			4.50	29.25	\$325	\$9,506.25
Janielle Lattimore	0.75		6.75	6.00	9.00	1.75	5.00	0.25		5.50	17.75				52.75	\$400	\$21,100.00
Michelle Leung	17.00	0.25	17.25	11.25	14.75	21.00	28.00	30.50	2.50	19.00	21.75		1.00		184.25	\$375	\$69,093.75
Matthew Mahady		21.00		0.25			0.50		0.75					2.25	24.75	\$375	\$9,281.25
Nycol Morrisey					1.25		9.00								10.25	\$375	\$3,843.75
Preya Rodriguez	12.25		13.00	33.25	19.25	31.50	73.50				1.00		15.00		198.75	\$375	\$74,531.25
Gary Weston				0.25	1.75	2.25	1.00	0.25		0.25	4.00				9.75	\$400	\$3,900.00
<b>Litigation Support</b>																	
Robert Santamarina	3.00						91.75	6.75	2.75		6.25				110.50	\$450	\$49,725.00
<b>Managing Clerk</b>																	
Mahiri Buffong			0.25	0.75		2.75	4.25			1.25	64.75				74.00	\$425	\$31,450.00
<b>TOTAL:</b>	<b>1,214.50</b>	<b>84.75</b>	<b>586.00</b>	<b>688.50</b>	<b>196.50</b>	<b>915.50</b>	<b>6,370.25</b>	<b>1,518.25</b>	<b>104.25</b>	<b>452.25</b>	<b>203.75</b>	<b>41.00</b>	<b>18.25</b>	<b>171.00</b>	<b>12,564.75</b>		<b>\$6,702,525.00</b>

# **Exhibit 8**





*Bernstein Litowitz Berger & Grossmann LLP*  
*Attorneys at Law*

# Firm Resume

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*Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history—over \$37 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.*

## Firm Overview

Bernstein Litowitz Berger & Grossmann LLP (BLB&G), a national law firm with offices located in New York, California, Delaware, Louisiana, and Illinois, prosecutes class and private actions on behalf of individual and institutional clients. The firm's litigation practice areas include securities class and direct actions in federal and state courts; corporate governance and shareholder rights litigation, including claims for breach of fiduciary duty and proxy violations; mergers and acquisitions and transactional litigation; alternative dispute resolution; and distressed debt and bankruptcy. We also handle, on behalf of major institutional clients and lenders, more general complex commercial litigation involving allegations of breach of contract, accountants' liability, breach of fiduciary duty, fraud, and negligence.

We are the nation's leading firm representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes U.S. public pension funds the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities. Our European client base includes APG; Aegon AM; ATP; Blue Sky Group; Hermes IM; Robeco; SEB; Handelsbanken; Nykredit; PGB; and PGGM, among others.

## More Top Securities Recoveries

Since its founding in 1983, BLB&G has prosecuted some of the most complex cases in history and has obtained over \$37 billion on behalf of investors. Unique among its peers, the firm has negotiated and obtained many of the largest securities class action recoveries in history, including:

- *In re WorldCom, Inc. Securities Litigation – \$6.19 billion recovery*
- *In re Cendant Corporation Securities Litigation – \$3.3 billion recovery*

- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – \$2.43 billion recovery
- *In re Nortel Networks Corporation Securities Litigation (Nortel II)* – \$1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – \$1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – \$1.05 billion recovery

Based on our record of success, BLB&G has been at the top of the rankings by ISS Securities Class Action Services (ISS-SCAS), a leading industry research publication that provides independent and objective third-party analysis and statistics on securities-litigation law firms, since its inception. In its most recent report, [\*Top 100 U.S. Class Action Settlements of All-Time\*](#), ISS-SCAS once again ranked BLB&G as the top firm in the field for the eleventh year in a row. BLB&G has served as lead or co-lead counsel in 37 of the ISS-SCAS's top 100 U.S. securities-fraud settlements—more than twice as many as any other firm—and recovered over \$26 billion for investors in those cases, nearly \$10 billion more than any other plaintiffs' securities firm.

## Giving Shareholders a Voice and Changing Business Practices for the Better

BLB&G was among the first law firms ever to obtain meaningful corporate governance reforms through litigation. In courts throughout the country, we prosecute shareholder class and derivative actions, asserting claims for breach of fiduciary duty and proxy violations wherever the conduct of corporate officers and/or directors, or M&A transactions, seek to deprive shareholders of fair value, undermine shareholder voting rights, or allow management to profit at the expense of shareholders.

We have prosecuted seminal cases establishing precedent which has increased market transparency, held wrongdoers accountable, addressed issues in the boardroom and executive suite, challenged unfair deals, and improved corporate business practices in ground-breaking ways.

From setting new standards of director independence, to restructuring board practices in the wake of persistent illegal conduct; from challenging the improper use of defensive measures and deal protections for management's benefit, to confronting stock options backdating abuses and other self-dealing by executives; we have confronted a variety of questionable, unethical and proliferating corporate practices. Seeking to reform faulty management structures and address breaches of fiduciary duty by corporate officers and directors, we have obtained unprecedented victories on behalf of shareholders seeking to improve governance and protect the shareholder franchise.

## Practice Areas

### Securities Fraud Litigation

Securities fraud litigation is the cornerstone of the firm's litigation practice. Since its founding, the firm has had the distinction of having tried and prosecuted many of the most high-profile securities fraud class actions in history, recovering billions of dollars and obtaining unprecedented corporate governance reforms on behalf of our clients. BLB&G continues to play a leading role in major securities litigation pending in federal and state courts, and the firm remains one of the nation's leaders in representing institutional investors in securities fraud class litigation.

The firm also pursues direct actions in securities fraud cases when appropriate. By selectively opting out of certain securities class actions, we seek to resolve our clients' claims efficiently and for substantial multiples of what they might otherwise recover from related class action settlements.

Our attorneys have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities. Biographies for our attorneys can be accessed on the firm's website by clicking [here](#).

### Corporate Governance and Shareholder Rights

Our Corporate Governance and Shareholder Rights attorneys prosecute derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. We have prosecuted actions challenging numerous highly publicized corporate transactions which violated fair process, fair price, and the applicability of the business judgment rule, and have also addressed issues of corporate waste, shareholder voting rights claims, and executive compensation.

Our attorneys have prosecuted numerous cases regarding the improper "backdating" of executive stock options which resulted in windfall undisclosed compensation to executives at the direct expense of shareholders—and returned hundreds of millions of dollars to company coffers. We also represent institutional clients in lawsuits seeking to enforce fiduciary obligations in connection with Mergers & Acquisitions and "Going Private" transactions that deprive shareholders of fair value when participants buy companies from their public shareholders "on the cheap." Although enough shareholders accept the consideration offered for the transaction to close, many sophisticated investors correctly recognize and ultimately enjoy the increased returns to be obtained by pursuing appraisal rights and demanding that courts assign a "true value" to the shares taken private in these transactions.

Our attorneys are well versed in changing SEC rules and regulations on corporate governance issues and have a comprehensive understanding of a wide variety of corporate law transactions and both substantive and courtroom expertise in the specific legal areas involved. As a result of the firm's high-profile and widely recognized capabilities, our attorneys are increasingly in demand with institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the boards' accountability to shareholders.

## Distressed Debt and Bankruptcy

BLB&G has obtained billions of dollars through litigation on behalf of bondholders and creditors of distressed and bankrupt companies, as well as through third-party litigation brought by bankruptcy trustees and creditors' committees against auditors, appraisers, lawyers, officers and directors, and other defendants who may have contributed to client losses. As counsel, we advise institutions and individuals nationwide in developing strategies and tactics to recover assets presumed lost as a result of bankruptcy. Our record in this practice area is characterized by extensive trial experience in addition to successful settlements.

## Commercial Litigation

BLB&G provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees, and other business entities. We have faced down the most powerful and well-funded law firms and defendants in the country—and consistently prevailed. For example, on behalf of the bankruptcy trustee, the firm prosecuted *BFA Liquidation Trust v. Arthur Andersen*, arising from the largest non-profit bankruptcy in U.S. history. After two years of litigation and a week-long trial, the firm obtained a \$217 million recovery from Andersen for the Trust. Combined with other recoveries, the total amounted to more than 70 percent of the Trust's losses.

Having obtained huge recoveries with nominal out-of-pocket expenses and fees of less than 20 percent, we have repeatedly demonstrated that valuable claims are best prosecuted by a first-rate litigation firm on a contingent basis at negotiated percentages. Legal representation need not compound the risk and high cost inherent in today's complex and competitive business environment. We are paid only if we (and our clients) win. The result: the highest quality legal representation at a fair price.

## Alternative Dispute Resolution

BLB&G offers clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. We have experience in U.S. and international disputes and our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association, FINRA, JAMS, International Chamber of Commerce, and the London Court of International Arbitration.

Our lawyers have successfully arbitrated cases that range from complex business-to-business disputes to individuals' grievances with employers. It is our experience that in some cases, a well-executed arbitration process can resolve disputes faster, with limited appeals and with a higher level of confidentiality than public litigation.

In the wake of the credit crisis, for example, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. We have also assisted clients with disputes involving failure to honor compensation commitments, disputes over the purchase of securities, businesses seeking compensation for uncompleted contracts, and unfulfilled financing commitments.

## Feedback from The Courts

Throughout the firm's history, many courts have recognized the professional excellence and diligence of the firm and its members. A few examples are set forth below.

### *In re WorldCom, Inc. Securities Litigation*

- The Honorable Denise Cote of the United States District Court for the Southern District of New York

"I have the utmost confidence in plaintiffs' counsel...they have been doing a superb job...The Class is extraordinarily well represented in this litigation."

"The magnitude of this settlement is attributable in significant part to Lead Counsel's advocacy and energy...The quality of the representation given by Lead Counsel...has been superb...and is unsurpassed in this Court's experience with plaintiffs' counsel in securities litigation."

"Lead Counsel has been energetic and creative...Its negotiations with the Citigroup Defendants have resulted in a settlement of historic proportions."

\* \* \*

### *In re Clarent Corporation Securities Litigation*

- The Honorable Charles R. Breyer of the United States District Court for the Northern District of California

"It was the best tried case I've witnessed in my years on the bench...."

"[A]n extraordinarily civilized way of presenting the issues to you [the jury]...We've all been treated to great civility and the highest professional ethics in the presentation of the case..."

"These trial lawyers are some of the best I've ever seen."

\* \* \*

### *Landry's Restaurants, Inc. Shareholder Litigation*

- Vice Chancellor J. Travis Laster of the Delaware Court of Chancery

"I do want to make a comment again about the excellent efforts...put into this case...This case, I think, shows precisely the type of benefits that you can achieve for stockholders and how representative litigation can be a very important part of our corporate governance system...you hold up this case as an example of what to do."

\* \* \*

### *McCall V. Scott (Columbia/HCA Derivative Litigation)*

- The Honorable Thomas A. Higgins of the United States District Court for the Middle District of Tennessee

"Counsel's excellent qualifications and reputations are well documented in the record, and they have litigated this complex case adeptly and tenaciously throughout the six years it has been pending. They assumed an enormous risk and have shown great patience by taking this case on a contingent basis, and despite an early setback they have persevered and brought about not only a large cash settlement but sweeping corporate reforms that may be invaluable to the beneficiaries."

## Significant Recoveries

BLB&G is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. The firm has successfully identified, investigated, and prosecuted many of the most significant securities and shareholder actions in history, recovering billions of dollars on behalf of defrauded investors and obtaining groundbreaking corporate-governance reforms. These resolutions include six recoveries of over \$1 billion, more than any other firm in our field. Examples of cases with our most significant recoveries include:

### Securities Class Actions

**Case:** *In re WorldCom, Inc. Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$6.19 billion securities fraud class action recovery—the second largest in history; unprecedented recoveries from Director Defendants.

**Case Summary:** Investors suffered massive losses in the wake of the financial fraud and subsequent bankruptcy of former telecom giant WorldCom, Inc. This litigation alleged that WorldCom and others disseminated false and misleading statements to the investing public regarding its earnings and financial condition in violation of the federal securities and other laws. It further alleged a nefarious relationship between Citigroup subsidiary Salomon Smith Barney and WorldCom, carried out primarily by Salomon employees involved in providing investment banking services to WorldCom, and by WorldCom's former CEO and CFO. As Court-appointed Co-Lead Counsel representing Lead Plaintiff the New York State Common Retirement Fund, we obtained unprecedented settlements totaling more than \$6 billion from the Investment Bank Defendants who underwrote WorldCom bonds, including a \$2.575 billion cash settlement to settle all claims against the Citigroup Defendants. On the eve of trial, the 13 remaining "Underwriter Defendants," including J.P. Morgan Chase, Deutsche Bank and Bank of America, agreed to pay settlements totaling nearly \$3.5 billion to resolve all claims against them. Additionally, the day before trial was scheduled to begin, all of the former WorldCom Director Defendants agreed to pay over \$60 million to settle the claims against them. An unprecedented first for outside directors, \$24.75 million of that amount came out of the pockets of the individuals—20% of their collective net worth. *The Wall Street Journal*, in its coverage, profiled the settlement as having "shaken Wall Street, the audit profession and corporate boardrooms." After four weeks of trial, Arthur Andersen, WorldCom's former auditor, settled for \$65 million. Subsequent settlements were reached with the former executives of WorldCom, and then with Andersen, bringing the total obtained for the Class to over \$6.19 billion.



- Case:** *In re Cendant Corporation Securities Litigation*
- Court:** United States District Court for the District of New Jersey
- Highlights:** \$3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.
- Summary:** The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company’s revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996, and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for \$2.8 billion and to adopt some of the most extensive corporate governance changes in history. E&Y settled for \$335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs CalPERS (the California Public Employees’ Retirement System), the New York State Common Retirement Fund and the New York City Pension Funds, the three largest public pension funds in America, in this action.
- Case:** *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*
- Court:** United States District Court for the Southern District of New York
- Highlights:** \$2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim—the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.
- Summary:** The firm represented Co-Lead Plaintiffs the State Teachers Retirement System of Ohio, the Ohio Public Employees Retirement System, and the Teacher Retirement System of Texas in this securities class action filed on behalf of shareholders of Bank of America Corporation (BAC) arising from BAC’s 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies’ current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

- Case:** *In re Nortel Networks Corporation Securities Litigation (Nortel II)*
- Court:** United States District Court for the Southern District of New York
- Highlights:** Over \$1.07 billion in cash and common stock recovered for the class.
- Summary:** This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the Ontario Teachers' Pension Plan Board and the Treasury of the State of New Jersey and its Division of Investment were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay \$2.4 billion in cash and Nortel common stock to resolve both matters. Nortel later announced that its insurers had agreed to pay \$228.5 million toward the settlement, bringing the total amount of the global settlement to approximately \$2.7 billion, and the total amount of the Nortel II settlement to over \$1.07 billion.
- 
- Case:** *In re Merck & Co., Inc. Securities Litigation*
- Court:** United States District Court, District of New Jersey
- Highlights:** \$1.06 billion recovery for the class.
- Summary:** This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the "blockbuster" COX-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a \$1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second-largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the Public Employees' Retirement System of Mississippi.
- 
- Case:** *In re McKesson HBOC, Inc. Securities Litigation*
- Court:** United States District Court for the Northern District of California
- Highlights:** \$1.05 billion recovery for the class.
- Summary:** This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson, and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the New York State Common Retirement Fund, BLB&G obtained a \$960 million settlement from the company; \$72.5 million in cash from Arthur Andersen; and, on the eve of trial, a \$10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than \$1 billion.

**Case:** *HealthSouth Corporation Bondholder Litigation*

**Court:** United States District Court for the Northern District of Alabama

**Highlights:** \$804.5 million in total recoveries.

**Summary:** In this litigation, BLB&G was the appointed Co-Lead Counsel for the bond holder class, representing Lead Plaintiff the Retirement Systems of Alabama. This action arose from allegations that Birmingham, Alabama based HealthSouth Corporation overstated its earnings at the direction of its founder and former CEO Richard Scrushy. Subsequent revelations disclosed that the overstatement actually exceeded over \$2.4 billion, virtually wiping out all of HealthSouth's reported profits for the prior five years. A total recovery of \$804.5 million was obtained in this litigation through a series of settlements, including an approximately \$445 million settlement for shareholders and bondholders, a \$100 million in cash settlement from UBS AG, UBS Warburg LLC, and individual UBS Defendants, and \$33.5 million in cash from the company's auditor. The total settlement for injured HealthSouth bond purchasers exceeded \$230 million, recouping over a third of bond purchaser damages.

**Case:** *In re Washington Public Power Supply System Litigation*

**Court:** United States District Court for the District of Arizona

**Highlights:** Over \$750 million—the largest securities fraud settlement ever achieved at the time.

**Summary:** BLB&G was appointed Chair of the Executive Committee responsible for litigating on behalf of the class in this action. The case was litigated for over seven years, and involved an estimated 200 million pages of documents produced in discovery; the depositions of 285 fact witnesses and 34 expert witnesses; more than 25,000 introduced exhibits; six published district court opinions; seven appeals or attempted appeals to the Ninth Circuit; and a three-month jury trial, which resulted in a settlement of over \$750 million—then the largest securities fraud settlement ever achieved.

**Case:** *In re Lehman Brothers Equity/Debt Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$735 million in total recoveries.

**Summary:** Representing the Government of Guam Retirement Fund, BLB&G successfully prosecuted this securities class action arising from Lehman Brothers Holdings Inc.'s issuance of billions of dollars in offerings of debt and equity securities that were sold using offering materials that contained untrue statements and missing material information.

After four years of intense litigation, Lead Plaintiffs achieved a total of \$735 million in recoveries consisting of: a \$426 million settlement with underwriters of Lehman securities offerings; a \$90 million settlement with former Lehman directors and officers; a \$99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a \$120 million settlement that resolves claims against UBS Financial

Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and the auditors never disavowed the statements.

**Case:** *In re Citigroup, Inc. Bond Action Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$730 million cash recovery; second largest recovery in a litigation arising from the financial crisis.

**Summary:** In the years prior to the collapse of the subprime mortgage market, Citigroup issued 48 offerings of preferred stock and bonds. This securities fraud class action was filed on behalf of purchasers of Citigroup bonds and preferred stock alleging that these offerings contained material misrepresentations and omissions regarding Citigroup's exposure to billions of dollars in mortgage-related assets, the loss reserves for its portfolio of high-risk residential mortgage loans, and the credit quality of the risky assets it held in off-balance sheet entities known as "structured investment vehicles." After protracted litigation lasting four years, we obtained a \$730 million cash recovery—the second largest securities class action recovery in a litigation arising from the financial crisis, and the second largest recovery ever in a securities class action brought on behalf of purchasers of debt securities. As Lead Bond Counsel for the Class, BLB&G represented Lead Bond Plaintiffs Minneapolis Firefighters' Relief Association, Louisiana Municipal Police Employees' Retirement System, and Louisiana Sheriffs' Pension and Relief Fund.

**Case:** *In re Schering-Plough Corporation/Enhance Securities Litigation; In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*

**Court:** United States District Court for the District of New Jersey

**Highlights:** \$688 million in combined settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) in this coordinated securities fraud litigations filed on behalf of investors in Merck and Schering-Plough.

**Summary:** After nearly five years of intense litigation, just days before trial, BLB&G resolved the two actions against Merck and Schering-Plough, which stemmed from claims that Merck and Schering artificially inflated their market value by concealing material information and making false and misleading statements regarding their blockbuster anti-cholesterol drugs Zetia and Vytarin. Specifically, we alleged that the companies knew that their "ENHANCE" clinical trial of Vytarin (a combination of Zetia and a generic) demonstrated that Vytarin was no more effective than the cheaper generic at reducing artery thickness. The companies nonetheless championed the "benefits" of their drugs, attracting billions of dollars of capital. When public pressure to release the results of the ENHANCE trial became too great, the companies reluctantly announced these negative results, which we alleged led to sharp declines in the value of the companies' securities, resulting in significant losses to investors. The combined \$688 million in settlements (Schering-Plough settled for \$473 million; Merck settled for \$215 million) is the second largest securities recovery ever in the Third Circuit, among the top 25

settlements of all time, and among the ten largest recoveries ever in a case where there was no financial restatement. BLB&G represented Lead Plaintiffs Arkansas Teacher Retirement System, the Public Employees' Retirement System of Mississippi, and the Louisiana Municipal Police Employees' Retirement System.

**Case:** *In re Lucent Technologies, Inc. Securities Litigation*

**Court:** United States District Court for the District of New Jersey

**Highlights:** \$667 million in total recoveries; the appointment of BLB&G as Co-Lead Counsel is especially noteworthy as it marked the first time since the 1995 passage of the Private Securities Litigation Reform Act that a court reopened the lead plaintiff or lead counsel selection process to account for changed circumstances, new issues, and possible conflicts between new and old allegations.

**Summary:** BLB&G served as Co-Lead Counsel in this securities class action, representing Lead Plaintiffs the Parnassus Fund, Teamsters Locals 175 & 505 D&P Pension Trust, Anchorage Police and Fire Retirement System, and the Louisiana School Employees' Retirement System. The complaint accused Lucent of making false and misleading statements to the investing public concerning its publicly reported financial results and failing to disclose the serious problems in its optical networking business. When the truth was disclosed, Lucent admitted that it had improperly recognized revenue of nearly \$679 million in fiscal 2000. The settlement obtained in this case is valued at approximately \$667 million, and is composed of cash, stock, and warrants.

**Case:** *In re Wachovia Preferred Securities and Bond/Notes Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** \$627 million recovery—among the largest securities class action recoveries in history; third-largest recovery obtained in an action arising from the subprime mortgage crisis.

**Summary:** This securities class action was filed on behalf of investors in certain Wachovia bonds and preferred securities against Wachovia Corp., certain former officers and directors, various underwriters, and its auditor, KPMG LLP. The case alleged that Wachovia provided offering materials that misrepresented and omitted material facts concerning the nature and quality of Wachovia's multibillion-dollar option-ARM (adjustable-rate mortgage) "Pick-A-Pay" mortgage loan portfolio, and that Wachovia's loan loss reserves were materially inadequate. According to the Complaint, these undisclosed problems threatened the viability of the financial institution, requiring it to be "bailed out" during the financial crisis before it was acquired by Wells Fargo. The combined \$627 million recovery obtained in the action is among the 20 largest securities class action recoveries in history, the largest settlement ever in a class action case asserting only claims under the Securities Act of 1933, and one of a handful of securities class action recoveries obtained where there were no parallel civil or criminal actions brought by government authorities. The firm represented Co-Lead Plaintiffs Orange County Employees Retirement System and Louisiana Sheriffs' Pension and Relief Fund in this action.

- Case:** *Bear Stearns Mortgage Pass-Through Litigation*
- Court:** United States District Court for the Southern District of New York
- Highlights:** \$500 million recovery—the largest recovery ever on behalf of purchasers of residential mortgage-backed securities.
- Summary:** BLB&G served as Co-Lead Counsel in this securities action, representing Lead Plaintiffs the Public Employees’ Retirement System of Mississippi. The case alleged that Bear Stearns & Company, Inc. sold mortgage pass-through certificates using false and misleading offering documents. The offering documents contained false and misleading statements related to, among other things, (1) the underwriting guidelines used to originate the mortgage loans underlying the certificates; and (2) the accuracy of the appraisals for the properties underlying the certificates. After six years of hard-fought litigation and extensive arm’s-length negotiations, the \$500 million recovery is the largest settlement in a U.S. class action against a bank that packaged and sold mortgage securities at the center of the 2008 financial crisis.
- 
- Case:** *Gary Hefler et al. v. Wells Fargo & Company et al.*
- Court:** United States District Court for the Northern District of California
- Highlights:** \$480 million recovery—the fourth largest securities settlement ever achieved in the Ninth Circuit and the 32nd largest securities settlement ever in the United States.
- Summary:** BLB&G served as Lead Counsel for the Court-appointed Lead Plaintiff Union Asset Management Holding, AG in this action, which alleged that Wells Fargo and certain current and former officers and directors of Wells Fargo made a series of materially false statements and omissions in connection with Wells Fargo’s secret creation of fake or unauthorized client accounts in order to hit performance-based compensation goals. After years of presenting a business driven by legitimate growth prospects, U.S. regulators revealed in September 2016 that Wells Fargo employees were secretly opening millions of potentially unauthorized accounts for existing Wells Fargo customers. The Complaint alleged that these accounts were opened in order to hit performance targets and inflate the “cross-sell” metrics that investors used to measure Wells Fargo’s financial health and anticipated growth. When the market learned the truth about Wells Fargo’s violation of its customers’ trust and failure to disclose reliable information to its investors, the price of Wells Fargo’s stock dropped, causing substantial investor losses.
- 
- Case:** *Ohio Public Employees Retirement System v. Freddie Mac*
- Court:** United States District Court for the Southern District of Ohio
- Highlights:** \$410 million settlement.
- Summary:** This securities fraud class action was filed on behalf of the Ohio Public Employees Retirement System and the State Teachers Retirement System of Ohio alleging that Federal Home Loan Mortgage Corporation (Freddie Mac) and certain of its current and former officers issued false and misleading

statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than \$5 billion in earnings. A settlement of \$410 million was reached in the case just as deposition discovery had begun and document review was complete.

**Case:** *In re Refco, Inc. Securities Litigation*

**Court:** United States District Court for the Southern District of New York

**Highlights:** Over \$407 million in total recoveries.

**Summary:** The lawsuit arises from the revelation that Refco, a once prominent brokerage, had for years secreted hundreds of millions of dollars of uncollectible receivables with a related entity controlled by Phillip Bennett, the company's Chairman and Chief Executive Officer. This revelation caused the stunning collapse of the company a mere two months after its initial public offering of common stock. As a result, Refco filed one of the largest bankruptcies in U.S. history. Settlements have been obtained from multiple company and individual defendants, resulting in a total recovery for the class of over \$407 million. BLB&G represented Co-Lead Plaintiff RH Capital Associates LLC.

**Case:** *In re Allergan, Inc. Proxy Violation Securities Litigation*

**Court:** United States District Court for the Central District of California

**Highlights:** Litigation recovered over \$250 million for investors while challenging an unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman.

**Summary:** As alleged in groundbreaking litigation, billionaire hedge fund manager Bill Ackman and his Pershing Square Capital Management fund secretly acquired a near 10% stake in pharmaceutical concern Allergan, Inc. as part of an unprecedented insider trading scheme by Ackman and Valeant Pharmaceuticals International, Inc. What Ackman knew—but investors did not—was that in the ensuing weeks, Valeant would be launching a hostile bid to acquire Allergan shares at a far higher price. Ackman enjoyed a massive instantaneous profit upon public news of the proposed acquisition, and the scheme worked for both parties as he kicked back hundreds of millions of his insider-trading proceeds to Valeant after Allergan agreed to be bought by a rival bidder. After a ferocious three-year legal battle over this attempt to circumvent the spirit of the U.S. securities laws, BLB&G obtained a \$250 million settlement for Allergan investors, and created precedent to prevent similar such schemes in the future. The Plaintiffs in this action were the State Teachers Retirement System of Ohio, the Iowa Public Employees Retirement System, and Patrick T. Johnson.

## Corporate Governance and Shareholders' Rights

**Case:** *City of Monroe Employees' Retirement System, Derivatively on Behalf of Twenty-First Century Fox, Inc. v. Rupert Murdoch, et al.*

**Court:** Delaware Court of Chancery

**Highlights:** Landmark derivative litigation established unprecedented, independent Board-level council to ensure employees are protected from workplace harassment while recouping \$90 million for the company's coffers.

**Summary:** Before the birth of the #metoo movement, BLB&G led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC serves as a model for public companies in all industries. The firm represented 21st Century Fox shareholder the City of Monroe (Michigan) Employees' Retirement System.

**Case:** *In re McKesson Corporation Derivative Litigation*

**Court:** United States District Court, Northern District of California, Oakland Division and Delaware Chancery Court

**Highlights:** Litigation recovered \$175 million and achieved substantial corporate governance reforms.

**Summary:** BLB&G represented the Police & Fire Retirement System City of Detroit and Amalgamated Bank in this derivative class action arising from the company's role in permitting and exacerbating America's ongoing opioid crisis. The complaint, initially filed in Delaware Chancery Court, alleged that defendants breached their fiduciary duties by failing to adequately oversee McKesson's compliance with provisions of the Controlled Substances Act and a series of settlements with the Drug Enforcement Administration intended to regulate the distribution and misuse of controlled substances such as opioids. Even after paying fines and settlements in the hundreds of millions of dollars, McKesson was sued in the National Opioid Multidistrict Litigation. In May 2018, our clients joined a substantially similar action being litigated in California federal court. Acting as co-lead counsel, BLB&G played a major role in litigating the case, opposing a motion to stay the action by a special litigation committee, and engaging in extensive pretrial discovery. Ultimately, \$175 million was recovered for the benefit of McKesson's shareholders in a settlement that also created substantial corporate-governance reforms to prevent a recurrence of McKesson's inadequate legal compliance efforts.



- Case:** *UnitedHealth Group, Inc. Shareholder Derivative Litigation*
- Court:** United States District Court for the District of Minnesota
- Highlights:** Litigation recovered over \$920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.
- Summary:** This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over \$920 million in ill-gotten compensation directly from the former officer Defendants—the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, “investors everywhere should applaud [the UnitedHealth settlement]....[T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings.” The Plaintiffs in this action were the St. Paul Teachers’ Retirement Fund Association, the Public Employees’ Retirement System of Mississippi, the Jacksonville Police & Fire Pension Fund, the Louisiana Sheriffs’ Pension & Relief Fund, the Louisiana Municipal Police Employees’ Retirement System and Fire & Police Pension Association of Colorado.
- Case:** *Caremark Merger Litigation*
- Court:** Delaware Court of Chancery – New Castle County
- Highlights:** Landmark Court ruling ordered Caremark’s board to disclose previously withheld information, enjoined a shareholder vote on the CVS merger offer, and granted statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise its offer by \$7.50 per share, equal to more than \$3.3 billion in additional consideration to Caremark shareholders.
- Summary:** Commenced on behalf of the Louisiana Municipal Police Employees’ Retirement System and other shareholders of Caremark RX, Inc., this shareholder class action accused the company’s directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation, all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark’s shareholders—forcing CVS to increase the consideration offered to shareholders by \$7.50 per share in cash (over \$3 billion in total).

