SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

MICHAEL PLUTTE, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. SEA LIMITED, FORREST XIAODONG LI, GANG YE, TONY TIANYU HOU, COLLEEN A. DE VRIES, YUXIN REN, NICHOLAS A. NASH, DAVID HENG CHEN SENG, KHOON HUA KUOK, GOLDMAN SACHS (ASIA) L.L.C., MORGAN STANLEY & CO. INTERNATIONAL PLC, CREDIT SUISSE SECURITIES (USA) L.L.C., CLSA LIMITED, CITIGROUP GLOBAL MARKETS INC., COWEN AND COMPANY, LLC, NOMURA SECURITIES INTERNATIONAL, INC., PIPER JAFFRAY & CO., STIFEL NICOLAUS & COMPANY, INCORPORATED, PT MADIRI SEKURITAS, TUDOR, PICKERING, HOLT & CO. SECURITIES, INC., BDO CAPITAL & INVESTMENT CORPORATION, CATHAY SECURITIES CORPORATION OFFSHORE SECURITIES UNIT, DBS BANK LTD., VIET CAPITAL SECURITIES JSC and COGENCY GLOBAL INC., Defendants.	Index No. 655436/2018 The Honorable Jennifer G. Schecter, J.S.C. Part 54 **Motion Sequence No. 004** MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR: (1) FINAL APPROVAL OF THE SETTLEMENT AND APPROVAL OF THE PLAN OF ALLOCATION; AND (2) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF

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Pursuant to Article 9 of the New York Civil Practice Law and Rules ("CPLR"), Plaintiff Michael Plutte respectfully submits this memorandum of law in support of: (1) final approval of the proposed $10,750,000 settlement ("Settlement") of this class action ("Action"); (2) approval of the Plan of Allocation ("POA"); and (3) approval of Lead Counsel's request for an award of attorneys' fees and expenses and an award to Plaintiff for representing the Settlement Class.

The terms of the Settlement are set forth in the Stipulation of Settlement ("Stipulation") which was filed with the Court on October 19, 2020. NYSCEF No. 66.[1]

I. PRELIMINARY STATEMENT

The $10.75 million recovery is the product of targeted and effective efforts in prosecuting the Action, together with arm's-length settlement negotiations among experienced and knowledgeable counsel, including a formal mediation session overseen by a nationally-recognized, neutral mediator. The Settlement is an admirable result for the Settlement Class and readily satisfies the standards for final approval. It is particularly beneficial to the Settlement Class in light of the many risks Plaintiff faced, including that the Court would grant all, or part, of Defendants' pending motion to dismiss, that any appeal from a favorable motion-to-dismiss ruling could be successful, or that Plaintiff could not execute a judgment against most of Defendants even if successful after trial because they are located abroad. All of these risks, and others, could ultimately lead to no recovery, or a far smaller recovery. The Settlement is also a testament to the tenacity and effectiveness of Plaintiff and Lead Counsel, given that no other investor filed suit – so the Settlement Class would have recovered nothing without their efforts – and, unlike many other cases, no regulatory or criminal investigation provided insight into these claims or allegations.

[1] All capitalized terms not defined herein are defined in the Stipulation and supporting Affirmation of Joseph Russello ("Russello Aff."), submitted herewith.

Settlement Class Members appear to agree. Pursuant to the Court's Implementing Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), dated December 8, 2020 (NYSCEF No. 91), over 28,200 copies of the Notice were sent to potential Settlement Class Members and nominees beginning on December 29, 2020, and the Summary Notice was published on January 8, 2021. *See* Murray Aff. ¶¶5-12.[2] To date, there have been no objections to the Settlement. If any timely objections are subsequently received, Lead Counsel will address them in the reply brief due on March 25, 2021.