- Case:** *In re Pfizer Inc. Shareholder Derivative Litigation*
- Court:** United States District Court for the Southern District of New York
- Highlights:** Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board to be supported by a dedicated \$75 million fund.
- Summary:** In the wake of Pfizer’s agreement to pay \$2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company’s most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer’s senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous “red flags” that Pfizer’s improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs Louisiana Sheriffs’ Pension and Relief Fund and Skandia Life Insurance Company, Ltd. In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the “Regulatory Committee”) to oversee and monitor Pfizer’s compliance and drug marketing practices and to review the compensation policies for Pfizer’s drug sales related employees.
- Case:** *Miller et al. v. IAC/InterActiveCorp et al.*
- Court:** Delaware Court of Chancery
- Highlights:** This litigation shut down efforts by controlling shareholders to obtain “dynastic control” of the company through improper stock class issuances, setting valuable precedent and sending a strong message to boards and management in all sectors that such moves will not go unchallenged.
- Summary:** BLB&G obtained this landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers sought ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders “supervoting rights.” Diller laid out a proposal to introduce a new class of non-voting stock to entrench “dynastic control” of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ended in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This became a critical corporate governance precedent, given the trend of public companies to introduce “low” and “no-vote” share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.
- Case:** *In re News Corp. Shareholder Derivative Litigation*
- Court:** Delaware Court of Chancery – Kent County
- Highlights:** An unprecedented settlement in which News Corp. recouped \$139 million and enacted significant corporate governance reforms that combat self-dealing in the boardroom.

**Summary:** Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped \$139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

## Clients and Fees

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we encourage retentions in which our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client. The firm generally negotiates with our clients a contingent fee schedule specific to each litigation, and all fee proposals are approved by the client prior to commencing litigation, and ultimately by the Court.

Our clients include many large and well-known financial and lending institutions and pension funds, as well as privately held companies that are attracted to our firm because of our reputation, expertise, and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors, and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

## In The Public Interest

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and pro bono activities, and regularly participate as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School. Highlights of our community contributions include the following:

### **Bernstein Litowitz Berger & Grossmann Public Interest Law Fellows**

BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donates funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This fund at Columbia Law School provides Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

### **Firm Sponsorship of Her Justice**

BLB&G is a sponsor of Her Justice, a not-for-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally vulnerable women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody, and visitation. To read more about Her Justice, visit the organization's website at <http://www.herjustice.org/>.

### **Firm Sponsorship of City Year New York**

BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

### **Max W. Berger Pre-Law Program**

In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

## Our Attorneys

BLB&G employs a dedicated team of attorneys, including partners, counsel, associates, and senior staff attorneys. Biographies for each of our attorneys can be found on our website by clicking [here](#). On a case-by-case basis, we also make use of a pool of staff attorneys to supplement our litigation teams. The BLB&G team also includes investigators, financial analysts, paralegals, electronic-discovery specialists, information-technology professionals, and administrative staff. Biographies for our investigative team are available on our website by clicking [here](#), and biographies for the leaders of our administrative departments are viewable [here](#).

## Partners

**Max Berger**, Founding Partner, has grown BLB&G from a partnership of four lawyers in 1983 into what the *Financial Times* described as “[one of the most powerful securities class action law firms in the United States](#)” by prosecuting seminal cases which have increased market transparency, held wrongdoers accountable, and improved corporate business practices in groundbreaking ways.

Described by sources quoted in leading industry publication *Chambers USA* as “the smartest, most strategic plaintiffs’ lawyer [they have] ever encountered,” Max has litigated many of the firm’s most high-profile and significant cases and secured some of the largest recoveries ever achieved in securities fraud lawsuits, negotiating seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* (\$3.3 billion), *Citigroup-WorldCom* (\$2.575 billion), *Bank of America/Merrill Lynch* (\$2.4 billion), *JPMorgan Chase-WorldCom* (\$2 billion), *Nortel* (\$1.07 billion), *Merck* (\$1.06 billion), and *McKesson* (\$1.05 billion). Max’s prosecution of the *WorldCom* litigation, which resulted in unprecedented monetary contributions from WorldCom’s outside directors (nearly \$25 million out of their own pockets on top of their insurance coverage) “shook Wall Street, the audit profession and corporate boardrooms.” (*The Wall Street Journal*)

Max’s cases have resulted in sweeping corporate governance overhauls, including the creation of an independent task force to oversee and monitor diversity practices (*Texaco* discrimination litigation), establishing an industry-accepted definition of director independence, increasing a board’s power and responsibility to oversee internal controls and financial reporting (*Columbia/HCA*), and creating a Healthcare Law Regulatory Committee with dedicated funding to improve the standard for regulatory compliance oversight by a public company board of directors (*Pfizer*). His cases have yielded results which have served as models for public companies going forward.

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, Max handled the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery, and negotiation related to the shocking misconduct and the Board’s extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind—the “Fox News Workplace Professionalism and Inclusion Council” of experts (WPIC)—majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries—\$90 million—ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Max's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "Investors' Billion-Dollar Fraud Fighter," which also discussed his role in the *Bank of America/Merrill Lynch Merger* litigation. In 2011, Max was twice profiled by *The American Lawyer* for his role in negotiating a \$627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a \$516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. For his outstanding efforts on behalf of WorldCom investors, he was featured in articles in *BusinessWeek* and *The American Lawyer*, and *The National Law Journal* profiled Max (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

### **One of the "100 Most Influential Lawyers in America"**

Widely recognized as the "Dean" of the U.S. plaintiff securities bar for his remarkable career and his professional excellence, Max has a distinguished and unparalleled list of honors to his name.

- He was selected as one of the "100 Most Influential Lawyers in America" by *The National Law Journal* for being "front and center" in holding Wall Street banks accountable and obtaining over \$5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.
- Described as a "standard-bearer" for the profession in a career spanning nearly 50 years, he is the recipient of *Chambers USA's* award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Max's "numerous headline-grabbing successes," as well as his unique stature among colleagues—"warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table." Max has been recognized as a litigation "star" and leading lawyer in his field by *Chambers* since its inception.
- *Benchmark Litigation* recently inducted him into its exclusive "Hall of Fame" and named him a 2021 "Litigation Star" in recognition of his career achievements and impact on the field of securities litigation.
- Upon its tenth anniversary, *Lawdragon* named Max a "Lawdragon Legend" for his accomplishments. He was recently inducted into *Lawdragon's* "Hall of Fame." He is regularly included in the publication's "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" lists.
- *Law360* published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," named him one of only six litigators selected nationally as a "Legal MVP," and selected him as one of "10 Legal Superstars" nationally for his work in securities litigation.
- Max has been regularly named a "leading lawyer" in the *Legal 500 US Guide* where he was also named to their "Hall of Fame" list, as well as *The Best Lawyers in America®* guide.
- Max was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, which named him a "Trial Lawyer of the Year" Finalist in 1997 for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Max has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with

several of his BLB&G partners, to author the first chapter—“Plaintiffs’ Perspective”—of Lexis/Nexis’s seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Max to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Max also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he served as the President of the Baruch College Fund from 2015-2019 and now serves as its Chairman. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in 2019, was awarded an honorary Doctor of Laws degree at Baruch’s commencement, the highest honor Baruch College confers upon an individual for non-academic achievement. The award recognized his decades-long dedication to the mission and vision of the College, and in bestowing it, Baruch's President described Max as “one of the most influential individuals in the history of Baruch College.” Max established the Max Berger Pre-Law Program at Baruch College in 2007.

A member of the Dean's Council to Columbia Law School as well as the Columbia Law School Public Interest/Public Service Council, Max has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School’s Center on Corporate Governance. In February 2011, Max received Columbia Law School's most prestigious and highest honor, “The Medal for Excellence.” This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Max was profiled in the Fall 2011 issue of *Columbia Law School Magazine*. Max is a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. Max recently endowed the Max Berger '71 Public Interest/Public Service Fellows Program at Columbia Law School. The program provides support for law students interested in pursuing careers in public service. Max and his wife, Dale, previously endowed the Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and, under Max’s leadership, BLB&G also created the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship at Columbia.

Among numerous charitable and volunteer works, Max is a significant and long-time contributor to Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally survivors of intimate partner violence, in connection with the many legal problems they face. In recognition of their personal support of the organization, Max and his wife, Dale Berger, were awarded the “Above and Beyond Commitment to Justice Award” by Her Justice in 2021 for being steadfast advocates for women living in poverty in New York City. In addition to his personal support of Her Justice, Max has ensured BLB&G's long-time involvement with the organization. Max is also an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York’s “Idealist of the Year,” for his commitment to, service for, and work in the community. A celebrated photographer, Max has held two successful photography shows that raised hundreds of thousands of dollars for City Year and Her Justice.

**Education:** Columbia Law School, 1971, J.D., Editor of the *Columbia Survey of Human Rights Law*; Baruch College-City University of New York, 1968, B.B.A., Accounting

**Bar Admissions:** New York; United States District Court for the Eastern District of New York; United States District Court for the Southern District of New York; United States Court of Appeals for the Second Circuit; United States



Court of Appeals for the Third Circuit; United States Court of Appeals for the Sixth Circuit; Supreme Court of the United States

**Abe Alexander** practices out of the New York office, where he focuses on securities fraud, corporate governance and shareholder rights litigation.

As a principal member of the trial team prosecuting *In re Merck Vioxx Securities Litigation*, Abe helped recover over \$1.06 billion on behalf of injured investors. The case, which asserted claims arising out of the Defendants' alleged misrepresentations concerning the safety profile of Merck's pain-killer, VIOXX, was settled shortly before trial and after more than 10 years of litigation, during which time plaintiffs achieved a unanimous and groundbreaking victory for investors at the U.S. Supreme Court. The settlement is the largest securities recovery ever achieved against a pharmaceutical company and among the 15 largest recoveries of all time.

Abe was also a principal member of the trial team that prosecuted *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*, which settled on the eve of trial for a combined \$688 million. This \$688 million settlement represents the second largest securities class action recovery against a pharmaceutical company in history and is among the largest securities class action settlements of any kind.

Abe has also obtained several additional significant recoveries on behalf of investors in pharmaceutical and life sciences companies, including a \$142 million recovery in *Medina v. Clovis Oncology, Inc.*, a securities fraud class action arising from Defendants' alleged misstatements about the efficacy and safety of its most important drug; a \$55 million recovery in *In re HeartWare International, Inc. Securities Litigation*, a case arising from Defendants' alleged misstatements about the device-maker's compliance with FDA regulations and the performance of its key heart pump; and a \$44 million recovery in *In re Adeptus Health Inc. Securities Litigation*, a case arising from alleged misstatements concerning the liquidity and cash flow of the country's largest operator of freestanding emergency rooms.

Abe secured a \$149 million recovery on behalf of investors in Equifax, Inc., helping to lead a securities class action arising from one of the largest data breaches in American history. Abe also played a lead role in securing a \$150 million settlement of investors' claims against JPMorgan Chase arising from alleged misrepresentations concerning the trading activities of the so-called "London Whale," and most recently, in securing a \$95 million recovery on behalf of investors in Cognizant Technology Solutions dealing with alleged false statements and illegal payments to Indian governmental officials to secure favorable permits.

He is currently prosecuting *In re The Boeing Company Aircraft Securities Litigation*; *Union Asset Management Holding AG v. The Kraft Heinz Company*; *Tsantes v. BioMarin Pharmaceutical Inc.*; *In re City of Sunrise Firefighters' Pension Fund v. Oracle Corp.*; *In re Myriad Genetics, Inc. Securities Litigation*; and *Cambridge Retirement System v. Amneal Pharmaceuticals, Inc.*, among others.

Prior to joining the firm, Abe represented institutional clients in a number of high-profile securities, corporate governance, and antitrust matters.

Abe was an award-winning member of his law school's national moot court team. Following law school, Abe served as a judicial clerk to Chief Justice Michael L. Bender of the Colorado Supreme Court.

He was recently named a 2022 "Rising Star of the Plaintiff's Bar" by *The National Law Journal*, was recently named a 2021 "Rising Star" by *Law360*, and chosen by *Benchmark Litigation* for its 2021 "40 & Under Hot List." *Super Lawyers* has also regularly selected Abe as a New York "Rising Star" in recognition of his accomplishments.

**Education:** University of Colorado Law School, 2008, J.D., Order of the Coif; New York University - The College of Arts and Science, 2003, B.A., *cum laude*, Analytic Philosophy

**Bar Admissions:** New York; Delaware; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States District Court for the District of Delaware; United States Court of Appeals for the First Circuit

**Scott Foglietta** prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. As a member of the case development and client advisory group—the firm's case development and client advisory group—Scott advises Taft-Hartley pension funds, public pension funds, and other institutional investors on potential legal claims.

Scott was an integral member of the team that advised the firm's clients in numerous matters including in securities class actions against Wells Fargo, which resulted in a \$480 million recovery; against Salix, which resulted in a \$210 million recovery; and against Equifax, which resulted in a \$149 million recovery. Scott was also key part of the teams that evaluated and developed novel case theories or claims in numerous cases, such as Willis Towers Watson, which arose from misrepresentations made in a proxy statement in connection with the merger between Willis Group and Towers Watson and was recently resolved for \$75 million (pending court approval), and the ongoing securities class action against Perrigo arising from misrepresentations made in connection with a tender offer for shares trading in both the United States and Israel. Scott was also a member of the team that secured our clients' appointments as lead plaintiffs in the ongoing securities class actions against Boeing, Kraft Heinz, and Luckin Coffee, among others.

Scott was a member of the litigation teams representing investors in securities class actions against FleetCor Technologies, which resulted in a \$50 million recovery, and Lumber Liquidators, which achieved a recovery of \$45 million. He is currently part of the team advising one of the firm's institutional investor clients in a shareholder derivative action against the board of directors of FirstEnergy Corp. arising from the company's role in an egregious public corruption scandal. For his accomplishments, Scott was recently named a 2022 "Rising Star" by *Law360*, has been regularly named a New York "Rising Star" in the area of securities litigation by Thomson Reuters *Super Lawyers* and in 2021 was chosen as a "Rising Star of the Plaintiffs Bar" by *The National Law Journal* and chosen by *Benchmark Litigation* for its "40 & Under Hot List."

Before joining the firm, Scott represented institutional and individual clients in a wide variety of complex litigation matters, including securities class actions, commercial litigation, and ERISA litigation. Prior to law school, Scott earned his M.B.A. in finance from Clark University and worked as a capital markets analyst for a boutique investment banking firm.

**Education:** Brooklyn Law School, 2010, J.D.; Clark University, Graduate School of Management, 2007, M.B.A., Finance; Clark University, 2006, B.A., *cum laude*, Management

**Bar Admissions:** New York; New Jersey; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States District Court for the District of New Jersey

**Sal Graziano** is widely recognized as one of the top securities litigators in the country. He has served as lead trial counsel in a wide variety of major securities fraud class actions, recovering billions of dollars on behalf of institutional investors and hedge fund clients.

Over the course of his distinguished career, Sal has successfully litigated many high-profile cases, including: *Merck & Co., Inc. (Vioxx) Sec. Litig.* (D.N.J.); *In re Schering-Plough Corp./ENHANCE Sec. Litig.* (D.N.J.); *New York State Teachers' Retirement System v. General Motors Co.* (E.D. Mich.); *In re MF Global Holdings Limited Sec. Litig.* (S.D.N.Y.); *In re Raytheon Sec. Litig.* (D. Mass.); *In re Refco Sec. Litig.* (S.D.N.Y.); *In re MicroStrategy, Inc. Sec. Litig.* (E.D. Va.); *In re Bristol Myers Squibb Co. Sec. Litig.* (S.D.N.Y.); and *In re New Century Sec. Litig.* (C.D. Cal.).

Industry observers, peers and adversaries routinely honor Sal for his accomplishments. He is one of the "Top 100 Trial Lawyers" in the nation and a "Litigation Star" according to *Benchmark Litigation*, which credits him for performing "top quality work." *Chambers USA* continuously ranks Sal as a top litigator, quoting market sources who describe him as "wonderfully talented...a smart, aggressive lawyer who works hard for his clients," and "the go-to for the biggest cases." Sal is also ranked as a top litigator by *Legal 500*, which quotes market sources who praise him as a "highly effective litigator." Heralded multiple times as one of a handful of Securities Litigation and Class Action "MVPs" in the nation by *Law360*, he has also been named a "Litigation Trailblazer" by *The National Law Journal*. Sal is also one of *Lawdragon's* "500 Leading Lawyers in America," named as a leading mass tort and plaintiff class action litigator by *Best Lawyers*<sup>®</sup>, and is one of Thomson Reuters' *Super Lawyers*.

A highly esteemed voice on investor rights, regulatory and market issues, in 2008 he was called upon by the Securities and Exchange Commission's Advisory Committee on Improvements to Financial Reporting to give testimony as to the state of the industry and potential impacts of proposed regulatory changes being considered. He is the author and co-author of numerous articles on developments in the securities laws, and was chosen, along with several of his BLB&G partners, to author the first chapter - "Plaintiffs' Perspective" - of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*.

A member of the firm's Executive Committee, Sal has previously served as the President of the National Association of Shareholder & Consumer Attorneys, and has served as a member of the Financial Reporting Committee and the Securities Regulation Committee of the Association of the Bar of the City of New York. He regularly speaks on securities fraud litigation and shareholder rights, and has guest lectured at Columbia Law School on the topic.

Prior to entering private practice, Sal served as an Assistant District Attorney in the Manhattan District Attorney's Office.

**Education:** New York University School of Law, 1991, J.D., *cum laude*; New York University - The College of Arts and Science, 1988, B.A., *cum laude*, Psychology

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States District Court for the Eastern District of Michigan; United States Court of Appeals for the First Circuit; United States Court of Appeals for the Second Circuit; United States Court of Appeals for the Third Circuit; United States Court of Appeals for the Fourth Circuit; United States Court of Appeals for the Sixth Circuit; United States Court of Appeals for the Ninth Circuit; United States Court of Appeals for the Eleventh Circuit

**Jerry Silk's** practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Jerry is a member of the firm's Executive Committee. He also oversees the firm's New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. In December 2014, Jerry was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" — one of several lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies — in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters.

In addition, *Lawdragon* magazine, which has named Jerry one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America," and one of America's top 500 "Rising Stars" in the legal profession, also profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners, *Chambers USA's* ranked Jerry nationally "for his expertise in a range of cases on the plaintiff side." He is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected by Thomson Reuters as a *Super Lawyer* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "[Mortgage Investors Turn to State Courts for Relief.](#)"

Jerry also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars, which resulted in a \$300 million settlement. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for \$3.2 billion. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately \$3.5 billion in the consideration offered to shareholders.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Jerry served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Jerry lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including his most recent article, "[SEC Statement On Emerging Markets Is A Stunning Failure,](#)" which was published by *Law360* on April 27, 2020. He has authored numerous additional articles, including: "Improving Multi-Jurisdictional, Merger-Related Litigation," American Bar Association (February 2011); "The Compensation Game," *Lawdragon*, (Fall 2006); "Institutional Investors as Lead Plaintiffs: Is There A New And Changing Landscape?," *75 St. John's Law Review* 31 (Winter 2001);

"The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He has also been a commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch*, *Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times*, *Financial Times*, *Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

**Education:** Brooklyn Law School, 1995, J.D., *cum laude*; Wharton School of the University of Pennsylvania, 1991, B.S., Economics

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York; United States Court of Appeals for the Second Circuit

**Katie Sinderson** is a partner in the firm's New York office. She focuses her practice on advising and representing clients in securities fraud class actions and has been a leader on teams recovering billions of dollars for investors.

Katie played a key role in two of the firm's largest cases, both of which settled near trial for billions of dollars on behalf of investors. In *In re Merck Securities Litigation*, she was a leader of the small trial team that achieved a \$1.062 billion settlement in the action arising from Merck's marketing of the recalled drug Vioxx. She was also a member of the trial team prosecuting *In re Bank of America Securities Litigation*, which resulted in a recovery of \$2.425 billion, one of the largest shareholder recoveries in history.

Most recently, Katie led the teams that recovered \$74 million in the securities class action against SunEdison and \$50 million in the securities class action against FleetCor Technologies. Katie also led the team that recovered \$74 million in the take-private merger litigation *San Antonio Fire and Police Pension Fund et al. v. Dole Food Co. et al.*, and served as a senior member of the teams that recovered \$210 million in *In re Salix Pharmaceuticals, Ltd. Securities Litigation*, \$216.75 million in *In re Washington Mutual Securities Litigation*, and \$210 million in *In re Wilmington Trust Securities Litigation*.

Along with partner Hannah Ross, Katie co-chairs the firm's Women's Forum, which offers opportunities for the firm's clients to network and share ideas and knowledge with female leaders in pension funds and institutional investors around the world.

Katie's success has earned her many recognitions, including being named a "Litigation Trailblazer" by *The National Law Journal*. She has been recognized as a "Titan of the Plaintiffs Bar" and a national "Rising Star" by *Law360*. For the last six years—from 2016 through 2021—Katie has been named to *Benchmark Litigation's* "Under 40 Hot List," which recognizes her as one of the nation's most accomplished legal partners under the age of 40. She was named a 2020 "Rising Star" by *New York Law Journal* and is regularly selected as a New York "Rising Star" by Thomson Reuters' *Super Lawyers*. She has also been named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon* and a "Next Generation Partner" by *Legal 500*.

**Education:** Georgetown University Law Center, 2006, J.D., *cum laude*, Dean's Scholar Full Scholarship Award Recipient; Articles Editor for *the Georgetown Journal of Gender and Law*; Baylor University, 2002, B.A., *cum laude*, Regents Full Scholarship Award Recipient

**Bar Admissions:** New York; United States District Court for the Southern District of New York; United States Court of Appeals for the Second Circuit

## Senior Counsel

**David Duncan's** practice concentrates on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining BLB&G, David worked as a litigation associate at Debevoise & Plimpton, where he represented clients in a wide variety of commercial litigation, including contract disputes, antitrust and products liability litigation, and in international arbitration. In addition, he has represented criminal defendants on appeal in New York State courts and has successfully litigated on behalf of victims of torture and political persecution from Sudan, Côte d'Ivoire and Serbia in seeking asylum in the United States.

While in law school, David served as an editor of the *Harvard Law Review*. After law school, he clerked for Judge Amalya L. Kearsse of the U.S. Court of Appeals for the Second Circuit.

**Education:** Harvard Law School, 1997, J.D., *magna cum laude*; Harvard College, 1993, A.B., *magna cum laude*, Social Studies

**Bar Admissions:** New York; Connecticut; United States District Court for the Southern District of New York

**Catherine Van Kampen's** law practice concentrates on class action settlement administration. She manages the firm's qualified settlement funds and claims administration for settlements achieved by the firm. Catherine is responsible for initiating and managing the claims administration process and working with the Court-appointed claims administrators and investment banks for the benefit of the Classes represented by the firm. Catherine works closely with the firm's partners to apply for Court approval in various jurisdictions throughout the United States for the disbursement of settlement funds. She regularly interfaces with institutional and retail investors to explain the claims administration process and to assist them with filing their claims.

Catherine also has extensive experience in complex litigation and litigation management, having served as a team leader and overseen attorney teams in many of the firm's most high-profile cases during the 2008 Financial Crisis. Catherine has worked on more than two dozen high-value cases. Fluent in Dutch, she has served as the lead investigator and led discovery efforts in actions involving international corporations and financial institutions headquartered in Belgium and the Netherlands. She is certified in E-Discovery and Healthcare Compliance.

Prior to joining BLB&G, Catherine focused on complex litigation initiated by institutional investors and the Federal Government. She has worked on litigation and investigations related to regulatory enforcement actions, corporate governance, and compliance matters as well as conducted extensive discovery in English and Dutch in cross-border litigation.

Since attending law school, Catherine has been deeply committed to public and pro bono service to underserved communities. Through her volunteer work, Catherine has been a champion of social change and justice, particularly for immigrant and refugee women and children. As a member of the New York City Bar Association's United Nations Committee and African Affairs Committee, she spearheaded organizing the highly successful and widely-praised International Law Conference on the Status of Women, Pro Bono Engagement Fair, EPIQ Women Awards and Huntington Her Hero Awards, featuring the Under Secretary and Special Representative to the Secretary General of the United Nations for the Prevention of Violence Against Women, and other prominent, progressive women's advocates from the New York Legal Community. In recognition of her work, Catherine was appointed Co-Chair of the United Nations Committee and a Member of the Council for International Affairs in September of 2021.

A committed humanitarian, Catherine was honored as the 2018 Ambassador Medalist at the New Jersey Governor's Jefferson Awards for Outstanding Public Service for her international humanitarian and pro bono work with refugees. The Jefferson Awards, issued by the Jefferson Awards Foundation that was founded by Jacqueline Kennedy Onassis, are awarded by state governors and are considered America's highest honor for public service bestowed by the United States Senate. Catherine was also honored in Princeton, New Jersey, by her high school alma mater, Stuart Country Day School, in its 2018 Distinguished Alumnae Gallery for her humanitarian and pro bono efforts on behalf of Yezidi and Christian women and children afflicted by war in Iraq and Syria. In 2020, Catherine was accepted as a *SHESOURCE* legal expert advocating for the needs of immigrant and refugee women by the Women's Media Center, founded by Gloria Steinem, Jane Fonda, and Robin Morgan. In 2021, Catherine was appointed a Global Goals Ambassador for Clean Water and Sanitation by the United Nations Association of the USA, the sister organization of the United Nations Foundation USA founded by Eleanor Roosevelt. She is a recipient of several honors recognizing her pro bono work and commitment to social issues, including an invitation to attend the 2020 Tory Burch Foundation Embrace Ambition Summit and an appointment to the Advisory Board of the National Center for Girls' Leadership in Princeton, New Jersey, in 2021.

Catherine is an active member of the American Bar Association, New York Bar Association, New York City Bar Association, New Jersey Bar Association, and the National Association of Women Lawyers. In 2020, Catherine was appointed to the New York State Bar Association's President's Leadership Development Committee. In 2021, Catherine was appointed to the New Jersey State Bar Association's Class Actions, International Law and Organizations, and Special Civil Part Committees. In 2022, Catherine was appointed as Co-chair of the American Bar Association's International Law Section — Women's Interest Network. As part of her pro bono legal work, she serves on two Boards of international NGOs serving refugees and internally displaced persons in the Middle East and Africa and rescuing exploited and trafficked women and girls. Closer to home, Catherine serves as an advisor to minority business owners in the New York City area on legal issues impacting their businesses.

Catherine clerked for the Honorable Mary M. McVeigh in the Superior Court of New Jersey where she was trained as a court-certified mediator. While in law school she interned at the Center for Social Justice's Immigration Law Clinic at Seton Hall University School of Law. Catherine is a Graduate of the American Inns of Court.

**Education:** Seton Hall University School of Law, 1998, J.D., Indiana University, 1988, B.A., Political Science

**Bar Admissions:** New York; New Jersey

## Associate

**Jimmy Brunetto** practices out of the firm's New York office, prosecuting securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients. He is a member of the firm's case development and client advisory group, in which he, as part of a team of attorneys, financial analysts, and investigators, counsels public pension funds and other institutional investors on potential legal claims.

Prior to joining the firm, Jimmy investigated and prosecuted securities fraud with the New York State Office of the Attorney General's Investor Protection Bureau, where he worked on a number of high-profile matters. While in law school, Jimmy was honored as a John Marshall Harlan Scholar and served as a Staff Editor for the *New York Law School Law Review*.

**Education:** New York Law School, 2011, J.D., cum laude, John Marshall Harlan Scholar; Staff Editor, New York Law School Law Review; University of Florida, 2007, B.A., cum laude, Political Science; University of Florida, 2007, B.S.B.A., Finance

**Bar Admissions:** New York

**Billy Freeland** practices out of the firm's New York office and prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Billy served as General Counsel to a fitness corporation, where he managed litigation and internal investigations, among other responsibilities. He previously worked as a litigation associate at a leading defense firm, and as an analyst at a prominent investment bank. Billy currently serves as an Ensign in the United States Navy Reserve, where he is an Intelligence Officer.

Billy received his J.D. from New York University School of Law, where he was a member of the *Annual Survey of American Law* as an article editor, finalist in the *Orison S. Marden Moot Court Competition* (2014 and 2015), and research assistant to Professors Rachel Barkow and Catherine Sharkey. While attending law school, Billy was a law clerk for Senator Charles E. Schumer on the United States Committee on the Judiciary in Washington, DC. He received both his M.A. in International Affairs and his B.A. in Political Science at Columbia University.

**Education:** New York University School of Law, 2015, J.D.; Columbia University, 2010, M.A., International Affairs; Columbia University, 2009, B.A., Political Science

**Bar Admissions:** New York

**Benjamin ("Will") Horowitz** [Former Associate] practiced out of the New York office\* in the securities litigation department. He represented the firm's institutional investor clients in securities fraud-related matters.

Prior to joining the firm, Will was an associate practicing litigation at Gibson, Dunn & Crutcher. Will is a graduate of Stanford Law School, where he was a member of the *Stanford Journal of Criminal Law and Policy* and participated in the Environmental Law Clinic. He graduated *summa cum laude* from Yale University, where he received his Bachelor of Arts degree in history.

\*Not admitted to practice in New York.

**Education:** Stanford Law School, 2018, J.D., Yale University, 2012, B.A.

**Bar Admissions:** California, Missouri

**Christopher Miles** [Former Associate] practiced out of the New York office in the securities litigation department. He represented the firm's institutional investor clients in securities fraud-related matters.

Prior to joining the firm, Christopher was an associate practicing litigation at Sullivan & Cromwell LLP, where he specialized in complex litigation, including securities and class actions. Christopher is a 2014 graduate of Harvard Law School and served as an editor for the *Harvard Law Review*. He received his undergraduate degree from the University of Nevada, Reno.

**Education:** Harvard Law School, J.D., 2014, *Harvard Law Review*; University of Nevada, B.A., 2010, *Dean's List*.

**Bar Admissions:** New York; U.S. District Courts for the Southern and Eastern Districts of New York.



**Rebecca N. Kim** [Former Associate] practiced out of the firm's New York office, prosecuting securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Rebecca was a member of the firm's New Matter Department, in which she, as part of a team of attorneys, financial analysts, and investigators, counseled public pension funds and other institutional investors on potential legal claims. She was also a member of the team prosecuting actions against Allianz Global Investors. She served on the firm's Diversity Committee. Prior to joining the firm, Rebecca represented institutional clients in a number of high-profile securities and antitrust matters.

While attending Columbia Law School, Rebecca was honored as a Harlan Fiske Stone Scholar. Additionally, she served as an Enforcement Intern at the U.S. Securities and Exchange Commission; participated in the Immigrants' Rights Clinic; and served as Articles Editor for the *Columbia Journal of Tax Law* and Submissions Editor for the *Columbia Journal of Race and Law*.

**Education:** Columbia Law School, J.D., 2017, Harlan Fiske Stone Scholar; Articles Editor, *Columbia Journal of Tax Law*; Submissions Editor, *Columbia Journal of Race and Law*; University of California, Berkeley, B.A., 2011

**Bar Admissions:** New York, United States District Court for the Southern District of New York; United States District Court for the Eastern District of New York

**Thomas Sperber** is an associate practicing out of the New York office prosecuting securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's institutional investor clients.