In recognition of the risks Plaintiff faced and the result obtained, Lead Counsel also respectfully moves this Court for an award of attorneys' fees of 33-1/3% of the Settlement Amount and $32,062.85 in expenses that were reasonably and necessarily incurred in this Action, plus interest on both amounts. Lead Counsel's fee and expense request has the full support of Plaintiff. *See* Plutte Aff, ¶4.[3] Lead Counsel's request reflects the significant risks taken in prosecuting the Action on a contingent basis, as well as the result achieved here. Additionally, Plaintiff seeks an award in the amount of $2,500 for the time he spent representing the Settlement Class. The Notice informed potential Settlement Class Members that Lead Counsel intended to apply to the Court for an award of attorneys' fees not to exceed 33-1/3% of the Settlement Amount, plus expenses of no greater than $75,000, plus interest on both amounts, and an award to Plaintiff. *See* Murray Aff., Ex. A, Notice at 75.

[2] "Murray Aff." refers to the Affidavit of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, dated February 24, 2021, submitted herewith.

[3] "Plutte Aff." refers to the Affidavit of Michael Plutte in Support of Settlement and Application for Award of Attorneys' Fees and Expenses, dated February 11, 2021, submitted herewith.

Accordingly, Plaintiff respectfully requests that the Court grant final approval of the Settlement and POA, and grant Lead Counsel's requested award of attorneys' fees and expenses and an award to Plaintiff.

II. FACTUAL AND PROCEDURAL BACKGROUND

To avoid repetition, Plaintiff respectfully refers the Court to the accompanying Russello Affirmation for a detailed discussion of the facts and history of the Action, the efforts undertaken by Plaintiff and Lead Counsel, the risks of continued litigation, and the negotiations that resulted in the Settlement.

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND SHOULD BE APPROVED BY THE COURT

A. The Law Favors and Encourages Settlements

New York courts strongly favor settlements as a matter of public policy. *See IDT Corp. v. Tyco Grp., S.A.R.L.*, 13 N.Y.3d 209, 213 (2009) ("[s]tipulations of settlement are judicially favored and may not be lightly set aside"); *see also Hallock v. State of N.Y.*, 64 N.Y.2d 224, 230 (1984).[4] "Strong policy considerations" favor settlements because "[a] negotiated compromise of a dispute avoids potentially costly, time-consuming litigation and preserves scarce judicial resources; courts could not function if every dispute devolved into a lawsuit." *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 383 (1993); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (holding that courts should be "mindful of the strong judicial policy in favor of settlements" in considering settlements).

Under New York law, final approval of a class-action settlement involves three steps. First, a scheduling order is entered setting forth the procedure for approving the settlement. Second,

[4] Unless noted, all emphasis in quotations is added and all internal citations and quotation marks are omitted.

notice of the proposed settlement and its terms are disseminated to class members. Finally, the Court holds a hearing in which the fairness, adequacy, and reasonableness of the settlement is presented and class members can be heard. *See In re Colt Indus. S'holder Litig.*, 77 N.Y.2d 185, 189 (1991).

Plaintiff has satisfied the first two steps. On December 8, 2020, the Court entered the Preliminary Approval Order. NYSCEF No. 91. Pursuant to the Preliminary Approval Order, Notice was mailed to potential Settlement Class Members who could be reasonably located beginning on December 29, 2020. Murray Aff., ¶¶5-11. As of the filing of this brief, Lead Counsel has not received any objections to any aspect of the Settlement.

As for the third step, a fairness hearing is scheduled for April 1, 2021 before the Court. While CPLR 908 provides that "[a] class action shall not be dismissed, discontinued or compromised without the approval of the Court," it does not prescribe specific guidelines for evaluating proposed settlements. Nonetheless, courts focus their inquiry on "the fairness of the settlement, its adequacy, its reasonableness, and the best interests of the class members." *Hosue v. Calypso St. Barth, Inc.*, No. 160400/2015, 2017 N.Y. Misc. LEXIS 3440, at *4 (Sup. Ct. N.Y. Cnty. Sept. 11, 2017). To inform this analysis, courts consider the following factors: (i) the likelihood that plaintiffs will succeed on the merits; (ii) the extent of support from the parties; (iii) the judgment of counsel; (iv) the presence of good faith bargaining; and (v) the complexity and nature of the issues of law and fact. *See Fernandez v. Hospitality*, No. 152208/2014, 2015 N.Y. Misc. LEXIS 2193, at *3 (Sup. Ct. N.Y. Cnty. June 20, 2015).