Prior to joining the firm, Thomas was a law clerk for the Honorable K. Michael Moore, Chief Judge of the United States District Court for the Southern District of Florida. He is a graduate of Fordham University School of Law, where he was an associate editor of the *Fordham Law Review*.

**Education:** Fordham University School of Law, 2018, J.D., Associate Editor, *Fordham Law Review*; Binghamton University - State University of New York, 2014, B.A.

**Bar Admissions:** New York

## Senior Staff Attorneys

**Larry Hosmer** is a senior staff attorney in the New York\* office, and primarily provides electronic discovery assistance and support in the litigation of securities fraud-related matters.

Prior to joining the firm, Larry had a private litigation practice in Dallas, Texas, and from there went on to focus in the growing electronic discovery field. Larry is a graduate of the SMU School of Law, where he was an Articles Editor of the International Lawyer law review. He was a National Merit Scholar at the University of Texas at Austin, where he graduated with a Bachelor of Arts degree in history.

\*Not admitted to practice in New York.

**Education:** Southern Methodist University School of Law, 1996, J.D.; University of Texas at Austin, 1993, B.A.

**Bar Admissions:** Texas

## Staff Attorneys

**Claudia A. Carten** [Former Staff Attorney] joined the BLB&G Staff Attorney team in September 2022 and worked on *Tsantes v. BioMarin Pharmaceutical Inc., et al.*; *Ohio Public Employees Retirement System v. Meta Platforms, Inc. f/k/a Facebook, Inc.*; and *In re Wells Fargo & Company Securities Litigation*.

Prior to joining the firm, Claudia worked as an e-discovery contract attorney for several law firms. Previously, Claudia was a Senior Litigation Associate with David E. Thomas & Associates.

**Education:** Hampton University, B.A., 1992; Hofstra University School of Law, J.D., 1995.

**Bar Admission:** New York.

**Jerome K. Mitchell** joined the BLB&G Staff Attorney team in April 2022.

Prior to joining the firm, Jerome was a contract attorney with various law firms working on patent infringement and securities litigation. Previously, Jerome was an attorney in the Patent Litigation Group with Greenberg Traurig and the Patent Prosecution Group with Reveo Inc.

**Education:** Hampton University, VA, B.A. (Biology), 1999. Pace University, J.D., 2003.

**Bar Admission:** New York.

**Yeruchem Neiman** joined the BLB&G Staff Attorney team in April 2022.

Prior to joining the firm, Yeruchem ("Jerry") was a staff attorney with various law firms working on financial class actions, oil and gas, pharmaceutical and biotech litigations including foreign language reviews in German, Dutch and the Nordic languages. Previously, Jerry was a financial analyst with B&W Equities and UBS Paine Webber.

**Education:** Brooklyn College of CUNY, NY, B.A. (Pre-Med & Economics), 2000. Fordham University School of Law, J.D., 2009.

**Bar Admissions:** New York, New Jersey.

**R. Stephen Roehler** has worked on numerous matters at BLB&G, including *City of Sunrise General Employees' Retirement Plan v. FleetCor Technologies, Inc., et al.*; *In re Akorn, Inc., Securities Litigation*; *In re SunEdison, Inc., Securities Litigation*; *Hefler et al. v. Wells Fargo & Company et al.*; *Fresno County Employees' Retirement Association v. comScore, Inc.*; *In re Allergan, Inc. Proxy Violation Securities Litigation*; *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*; and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2010, Stephen was an attorney at Milberg LLP, where he worked on several complex securities and antitrust litigations. Previously, Stephen was an associate at Latham & Watkins LLP.

**Education:** University of California, San Diego, B.A., 1993. University of Southern California Law School, J.D., 1999.

**Bar Admissions:** New York; California.

**Ruben Toft Sindahl** [Former Staff Attorney] joined the firm in March 2022 as a Danish proficient attorney and worked on *Tsantes v. BioMarin Pharmaceutical Inc., et al.* and *Logan v. ProPetro Holding Corp., et al.*

Prior to joining the firm, Ruben worked as an E-discovery foreign language attorney with various law firms.

**Education:** University of Copenhagen School of Law, Denmark, 2010; University of Pittsburgh School of Law, J.D. & LL.M., 2018.

**Bar Admissions:** Washington D.C.

**Lewis Smith** has worked on numerous matters at BLB&G, including *In re Fifth Street Finance Corp. Stockholder Litigation*; *Allstate Insurance Company v. Morgan Stanley & Co., Inc.*; *Dexia Holdings, Inc. v. JP Morgan*; and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*. Lewis currently focuses on corporate governance matters.

Prior to joining the firm in 2012, Lewis was a contract attorney at Kenyon & Kenyon.

**Education:** Seton Hall University School of Law, J.D., 2007; Cal Poly State University, B.S., 2001; Brunel University, M.A., 2002

**Bar Admissions:** New York

**Juan Vera** joined the BLB&G Staff Attorney team in September 2022 and worked on *Tsantes v. BioMarin Pharmaceutical Inc., et al.*; and *In re The Boeing Company Aircraft Securities Litigation*.

Prior to joining the firm, Juan worked as an e-discovery attorney at various law firms. Previously, Juan was an Assistant Public Defender with the Ninth Judicial Circuit of Florida involved in motion and trial practice.

**Education:** Hunter College, NY, B.A., 2000. West Virginia University College of Law, J.D., 2004.

**Bar Admissions:** New York. Florida.

# **Exhibit 9**

**EXHIBIT 9**

*In re BioMarin Pharmaceutical Inc. Securities Litigation,*  
Case No. 3:20-cv-06719-WHO (N.D. Cal.)

**LEAD COUNSEL' EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$2,319.00
Service of Process	\$1,475.32
Online Factual Research	\$15,881.63
Online Legal Research	\$42,172.59
Document Management & Litigation Support	\$9,550.08
Telephone	\$68.92
Postage & Express Mail	\$1,506.39
Hand Delivery Charges	\$138.50
Local Transportation	\$1,660.89
Outside Copying & Printing	\$912.83
Out-of-Town Travel	\$8,944.93
Working Meals	\$958.10
Court Reporting & Transcripts	\$13,586.10
Experts & Consultants	\$284,177.50
Mediation	\$13,700.00
<b>TOTAL:</b>	<b>\$397,052.78</b>

# **Exhibit 10**

# **Exhibit 10A**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE: SANDISK LLC SECURITIES  
LITIGATION

Case No. 3:15-cv-01455-VC  
Hon. Vince Chhabria

**REVISED ~~PROPOSED~~ ORDER  
AWARDING ATTORNEYS’ FEES,  
PAYMENT OF LITIGATION  
EXPENSES, AND REIMBURSEMENT  
OF CLASS REPRESENTATIVES’  
COSTS AND EXPENSES**

THIS MATTER having come before the Court for hearing on September 26, 2019 (the “Settlement Hearing”) to determine, among other things, whether and in what amount to award (i) Plaintiffs’ Counsel in the above-captioned consolidated securities class action (the “Action”) attorneys’ fees and litigation expenses in connection with their representation of the Class; and (ii) Class Representatives their costs and expenses pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”); the Court, having considered all papers filed and proceedings had herein and otherwise being fully informed;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order operates by reference to the definitions in the Revised Stipulation and Agreement of Settlement filed on May 20, 2019 (ECF No. 274-1) (the “Stipulation”), and all capitalized terms used, but not defined, herein shall have the same meanings as those set forth in the Stipulation.

2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finds and concludes that due and adequate notice was directed to Persons who are Class Members who could be identified with reasonable effort, advising them of Class Counsel’s motion for an award of attorneys’ fees, payment of litigation expenses and reimbursement of Class Representatives’ costs and expenses and their right to object thereto, and



1 a full and fair opportunity was accorded to Persons who are Class Members to be heard. There  
2 were no objections to Class Counsel's motion.

3 3. Class Counsel are hereby awarded, on behalf of all Plaintiffs' Counsel, attorneys'  
4 fees in the amount of 25% of the Settlement Fund, plus accrued interest, and \$885,149.36, plus  
5 accrued interest, in payment of Plaintiffs' Counsel's litigation expenses, which sums the Court  
6 finds to be fair and reasonable. Consistent with this Court's established practice, 10% of the total  
7 amount of attorneys' fees awarded is the percentage, proposed by Class Counsel given their  
8 demonstrated commitment to the Class and hereby deemed an appropriate amount, that shall be  
9 withheld until after a distribution of the Net Settlement Fund to Authorized Claimants has been  
10 made. Otherwise, the attorneys' fees and expenses awarded shall be paid from the Settlement  
11 Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of  
12 the Stipulation, which terms, conditions, and obligations are incorporated herein by reference.

13 4. Class Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs'  
14 Counsel in a manner in which they, in good faith, believe reflects the contributions of such counsel  
15 to the institution, prosecution, and settlement of the Action.

16 5. In making this award of attorneys' fees and expenses to be paid from the  
17 Settlement Fund, the Court has considered and found that:

18 (a) the Settlement has created a fund of \$50,000,000 in cash, and Class  
19 Members who submit acceptable Claim Forms will benefit from the Settlement that has  
20 been achieved as a result of the efforts of Plaintiffs' Counsel;

21 (b) the attorneys' fees sought by Class Counsel have been reviewed and  
22 approved as reasonable by Class Representatives, who are institutional investors that  
23 oversaw the prosecution and resolution of the Action;

24 (c) copies of the revised Settlement Notice (ECF No. 274-3) were mailed to  
25 over 203,000 potential Class Members and nominees, stating that Class Counsel would  
26 apply for attorneys' fees in an amount not to exceed 28% of the Settlement Fund and  
27 litigation expenses in an amount not to exceed \$1,000,000, and there were no objections  
28

1 to the requested attorneys' fees and expenses, which are less than the amounts stated in  
2 the revised Settlement Notice;

3 (d) the Action raised a number of complex issues;

4 (e) had Plaintiffs' Counsel not achieved the Settlement, there was a significant  
5 risk that Class Representatives and the other members of the Class may have recovered  
6 less or nothing at all from Defendants;

7 (f) Plaintiffs' Counsel have devoted nearly 30,000 hours with a lodestar value  
8 of \$15,950,994.50 to this Action and have advanced \$885,149.36 in litigation expenses to  
9 achieve the Settlement; and

10 (g) the amount of attorneys' fees and litigation expenses to be paid from the  
11 Settlement Fund are fair and reasonable and consistent with awards in similar cases.

12 6. In accordance with the PSLRA, Class Representative City of Bristol Pension Fund  
13 is hereby awarded \$7,300 from the Settlement Fund as reimbursement for its reasonable costs and  
14 expenses directly related to its representation of the Class.

15 7. In accordance with the PSLRA, Class Representative Pavers and Road Builders  
16 Pension, Annuity and Welfare Funds is hereby awarded \$7,717.50 from the Settlement Fund as  
17 reimbursement for its reasonable costs and expenses directly related to its representation of the  
18 Class.

19 8. In accordance with the PSLRA, Class Representative the City of Newport News  
20 Employees' Retirement Fund is hereby awarded \$7,474.44 from the Settlement Fund as  
21 reimbursement for its reasonable costs and expenses directly related to its representation of the  
22 Class.

23 9. In accordance with the PSLRA, Class Representative Massachusetts Laborers'  
24 Pension Fund is hereby awarded \$8,557.50 from the Settlement Fund as reimbursement for its  
25 reasonable costs and expenses directly related to its representation of the Class.

26 10. Any appeal of or challenge to this Court's award of attorneys' fees, payment of  
27 litigation expenses, and reimbursement of Class Representatives' costs and expenses in  
28

1 connection with their representation of the Class shall in no way disturb or affect the finality of  
2 the Judgment.

3 11. Exclusive jurisdiction is hereby retained over the Parties and Class Members for  
4 all matters relating to this Action, including administration, interpretation, effectuation, or  
5 enforcement of the Stipulation and this Order.

6 12. In the event that the Settlement is terminated or the Effective Date of the  
7 Settlement fails to occur, this Order shall be rendered null and void to the extent provided by the  
8 Stipulation.

9 Dated: October 23, 2019

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12 HONORABLE VINCE CHHABRIA  
13 UNITED STATES DISTRICT JUDGE  
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# **Exhibit 10B**

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17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN JOSE DIVISION**

20 IN RE INTUITIVE SURGICAL  
21 SECURITIES LITIGATION

Case No. 5:13-cv-01920 EJD (HRL)

CLASS ACTION

**[PROPOSED] ORDER AWARDING  
ATTORNEYS' FEES, PAYMENT OF  
EXPENSES, AND PAYMENT OF  
CLASS REPRESENTATIVES'  
EXPENSES**

22 On December 20, 2018, a hearing having been held before this Court to determine,  
23 among other things, whether and in what amount to award (1) Class Counsel in the above-  
24 captioned consolidated securities class action (the "Action") fees and litigation expenses directly

1 relating to their representation of the Class; and (2) Class Representatives their costs and  
2 expenses (including lost wages), pursuant to the Private Securities Litigation Reform Act of 1995  
3 (the “PSLRA”). The Court having considered all matters submitted to it at the hearing and  
4 otherwise; and it appearing that a notice of the hearing substantially in the form approved by the  
5 Court (the “Settlement Notice”) was mailed to all reasonably identified Class Members; and that  
6 a summary notice of the hearing (the “Summary Notice”), substantially in the form approved by  
7 the Court, was published in *Investor’s Business Daily* and transmitted over *PR Newswire*; and  
8 the Court having considered and determined the fairness and reasonableness of the award of  
9 attorneys’ fees and expenses requested;

10 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

11 1. The Court has jurisdiction over the subject matter of this Action and over all  
12 parties to the Action, including all Class Members who have not timely and validly requested  
13 exclusion, Plaintiffs’ counsel, and the Claims Administrator.

14 2. All capitalized terms used herein have the meanings set forth and defined in the  
15 Stipulation and Agreement of Settlement, dated as of September 11, 2018 (the “Stipulation”).

16 3. Notice of Class Counsel’s application for attorneys’ fees and payment of litigation  
17 expenses was given to all Class Members who could be identified with reasonable effort. The  
18 form and method of notifying the Class of the application for attorneys’ fees and expenses met  
19 the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7)  
20 of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, due  
21 process, and other applicable law, constituted the best notice practicable under the  
22 circumstances, and constituted due and sufficient notice to all persons and entities entitled  
23 thereto.

24 4. Class Counsel are hereby awarded, on behalf of all Plaintiffs’ counsel, attorneys’  
25 fees in the amount of \$8,075,000 plus interest at the same rate earned by the Settlement Fund  
26 (which is 19% of the Settlement Fund), and payment of litigation expenses in the amount of  
27 \$1,988,789.66, which sums the Court finds to be fair and reasonable.

1           5.       The award of attorneys’ fees and litigation expenses may be paid to Class Counsel  
2 from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions,  
3 and obligations of the Stipulation, which terms, conditions, and obligations are incorporated  
4 herein.

5           6.       In making this award of attorneys’ fees and payment of litigation expenses to be  
6 paid from the Settlement Fund, the Court has analyzed the factors considered within the Ninth  
7 Circuit and found that:

8                   (a)       The Settlement has created a common fund of \$42.5 million in cash and  
9 that numerous Class Members who submit acceptable Claim Forms will benefit from the  
10 Settlement created by the efforts of counsel;

11                   (b)       The requested attorneys’ fees and payment of litigation expenses have  
12 been reviewed and approved as fair and reasonable by Class Representatives, sophisticated  
13 institutional investors that were directly involved in the prosecution and resolution of the Action  
14 and who have a substantial interest in ensuring that any fees paid to counsel are duly earned and  
15 not excessive;

16                   (c)       Class Counsel undertook the Action on a contingent basis, and have  
17 received no compensation during the Action, and any fee and expense award has been  
18 contingent on the result achieved;

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

21                   (e)       Class Counsel conducted the Action and achieved the Settlement with  
22 skillful and diligent advocacy;

23                   (f)       Plaintiffs’ counsel have devoted approximately 41,813.90 hours, with a  
24 lodestar value of \$21,548,609.00 to achieve the Settlement;

25                   (g)       The amount of attorneys’ fees awarded are fair and reasonable and are  
26 less than fee awards approved in cases within the Ninth Circuit with similar recoveries;

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1 (h) Notice was disseminated to putative Class Members stating that Class  
2 Counsel would be submitting an application for attorneys' fees in an amount not to exceed 19%  
3 of the Settlement Fund, which includes interest, and payment of litigation expenses incurred in  
4 connection with the prosecution of this Action up to \$2,500,000 plus interest, and that such  
5 application also might include a request that Class Representatives be reimbursed their  
6 reasonable costs and expenses (including lost wages) directly related to their representation of  
7 the Class; and

8 (i) There were no objections to the application for attorneys' fees or  
9 expenses.


10 7. In accordance with the PSLRA, the Court hereby awards Class Representative  
11 Employees' Retirement System of the State of Hawaii \$49,754.18 for its costs and expenses  
12 directly related to its representation of the Class, and Class Representative Greater Pennsylvania  
13 Carpenters' Pension Fund \$9,100.00 for its costs and expenses directly related to its  
14 representation of the Class.

15 8. Any appeal or challenge affecting this Court's approval of any attorneys' fee,  
16 expense application, or award of costs and expenses to Class Representatives in the Action, shall  
17 in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

18 9. Exclusive jurisdiction is retained over the subject matter of this Action and over  
19 all parties to the Action, including the administration of the Settlement.

20 10. In the event that the Settlement is terminated or does not become Final or the  
21 Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be  
22 rendered null and void to the extent provided by the Stipulation and shall be vacated in  
23 accordance with the Stipulation.

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25 Dated: December 20, 2018

  
26 HONORABLE EDWARD J. DAVILA  
27 UNITED STATES DISTRICT JUDGE



# **Exhibit 10C**

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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

IN RE SNAP INC. SECURITIES  
LITIGATION

Case No. 2:17-cv-03679-SVW-AGR

**CLASS ACTION**

This Document Relates To: All Actions.

**ORDER AWARDING  
ATTORNEYS' FEES AND  
LITIGATION EXPENSES**

Courtroom: 10A, 10<sup>th</sup> Floor  
Judge: Hon. Stephen V. Wilson

1 This matter is before the Court on Class Counsel’s motion for an award of attorneys’  
2 fees and Litigation Expenses. The Court having considered all matters submitted to it; and  
3 it appearing that notice substantially in the form approved by the Court, which advised of  
4 Class Counsel’s request for an award of attorneys’ fees and Litigation Expenses, was mailed  
5 to all Class Members who or which could be identified with reasonable effort, and that a  
6 summary notice substantially in the form approved by the Court was published in *The Wall*  
7 *Street Journal* and *Investor’s Business Daily* and was transmitted over the *PR Newswire*  
8 pursuant to the specifications of the Court; and the Court having considered and determined  
9 the fairness and reasonableness of the award of attorneys’ fees and Litigation Expenses  
10 requested,

11 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

12 1. This Order incorporates by reference the definitions in the Stipulation and  
13 Agreement of Settlement dated March 20, 2020 (ECF No. 368-3) (“Stipulation”) and all  
14 capitalized terms not otherwise defined herein shall have the same meanings as set forth in  
15 the Stipulation.

16 2. The Court has jurisdiction to enter this Order and over the subject matter of  
17 the Action and all Parties to the Action, including all Class Members.

18 3. Notice of Class Counsel’s motion for an award of attorneys’ fees and  
19 Litigation Expenses was given to all Class Members who or which could be identified with  
20 reasonable effort. The form and method of notifying the Class of the motion for an award  
21 of attorneys’ fees and Litigation Expenses satisfied the requirements of Rule 23 of the  
22 Federal Rules of Civil Procedure, the United States Constitution (including the Due Process  
23 Clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §§ 77z-1, 78u-4),  
24 as amended, and all other applicable law and rules, constituted the best notice practicable  
25 under the circumstances, and constituted due and sufficient notice to all persons and entities  
26 entitled thereto.

27 4. Class Counsel is hereby awarded attorneys’ fees in the amount of 25% of the  
28 Settlement Fund and \$2,290,350.53 in reimbursement of Plaintiffs’ Counsel’s Litigation

1 Expenses (which fees and expenses shall be paid from the Settlement Fund), which sums  
2 the Court finds to be fair and reasonable. Class Counsel shall allocate the attorneys' fees  
3 awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects  
4 the contributions of such counsel to the institution, prosecution, and settlement of the  
5 Action.

6 5. In making this award of attorneys' fees and Litigation Expenses from the  
7 Settlement Fund, the Court has considered and found that:

8 (a) The Settlement has created a fund of \$154,687,500 in cash that has been  
9 funded into escrow pursuant to the terms of the Stipulation, and that numerous Class  
10 Members who submit acceptable Claims will benefit from the Settlement that occurred  
11 because of the efforts of Plaintiffs' Counsel;

12 (b) The fee sought is based on retainer agreements entered into between  
13 Class Representatives and Class Counsel at the outset of Class Representatives'  
14 involvement in the Action; and the requested fee has been reviewed and approved as  
15 reasonable by Class Representatives, who actively supervised the prosecution and  
16 resolution of the Action;

17 (c) More than 824,000 copies of the Postcard Notice and more than 4,600  
18 copies of the Notice were mailed to potential Class Members and nominees stating that  
19 Class Counsel would apply for attorneys' fees in an amount not to exceed 25% of the  
20 Settlement Fund, and reimbursement of Litigation Expenses in an amount not to exceed  
21 \$3.25 million, plus interest, which amount may include a request for reimbursement to Class  
22 Representatives in an aggregate amount not to exceed \$275,000;

23 (d) Plaintiffs' Counsel conducted the litigation and achieved the Settlement  
24 with skill, perseverance, and diligent advocacy;

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

26 (f) Had Plaintiffs' Counsel not achieved the Settlement there would remain  
27 a significant risk that Class Representatives and the other members of the Class may have  
28 recovered less or nothing from the SAC Defendants after trial;

1 (g) Plaintiffs’ Counsel devoted over 50,000 hours, with a collective lodestar  
2 value of \$22,438,458.15, to achieve the Settlement;

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

6 (i) Not a single Class Member has objected to the requested award of  
7 attorneys’ fees or Litigation Expenses.

8 6. Court-appointed Class Representatives are hereby awarded the following  
9 amounts from the Settlement Fund as reimbursement for their reasonable costs and  
10 expenses directly related to their representation of the Class: (i) \$36,750.00 to Smilka  
11 Melgoza, on behalf of the Smilka Melgoza Trust U/A DTD 04/08/2014; (ii) \$22,800.00 to  
12 Rediet Tilahun; (iii) \$5,000.00 to Tony Ray Nelson; \$22,765.00 to Rickey E. Butler;  
13 \$7,500.00 to Alan L. Dukes; \$2,500.00 to Donald R. Allen; and \$2,500.00 to Shawn B.  
14 Dandridge.

15 7. Any appeal or any challenge affecting this Court’s approval regarding any  
16 attorneys’ fees and Litigation Expenses application shall in no way disturb or affect the  
17 finality of the Judgment.

18 8. In the event that the Settlement is terminated or the Effective Date of the  
19 Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent  
20 provided by the Stipulation.

21 9. There is no just reason for delay in the entry of this Order, and immediate entry  
22 by the Clerk of the Court is expressly directed.

23  
24 SO ORDERED this 9th day of March, 2021.

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27 The Honorable Stephen V. Wilson  
28 United States District Judge

# **Exhibit 10D**

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 SOUTHERN DIVISION

3 IN RE ALLERGAN, INC. PROXY  
4 VIOLATION SECURITIES  
5 LITIGATION

Case No. 8:14-cv-02004-DOC-KESx  
CLASS ACTION

6 ORDER AWARDING ATTORNEYS'  
7 FEES AND REIMBURSEMENT OF  
8 LITIGATION EXPENSES

8 This matter came on for hearing on June 12, 2018 (the "Settlement Hearing")  
9 on Lead Counsel's motion for an award of attorneys' fees and reimbursement of  
10 Litigation Expenses. The Court having considered all matters submitted to it at the  
11 Settlement Hearing and otherwise; and it appearing that notice of the Settlement  
12 Hearing substantially in the form approved by the Court was mailed to all Class  
13 Members who or which could be identified with reasonable efforts, and that a  
14 summary notice of the hearing substantially in the form approved by the Court was  
15 published in *The Wall Street Journal*, *The New York Times*, and *The Financial Times*  
16 and released via *PR Newswire* pursuant to the specifications of the Court; and the  
17 Court having considered and determined the fairness and reasonableness of the  
18 award of attorneys' fees and reimbursement of Litigation Expenses,

1 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

2 1. This Order incorporates by reference the definitions in the Stipulation  
3 and Agreement of Settlement dated January 26, 2018 (ECF No. 606) (the  
4 “Stipulation”) and all capitalized terms not otherwise defined herein shall have the  
5 same meanings as set forth in the Stipulation.

6 2. The Court has jurisdiction to enter this Order and over the subject  
7 matter of the Action and all parties to the Action, including all Class Members.

8 3. Notice of Lead Counsel’s motion for an award of attorneys’ fees and  
9 reimbursement of Litigation Expenses was given to all Class Members who could  
10 be identified with reasonable effort. The form and method of notifying the Class of  
11 the motion for an award of attorneys’ fees and reimbursement of Litigation Expenses  
12 satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the  
13 United States Constitution (including the Due Process Clause), the Private Securities  
14 Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other  
15 applicable law and rules, constituted the best notice practicable under the  
16 circumstances, and constituted due and sufficient notice to all persons and entities  
17 entitled thereto.

18 4. Lead Counsel are hereby awarded attorneys’ fees in the amount of 21%  
19 of the Settlement Fund, which is equivalent to \$52,500,000 (before interest), and  
20 \$6,205,108.12 in reimbursement of Plaintiffs’ Counsel’s litigation expenses (which  
21



1 fees and expenses shall be paid from the Settlement Fund), which sums the Court  
2 finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees  
3 awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe  
4 reflects the contributions of such counsel to the institution, prosecution and  
5 settlement of the Action.

6 5. In addition, the law firm of Cotchett, Pitre & McCarthy, LLP is hereby  
7 awarded attorneys' fees in the amount of \$84,500 and \$3,357.66 in reimbursement  
8 of litigation expenses (which fees and expenses shall be paid from the Settlement  
9 Fund) and the law firm of Bottini & Bottini, Inc. is hereby awarded attorneys' fees  
10 in the amount of \$161,800 and \$6,306.90 in reimbursement of litigation expenses  
11 (which fees and expenses shall be paid from the Settlement Fund), which sums the  
12 Court finds to be fair and reasonable.

13 6. In making this award of attorneys' fees and reimbursement of Litigation  
14 Expenses to be paid from the Settlement Fund, the Court has considered and found  
15 that:

16 (a) The Settlement has created a fund of \$250,000,000 in cash that  
17 has been funded into escrow pursuant to the terms of the Stipulation, and that  
18 numerous Class Members who submit acceptable Claim Forms will benefit  
19 from the Settlement that occurred because of the efforts of Lead Counsel;

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1 (b) The fee sought by Lead Counsel has been reviewed and approved  
2 as reasonable by Class Representatives, including the two institutional  
3 investor Lead Plaintiffs, that oversaw the prosecution and resolution of the  
4 Action;

5 (c) Copies of the Settlement Notice were mailed to over 61,700  
6 potential Class Members and nominees stating that Lead Counsel would apply  
7 for attorneys' fees in an amount not to exceed 25% of the Settlement Fund  
8 and reimbursement of Litigation Expenses in an amount not to exceed \$8.5  
9 million;

10 (d) There were no objections to the requested attorneys' fees and  
11 expenses;

12 (e) Lead Counsel have conducted the litigation and achieved the  
13 Settlement with skill, perseverance and diligent advocacy;

14 (f) The Action raised a number of complex and novel issues;

15 (g) Had Lead Counsel not achieved the Settlement there would  
16 remain a significant risk that Class Representatives and the other members of  
17 the Class may have recovered less or nothing from Defendants;

18 (h) Plaintiffs' Counsel devoted over 136,000 hours, with a lodestar  
19 value of over \$65.2 million, to achieve the Settlement; and  
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1 (i) The amount of attorneys’ fees awarded and expenses to be  
2 reimbursed from the Settlement Fund are fair and reasonable and consistent  
3 with awards in similar cases.

4 7. The Court-approved Administrator, Garden City Group, LLC, shall not  
5 be reimbursed for total fees and expenses in excess of \$580,000.00 in connection  
6 with this Action without further order of the Court.

7 8. Class Representative State Teachers Retirement System of Ohio is  
8 hereby awarded \$74,839.78 from the Settlement Fund as reimbursement for its  
9 reasonable costs and expenses directly related to its representation of the Class.

10 9. Class Representative Iowa Public Employees Retirement System is  
11 hereby awarded \$17,887.20 from the Settlement Fund as reimbursement for its  
12 reasonable costs and expenses directly related to its representation of the Class.

13 10. Class Representative Patrick T. Johnson is hereby awarded \$35,400  
14 from the Settlement Fund as reimbursement for his reasonable costs and expenses  
15 directly related to his representation of the Class.

16 11. Any appeal or any challenge affecting this Court’s approval regarding  
17 any attorneys’ fees and expense application shall in no way disturb or affect the  
18 finality of the Judgment.

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1 12. Exclusive jurisdiction is hereby retained over the parties and the Class  
2 Members for all matters relating to this Action, including the administration,  
3 interpretation, effectuation or enforcement of the Stipulation and this Order.

4 13. In the event that the Settlement is terminated or the Effective Date of  
5 the Settlement otherwise fails to occur, this Order shall be rendered null and void to  
6 the extent provided by the Stipulation.

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

9 SO ORDERED this 14<sup>th</sup> day of August, 2018.

10  
11 *David O. Carter*

12 \_\_\_\_\_  
The Honorable David O. Carter  
United States District Judge

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# **Exhibit 10E**

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jkehoe@sbtclaw.com

Additional Counsel for Erie

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

18 \_\_\_\_\_ )  
19 )  
20 **In re: BROCADE SECURITIES** )  
21 **LITIGATION** )  
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Consolidated Case No.: 3:05-CV-02042-CRB

**FINAL ORDER AND JUDGMENT**

1 WHEREAS, a consolidated class action is pending in this Court captioned: *In re: Brocade*  
2 *Securities Litigation*, Consolidated Case No. 3:05-CV-02042-CRB (the “Action”);

3 WHEREAS, the Court previously certified the Class (as defined herein) in this Action by  
4 Order dated October 12, 2007, over the opposition of defendants Brocade Communications Systems,  
5 Inc. (“Brocade” or the “Company”) and Gregory Reyes, Antonio Canova, Larry Sonsini, Seth  
6 Neiman, and Neal Dempsey (collectively, “Individual Defendants”);

7 WHEREAS, on November 18, 2008, the Court preliminarily certified the same Class for  
8 purposes of effectuating the settlement among Lead Plaintiff and Class Representative, Arkansas  
9 Public Employees Retirement System (“APERs”), and Class Representative, Erie County Public  
10 Employees Retirement System (“ERIE”) (together, “Class Representatives”), and KPMG LLP  
11 (“KPMG” and, collectively with Brocade and the Individual Defendants, “Defendants”);

12 WHEREAS, pursuant to Federal Rule of Civil Procedure 23(e), this matter came before the  
13 Court for hearing pursuant to the Preliminary Approval of Settlement Agreement Order dated  
14 November 18, 2008 (the “Notice Order”), on the application of the parties for approval of a  
15 proposed settlement of the Action (the “Settlement”) set forth in the following stipulations: (i) a  
16 Modified Stipulation and Agreement of Settlement dated January 14, 2009 entered into among Class  
17 Representatives, on behalf of themselves and the Class, Brocade and the Individual Defendants (the  
18 “Brocade Stipulation”), and (ii) a Stipulation and Agreement of Settlement dated October 23, 2008  
19 entered into among Class Representatives, on behalf of themselves and the Class, and KPMG (the  
20 “KPMG Stipulation,” and together with the Brocade Stipulation, the “Stipulations”);

21 WHEREAS, due and adequate notice has been given to the Class as required in the Notice  
22 Order; and

23 WHEREAS, the Court has considered all papers filed and proceedings had herein and  
24 otherwise is fully informed in the premises and good cause appearing therefor;

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:  
26





1 KPMG. Specifically, this Court finds that: (a) the Class is so numerous that joinder of all members  
2 is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the  
3 Class Representatives are typical of the claims of the Class; (d) Class Representatives and their  
4 counsel have fairly and adequately protected the interests of the Class; (e) the questions of law and  
5 fact common to members of the Class predominate over any questions affecting only individual  
6 members of the Class; and (f) a class action is superior to other available methods for the fair and  
7 efficient adjudication of the controversy considering: (i) the interests of the Class Members in  
8 individually controlling the prosecution of the separate actions, (ii) the extent and nature of any  
9 litigation concerning the controversy already commenced by members of the Class, (iii) the  
10 desirability or undesirability of continuing the litigation of the claims asserted in this Action, and  
11 (iv) the difficulties likely to be encountered in the management of this Action as a class action.

12 5. Accordingly, the Action is hereby certified as a class action pursuant to Fed. R. Civ.  
13 P. 23(a) and 23(b)(3) for purposes of effectuating the Settlement with KPMG on behalf of the same  
14 Class previously certified in this Action, which consists of: all persons and entities who purchased  
15 or otherwise acquired Brocade common stock between May 18, 2000 and May 15, 2005, inclusive,  
16 and who were damaged thereby (the “Class”). Excluded from the Class are: (a) Defendants; (b) all  
17 officers, directors, and partners of any Defendant and of any Defendant’s partnerships, subsidiaries,  
18 or affiliates at all relevant times; (c) members of the immediate family of any of the foregoing  
19 excluded parties; (d) the legal representatives, heirs, successors, and assigns of any of the foregoing  
20 excluded parties; and (e) any entity in which any of the foregoing excluded parties has or had a  
21 controlling interest at all relevant times. Also excluded from the Class are any putative members  
22 of the Class who excluded themselves by timely requesting exclusion in accordance with the  
23 requirements set forth in the Notice, as listed on Exhibit 1 annexed hereto.

24 6. The Settlement, and all transactions preparatory or incident thereto, is found to be  
25 fair, reasonable, adequate, and in the best interests of the Class, and is hereby approved. The  
26 Parties are hereby authorized and directed to comply with and to consummate the Settlement in

1 accordance with the Stipulations, and the Clerk of this Court is directed to enter and docket this  
2 Judgment in the Action.

3 7. The Action and all claims included therein, as well as all of the Settled Claims  
4 (defined in the Stipulations and in Paragraph 8(c) below) are dismissed with prejudice as to Class  
5 Representatives and all other members of the Class, and as against each and all of the Released  
6 Parties (defined in the Stipulations and in Paragraph 8(a) below). The Parties are to bear their own  
7 costs, except as otherwise provided in the Stipulations.

8 8. As used in this Judgment, the terms “Released Parties,” “Related Parties,” “Settled  
9 Claims,” “Settled Defendants’ Claims,” and “Unknown Claims” shall have the meanings set forth  
10 below:

11 (a) “Released Parties” means Defendants and, as applicable, each of their Related Parties  
12 as defined below.

13 (b) “Related Parties” means each of Defendants’ past or present directors, officers,  
14 employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling shareholders,  
15 attorneys, advisors, accountants, auditors, personal or legal representatives, predecessors, successors,  
16 parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities,  
17 any entity in which a Defendant has a controlling interest, any member of any Individual  
18 Defendant’s immediate family, or any trust of which any Individual Defendant is the settlor or which  
19 is for the benefit of any member of an Individual Defendant’s immediate family.

20 (c) “Settled Claims” means and includes any and all claims, debts, demands,  
21 controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature  
22 whatsoever (including, but not limited to, any claims for damages (whether compensatory, special,  
23 incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief,  
24 rescission or rescissionary damages, interest, attorneys’ fees, expert or consulting fees, costs,  
25 expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state,  
26 local, statutory or common law or any other law, rule or regulation, whether fixed or contingent,

1 accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured,  
2 whether class or individual in nature, including both known claims and Unknown Claims (defined  
3 herein) that: (i) have been asserted in this Action by Class Representatives on behalf of the Class  
4 and its Class Members against any of the Released Parties, or (ii) have been or could have been  
5 asserted in any forum by Class Representatives, Class Members or any of them against any of the  
6 Released Parties, which arise out of, relate to or are based upon the allegations, transactions, facts,  
7 matters, occurrences, representations or omissions involved, set forth, or referred to in the Complaint  
8 and/or the Amended Complaint. Settled Claims shall also include any claims, debts, demands,  
9 controversies, obligations, losses, rights or causes of action that Class Representatives, Class  
10 Members or any of them may have against the Released Parties or any of them which involve or  
11 relate in any way to the defense of the Action or the Settlement of the Action. Notwithstanding the  
12 foregoing, Settled Claims shall not include: (i) any claims to enforce the Settlement, including,  
13 without limitation, any of the terms of the Stipulations, the Notice Order, this Judgment or any other  
14 orders issued by the Court in connection with the Settlement; (ii) any claims asserted by Persons  
15 who exclude themselves from the Class by timely requesting exclusion in accordance with the  
16 requirements set forth in the Notice; (iii) any claims, rights or causes of action that have been or  
17 could have been asserted in the Derivative Actions and/or the Company Action (as defined in the  
18 Brocade Stipulation); or (iv) any and all claims that have been asserted under the Securities Act of  
19 1933 and the Securities Exchange Act of 1934, or any other laws, for the allegedly wrongful conduct  
20 complained of in *In re Brocade Communications Systems, Inc. Initial Public Offering Securities*  
21 *Litigation*, 01 CV 6613 (SAS)(BSJ), as coordinated for pretrial purposes in *In re Initial Public*  
22 *Offering Securities Litigation*, Master File No. 21 MC 92 (SAS), pending in the United States  
23 District Court for the Southern District of New York.

24 (d) “Settled Defendants’ Claims” means and includes any and all claims, debts, demands,  
25 controversies, obligations, losses, costs, rights or causes of action or liabilities of any kind or nature  
26 whatsoever (including, but not limited to, any claims for damages (whether compensatory, special,  
27

1 incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief,  
2 rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs,  
3 expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state,  
4 local, statutory or common law or any other law, rule or regulation, whether fixed or contingent,  
5 accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured,  
6 including both known claims and Unknown Claims, that have been or could have been asserted in  
7 the Action or any forum by the Released Parties against any of the Class Representatives, Plaintiffs'  
8 Counsel, Class Members or their attorneys, which arise out of or relate in any way to the institution,  
9 prosecution, or settlement of the Action. Notwithstanding the foregoing, Settled Defendants' Claims  
10 shall not include any claims to enforce the Settlement, including, without limitation, any of the terms  
11 of the Stipulations, the Notice Order, this Judgment or any other orders issued by the Court in  
12 connection with the Settlement .

13 (e) "Unknown Claims" means any and all claims that any Class Representative or Class  
14 Member does not know or suspect to exist and any and all claims that any Defendant does not know  
15 or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if  
16 known by him, her or it, might have affected his, her or its settlement with and release of, as  
17 applicable, the Released Parties, Class Representatives, and Class Members, or might have affected  
18 his, her or its decision to object or not to object to this Settlement. The Class Representatives, Class  
19 Members, Defendants and each of them have acknowledged and agreed that he, she or it may  
20 hereafter discover facts in addition to or different from those which he, she or it now knows or  
21 believes to be true with respect to the subject matter of the Settled Claims and/or the Settled  
22 Defendants' Claims. Nevertheless, with respect to any and all Settled Claims and Settled  
23 Defendants' Claims, the Parties to the Stipulations have stipulated and agreed that, upon the  
24 Effective Date, they shall expressly waive and each of the Class Members shall be deemed to have,  
25 and by operation of the Judgment shall have, waived all provisions, rights and benefits of California  
26 Civil Code § 1542 and all provisions rights and benefits conferred by any law of any state or

1 territory of the United States, or principle of common law, which is similar, comparable or  
2 equivalent to California Civil Code § 1542. California Civil Code § 1542 provides:

3 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
4 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
5 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
6 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**  
7 **OR HER SETTLEMENT WITH THE DEBTOR.**

8 The Parties to the Stipulations have expressly acknowledged and agreed, and the Class Members  
9 shall be deemed to have, and by operation of the Judgment shall have acknowledged and agreed, that  
10 the waiver and release of Unknown Claims constituting Settled Claims and/or Settled Defendants’  
11 Claims was separately bargained for and a material element of the Settlement.

12 9. (a) In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for  
13 contribution arising out of any Settled Claim (i) by any person against Brocade or the Individual  
14 Defendants, and (ii) by Brocade or the Individual Defendants against any person, other than claims  
15 for contribution that Brocade and/or the Special Litigation Committee (as defined in the Brocade  
16 Stipulation) have asserted or may assert against the Individual Defendants, the Related Parties or  
17 any of them, are hereby permanently barred and discharged. In accordance with 15 U.S.C. § 78u-  
18 4(f)(7)(A), any and all claims for contribution arising out of any Settled Claim (i) by any person  
19 against KPMG, and (ii) by KPMG against any person, other than a person whose liability has been  
20 extinguished by the KPMG Settlement, are hereby permanently barred and discharged. This  
21 paragraph 9(a) shall be referred to herein as the “Bar Order.”

22 (b) Notwithstanding the Bar Order or any other provision or paragraph in this  
23 Judgment or 15 U.S.C. § 78u-4(f)(7)(A) to the contrary, the Individual Defendants have  
24 acknowledged and agreed, and the Court finds, that the Individual Defendants are “person[s]  
25 whose liability has been extinguished” by the Brocade Stipulation within the meaning of 15 U.S.C.  
26 § 78u-4(f)(7)(A)(ii). Further, the Court finds that the Individual Defendants have knowingly and  
27 expressly waived the right to assert the Bar Order or 15 U.S.C. § 78u-4(f)(7)(A) as a defense to  
28 any claims for contribution that Brocade and/or the Special Litigation Committee have asserted

1 or may assert against them in connection with the defense and Settlement of the Action or any  
2 related litigation arising from the transactions and occurrences that form the basis of the Action;  
3 provided, however, that the Individual Defendants and their Related Parties, and each of them,  
4 shall retain the right to defend against any such claims for contribution on other grounds,  
5 including, without limitation: (i) that he or she is not at fault for the conduct giving rise to the  
6 Settlement; (ii) that his or her proportional fault is less than asserted by Brocade and/or the Special  
7 Litigation Committee; (iii) that Brocade is legally and/or contractually obligated to indemnify him  
8 or her for some or all of the Settlement Amount and/or that he or she is not required to reimburse  
9 or repay Brocade for that indemnified amount; and (iv) that the Settlement Amount is greater than  
10 warranted under all of the circumstances. Further, Brocade and the Special Litigation Committee  
11 have agreed that they will not argue or otherwise assert in any forum or proceeding that (i) by  
12 entering into the Brocade Stipulation the Individual Defendants acquiesced in the Settlement  
13 Amount or waived in any way their arguments challenging the Settlement Amount as excessive,  
14 and (ii) the Bar Order in any way affects or impairs the existing rights of the Individual Defendants  
15 to obtain indemnification and advancement of fees incurred in connection with Settled Claims or  
16 any other claim asserted against them. The Individual Defendants have agreed that they will not  
17 argue or otherwise assert in any forum or proceeding that, by entering into the Brocade  
18 Stipulation, Brocade or the Special Litigation Committee in any way compromised or otherwise  
19 affected its/their right to seek to limit or extinguish any purported obligation to indemnify or  
20 advance fees to the Individual Defendants and their Related Parties or to seek to recover any of  
21 the fees or expenses that Brocade has advanced or may advance on behalf of or for the benefit of  
22 the Individual Defendants and/or their Related Parties.

23 10. Upon the Effective Date, Class Representatives and all Class Members on behalf  
24 of themselves, their personal representatives, heirs, executors, administrators, trustees, successors  
25 and assigns: (a) shall have fully, finally and forever released, relinquished and discharged each and  
26 every one of the Settled Claims against the Released Parties, whether or not any such Class Member

1 or Class Representative executes or delivers a Proof of Claim and Release form (“Proof of Claim”);  
2 and (b) shall be deemed to have covenanted not to sue on, and shall forever be barred from suing  
3 on, instituting, prosecuting, continuing, maintaining or asserting in any forum, either directly or  
4 indirectly, on their own behalf or on behalf of any class or other person, any Settled Claim against  
5 any of the Released Parties.

6 11. Upon the Effective Date, each of the Defendants, on behalf of themselves and their  
7 Related Parties: (a) shall have fully, finally and forever released, relinquished and discharged each  
8 and every one of the Settled Defendants’ Claims; and (b) shall be deemed to have covenanted not  
9 to sue on, and shall forever be barred from suing on, instituting, prosecuting, continuing, maintaining  
10 or asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any class  
11 or other person, any Settled Defendants’ Claim against Class Representatives, Class Members and  
12 their respective counsel, or any of them.

13 12. Notwithstanding ¶¶ 9-11 herein, nothing in this Judgment shall bar any action or  
14 claim by any of the Parties or the Released Parties to enforce or effectuate the terms of the  
15 Stipulations or this Judgment.

16 13. This Judgment and the Stipulations, including any provisions contained in the  
17 Stipulations, any negotiations, statements, or proceedings in connection therewith, or any action  
18 undertaken pursuant thereto:

19 (a) shall not be offered or received against any Released Party as evidence of or  
20 construed as or deemed to be evidence of any presumption, concession, or admission by the  
21 Released Parties with respect to the truth of any fact alleged by any of the plaintiffs or the validity  
22 of any claim that has been or could have been asserted in the Action or in any litigation, or the  
23 deficiency of any defense that has been or could have been asserted in the Action or in any litigation,  
24 or of any liability, negligence, fault, or wrongdoing of any Released Party;

25 (b) shall not be offered or received against any Released Party as evidence of a  
26 presumption, concession or admission of any fault, misrepresentation or omission with respect to  
27

1 any statement or written document approved or made by any Released Party;

2 (c) shall not be offered or received against any Released Party as evidence of a  
3 presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing  
4 in any civil, criminal or administrative action or proceeding, other than such proceedings as may be  
5 necessary to effectuate the provisions of the Stipulations; provided, however, that the Released  
6 Parties may offer or refer to the Stipulations to effectuate the terms of the Stipulations, including the  
7 releases and other liability protection granted them hereunder, and may file the Stipulations and/or  
8 this Judgment in any action that may be brought against them (other than one that has been or may  
9 be brought by Brocade and/or the Special Litigation Committee) in order to support a defense or  
10 counterclaim based on principles of res judicata, collateral estoppel, full faith and credit, release,  
11 good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue  
12 preclusion or similar defense or counterclaim;

13 (d) shall not be construed against any Released Party as an admission or concession that  
14 the consideration to be given hereunder represents the amount that could be or would have been  
15 recovered after trial; and

16 (e) shall not be construed as or received in evidence as an admission, concession or  
17 presumption against the Class Representatives or any of the Class Members that any of their claims  
18 are without merit, or that any defenses asserted by Defendants have any merit, or that damages  
19 recoverable under the Action would not have exceeded the Settlement Amount.

20 14. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel  
21 and the Claims Administrator are directed to administer the Settlement in accordance with the terms  
22 and provisions of the Stipulations.

23 15. The Court finds that all Parties and their counsel have complied with each  
24 requirement of the PSLRA and Rules 11 and 37 of the Federal Rules of Civil Procedure as to all  
25 proceedings herein and that Class Representatives and Plaintiffs' Counsel at all times acted in the  
26 best interests of the Class and had a good faith basis to bring, maintain and prosecute this Action as



1 to each Defendant in accordance with the PSLRA and Federal Rule of Civil Procedure 11.

2 16. Only those Class Members who submit valid and timely Proofs of Claim shall be  
3 entitled to receive a distribution from the Net Settlement Fund. The Proof of Claim to be executed  
4 by the Class Members shall further release all Settled Claims against the Released Parties. All Class  
5 Members shall be bound by all of the terms of the Stipulations and this Judgment, including the  
6 releases set forth herein, whether or not they submit a valid and timely Proof of Claim, and shall be  
7 barred from bringing any action against any of the Released Parties concerning the Settled Claims.

8 17. No Class Member shall have any claim against Plaintiffs' Counsel, the Claims  
9 Administrator, or other agent designated by Plaintiffs' Counsel based on the distributions made  
10 substantially in accordance with the Settlement and Plan of Allocation as approved by the Court and  
11 further orders of the Court.

12 18. No Class Member shall have any claim against the Defendants, Defendants' counsel,  
13 or any of the Released Parties with respect to: (a) any act, omission or determination of Plaintiffs'  
14 Counsel, the Escrow Agent or the Claims Administrator, or any of their respective designees or  
15 agents, in connection with the administration of the Settlement or otherwise; (b) the management,  
16 investment or distribution of the Gross Settlement Fund and/or the Net Settlement Fund; (c) the Plan  
17 of Allocation; (d) the determination, administration, calculation or payment of claims asserted  
18 against the Gross Settlement Fund and/or the Net Settlement Fund; (e) the administration of the  
19 Escrow Account; (f) any losses suffered by, or fluctuations in the value of, the Gross Settlement  
20 Fund and/or the Net Settlement Fund; or (g) the payment or withholding of any Taxes, expenses  
21 and/or costs incurred in connection with the taxation of the Gross Settlement Fund and/or the Net  
22 Settlement Fund or the filing of any tax returns.

23 19. Any order approving or modifying the Plan of Allocation set forth in the Notice, or  
24 the application by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses  
25 or any request of Class Representatives for reimbursement of reasonable costs and expenses shall  
26 not disturb or affect the Finality of this Judgment, the Stipulations or the Settlement contained



1 (e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a  
2 significant risk that the Class Representatives and the Class may have recovered less or nothing from  
3 the Defendants;

4 (f) Plaintiffs' Counsel have advanced in excess of the requested \$986,039 in  
5 costs and expenses to fund the litigation of this Action; and

6 (g) The amount of attorneys' fees awarded and expenses reimbursed from the  
7 Gross Settlement Fund are fair and reasonable under all of the circumstances and consistent with  
8 awards in similar cases.

9 22. No Class Member filed an objection to the terms of the settlement or the fee  
10 application. Two objections were filed by former defendants who are not Class Members. Those  
11 objections have been withdrawn and are no longer before the Court. All other objections, if any, are  
12 hereby denied.

13 23. Without affecting the Finality of this Judgment in any way, the Court reserves  
14 exclusive and continuing jurisdiction over the Action, the Class Representatives, the Class, and the  
15 Released Parties for purposes of: (a) supervising the implementation, enforcement, construction, and  
16 interpretation of the Stipulations, the Plan of Allocation, and this Judgment; (b) hearing and  
17 determining any application by Plaintiffs' Counsel for an award of attorneys' fees, costs, and  
18 expenses and/or reimbursement to the Class Representatives, if such determinations were not made  
19 at the Fairness Hearing; and (c) supervising the distribution of the Gross Settlement Fund and/or the  
20 Net Settlement Fund.

21 24. In the event that the Settlement is terminated or does not become Final in  
22 accordance with the terms of the Stipulations for any reason whatsoever, or in the event that the  
23 Gross Settlement Fund, or any portion thereof, is returned to Brocade or KPMG, then this Judgment  
24 shall be rendered null and void and shall be vacated to the extent provided by and in accordance with  
25 the Stipulations and, in such event, all orders entered and releases delivered in connection herewith  
26 shall be null and void to the extent provided by and in accordance with the Stipulations.



# **Exhibit 10F**

24 January 2023



# Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review

Federal Filings Declined for the Fourth Consecutive Year

Average and Median Settlement Values Increased by More than 50%  
Compared to 2021

By Janeen McIntosh, Svetlana Starykh, and Edward Flores

## Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review

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24 January 2023

### Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review with you. This year's edition builds on work carried out over more than three decades by many members of NERA's Securities and Finance Practice. This year's report continues our analyses of trends in filings and settlements and presents new analyses related to current topics such as event-driven litigation. Although space does not permit us to present all the analyses the authors have undertaken while working on this year's edition or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our research or our work related to securities litigations. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

**Dr. David Tabak**, Managing Director

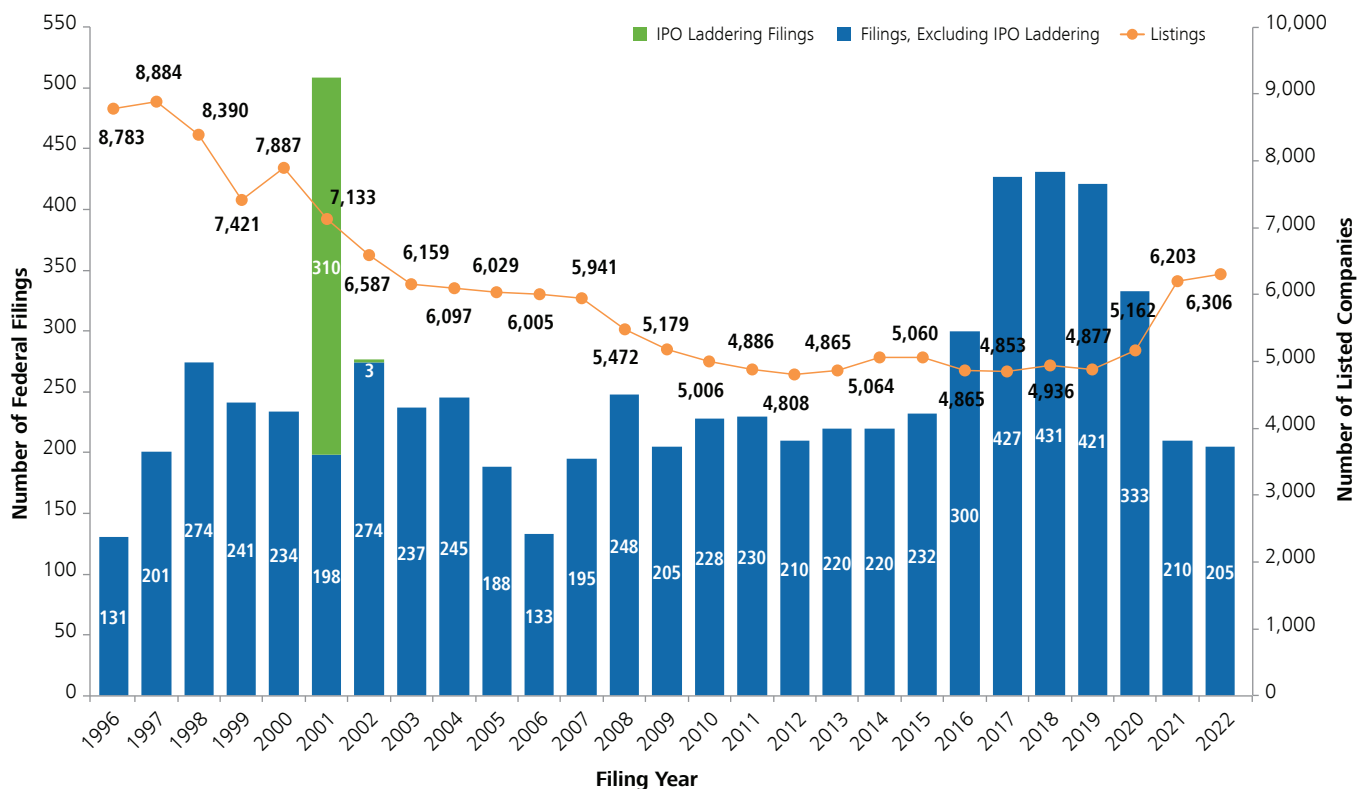
### Introduction

Filings of new securities class actions declined each year from 2019 through 2022. In 2022, there were 205 new federal securities class action suits filed. This significant decline from the 431 cases filed in 2018 was largely due to the lower number of merger-objection and Rule 10b-5 cases filed in 2022. Similarly, there were fewer cases resolved in 2022 than in 2021. The decline in resolutions, since 2021, was driven by the decrease in dismissed non-merger-objection and non-crypto unregistered securities cases, a category that declined by more than 30%.<sup>2</sup> The aggregate settlement amount for cases settled in 2022 was \$4 billion, which is approximately \$2 billion higher than the inflation-adjusted amount for 2021. With more cases settling for higher values in 2022 compared to 2021, the average settlement value increased by over 70% to \$38 million and the median settlement value increased by over 50% to \$13 million.

## Trends in Filings

For the fourth consecutive year, there was a decline in the number of new federal securities class action suits filed (see Figure 1).<sup>3</sup> In 2022, there were 205 new cases filed, a decline from the 210 new cases filed in 2021. This decline is a continuation of the downward trend observed since 2018, when more than 400 cases were recorded. This decline has been driven by the lower levels of merger-objection cases and cases with only Rule 10b-5 claims filed in each year (see Figure 2). Of the cases filed in 2022, suits against defendants in the health technology and services sector and the electronic technology and services sector were the most common, each accounting for 27% of total cases (see Figure 3). Although there was a decline in the aggregate number of cases filed in the Second, Third, and Ninth Circuits to the lowest level within the 2018–2022 period, the majority of new filings continue to be concentrated in these jurisdictions (see Figure 4). Of the cases filed in 2022, 33% included an allegation related to misled future performance, the most common allegation for the year. The proportion of cases with an allegation related to a regulatory issue increased from 19% in 2021 to 26% in 2022 (see Figure 5).<sup>4</sup>

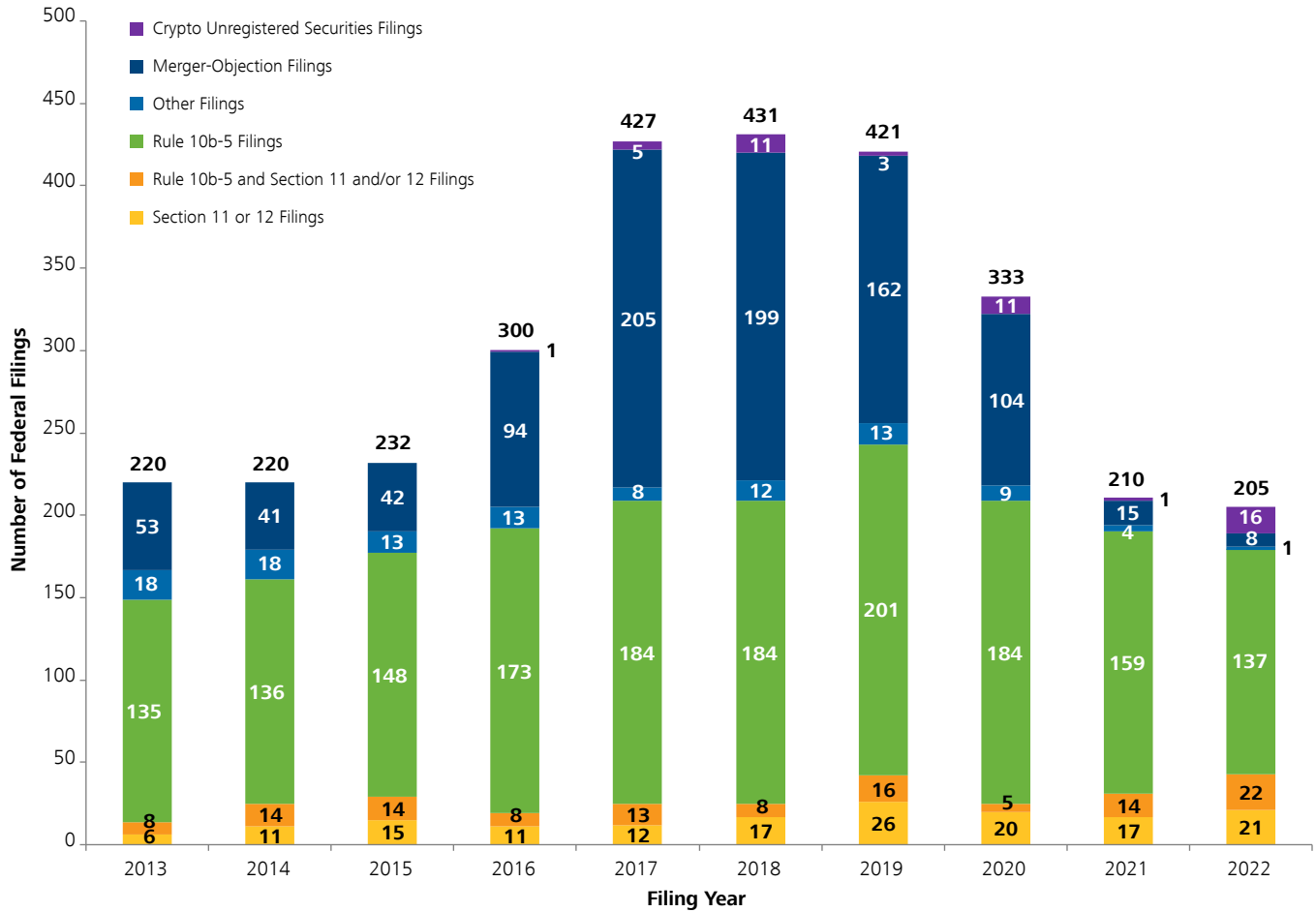
Figure 1. **Federal Filings and Number of Companies Listed in the United States**  
January 1996–December 2022



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2022 listings data is as of November 2022.