These factors favor approval of the Settlement. Plaintiff and Lead Counsel thoroughly examined the facts and the law applicable to the claims and defenses asserted in the Action, and weighed the benefits of the Settlement against the risk, delay and cost of further litigation, including the possibility of appeals and the difficulty in collecting any judgment even if successful.

Russello Aff., ¶¶27-31. Plaintiff respectfully submits that the Settlement is fair, reasonable and adequate, and merits this Court's approval.

B. The Likelihood Plaintiff Will Succeed and the Complexity of the Issues of Law and Fact

The probability of success on the merits is an important factor in assessing a settlement. *See In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (1st Dept. 1990) ("Courts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement."), *aff'd*, 77 N.Y.2d 185 (1991); *see also Fernandez*, 2015 N.Y. Misc. LEXIS 2193, at *3-*4 (courts must "balance the value of a proposed settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation"). So too is the complexity of the issues of law and fact presented in the litigation. *See, e.g.*, *Hosue*, 2017 N.Y. Misc. LEXIS 3440, at *5 (noting "Class Counsel took into account the risks of establishing liability, and also considered the time, delay, and financial repercussions in the event of trial and appeal by Defendant").

The Action presented numerous factual and legal obstacles. The claims in this Action were extensively explored in motion-to-dismiss briefing and at oral argument, in an extended colloquy with the Court. While Plaintiff and Lead Counsel were prepared to continue litigating the Action, surviving Defendants' motion to dismiss was not assured, nor was success on the inevitable appeal in the wake of a favorable ruling. Defendants have continuously denied any wrongdoing and are represented by a highly resourceful defense team. Although Plaintiff believes he adequately alleged these claims, any recovery would be at risk if dismissal were granted and upheld on appeal. And the claims presented challenging issues involving the necessity of disclosure in an offering of alleged long-standing operational problems and interim financial information.

Specifically, Plaintiff alleged that: (i) Sea was in the process of a lengthy transition to a new gaming platform, which was then experiencing significant operational problems and delayed

market acceptance; and (ii) Sea had dramatically increased marketing expenses and experienced significant losses in its Digital Entertainment business in the quarter which ended before the offering. Russello Aff., ¶¶9, 15.

In response, Defendants argued that: (i) information about the gaming platform was public, "beginning with the announcement of the beta launch in July 2016 and continuing throughout 2016 and 2017"; (ii) the Registration Statement "disclosed that Sea had suffered net losses in 2014, 2015, 2016 and the six months ended June 30, 2017 'primarily due to significant sales and marketing expenses,'" and Sea had no duty to disclose "interim" third quarter results until it did, on November 22, 2017; and (iii) "claims regarding both Garena and the third quarter 2017 results also fail because Plaintiff has not and cannot allege that these supposed omissions could have caused any decline in Sea's ADS price, as their disclosure did not reveal any prior misrepresentation." *Id.* at ¶15. Defendants also argued that the offering materials sufficiently warned investors of the risks and consequences associated with Sea's technology upgrades and financial performance, and that analysts and investors understood that Sea would incur increasing sales and marketing expenses, referencing analyst reports issued after the IPO. *Id.* Lead Counsel believed that these hurdles could be overcome, and that liability could be established, but the risk remained that the Court or a jury would agree with Defendants' arguments, precluding any recovery.