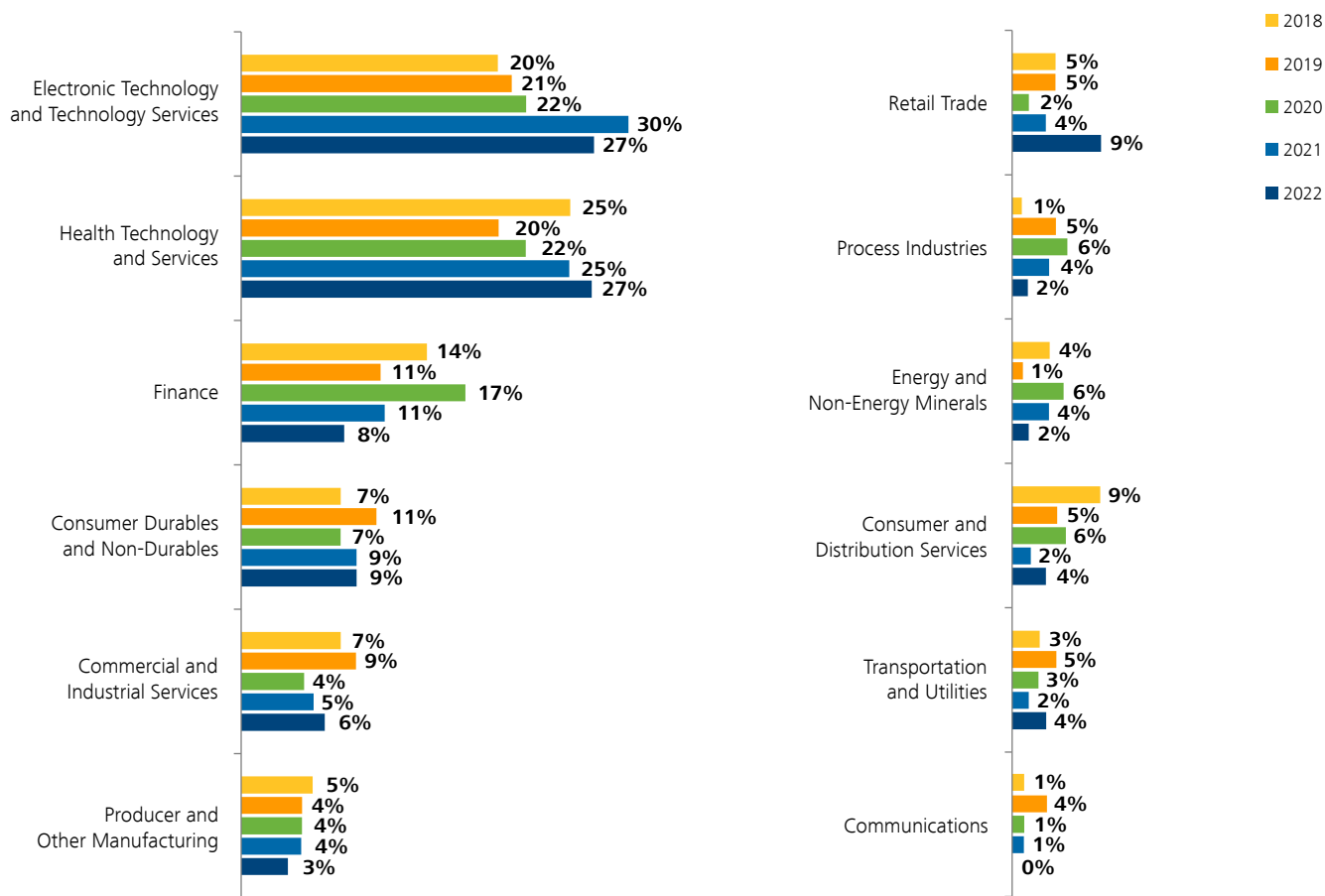


Figure 2. **Federal Filings by Type**  
January 2013–December 2022



*For the fourth consecutive year, there was a decline in the number of new federal securities class action suits filed.*

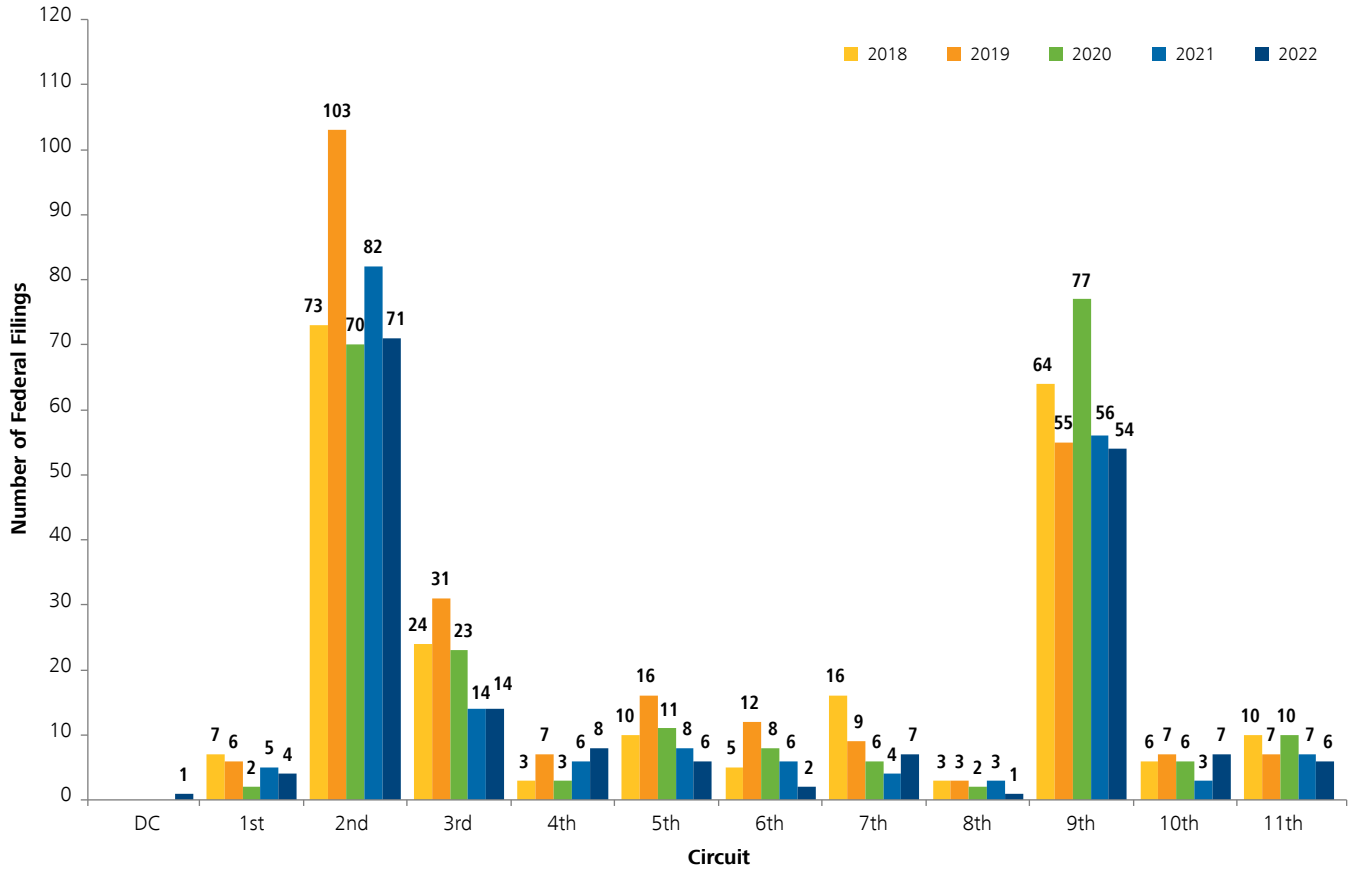
Figure 3. **Percentage of Federal Filings by Sector and Year**  
 Excludes Merger Objections and Crypto Unregistered Securities  
 January 2018–December 2022



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

*Filings against defendants in the health technology and services sector and the electronic technology and services sector were the most common in 2022, each accounting for 27% of total cases.*

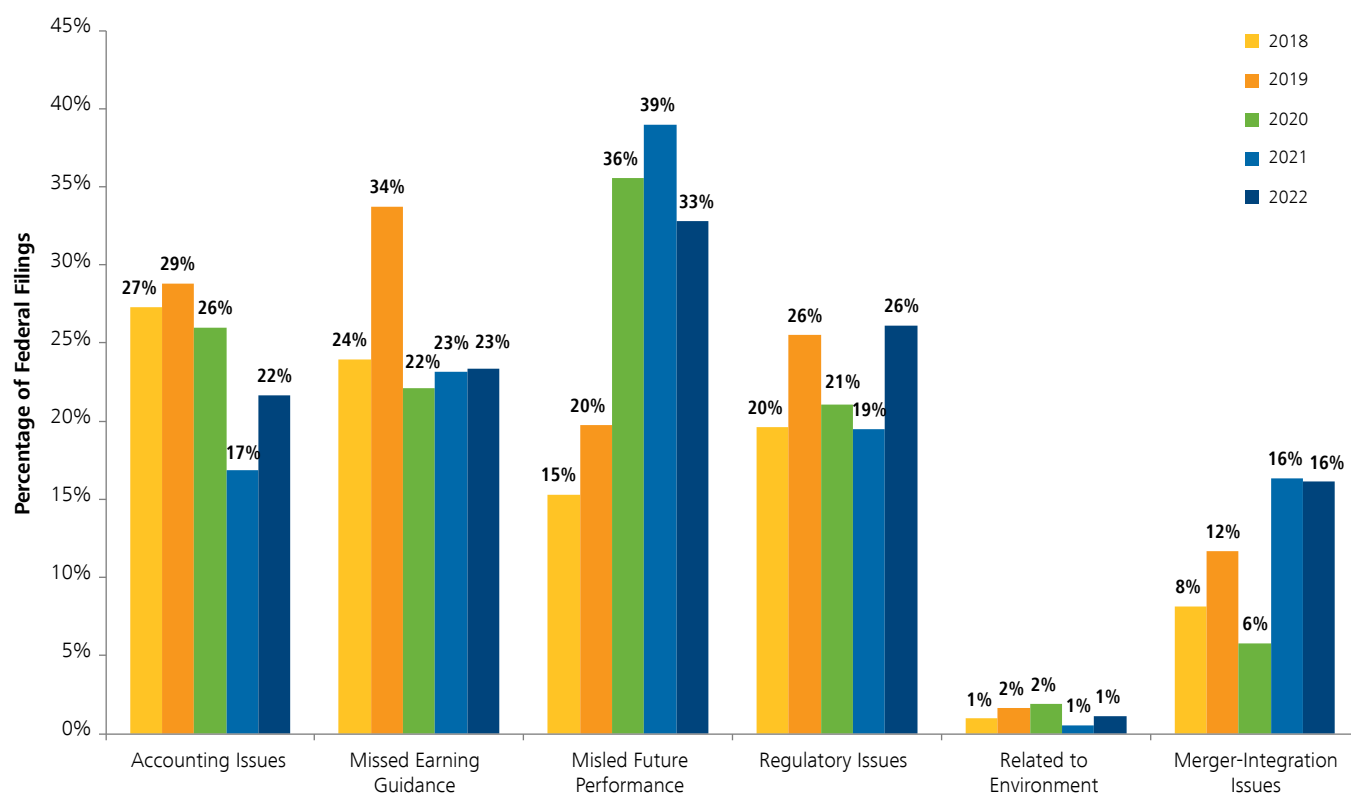
Figure 4. **Federal Filings by Circuit and Year**  
 Excludes Merger Objections and Crypto Unregistered Securities  
 January 2018–December 2022



*Although there was a decline in the aggregate number of cases filed in the Second, Third, and Ninth Circuits to the lowest level within the 2018–2022 period, the majority of new filings continue to be concentrated in these jurisdictions.*

Figure 5. **Allegations**

Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12  
January 2018–December 2022



## Event-Driven and Special Cases

Here we summarize activity and trends in filings over the 2019–2022 period in potential development areas we have identified for securities class actions (see Figures 6 and 7).<sup>5</sup>

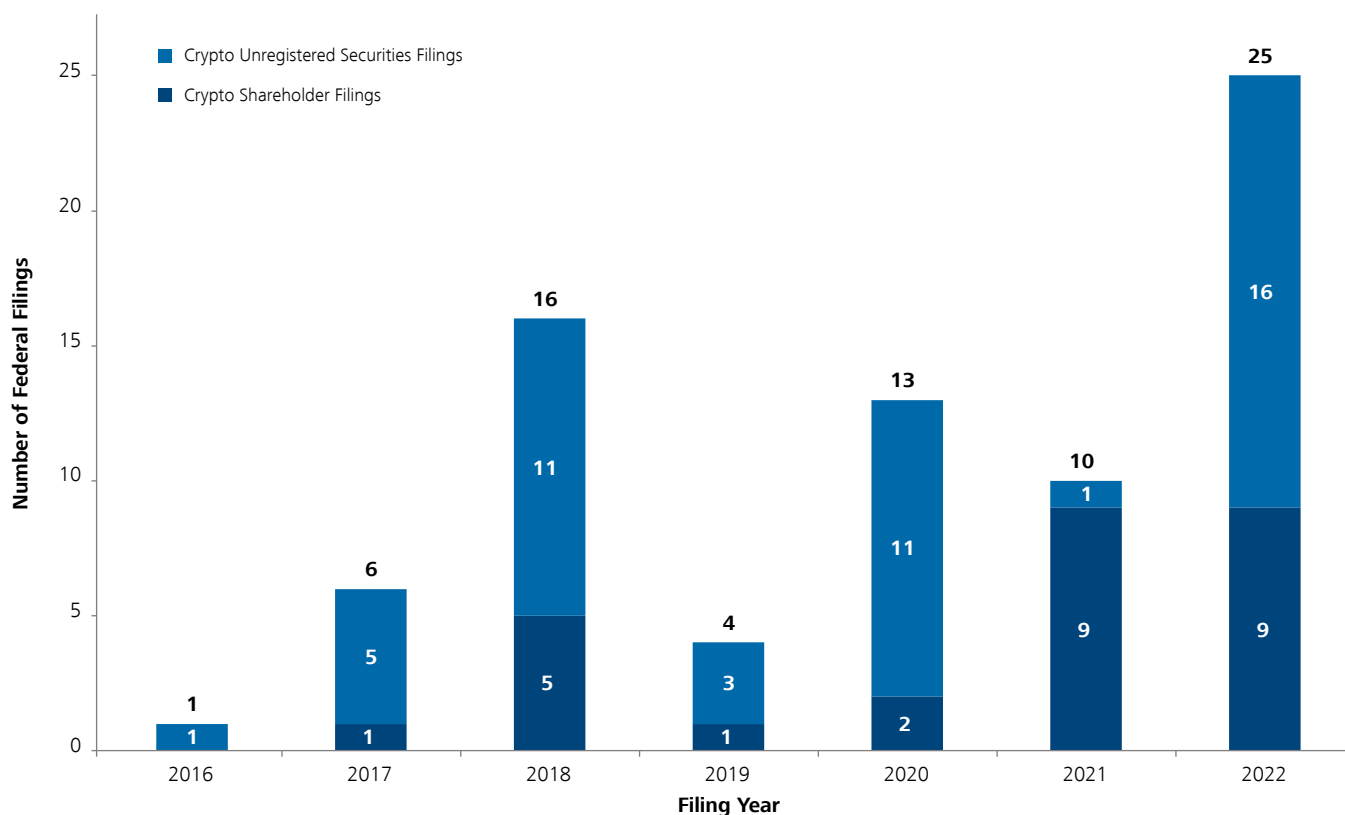
### ESG Cases

Environmental, social, and governance (ESG) disclosures and companies' commitments to meet disclosure guidelines have been a developing area of interest to investors and government agencies such as the Securities and Exchange Commission over the recent decade.<sup>5</sup> Along with that interest have come waves of lawsuits filed by plaintiffs alleging fraud related to ESG disclosures. For example, in a securities class action suit filed against CBS Corporation in 2018, plaintiffs alleged the defendant made false and misleading statements and/or failed to disclose that CBS executives engaged in widespread workplace sexual harassment and that the defendant's purported policies were inadequate to prevent the conduct. This suit was settled in 2022 for \$14,750,000. Similarly, in the ongoing securities suit filed against Activision Blizzard, Inc., in 2021, plaintiffs allege the defendant made false and misleading statements and/or failed to disclose that there was discrimination against women and minority employees and the existence of numerous complaints about unlawful harassment, discrimination, and retaliation made to human resources that were not addressed. As focus and interest in this area continues, this may lead to a higher number of ESG-related cases being filed.

### Crypto Cases

The first securities class action related to cryptocurrency was filed against GAW Miners, LLC, in June 2016. Since 2017, there have been year-to-year fluctuations in the number of new crypto federal filings each year. In 2022, there were 25 crypto federal class actions suits filed. This is more than double the number of similar suits filed in 2021. This uptick was driven by the increase in the number of crypto unregistered securities cases.

Figure 6. **Number of Crypto Federal Filings**  
January 2016–December 2022



### Bribery/Kickbacks

Over the 2019–2020 period, there were 14 cases filed related to allegations of bribery or kickbacks. In 2021, there was a reduction in the number of these cases filed, with only one bribery/kickback-related case filed in that year. In 2022, four such cases were filed.

### Cannabis

In 2019 and 2020, there were seven and six securities class action cases filed against defendants in the cannabis industry, respectively. Since then, there has only been one suit filed against these defendants each year.

### Cybersecurity Breach

Since 2019, there have been at least three securities class action suits filed each year related to a cybersecurity breach. More specifically, between 2019 and 2020, there were a total of six such cases filed, and an additional five suits brought in 2021. In 2022, the number of new federal suits declined slightly to three filings.

### COVID-19

Since the emergence of the COVID-19 pandemic in March 2020, 77 securities class action suits have been filed with claims related to the pandemic. Between March 2020 and December 2020, 33 cases were filed with COVID-19-related claims. In 2021, the number of suits filed declined to 20, but then increased slightly to 24 in 2022.

### Environment

Over the 2019–2022 period, 12 environment-related securities class action suits have been filed. Of these, only three were filed in 2021–2022.

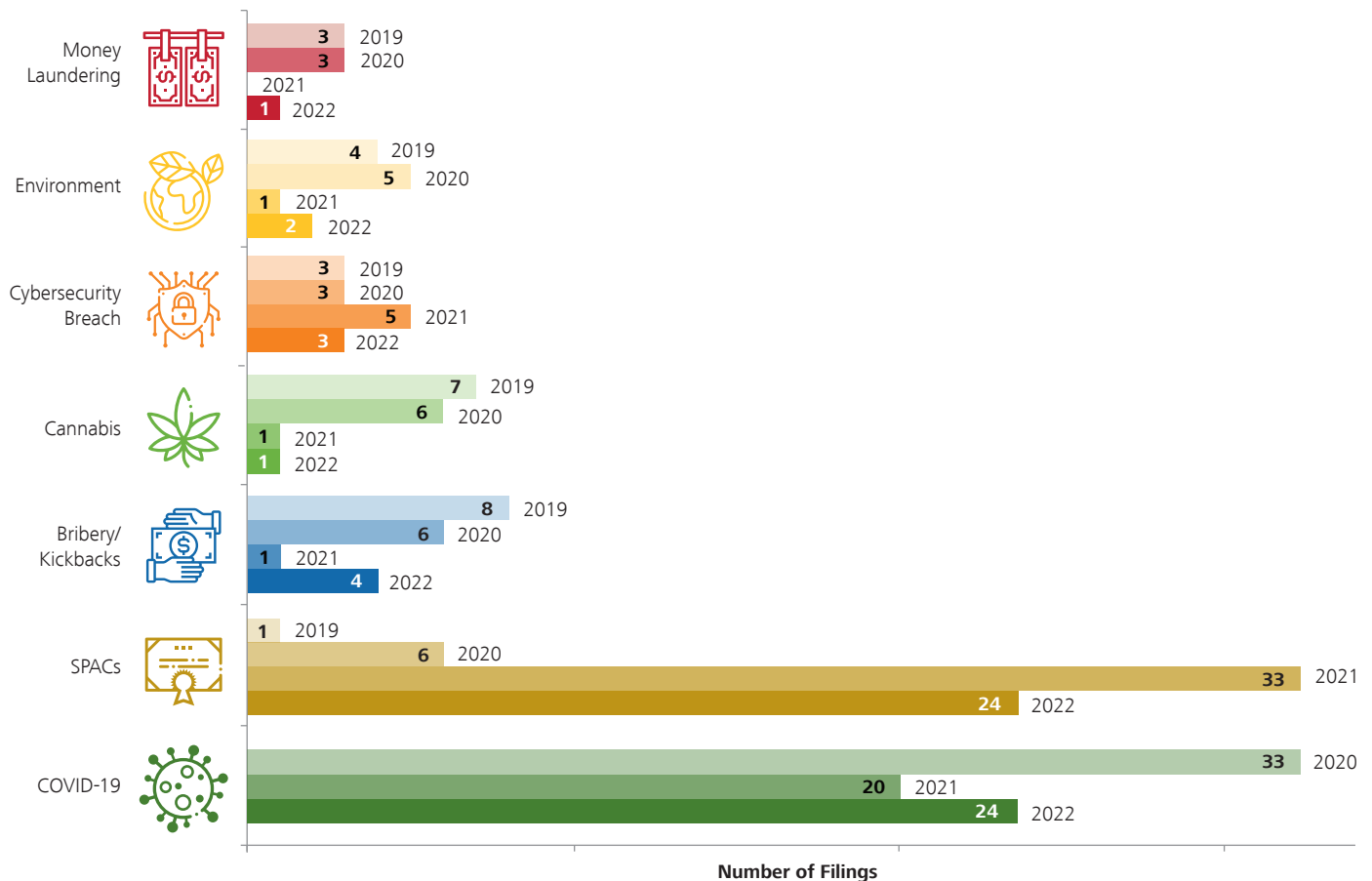
### Money Laundering

In 2019 and 2020, there were three cases filed each year with claims related to money laundering. Between 2021 and 2022, only one such suit has been filed.

### SPAC

In 2019, only one case related to special purpose acquisition companies (SPACs) was filed. Since then, new federal cases related to these claims have increased substantially, with six filings in 2020 and 33 cases filed in 2021. During 2022, there were 24 securities class action suits filed related to SPACs, a 27% decline from 2021.<sup>7</sup>

Figure 7. **Event-Driven and Other Special Cases by Filing Year**  
January 2019–December 2022



## Trends in Resolutions

The number of resolved cases—dismissed and settled cases—declined in 2022 to 214 from 248 in 2021 (see Figure 8).<sup>8</sup> Although 2022 was a record-setting year for the number of settled non-merger-objection, non-crypto unregistered securities cases during the 2013–2022 period, there was a larger decrease in the number of dismissed non-merger-objection, non-crypto unregistered securities cases, which led to a decline in overall resolutions. In addition, in 2022, the number of merger-objection cases resolved declined to 14, a substantial decrease from the 2017–2020 period, when more than 130 such cases were resolved each year. Of the cases filed since 2015, as of 31 December 2022, a larger portion has been dismissed than have settled (see Figure 9). This is consistent with historical trends, which indicate that settlements occur later in the litigation cycle and dismissals tend to occur in the earlier stages. Taking the time between first complaint and resolution to represent the length of time taken to resolve a suit, more than half the cases resolve between one and three years, and 17% of cases resolve more than four years after the first complaint was filed (see Figure 10).

Figure 8. **Number of Resolved Cases: Dismissed or Settled**  
January 2013–December 2022

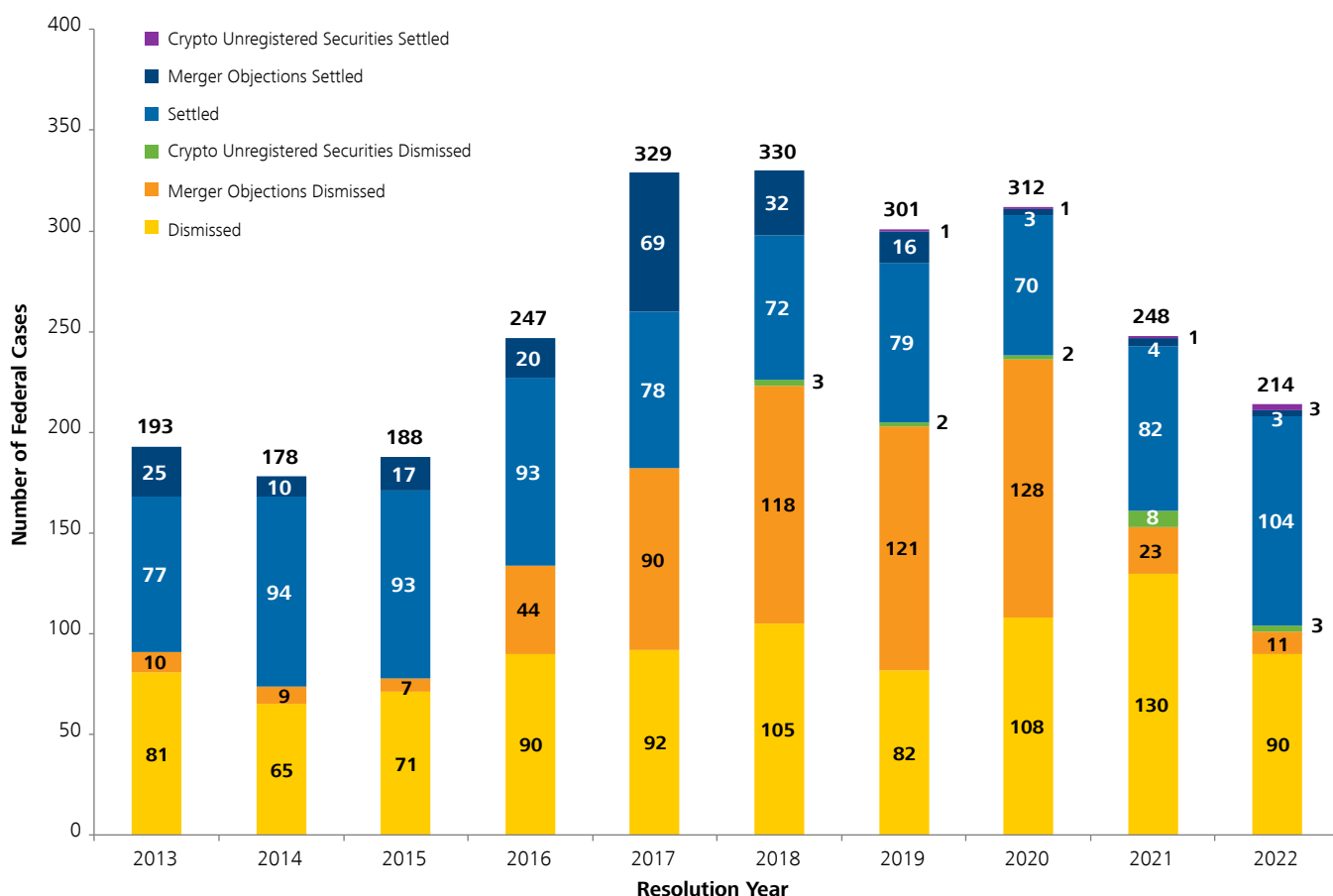
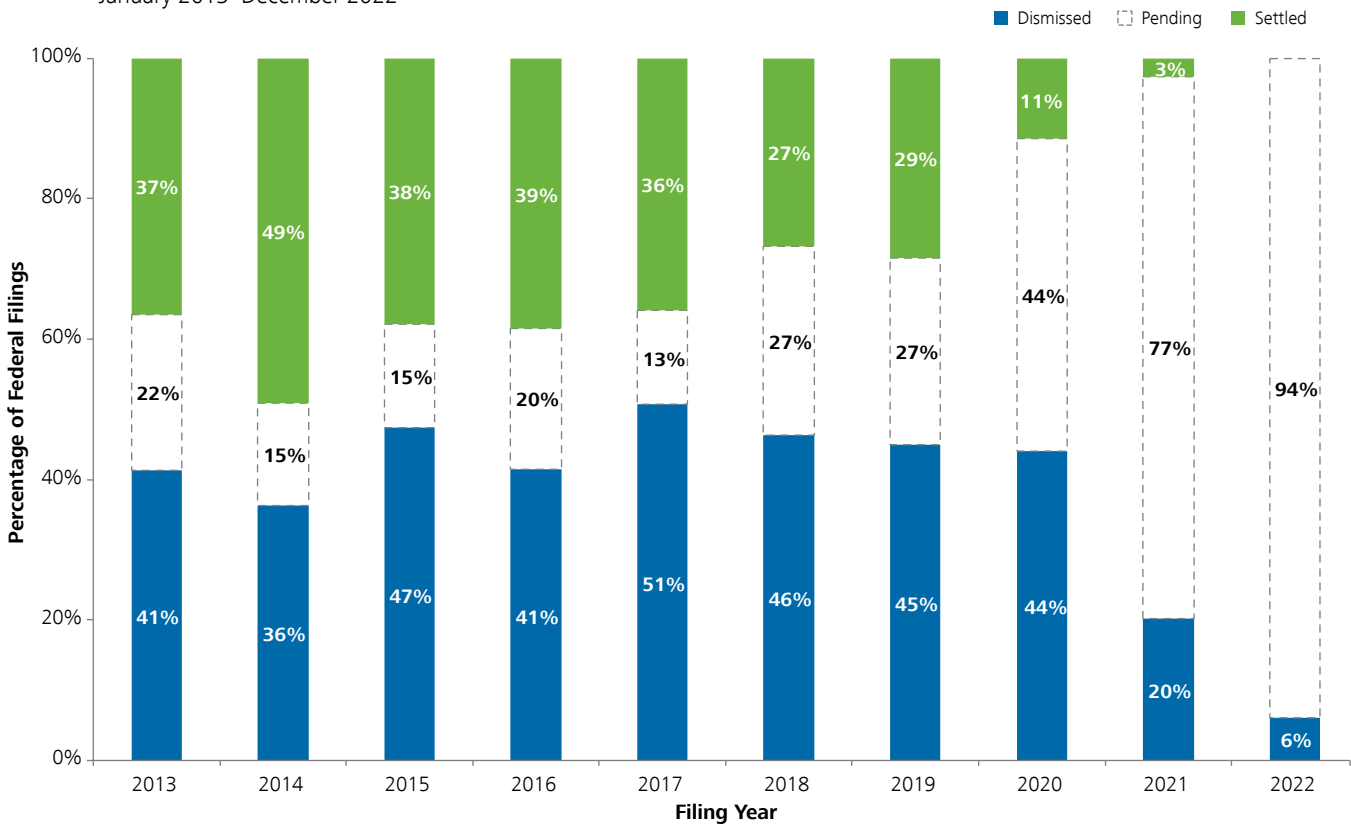
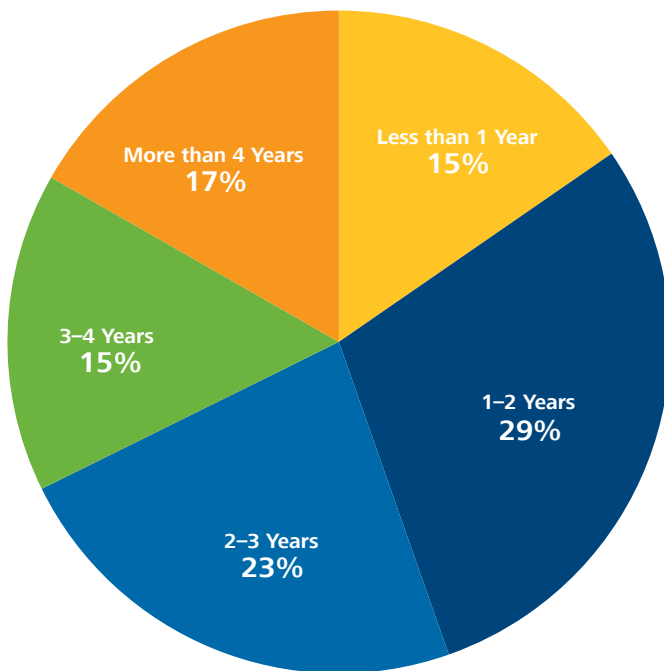


Figure 9. **Status of Cases as Percentage of Federal Filings by Filing Year**  
 Excludes Merger Objections, Crypto Unregistered Securities, and Verdicts  
 January 2013–December 2022



Note: Dismissals may include dismissals without prejudice and dismissals under appeal. Component values may not add to 100% due to rounding.

Figure 10. **Time from First Complaint Filing to Resolution**  
 Excluding Merger Objections and Crypto Unregistered Securities  
 Cases Filed January 2003–December 2018 and Resolved January 2003–December 2022





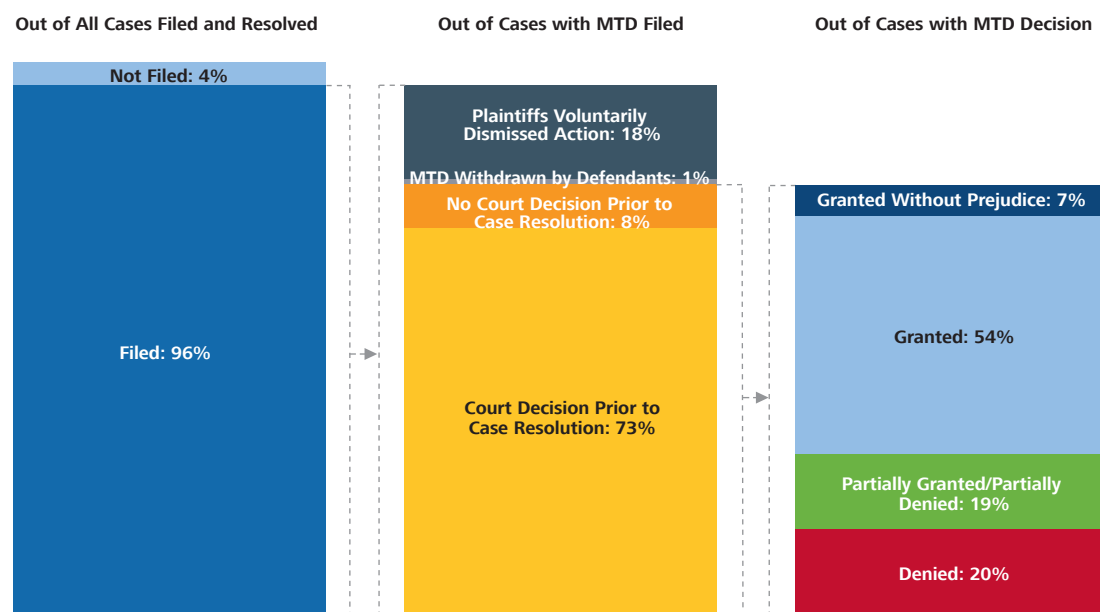
## Analysis of Motions

NERA's federal securities class action database tracks filing and resolution activity as well as decisions on motions to dismiss, motions for class certification, and the status of any motion as of the resolution date. For this analysis, we include securities class actions that were filed and resolved over the 2013–2022 period in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged.

### Motion to Dismiss

A motion to dismiss was filed in 96% of the securities class action suits filed and resolved. A decision was reached in 73% of these cases, while 18% were voluntarily dismissed by plaintiffs, 8% settled before a court decision was reached, and 1% of the motions were withdrawn by defendants. Among the cases where a decision was reached, 61% were granted (with or without prejudice) and only 20% were denied (see Figure 11).

Figure 11. **Filing and Resolutions of Motions to Dismiss**  
Cases Filed and Resolved January 2013–December 2022



### Motion for Class Certification

A motion for class certification was filed in only 17% of the securities class action suits filed and resolved, as most cases are either dismissed or settled before the class certification stage is reached. A decision was reached in 60% of the cases where a motion for class certification was filed. Almost all of the other 40% of cases were resolved with a settlement. Among the cases where a decision was reached, the motion for class certification was granted (with or without prejudice) in 86% of cases (see Figure 12). Approximately 65% of decisions on motions for class certification occur within three years of the filing of the first complaint, with nearly all decisions occurring within five years (see Figure 13). The median time was about 2.7 years.

Figure 12. **Filing and Resolutions of Motions for Class Certification**  
Cases Filed and Resolved January 2013–December 2022

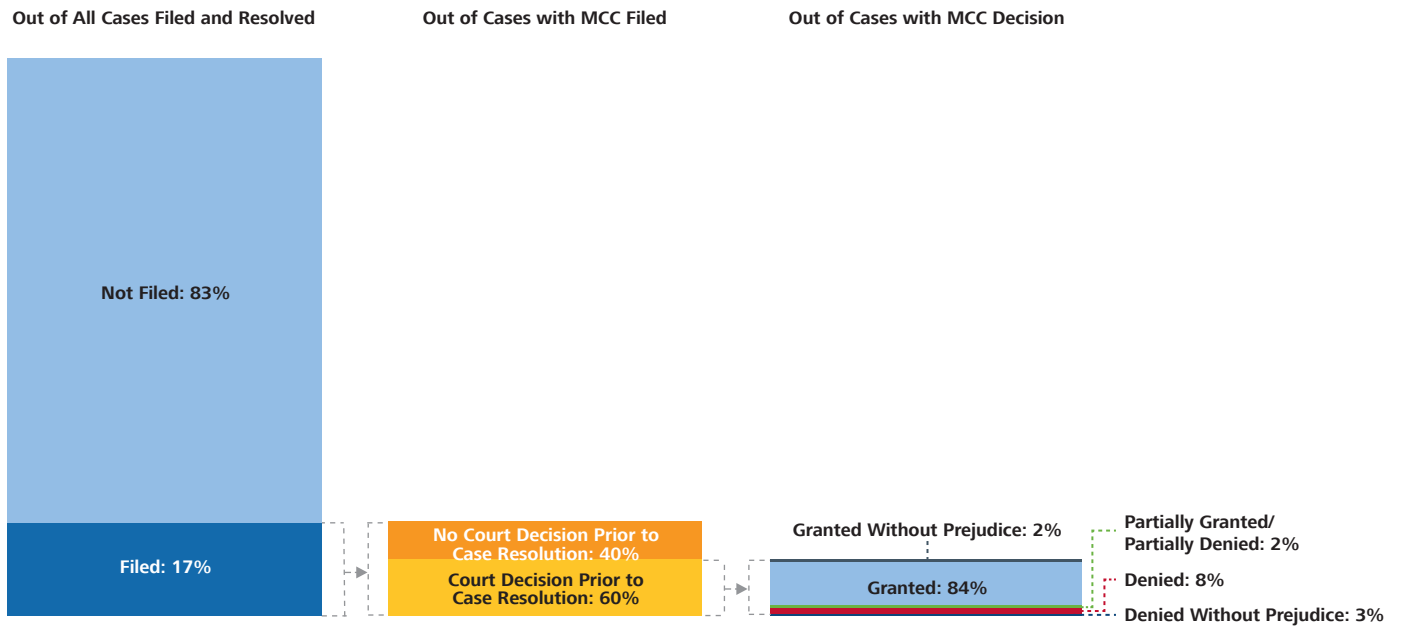
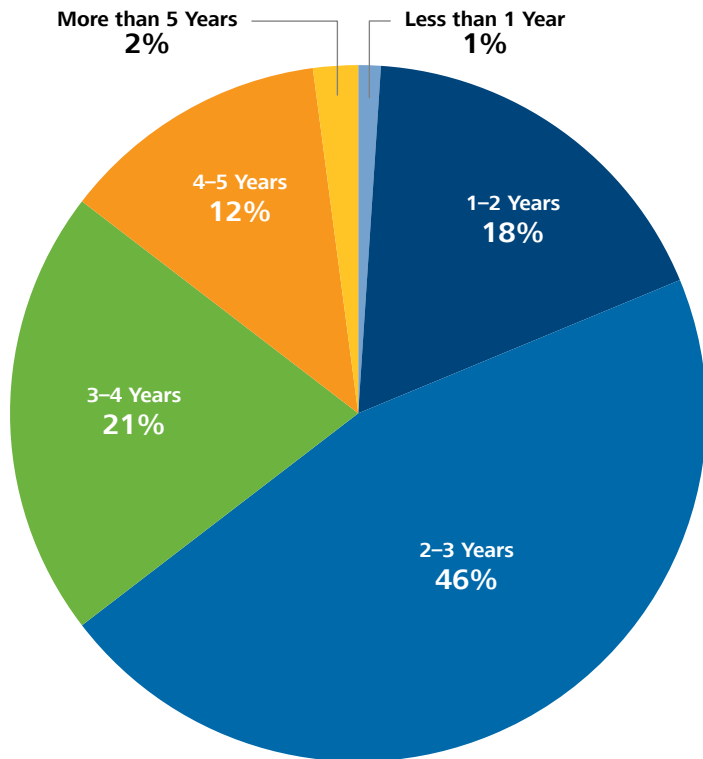


Figure 13. **Time from First Complaint Filing to Class Certification Decision**  
Cases Filed and Resolved January 2013–December 2022



### Trends in Settlement Values

Aggregate settlements for 2022 totaled \$4 billion, which is more than double the inflation-adjusted total for 2021 of \$1.9 billion.<sup>9</sup> In 2022, the average settlement value was \$38 million, an increase of more than 70% compared to the 2021 inflation-adjusted average settlement value (see Figures 14 and 15). The distribution of 2022 settlement values differed from the settlements in 2021, with more cases settling for higher values, and more consistent with the distribution of settlement values observed in 2020 (see Figure 16). This shift is also evident in the median settlement values. The median settlement value for 2022 is \$13 million, which is approximately \$5 million higher than the 2021 inflation-adjusted median value of \$8 million (see Figure 17).<sup>10</sup>

Figure 14. **Average Settlement Value**

Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class  
January 2013–December 2022

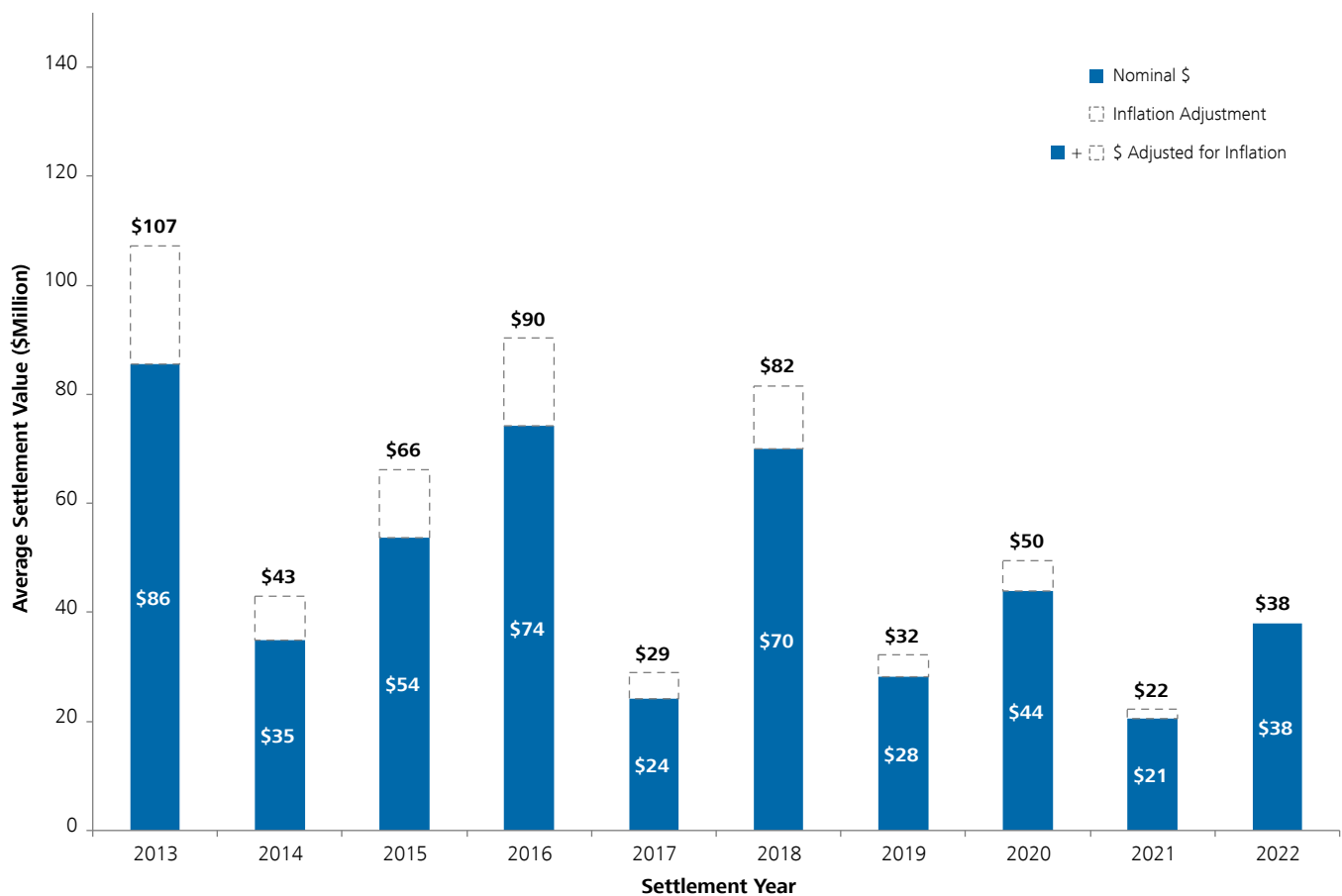


Figure 15. **Average Settlement Value**

Excludes Settlements over \$1 Billion, Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class January 2013–December 2022

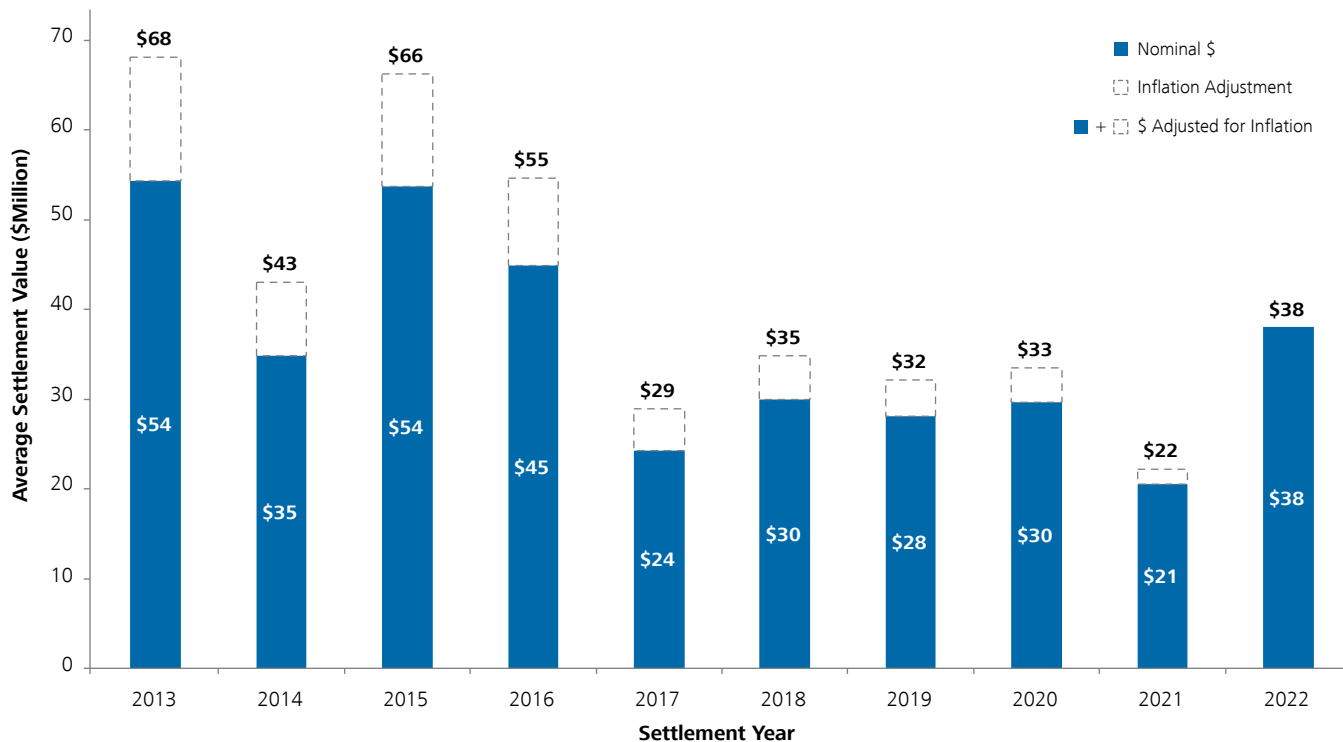


Figure 16. **Distribution of Settlement Values**

Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class January 2018–December 2022

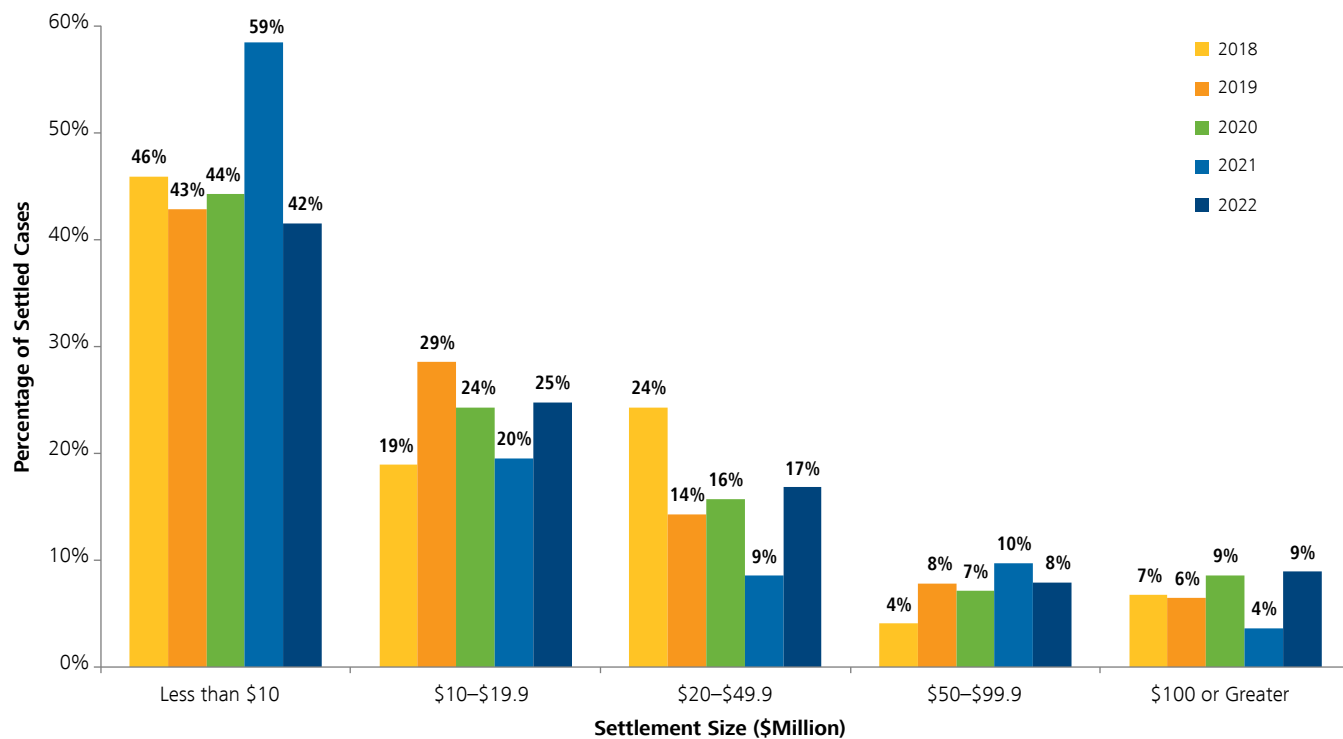
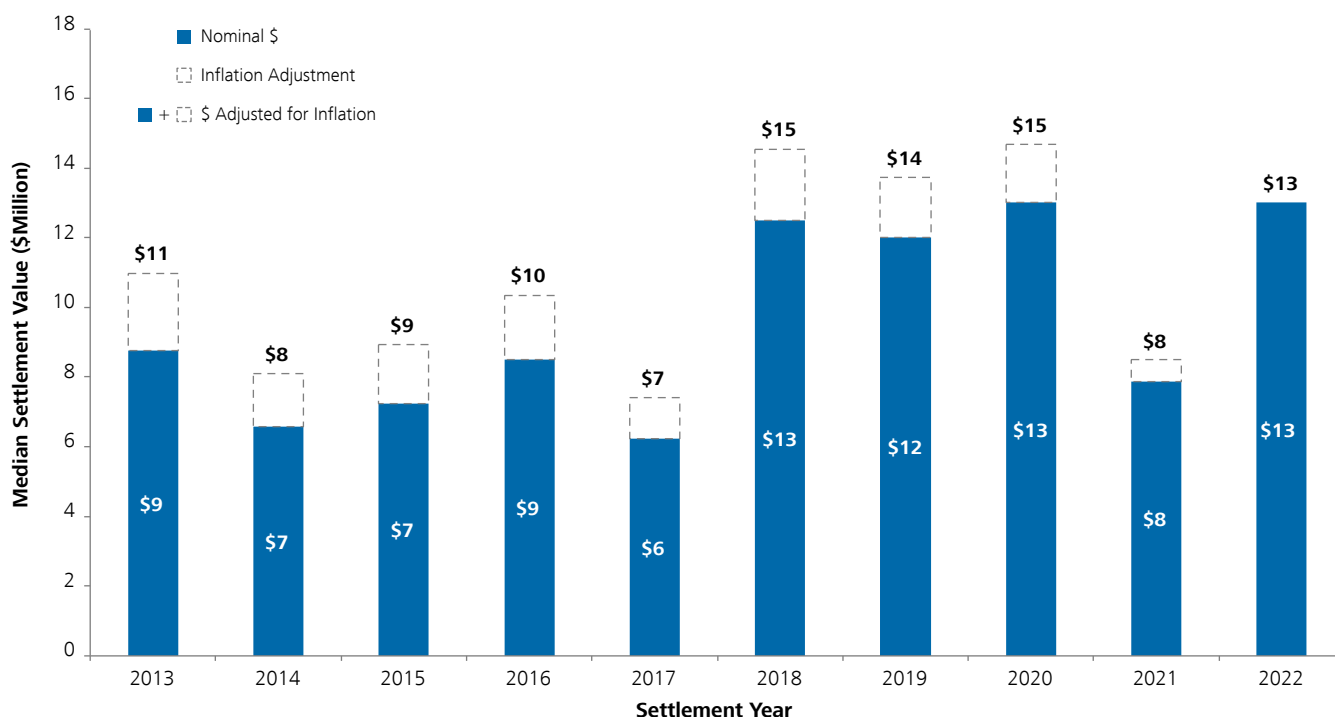


Figure 17. **Median Settlement Value**

Excludes Settlements over \$1 Billion, Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class January 2013–December 2022



### Top Settlements

The top 10 settlements in 2022 ranged from \$98 million to \$809.5 million and totaled \$2.2 billion. The highest settlement reached was against Twitter, Inc., for a case filed in California in 2016 (see Table 1).

Table 1. **Top 10 2022 Securities Class Action Settlements**

Ranking	Defendant	Filing Date	Settlement Date	Total Settlement Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
1	Twitter, Inc.	16 Sept 16	11 Nov 22	\$809.5	\$185.7	9th	Technology Services
2	Teva Pharmaceutical Industries Ltd.	6 Nov 16	2 Jun 22	\$420.0	\$109.3	2nd	Health Technology
3	Luckin Coffee Inc.	13 Feb 20	22 Jul 22	\$175.0	\$31.3	2nd	Consumer Non-Durables
4	BlackBerry Ltd.	4 Oct 13	29 Sept 22	\$165.0	\$59.5	2nd	Technology Services
5	Granite Construction Inc.	13 Aug 19	24 Feb 22	\$129.0	\$21.7	9th	Industrial Services
6	Endo International plc.	14 Nov 17	23 Feb 22	\$113.4	\$20.9	3rd	Health Technology
7	Walgreen Co.	10 April 15	7 Oct 22	\$105.0	\$31.1	7th	Retail Trade
8	Novo Nordisk A/S	11 Jan 17	27 Jun 22	\$100.0	\$31.7	3rd	Health Technology
9	Stamps.com, Inc.	13 Mar 19	24 Jan 22	\$100.0	\$17.3	9th	Commercial Services
10	Mattel, Inc.	24 Dec 19	2 May 22	\$98.0	\$14.8	9th	Consumer Durables
<b>Total</b>				<b>\$2,214.9</b>	<b>\$523.4</b>		

The top 10 federal securities class action settlements, as of 31 December 2022, consists of settlements ranging from \$1.14 billion to \$7.24 billion. From 2018 to 2021, this list remained unchanged because there were no settlements reached in excess of \$1.1 billion during this time. In 2022, this list was updated to incorporate the \$1.21 billion partial settlement in the ongoing suit against Valeant Pharmaceuticals International, Inc. (see Table 2).

Table 2. **Top 10 Federal Securities Class Action Settlements** (As of 31 December 2022)

Ranking	Defendant	Filing Date	Settlement Year(s)	Total Settlement Value (\$Million)	Codefendant Settlements		Plaintiffs' Attorneys' Fees and Expenses Value (\$Million)	Circuit	Economic Sector
					Financial Institutions Value (\$Million)	Accounting Firms Value (\$Million)			
1	ENRON Corp.	22 Oct 01	2003–2010	\$7,242	\$6,903	\$73	\$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 02	2004–2005	\$6,196	\$6,004	\$103	\$530	2nd	Communications
3	Cendant Corp.	16 Apr 98	2000	\$3,692	\$342	\$467	\$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 02	2007	\$3,200	No codefendant	\$225	\$493	1st	Producer Manufacturing
5	Petroleo Brasileiro S.A.- Petrobras	8 Dec 14	2018	\$3,000	\$0	\$50	\$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 Jul 02	2006	\$2,650	No codefendant	\$100	\$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 09	2013	\$2,425	No codefendant	No codefendant	\$177	2nd	Finance
8	Household International, Inc.	19 Aug 02	2006–2016	\$1,577	Dismissed	Dismissed	\$427	7th	Finance
9	Valeant Pharmaceuticals International, Inc.*	22 Oct 15	2020	\$1,210	\$0	\$0	\$160	3rd	Health Technology
10	Nortel Networks	2 Mar 01	2006	\$1,143	No codefendant	\$0	\$94	2nd	Electronic Technology
<b>Total</b>				<b>\$32,334</b>	<b>\$13,249</b>	<b>\$1,017</b>	<b>\$3,358</b>		

\*Denotes a partial settlement, which is included here due to its sizable amount. Note that this case is not included in any of our resolution or settlement statistics.

## NERA-Defined Investor Losses

To estimate the potential aggregate loss to investors as a result of investing in the defendant’s stock during the alleged class period, NERA has developed a proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Loss measure is constructed assuming investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. Over the years, NERA has reviewed and examined more than 2,000 settlements and found, of the variables analyzed, this proprietary variable to be the most powerful predictor of settlement amount.<sup>11</sup>

A statistical review reveals that settlement values and NERA-Defined Investor Losses are highly correlated, although the relationship is not linear. The ratio is higher for cases with lower NERA-Defined Investor Losses than for cases with higher Investor Losses (see Figure 18). Since 2013, annual median Investor Losses have ranged from a high of \$972 million to a low of \$358 million. For cases settled in 2022, the median Investor Losses were \$972 million, which is 33% higher than the 2021 value and the highest recorded value during the 2013–2022 period. Between 2020 and 2022, the median ratio of settlement amount to Investor Losses has been stable at 1.8% (see Figure 19).

Figure 18. **Median Settlement Value as a Percentage of NERA-Defined Investor Losses**  
 By Investor Losses  
 Cases Filed and Settled December 2011–December 2022

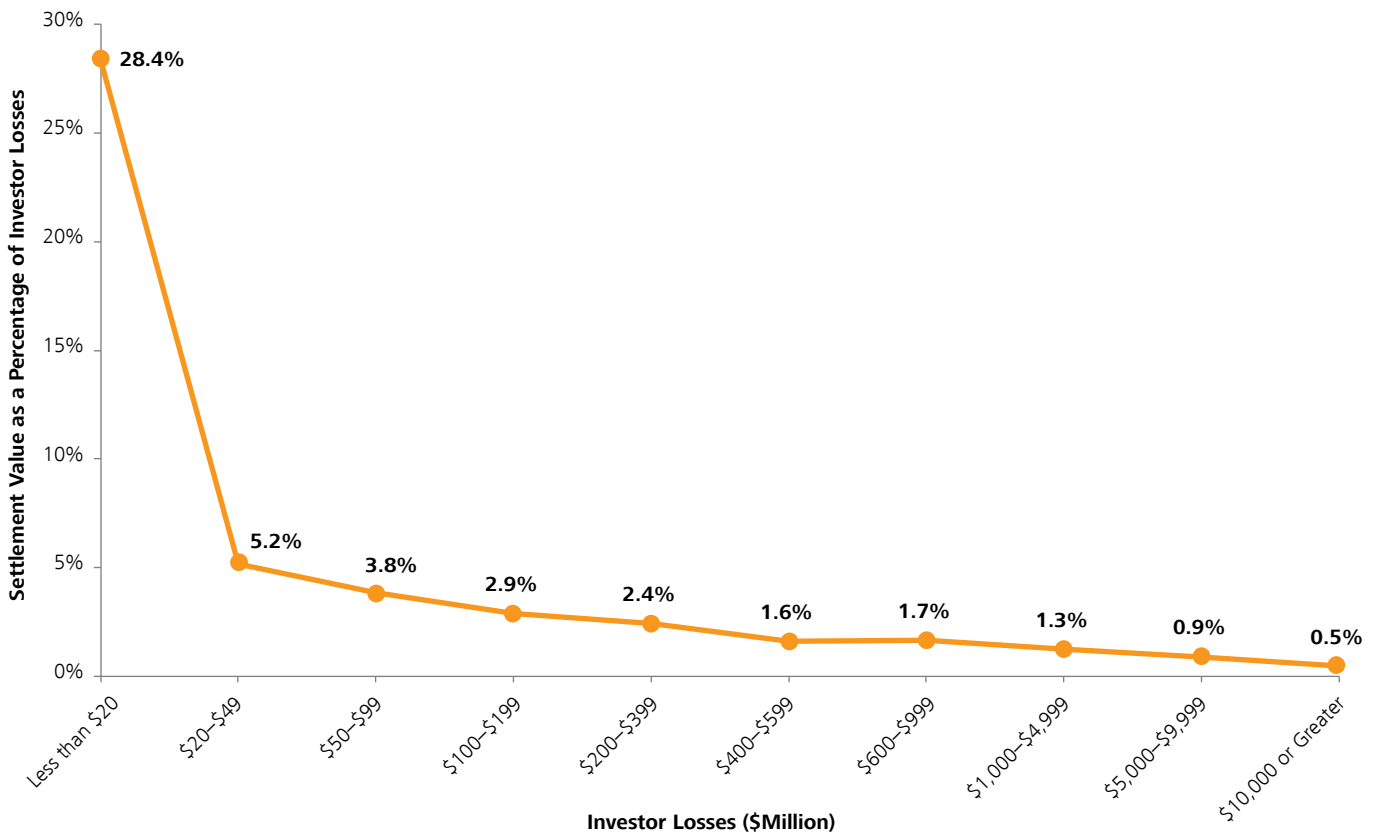
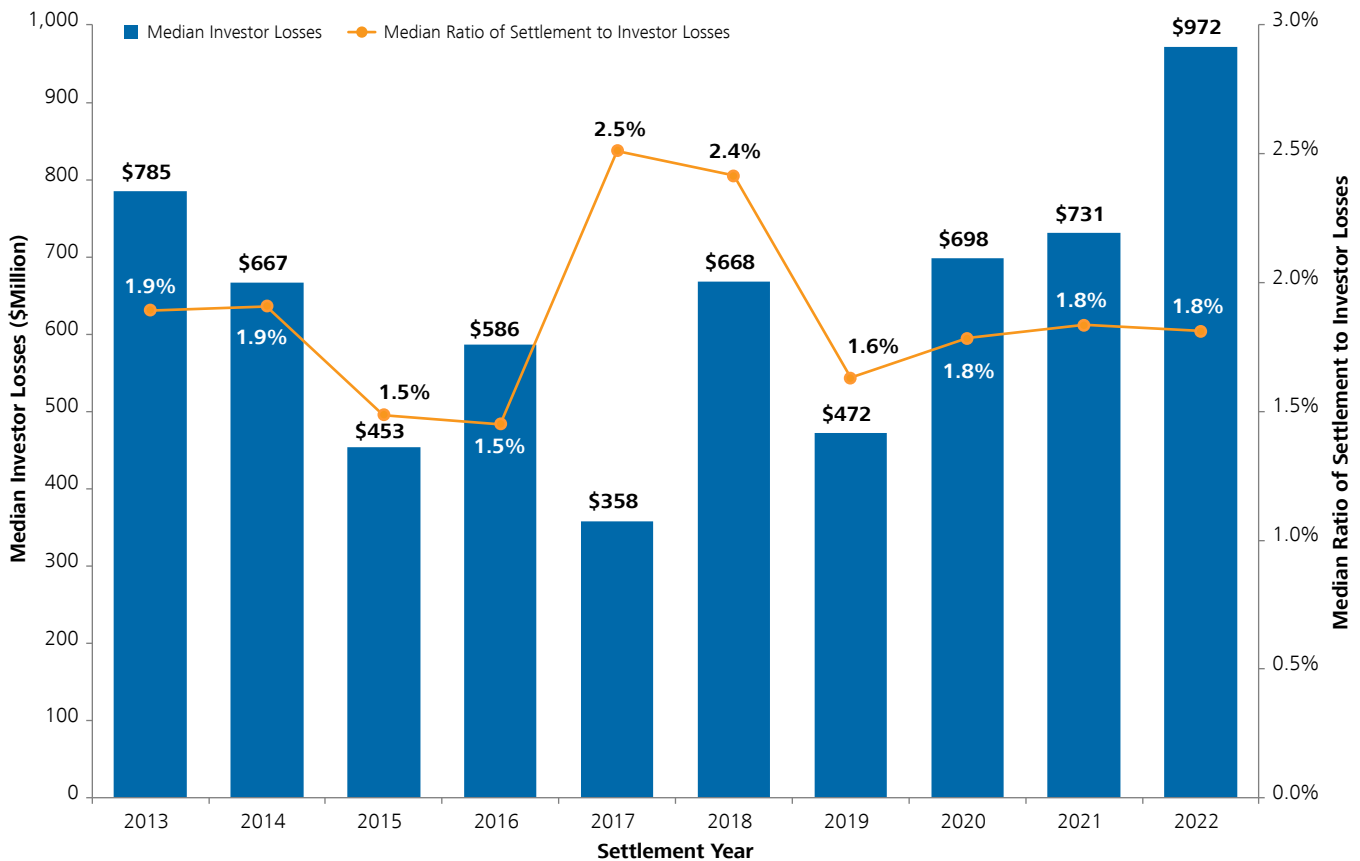


Figure 19. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**  
January 2013–December 2022

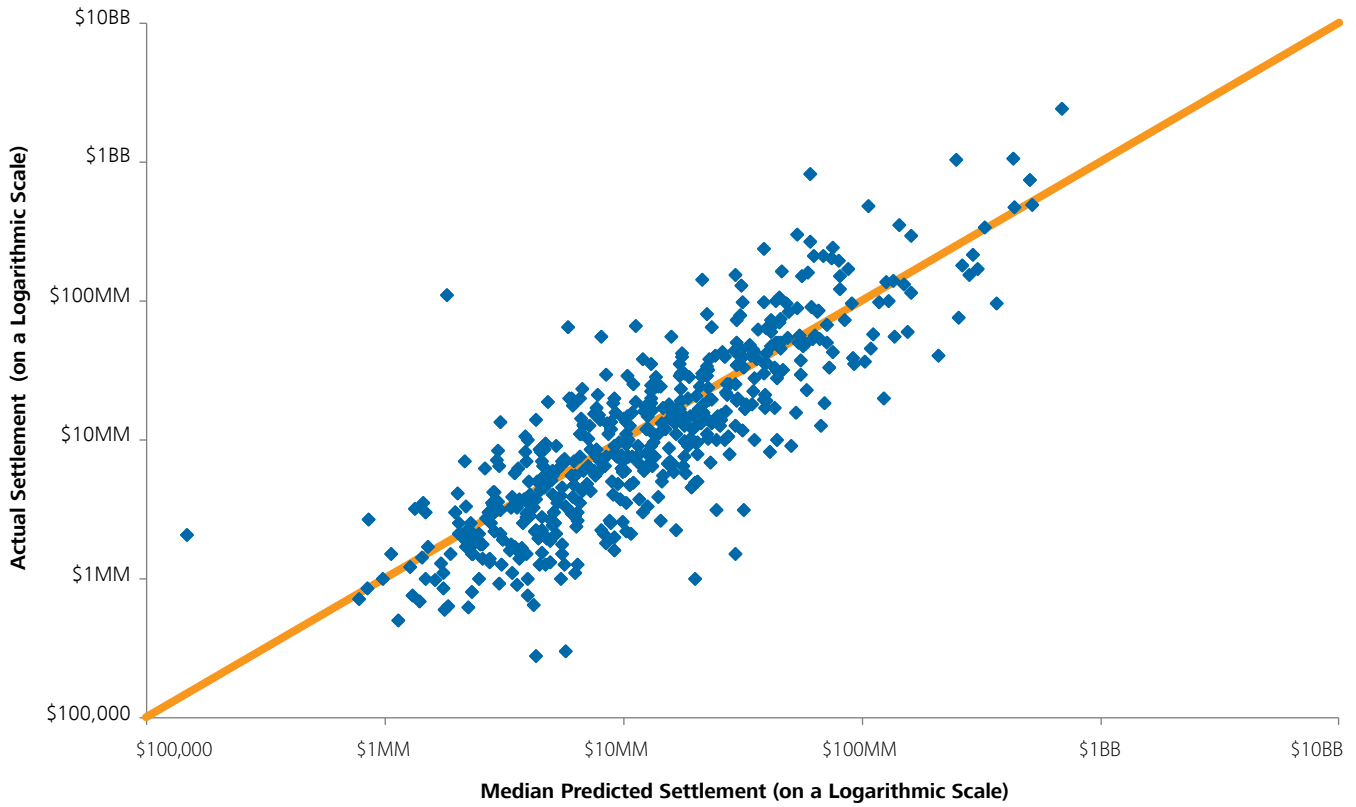


NERA has identified the following key factors as driving settlement amounts:

- NERA-Defined Investor Losses;
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities (in addition to common stock) alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (e.g., whether the company has already been sanctioned by a government or regulatory agency or paid a fine in connection with the allegations);
- The stage of litigation at the time of settlement; and
- Whether an institution or public pension fund is named lead plaintiff (see Figure 20).



Figure 20. **Predicted vs. Actual Settlements**  
 Investor Losses Using S&P 500 Index  
 Cases Settled December 2011–December 2022




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*Among cases settled between December 2011 and December 2022, factors in NERA’s statistical model account for a substantial fraction of the variation observed in actual settlements.*

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## Trends in Plaintiffs’ Attorneys’ Fees and Expenses

In 2022, aggregate plaintiffs’ attorneys’ fees and expenses amounted to \$1 billion (see Figure 21). This marks the first year since 2018 that aggregate plaintiffs’ attorneys’ fees and expenses exceeded \$1 billion. The 2022 aggregate fees and expenses is double the amount observed in 2021, driven by an increase in the aggregate fees and expenses associated with settlements between \$10 million and \$499.9 million and by the \$186 million in fees and expenses associated with settlements between \$500 million and \$999.9 million. Although there are year-to-year fluctuations in the aggregate fees and expenses, the trend in the median of plaintiffs’ attorneys’ fees and expenses as a percentage of settlement amount has remained stable (see Figure 22). The data reveal that fees and expenses represent an increasing percentage of settlement value as settlement value decreases—a pattern that is consistent in cases settled since 2013 as well as in cases settled between 1996 and 2012. For cases settled in the recent period with a settlement value of \$1 billion or higher, fees and expenses accounted for 8.8% of the settlement value. This percentage increases to more than 30% for cases with a settlement value under \$10 million.

Figure 21. **Aggregate Plaintiffs’ Attorneys’ Fees and Expenses by Settlement Size**  
January 2013–December 2022

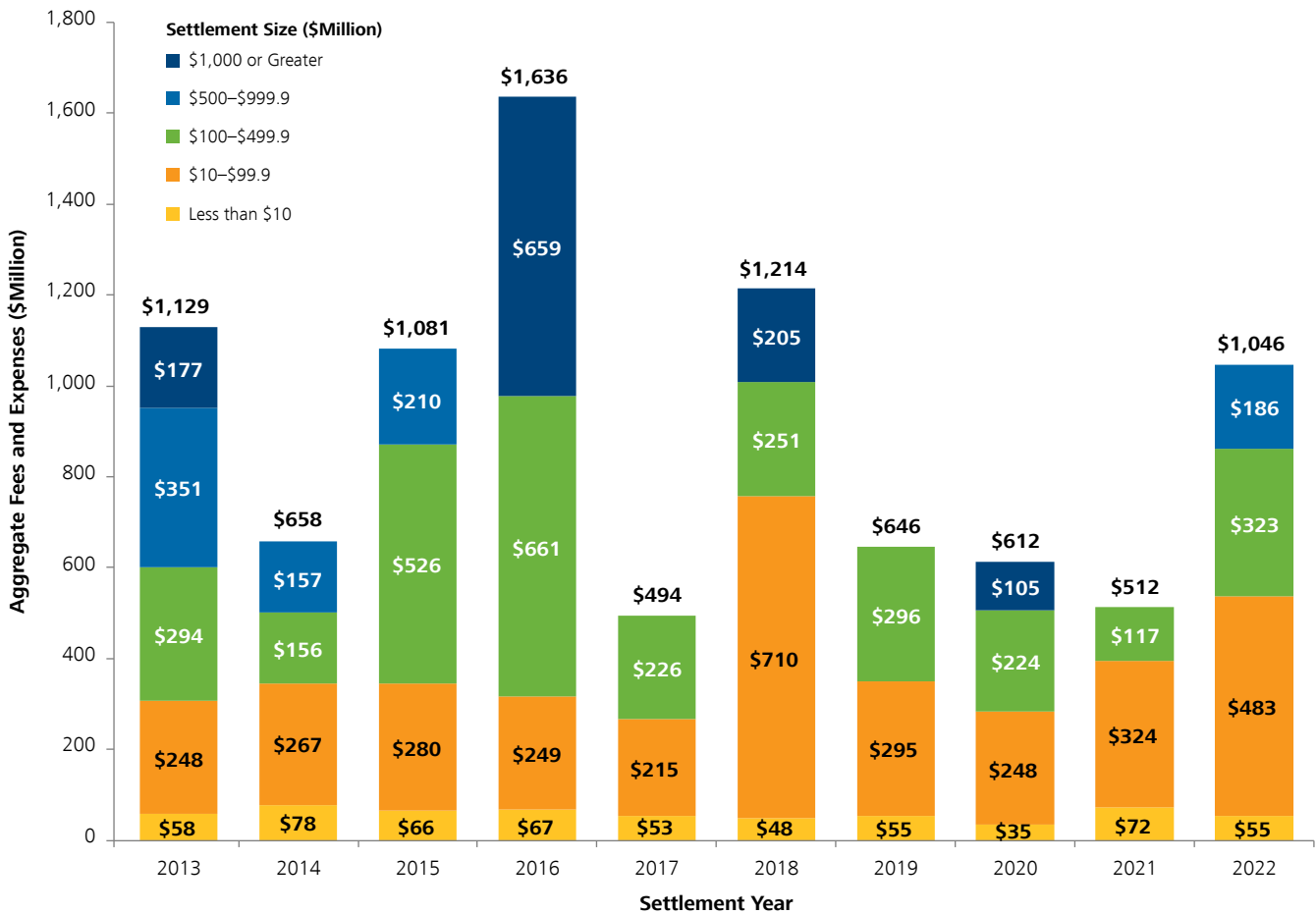
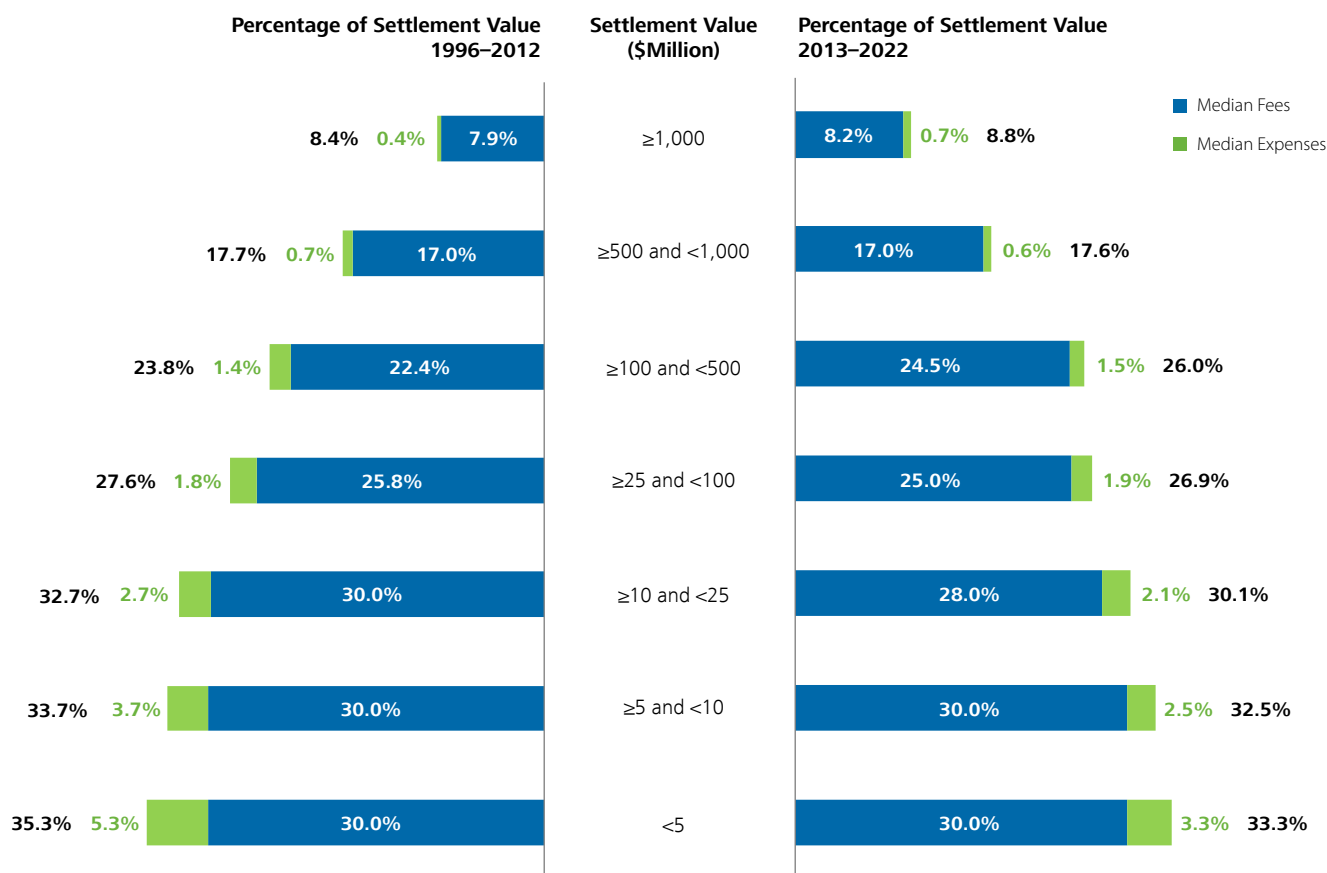


Figure 22. **Median of Plaintiffs’ Attorneys’ Fees and Expenses by Size of Settlement**  
 Excludes Merger Objections, Crypto Unregistered Securities, and Settlements for \$0 to the Class



Note: Component values may not add to total value due to rounding.

## Conclusion

In 2022, new filings of federal securities class actions declined for the fourth consecutive year as a result of fewer merger-objection and Rule 10b-5 cases filed. Of the 205 cases filed in 2022, more than 20% were SPAC or crypto-related filings. Total resolutions declined by 14% from 248 in 2021 to 214 in 2022 due to the continued reduction in non-merger-objection and non-crypto unregistered cases. The average settlement value and median settlement value for cases settled in 2022 were \$38 million and \$13 million, respectively, an increase over the 2021 values.

## Notes

- 1 This edition of NERA's report on "Recent Trends in Securities Class Action Litigation" expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors thank Dr. David Tabak and Benjamin Seggerson for helpful comments on this edition. We thank Vlad Lee and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA's proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.
- 2 In this study we introduced a new category of "special" cases, crypto cases, which consist of two mutually exclusive subgroups: (1) crypto shareholder class actions, which include a class of investors in common stock, American depository receipts/ American depository shares (ADR/ADS), and/or other registered securities, along with crypto- or digital-currency-related allegations; and (2) crypto unregistered securities class actions, which do not have class investors in any registered securities that are traded on major exchanges (New York Stock Exchange, Nasdaq). We include crypto shareholder class actions in all our analyses that include standard cases. Crypto unregistered securities class actions are excluded from some analyses, which is noted in the titles of our figures.
- 3 NERA tracks securities class actions that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. The first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings. Data for this report were collected from multiple sources, including Institutional Shareholder Services, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, complaints, case dockets, and public press reports.
- 4 Most securities class action complaints include multiple allegations. For this analysis, all allegations from the complaint are included and thus the total number of allegations exceeds the total number of filings.
- 5 It is important to note that due to the small number of cases in some of these categories, the findings summarized here may be driven by one or two cases.
- 6 ESG securities class action cases filed in federal courts are included in NERA's database and the analyses in this report. For this update, no analyses have been prepared on this development area specifically.
- 7 Report updated on 7 February 2023. Analyses for the "SPACs" group were updated to incorporate "blank check" company-related cases and cases that were not originally classified as SPACs prior to publishing.
- 8 Here "dismissed" is used as shorthand for all class actions resolved without settlement; it includes cases in which a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an ultimately unsuccessful motion for class certification.
- 9 While annual average settlement values can be a helpful statistic, these values may be affected by one or a few very high settlement amounts. Unlike averages, the median settlement value is unaffected by these very high outlier settlement amounts. To understand what more typical cases look like, we analyze the average and median settlement values for cases with a settlement amount under \$1 billion, thus excluding these outlier settlement amounts. For the analysis of settlement values, we limit our data to non-merger-objection and non-crypto unregistered securities cases with settlements of more than \$0 to the class.
- 10 For our analysis, NERA includes settlements that have had the first settlement-approval hearing. This means we do not include partial settlements or tentative settlements that have been announced by plaintiffs and/or defendants. As a result, although we include the Valeant partial settlement in Table 2 due to its sizable amount, this case is not included in any of our resolution or settlement statistics.
- 11 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock based on one or more corrective disclosures moving the stock price to its alleged true value. As a result, we have not calculated this metric for cases such as merger objections.

## About NERA

NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For more than six decades, we have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real-world industry experience to issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. Continuing our legacy as the first international economic consultancy, NERA serves clients from major cities across North America, Europe, and Asia Pacific.

## Contacts

For further information, please contact:



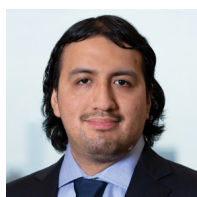
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*The opinions expressed herein do not necessarily represent the views of NERA Economic Consulting or any other NERA consultant.*



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# **Exhibit 10G**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  MALLINCKRODT PLC, <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11  Case No. 20-12522 (JTD)  Jointly Administered  <b>Obj. Deadline: June 7, 2022 at 4:00 p.m. (ET)</b> <b>Hearing Date: TBD</b>
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**COVER SHEET TO THE SIXTH INTERIM APPLICATION OF COOLEY LLP,  
COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF  
MALLINCKRODT PLC, *ET AL.*, FOR COMPENSATION AND REIMBURSEMENT OF  
EXPENSES FOR THE PERIOD OF JANUARY 1, 2022 THROUGH  
MARCH 31, 2022**

<b>Basic Information</b>	
Name of Applicant	Cooley LLP
Name of Client	Official Committee of Unsecured Creditors of Mallinckrodt plc, <i>et al.</i>
Petition Date	October 12, 2020
Retention Date	Effective as of October 30, 2020
Date of Order Approving Employment	December 21, 2020
<b>Sixth Interim Period</b>	
Time Period Covered	January 1, 2022 through March 31, 2022
Total Hours Billed	1,449.4
Total Fees Requested	\$1,612,165.00
Total Expenses Requested	\$136,663.87
Blended Rate (All Timekeepers)	\$1,112.30
Blended Rate (All Attorneys) <sup>2</sup>	\$1,166.81
Fees Requested over Budgeted Amount (if any)	\$0.00
Total Attorneys <sup>3</sup>	27
Total Attorneys not in Staffing Plan (if any)	6
Total Attorneys Billing <15 hours (if any)	10
Rate Increases Not Previously Approved/Disclosed?	No

<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <http://restructuring.primeclerk.com/Mallinckrodt>. The Debtors' mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

<sup>2</sup> The blended hourly rate for attorneys does not include law clerks.

<sup>3</sup> Does not include law clerks.



<b>Historical Information</b>	
Fees Approved to Date by Interim Order <sup>4</sup>	\$33,272,010.45
Expenses Approved to Date by Interim Order <sup>5</sup>	\$855,353.24
Allowed Fees Paid to Date	\$33,700,281.65
Allowed Expenses Paid to Date	\$793,345.24

This is Cooley LLP's sixth interim fee application in these chapter 11 cases.

The total time expended in connection with the preparation of this fee application is not included herein as such time was expended after the Interim Period.

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<sup>4</sup> Applicant originally requested (i) \$1,986,494.00 in fees in its First Interim Fee Application, (ii) \$5,593,877.50 in fees in its Second Interim Fee Application, (iii) \$7,814,215.70 in fees in its Third Interim Fee Application, (iv) \$8,359,049.40 in fees in its Fourth Interim Fee Application, and (v) \$10,240,496.50 in fees in its Fifth Interim Fee Application. The above amount reflects an aggregate fee reduction of \$722,122.65 per the U.S. Trustee's and Fee Examiner's responses.

<sup>5</sup> Applicant originally requested (i) \$378,490.71 in expenses in its Fourth Interim Fee Application and (ii) \$333,559.82 in expenses in its Fifth Interim Fee Application. The above amount reflects an expense reduction of \$2,463.84 per the U.S. Trustee and Fee Examiner's responses.

**MONTHLY FEE APPLICATIONS SUBJECT TO THE INTERIM PERIOD**

Date Filed	Period Covered	Requested		Approved		Fee Holdback
		Fees	Expenses	Fees [80%]	Expenses [100%]	
Fifteenth Monthly 3/17/2022 [D.I. 6801]	1/1/2022- 1/31/2022	\$535,339.00	\$87,117.07	\$428,271.20 <sup>6</sup>	\$87,117.07	\$107,067.80
Sixteenth Monthly 4/1/2022 [D.I. 7015]	2/1/2022- 2/28/2022	\$270,159.00	\$31,771.79	\$216,127.20 <sup>7</sup>	\$31,771.79	\$54,031.80
Seventeenth Monthly 5/3/2022 [D.I. 7291]	3/1/2022- 3/31/2022	\$806,667.00	\$17,775.01	\$645,333.60 <sup>8</sup>	\$17,775.01	\$161,333.40
<b>TOTAL</b>		\$1,612,165.00	\$136,663.87	\$1,289,732.00	\$136,663.87	\$322,433.00

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<sup>6</sup> A Certificate of No Objection was filed on April 7, 2022 [D.I. 7052].

<sup>7</sup> A Certificate of No Objection was filed on April 22, 2022 [D.I. 7221].

<sup>8</sup> This application pending before the Court. The objection deadline is May 23, 2022.

**COMPENSATION BY TIMEKEEPER DURING THE INTERIM PERIOD**

<b>Name of Professional Person</b>	<b>Position of the Applicant, Year of Obtaining License to Practice, Area of Expertise</b>	<b>Hourly Billing Rate<sup>9</sup></b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Jay Indyke	Partner; Member of New York Bar since 1982; Area of Expertise: Bankruptcy	\$1,590	9.4	\$14,946.00
Cathy Hershcopf	Partner; Member of New York Bar since 1989; Area of Expertise: Bankruptcy	\$1,420	106.8	\$151,656.00
Philip Bowman	Partner; Member of New York Bar since 2002; Area of Expertise: Business Litigation	\$1,360	9.0	\$12,240.00
Kathleen Hartnett	Partner; Member of New York Bar since 2003, DC Bar since 2003, and California Bar since 2017; Area of Expertise: Business Litigation	\$1,340	4.8	\$6,432.00
Ian Shapiro	Partner; Member of New York Bar since 2001; Area of Expertise: Business Litigation	\$1,305	66.9	\$87,304.50
Jonathan Kim	Partner; Member of New York Bar since 1997 and Nevada Bar since 1997; Area of Expertise: Business Litigation	\$1,265	14.2	\$17,963.00
Cullen D. Speckhart	Partner; Member of Virginia Bar since 2009, New York Bar since 2010, Missouri Bar since 2016, and DC Bar since 2020; Area of Expertise: Bankruptcy	\$1,225	45.4	\$55,615.00
Robert Earles	Partner; Member of Illinois Bar since 2012; Area of Expertise: Business Litigation	\$1,215	4.5	\$5,467.50
Michael Klein	Partner; Member of New York Bar since 2005; Area of Expertise: Bankruptcy	\$1,180	88.5	\$104,430.00
David Vogel	Special Counsel; Member of DC Bar since 1994 and Virginia Bar since 2002; Area of Expertise: Business Litigation	\$1,175	2.2	\$2,585.00
Nicholas Flath	Special Counsel; Member of New York Bar since 2012; Area of Expertise: Business Litigation	\$1,170	0.7	\$819.00
Reed Smith	Special Counsel; Member of New York Bar since 1999; Area of Expertise: Business Litigation	\$1,165	133.3	\$155,294.50

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<sup>9</sup> Applicant's rates are subject to a customary, firm-wide "step-up" on January 1, 2022.

<b>Name of Professional Person</b>	<b>Position of the Applicant, Year of Obtaining License to Practice, Area of Expertise</b>	<b>Hourly Billing Rate<sup>9</sup></b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Erica Richards	Special Counsel; Member of New York Bar since 2007; Area of Expertise: Bankruptcy	\$1,165	56.8	\$66,172.00
David Kupfer	Associate; Member of New Jersey Bar since 2011 and New York Bar since 2012; Area of Expertise: Business Litigation	\$1,155	48.8	\$56,364.00
Robert Jacques	Associate; Member of Georgia Bar since 2013 and DC since 2016; Area of Expertise: Insurance	\$1,155	0.9	\$1,039.50
Summer McKee	Associate; Member of New York Bar since 2015; Area of Expertise: Bankruptcy	\$1,155	298.4	\$344,652.00
Lauren Reichardt	Associate; Member of New York Bar since 2015; Area of Expertise: Bankruptcy	\$1,155	78.4	\$90,552.00
Evan Lazerowitz	Associate; Member of New Jersey Bar since 2013 and New York Bar since 2014; Area of Expertise: Bankruptcy	\$1,140	53.3	\$60,762.00
Olya Antle	Associate; Member of Virginia Bar since 2012 and DC Bar since 2020; Area of Expertise: Bankruptcy	\$1,115	25.6	\$28,544.00
Paul Springer	Associate; Member of New York Bar since 2016; Area of Expertise: Bankruptcy	\$1,115	124.4	\$138,706.00
Joseph Brown	Associate; Member of New York Bar since 2017 and DC Bar since 2020; Area of Expertise: Bankruptcy	\$1,115	15.8	\$17,617.00
Charlie Low	Associate; Member of New York Bar since 2017; Area of Expertise: Business Litigation	\$1,115	30.0	\$33,450.00
Georgina Inglis	Associate; Member of New York Bar since 2018 and DC Bar since 2019; Area of Expertise: Business Litigation	\$1,000	14.3	\$14,300.00
Courtney Gladstone	Associate; Member of DC Bar since 2017 and Massachusetts Bar since 2020; Area of Expertise: Business Litigation	\$1,000	5.0	\$5,000.00
Jeremiah Ledwidge	Associate; Member of New York Bar since 2018; Area of Expertise: Bankruptcy	\$920	32.6	\$29,992.00
Weiru Fang	Associate; Member of New York Bar since 2019; Area of Expertise: Bankruptcy	\$920	47.6	\$43,792.00

<b>Name of Professional Person</b>	<b>Position of the Applicant, Year of Obtaining License to Practice, Area of Expertise</b>	<b>Hourly Billing Rate<sup>9</sup></b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Lauren Fowler	Associate; Member of New York Bar since 2021; Area of Expertise: Business Litigation	\$720	18.6	\$13,392.00
Anne Bigler	Law Clerk	\$610	19.0	\$11,590.00
Lillian Boodaghians	Law Clerk	\$610	13.7	\$15,487.00
		\$620	11.5	
Mollie Canby	Paralegal	\$380	63.7	\$24,206.00
Denis Cahir	Paralegal	\$350	4.1	\$1,435.00
Courtney Fisher	Paralegal	\$300	1.2	\$360.00
<b>TOTAL</b>			<b>1,449.4</b>	<b>\$1,612,165.00</b>
<b>Blended Hourly Rate for All Timekeepers</b>				<b>\$1,112.30</b>
<b>Blended Rate for Attorneys<sup>10</sup></b>				<b>\$1,166.81</b>

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<sup>10</sup> The blended hourly rate for attorneys does not include law clerks.

**TIME BILLED BY PROJECT CATEGORY DURING THE INTERIM PERIOD**

<b>Subject Matter Categories</b>		<b>Hours Spent</b>	<b>Fees</b>
B01	Asset Analysis and Recovery	11.3	\$13,627.50
B02	Asset Disposition	1.8	\$2,124.00
B03	Business Operations	4.4	\$5,045.00
B04	Case Administration	57.6	\$41,396.50
B05	Claims	145.8	\$169,831.50
B06	Employee Benefits and Pensions	0.8	\$924.00
B07	Fee/Employment Applications	4.7	\$4,660.50
B07A	Cooley Fee Applications	61.1	\$43,360.00
B07B	Cooley Employment Application	3.0	\$1,410.00
B07D	Other Fee Applications	0.4	\$438.50
B08	Fee/Employment Objections	3.2	\$1,216.00
B10	Litigation	301.4	\$324,491.50
B11	Meetings	84.3	\$98,603.00
B12	Plan and Disclosure Statement	639.6	\$742,190.00
B16	Business Analysis	0.8	\$924.00
B18	Leases and Executory Contracts	4.7	\$5,491.50
B19	Preparation For and Attendance at Court Hearings	76.8	\$91,256.00
B25	Foreign Proceedings	1.5	\$2,130.00
B26	Trust	46.2	\$63,045.50
	<b>TOTAL</b>	<b>1,449.4</b>	<b>\$1,612,165.00</b>

**COMPARISON OF TIME BUDGETED TO ACTUAL TIME BILLED BY PROJECT  
CATEGORY DURING THE INTERIM PERIOD**

Subject Matter Categories		Budgeted Hours	Actual Hours	Variance (Hours)	Budgeted Fees	Actual Fees	Variance (Fees)
B01	Asset Analysis and Recovery	250	11.3	(238.7)	\$500,000.00	\$13,627.50	(\$486,372.50)
B02	Asset Disposition	100	1.8	(98.2)	\$100,000.00	\$2,124.00	(\$97,876.00)
B03	Business Operations	400	4.4	(395.6)	\$500,000.00	\$5,045.00	(\$494,955.00)
B04	Case Administration	150	57.6	(92.4)	\$250,000.00	\$41,396.50	(\$208,603.50)
B05	Claims	1,300	145.8	(1,154.2)	\$1,400,000.00	\$169,831.50	(\$1,230,168.50)
B06	Employee Benefits/Pensions	75	0.8	(74.2)	\$75,000.00	\$924.00	(\$74,076.00)
B07 <sup>11</sup>	Fee/Employment Applications	250	69.2	(180.8)	\$500,000.00	\$49,869.00	(\$450,131.00)
B08	Fee/Employment Objections	75	3.2	(71.8)	\$75,000.00	\$1,216.00	(\$73,784.00)
B09	Financing and Cash Collateral	100	0.0	(100.0)	\$100,000.00	\$0.00	(\$100,000.00)
B10	Litigation	850	301.4	(548.6)	\$900,000.00	\$324,491.50	(\$575,508.50)
B11	Meetings	100	84.3	(15.7)	\$100,000.00	\$98,603.00	(\$1,397.00)
B12	Plan and Disclosure Statement	350	639.6	289.6	\$500,000.00	\$742,190.00	\$242,190.00
B13	Relief from Stay Proceedings	10	0.0	(10.0)	\$20,000.00	\$0.00	(\$20,000.00)
B14	Travel	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B15	Accounting/Auditing	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B16	Business Analysis	15	0.8	(14.2)	\$25,000.00	\$924.00	(\$24,076.00)
B17	Corporate Finance	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B18	Leases and Executory Contracts	25	4.7	(20.3)	\$30,000.00	\$5,491.50	(\$24,508.50)

<sup>11</sup> Category total includes the following sub-categories:

- (i) B07 – Fee/Employment Applications, with the aggregate fees billed for the Interim Period in the amount of \$4,660.50;
- (ii) B07A – Cooley Fee Applications, with the aggregate fees billed for the Interim Period in the amount of \$43,360.00;
- (iii) B07B – Cooley Employment Application with the aggregate fees billed for the Interim Period in the amount of \$1,410.00; and
- (iii) B07D – Other Fee Applications, with the aggregate fees billed for the Interim Period in the amount of \$438.50.

Subject Matter Categories		Budgeted Hours	Actual Hours	Variance (Hours)	Budgeted Fees	Actual Fees	Variance (Fees)
B19	Preparation For and Attendance at Court Hearings	75	76.8	1.8	\$75,000.00	\$91,256.00	\$16,256.00
B20	Reconstruction Accounting	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B21	Tax Issues	75	0.0	(75.0)	\$75,000.00	\$0.00	(\$75,000.00)
B22	Valuation	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B23	Avoidance Actions	10	0.0	(10.0)	\$10,000.00	\$0.00	(\$10,000.00)
B24	Regulatory Compliance	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B25	Foreign Proceedings	0	1.5	1.5	\$0.00	\$2,130.00	\$2,130.00
B26	Trust	0	46.2	46.2	\$0.00	\$63,045.50	\$63,045.50
B27	Retail	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B28	Real Estate	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B29	Intellectual Property	0	0.0	0.0	\$0.00	\$0.00	\$0.00
B30	RSA/DIP Milestones	0	0.0	0.0	\$0.00	\$0.00	\$0.00
	<b>TOTAL</b>	<b>4,210.0</b>	<b>1,449.4</b>	<b>(2,760.6)</b>	<b>\$5,235,000.00</b>	<b>\$1,612,165.00</b>	<b>(\$3,622,835.00)</b>



**EXPENSE SUMMARY DURING THE INTERIM PERIOD**

<b>Expense Category</b>	<b>Amount</b>
Air Fare	\$1,001.22
Deposition Fees	\$1,897.26
E-Discovery Technology Services / RelOne Database (Relativity)	\$11.40
E-Discovery Monthly Services / Storage / Access Fees (TransPerfect Document Management, Inc.)	\$67,519.92
FedEx	\$24.37
Hotel	\$8,646.81
Meals	\$21,178.62
Messenger Fees	\$309.79
Relativity User Access Fee	\$2,925.00
RelOne Data Hosting Fee	\$6,485.04
Reproduction of Documents/Binders – Outside Services (Vector Litigation Support, Inc.)	\$7,885.93
Research Database / Document Retrieval	\$9,167.26
Supplies	\$312.32
Train Fare	\$313.00
Transportation	\$8,985.93
<b>TOTAL</b>	<b>\$136,663.87</b>

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC, *et al.*,<sup>12</sup>

Debtors.

Chapter 11

Case No. 20-12522 (JTD)

Jointly Administered

Obj. Deadline: June 7, 2022 at 4:00 p.m. (ET)

Hearing Date: TBD

**SIXTH INTERIM APPLICATION OF COOLEY LLP, COUNSEL TO THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS OF MALLINCKRODT PLC, *ET AL.*,  
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR  
THE PERIOD OF JANUARY 1, 2022 THROUGH MARCH 31, 2022**

TO THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE:

Cooley LLP (“Cooley” or “Applicant”), counsel to the Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors (the “Debtors”), respectfully represents:

**INTRODUCTION**

1. This is Applicant’s sixth interim application (the “Application”) for allowance of compensation and reimbursement of expenses pursuant to § 331 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases (the “U.S. Trustee Guidelines”), the Order Establishing

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<sup>12</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://restructuring.primeclerk.com/Mallinckrodt>. The Debtors’ mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

Procedures for Interim Compensation and Reimbursement of Professionals (the “Interim Compensation Order”) [D.I. 770], and the Order Establishing Procedures for Consideration of Requested Fee Compensation and Reimbursement of Expenses (the “Fee Examiner Procedures Order”) [D.I. 1324].

2. Pursuant to the Interim Compensation Order, Applicant may file monthly fee applications with this Court. As described in the summary sheets to this Application, Applicant has previously filed monthly fee applications (collectively, the “Monthly Applications”) requesting allowance of fees and expenses for the period of (i) January 1, 2022 through January 31, 2022, (ii) February 1, 2022 through February 28, 2022, and (iii) March 1, 2022 through March 31, 2022. These applications include, among other things, contemporaneously maintained time entries for each professional who provided services during the application period, maintained in increments of tenths (1/10) of an hour, and an itemization and description of the costs and expenses incurred by Applicant. The Monthly Applications are hereby incorporated by reference.

3. This Application seeks interim approval of compensation for legal services rendered by Applicant in the amount of \$1,612,165.00, and reimbursement of certain expenses incurred by (or first billed by outside vendors to) Applicant in the amount of \$136,663.87 for the period of January 1, 2022 through March 31, 2022 (the “Interim Period”). This Application complies with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Interim Compensation Order.

### **GENERAL CASE BACKGROUND**

4. On October 12, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition with the United States Bankruptcy Court for the District of Delaware (the “Court”) for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and

managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee has been appointed in these chapter 11 cases by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”).

5. On October 27, 2020, the U.S. Trustee appointed the Committee, consisting of the following five members: (i) New PharmaTop LP; (ii) Acument Global Technologies, Inc.; (iii) Commodore Bowens, Jr., as Administrator for Estate of Commodore Bowens; (iv) U.S. Bank Trust National Association; and (v) AFSCME District Council 47 Health and Welfare Fund.<sup>13</sup>

6. On October 29, 2020, the Committee selected Robinson & Cole LLP (“Robinson Cole”) as its general counsel and Delaware counsel, and on October 30, 2020, the Committee selected Cooley as its counsel. On October 31, 2020, the Committee selected Dundon Advisers, LLC (“Dundon”) and Alvarez & Marsal Holdings, LLC (“A&M”) as its financial advisors, and on November 2, 2020, the Committee selected Moelis & Company (“Moelis”) as its investment banker.

7. On December 21, 2020, the Court entered an order authorizing the Committee to retain Cooley as its counsel effective as of October 30, 2020 [D.I. 892].

8. On December 22, 2020, the Court appointed Don F. Oliver of Direct Fee Review, LLC as the fee examiner in these chapter 11 cases (the “Fee Examiner Order”) [D.I. 916].

9. On March 2, 2022, the Court entered an order confirming the *Fourth Amended Joint Plan of Reorganization (With Technical Modifications) of Mallinckrodt Plc and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Plan”) [D.I. 6660].

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<sup>13</sup> On December 29, 2020, the U.S. Trustee filed an amended notice of appointment, removing NewPharmaTop LP from the Committee. See [D.I. 1082]. Upon entry of this Court’s *Order Regarding Withdrawal of Claims* [D.I. No. 6980] entered on March 30, 2022, Acument Global Technologies, Inc. resigned from the Committee.

**JURISDICTION AND STATUTORY PREDICATES**

10. This Court has jurisdiction to consider this Application pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Pursuant to Local Rule 9013-1(f), Applicant consents to the entry of a final judgment or order with respect to this Application if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties. The statutory predicates for the relief requested herein are §§ 105(a), 330 and 331 of the Bankruptcy Code, and Bankruptcy Rule 2016.

**MATTERS PERTAINING TO APPLICANT DURING THE INTERIM PERIOD**

11. Applicant has maintained contemporaneous time records which indicate the time that each attorney has spent working on a particular matter and the nature of the work performed. Copies of these time records are annexed to this Application as **Exhibit C**. The total number of hours expended by Applicant's attorneys and para-professionals during the Interim Period in conjunction with these chapter 11 cases is 1,449.4. All of the services have been rendered by those individuals at Applicant's firm.

12. The personnel who have expended extensive time on this matter during the Interim Period are as follows: (a) Cathy Rae Hershkopf, Cullen D. Speckhart, Michael Klein, Erica Richards, Summer McKee, Lauren Reichardt, Evan Lazerowitz, Olya Antle, Paul Springer, Joseph Brown, Jeremiah Ledwidge and Weiru Fang have been actively involved in all aspects of these chapter 11 cases during the Interim Period and were responsible for the various day-to-day issues that arose during the Interim Period; (b) Robert Jacques was responsible for insurance matters during the Interim Period; and (c) Philip Bowman, Kathleen Hartnett, Ian Shapiro, Robert Earles, Jonathan Kim, Reed Smith, David Vogel, David Kupfer, Nicholas Flath, Charlie Low, Courtney

Gladstone, Georgina Inglis, and Lauren Fowler were responsible for litigation, appeals, and claims issues during the Interim Period.

13. Applicant rendered all the professional services for which compensation is requested herein in connection with the Debtors' chapter 11 cases in furtherance of Applicant's professional responsibilities as attorneys for the Committee.

14. During the Interim Period, the partners, associates and para-professionals of Applicant devoted substantial time, 1,449.4 hours, in rendering professional services to the Committee, all of which time was reasonable and necessary.

15. Applicant, by experience, training and ability, is fully qualified to perform the services for which compensation is sought here. Applicant represents or holds no interest adverse to the Committee with respect to the matters upon which it is engaged.

16. No agreement or understanding exists between Applicant and any other entity for the sharing of compensation to be received for services rendered in or in connection with these chapter 11 cases.

**EXPENSES<sup>14</sup> INCURRED DURING THE INTERIM PERIOD**

17. Annexed as part of the cover sheet is a list of the necessary and actual disbursements incurred during the Interim Period in connection with the above-described work. The list is derived from the information found in **Exhibit C**. These records indicate that Applicant has advanced during the Interim Period the sum of \$136,663.87 in necessary and actual out-of-pocket expenses.

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<sup>14</sup> In connection with said expenses, it should be noted that Applicant charges 25¢ per page for outgoing facsimiles with no charge for incoming facsimiles, 10¢ per page for photocopying, 80¢ per page for color photocopying, and charges for meals only necessitated by meetings with the Debtors, the Committee, or when Applicant's personnel would work on these chapter 11 cases through a normal meal period.

**DISCLOSURES PURSUANT TO THE REVISED U.S. TRUSTEE GUIDELINES**

18. At the onset of these chapter 11 cases, Applicant discussed its budget and staffing plan with the co-chairpersons of the Committee. The budget is attached hereto as **Exhibit B**. For the Interim Period, the compensation sought by Applicant did not exceed the fees projected in the budget.

19. Twenty-seven attorneys, two law clerks, and three paralegals are included in this Application. The staffing plan approved by the client provided for twenty-one attorneys and two paralegals; however, the additional professionals performed services on discrete, ancillary tasks that required their special expertise.

20. The following is provided in response to the request for additional information set forth in Paragraph C.5 of the Revised UST Guidelines:

**Question:** Did you agree to any variations from, or alternatives to, your standard or customary billing arrangements for this engagement?

Response: No.

**Question:** If the fees sought in this fee application as compared to the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the client?

Response: No.

**Question:** Have any of the professionals included in this fee application varied their hourly rate based on the geographic location of the bankruptcy case?

Response: No.

**Question:** Does the fee application include time or fees related to reviewing or revising time records or preparing, reviewing, or revising invoices?

Response: No.

**Question:** Does this fee application include time or fees for reviewing time records to redact any privileged or other confidential information?

Response: No.

**Question:** If the fee application includes any rate increases since retention, did the client (i) review and approve those rate increases in advance, and (ii) agree when retaining the law firm to accept all future rate increases?

Response: This Application includes a rate increase since Applicant's retention. Applicant's rates are subject to a customary, firm-wide "step-up" on January 1, 2022. The Committee has reviewed, approved and agreed to the rate increase.

21. Applicant's fees have increased during the Interim Period. Disclosures of the blended rate of Applicant's timekeepers are attached hereto as **Exhibit A**.

**ALLOWANCE OF INTERIM COMPENSATION**

22. With respect to the level of compensation, section 330 of the Bankruptcy Code provides, in pertinent part, that the Court may award to a professional person, "reasonable compensation for actual, necessary services rendered." Section 330(a)(3), in turn, provides that:

In determining the amount of reasonable compensation to be awarded . . . , the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including –

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;



- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

23. The congressional policy expressed above provides for adequate compensation in order to continue to attract qualified and competent professionals to bankruptcy cases. *See In Re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 850 (3d Cir. 1994) (“Congress rather clearly intended to provide sufficient economic incentive to lure competent bankruptcy specialists to practice in the bankruptcy courts.”) (citation and internal quotation marks omitted); *In re Drexel Burnham Lambert Group, Inc.*, 133 B.R. 13, 18 (Bankr. S.D.N.Y. 1991) (“Congress’ objective on requiring that the market, not the Court, establish attorneys’ rates was to ensure that bankruptcy cases were staffed by appropriate legal specialists.”).

24. Applicant asserts that in accordance with the factors enumerated in 11 U.S.C. § 330, the amount requested is fair and reasonable given (a) the complexity of this case, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the costs of comparable services other than in a case under this title. It is respectfully submitted that, had counsel with less experience in these types of matters been retained, the cost to the estate would have been much greater.

25. The fees charged by Applicant in these chapter 11 cases are billed in accordance with the existing billing rates and procedures in effect during the Interim Period. The services rendered by Applicant were necessary and beneficial to the Committee, consistently performed in a timely manner, and reasonable in light of the value of such services to the Committee,

Applicant's demonstrated skill and expertise in the bankruptcy field, and the customary compensation charged by comparably skilled practitioners. Accordingly, Applicant submits that approval of the compensation for professional services and reimbursement of expenses sought herein is warranted.

**NOTICE, PRIOR APPLICATION AND CERTIFICATION**

26. Notice of this Application has been provided in accordance with the Interim Compensation Order. Applicant submits that the foregoing constitutes good and sufficient notice and that no other or further notice need be provided.

27. No previous application for the relief sought herein has been made to this or any other court.

28. Applicant has reviewed the requirements of the Local Rules, including Local Rule 2016-1, and this Application complies with those rules.

*[Remainder of page intentionally left blank]*

**WHEREFORE**, Applicant hereby respectfully requests (i) interim allowance of compensation for Applicant's duly authorized, necessary and valuable service to the Committee during the Interim Period in the aggregate amount of \$1,612,165.00, reimbursement to Applicant for actual and necessary expenses incurred during the Interim Period in the aggregate amount of \$136,663.87, and (iii) awarding Applicant such other and further relief that this Court deems just and proper.

Dated: May 17, 2022

**COOLEY LLP**

/s/ Cullen D. Speckhart

Cullen D. Speckhart  
1299 Pennsylvania Ave., NW, Suite 700  
Washington DC 20004  
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-and-

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Facsimile: (212) 479-6275  
Email: chershcopf@cooley.com  
mklein@cooley.com

*Co-Counsel for the Official Committee of  
Unsecured Creditors*

# **Exhibit 10H**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE HP SECURITIES LITIGATION,

This Document Relates To: All Actions

MASTER FILE No. 3:12-cv-05980-CRB

**CLASS ACTION**

~~[PROPOSED]~~ ORDER AWARDING  
ATTORNEYS' FEES AND LITIGATION  
EXPENSES

1 This matter came for hearing on November 13, 2015 (the “Settlement Hearing”), on Lead  
2 Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses  
3 (“Fee and Expense Application”). The Court having considered Lead Counsel’s Fee and Expense  
4 Application and all matters submitted to it at the Settlement Hearing and otherwise; and it appearing  
5 that due and adequate notice of the Settlement, the Settlement Hearing and related matters,  
6 including Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses, was  
7 given to the Settlement Class as required by the Court’s July 17, 2015 Order (the “Preliminary  
8 Approval Order”).

9 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

10 1. This Order hereby incorporates by reference the definitions in the Stipulation of  
11 Settlement and Release dated as of June 8, 2015 (the “Stipulation”), and all capitalized terms used  
12 herein shall have the same meanings as set forth in the Stipulation.

13 2. This Court has jurisdiction to enter this Order. This Court has jurisdiction over the  
14 subject matter of the Action and over all parties to the Action, including all Settlement Class  
15 Members.

16 3. Notice of Lead Counsel’s Fee and Expense Application was given to all Settlement  
17 Class Members who could be identified with reasonable effort. The form and method of notifying  
18 the Settlement Class of Lead Counsel’s Fee and Expense Application met the requirements of due  
19 process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities  
20 Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation  
21 Reform Act of 1995, the Constitution of the United States, and any other applicable law, and  
22 constituted the best notice practicable under the circumstances, and constituted due and sufficient  
23 notice to all persons entitled thereto.

24 4. Settlement Class Members have been given the opportunity to object to Lead  
25 Counsel’s Fee and Expense Application in compliance with Rule 23(h)(2) of the Federal Rules of  
26 Civil Procedure.

1           5.       Lead Counsel is hereby awarded attorneys' fees in the amount of 11% of the  
2 Settlement Amount, net of Court-approved Litigation Expenses, which sum the Court finds to be  
3 fair and reasonable, and \$1,023,971.29 in reimbursement of Litigation Expenses, plus interest  
4 earned on both amounts at the same rate as earned by the Settlement Fund. The foregoing  
5 attorneys' fees and Litigation Expenses shall be paid from the Settlement Fund in accordance with  
6 the terms of the Stipulation.

7           6.       Lead Plaintiff PGGM Vermogensbeheer B.V. is hereby awarded \$162,900 from the  
8 Settlement Fund as reimbursement for its costs and expenses directly related to its representation of  
9 the Settlement Class.

10          7.       In making the foregoing awards of attorneys' fees and Litigation Expenses to be paid  
11 from the Settlement Fund, the Court has considered and found that:

12           a.       The Settlement has created a fund of \$100 million in cash that has been  
13 deposited into an escrow account for the benefit of the Settlement Class pursuant to  
14 the terms of the Stipulation, and eligible members of the Settlement Class who  
15 submit acceptable Claim Forms will benefit from the Settlement that occurred  
16 because of Lead Counsel's efforts;

17           b.       Lead Counsel's Fee and Expense Application has been reviewed and  
18 approved as fair and reasonable by the Court-appointed Lead Plaintiff, a large,  
19 sophisticated institutional investor that was actively involved in the prosecution and  
20 resolution of the Action;

21           c.       Copies of the Notice which stated that Lead Counsel would apply to the  
22 Court for attorneys' fees in an amount not to exceed eleven percent (11%) of the  
23 Settlement Amount, net of Litigation Expenses, and reimbursement of Litigation  
24 Expenses in an amount not to exceed \$1.25 million, were mailed to over 809,000  
25 potential Settlement Class Members or their nominees. In addition, the Notice stated  
26 that the maximum amount of Litigation Expenses included reimbursement of costs  
27  
28

1 and expenses (including lost wages) incurred by Lead Plaintiff in connection with its  
2 representation of the Settlement Class, in an amount not to exceed \$175,000;

3 d. There were no objections to Lead Counsel’s Fee and Expense Application;

4 e. Lead Counsel has conducted the litigation and achieved the Settlement with  
5 skill, perseverance and diligent advocacy;

6 f. The Action involves complex factual and legal issues and was actively  
7 prosecuted for nearly three years;

8 g. Had Lead Counsel not achieved the Settlement, there would remain a  
9 significant risk that Lead Plaintiff and the other members of the Settlement Class  
10 may have recovered less or nothing from the Defendants;

11 h. Lead Counsel devoted over 17,723 hours, with a lodestar value of  
12 approximately \$9.4 million, to achieve the Settlement; and

13 i. The amount of attorneys’ fees and Litigation Expenses to be reimbursed from  
14 the Settlement Fund are fair and reasonable and consistent with awards in similar  
15 cases.

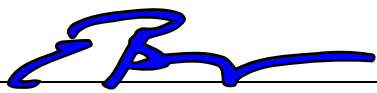
16 8. Any appeal or any challenge affecting this Court’s award of attorneys’ fees and  
17 Litigation Expenses shall in no way disturb or affect the finality of the Judgment.

18 9. Jurisdiction is hereby retained over the parties and the Settlement Class Members for  
19 all matters relating to this Action, including the administration, interpretation, effectuation or  
20 enforcement of the Stipulation and this Order.

21 10. In the event that the Settlement is terminated or the Effective Date of the Settlement  
22 otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the  
23 Stipulation and shall be vacated in accordance with terms of the Stipulation.

24 11. There is no just reason for delay in the entry of this Order, and immediate entry by  
25 the Clerk of the Court is expressly directed.

26 Dated: 11/13/2015

27   
28 The Honorable Charles R. Breyer  
United States District Judge



# **Exhibit 10I**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

IN RE KRAFT HEINZ SECURITIES  
LITIGATION

Case No. 1:19-cv-01339

Honorable Jorge L. Alonso

**ORDER AWARDING ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

This matter is before the Court on Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. The Court having considered all matters submitted to it; and it appearing that notice substantially in the form approved by the Court, which advised of Lead Counsel's request for an award of attorneys' fees and Litigation Expenses, was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice substantially in the form approved by the Court was published in *The Wall Street Journal* and transmitted over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement, dated as of May 2, 2023 (ECF No. 475-3) ("Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.
2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all Parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses was given to all Settlement Class Members who or which could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and Litigation Expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 20% of the Settlement Fund and \$2,656,091.93 in payment of Plaintiffs' Counsel's litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded among Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees and payment of expenses from the Settlement Fund, the Court has considered and found that:

A. The Settlement has created a fund of \$450,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

B. The fee sought has been reviewed and approved as reasonable by Plaintiffs, sophisticated investors that actively supervised the Action;

C. Over 1.6 million Postcard Notices and 5,600 Notice Packets (i.e., the Notice and Claim Form) were mailed to potential Settlement Class Members and Nominees stating that Lead Counsel would apply for an award of attorneys' fees in the amount of 20% of the Settlement Fund and for payment of Litigation Expenses in an amount not to exceed \$3,200,000, and only two objections to the requested attorneys' fees have been received, which the Court has consider and rejected;

D. Plaintiffs' Counsel conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

E. The Action raised a number of complex issues;

F. Had Lead Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

G. Plaintiffs' Counsel devoted over 112,000 hours, with a lodestar value of \$52,985,816.50, to achieve the Settlement; and

H. The amount of attorneys' fees awarded and expenses to be paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Plaintiffs are hereby awarded reimbursement for their reasonable costs and expenses directly related to their representation of the Settlement Class in the following amounts: (i) \$12,780.00 to Sjunde AP-Fonden; (ii) \$73,950.00 to Union Asset Management Holding AG; and (iii) \$27,610.00 to Booker Enterprises Pty Ltd.

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

8. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

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

SO ORDERED this 19th day of September, 2023.

A handwritten signature in black ink, consisting of a large, stylized 'J' and 'A' with a horizontal line through them, enclosed in a large, loopy oval.

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The Honorable Jorge L. Alonso  
United States District Judge

# **Exhibit 10J**

FILED IN CHAMBERS  
THOMAS W. THRASH JR.  
U.S.D.C. Atlanta

JUN 26 2020

JAMES N. HATTEN, Clerk  
By: *[Signature]* Deputy Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE EQUIFAX INC. SECURITIES  
LITIGATION

Consolidated Case No.  
1:17-cv-03463-TWT

**ORDER AWARDING  
ATTORNEYS' FEES AND LITIGATION EXPENSES**

This matter came on for hearing on June 26, 2020 (the "Settlement Fairness Hearing") on Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Fairness Hearing and otherwise; and it appearing that notice of the Settlement Fairness Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in the *Wall Street Journal* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated February 12, 2020 (ECF No. 159-2) (the “Stipulation”) and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys’ fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Plaintiff’s Counsel are hereby awarded attorneys’ fees in the amount of 20 % of the Settlement Fund, net of total Court-awarded Litigation Expenses, which sum the Court finds to be fair and reasonable. Plaintiff’s Counsel are also



hereby awarded \$659,925.13 in payment of litigation expenses to be paid from the Settlement Fund, which sum the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiff's Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of \$149,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiff's Counsel;

(b) The fee sought is based on a retainer agreement entered into between Lead Plaintiff, a sophisticated institutional investor that actively supervised the Action, and Lead Counsel at the outset of the Action; and the requested fee has been reviewed and approved as reasonable by Lead Plaintiff;

(c) Over 185,000 copies of the Notice were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for an award of attorneys' fees in an amount not exceed 20% of the

Settlement Fund and for payment of Litigation Expenses in an amount not to exceed \$1,000,000, and no objections to the requested attorneys' fees and expenses were received;

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

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

(f) Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiff and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(g) Plaintiff's Counsel devoted over 42,200 hours, with a lodestar value of over \$18.6 million, to achieve the Settlement; and

(h) The amount of attorneys' fees awarded and expenses to be paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff Union Asset Management Holding AG is hereby awarded \$ 121,375.00 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

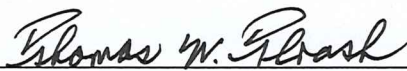
7. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

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

9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

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

SO ORDERED this 26 day of June, 2020.



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The Honorable Thomas W. Thrash, Jr.  
United States District Judge