Moreover, the affirmative defense of negative causation would have been central to further proceedings, including any motion for summary judgment. Defendants argued that the disclosure of the third quarter 2017 results did not cause any Securities Act losses.[5] Although Plaintiff strongly disagrees with that position, a battle of the experts undoubtedly would have ensued and

[5] Defendants also maintained that Plaintiff could not point to any corrective disclosure about the Garena upgrade because it was public before the IPO.

the risk that Defendants could prevail on that issue was palpable, further supporting the Settlement. *See In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) (emphasizing that a "battle of the experts" may complicate the resolution of issues). Thus, courts have recognized that when parties will likely rely on significant expert testimony and analysis, settlement is favored. *See, e.g.*, *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 161-62 (S.D.N.Y. 2011) (approving settlement where the litigation risks included a "credible defense of negative causation").

Even if their negative causation defense was not successful, Defendants would have argued that investors who sold their stock after February 2019 suffered no cognizable damages, because that is the last time that Sea's ADSs traded below the IPO price. According to Plaintiff's consultant, the full damages suffered by the Settlement Class were approximately $123 million. Under this best-case scenario, the Settlement represents a recovery of approximately 8% of recoverable damages. Thus, viewing the Settlement Amount through any lens demonstrates that it provides a substantial recovery for the Settlement Class.[6]

The risks that several important individuals affiliated with Sea would be beyond the Court's subpoena power and necessary witnesses and documents would be unavailable in discovery and trial further support the Settlement at this stage. Russello Aff., ¶28. The Registration Statement warned that personal jurisdiction over Sea's executive officers and directors may be lacking in the U.S. *Id.* Likewise, the Registration Statement warned of the difficulties associated with filing suit against Sea and its management and directors, executing judgments, and pursuing recourse under the federal securities laws. *Id.* at ¶29.

[6] Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements*, 2019 Review and *Analysis* (Cornerstone Research 2020) at 7, Figure 6 (between 2010-2019 median settlements in cases alleging Section 11 and/or 12(a)(2) claims only was $7.2 million, and 7.4% of "simplified statutory damages") (Ex. A).

Accordingly, this Action involved complex issues of law and fact and heightened risks as a result of Sea's status as a foreign private issuer. There was no assurance that even if this Court denied the motion to dismiss, Plaintiff would have been able to conduct adequate discovery, certify a class, survive summary judgment, or prevail at trial, let alone win the inevitable appeals or execute a judgment and recover funds for the Settlement Class. The Settlement eliminates these substantial risks.

C. The Judgment of Counsel and the Extent of Support from the Parties

The support of the parties, judgment of counsel, and presence of bargaining in good faith all support final approval. *See Rosenfeld v. Bear Stearns & Co*., 237 A.D.2d 199, 199 (1st Dep't 1997).

Lead Counsel has concluded that the Settlement is fair, reasonable and adequate based on its investigation, analysis and experience. The Settlement resulted from informed, arm's-length negotiations, including a full-day mediation between counsel for Plaintiff and Defendants under the direction of an experienced mediator, Michelle Yoshida, Esq. of Phillips ADR. Given the benefits earmarked for the Settlement Class, Lead Counsel has concluded that the Settlement is appropriate, particularly when considered against the risks, costs and uncertainties of continued litigation. Courts have repeatedly given considerable weight to counsel's views regarding settlement. *See Michels v. Phoenix Home Life Mut. Ins. Co.*, No. 5318-05, 1997 N.Y. Misc. LEXIS 171, at *85 (Sup. Ct. Albany Cnty. Jan. 3, 1997).

Plaintiff also supports approval of the Settlement. Plutte Aff., ¶4. Additionally, although the March 18, 2021 deadline for objections has not yet passed, to date there has been no objection to any aspect of the Settlement or the relief sought in connection with this motion. A lack of objections is generally indicative of the class's approval of a proposed settlement. *See Pressner v. MortgageIT Holdings, Inc.*, No. 602472/2006, 2007 N.Y. Misc. LEXIS 4420, at *6 (Sup. Ct.

N.Y. Cnty. May 29, 2007) (granting approval "since there has been no objection to the proposed settlement").

D. The Settlement Is the Result of Good Faith, Arm's-Length Negotiations

The Settlement is the product of hard-fought negotiations between experienced counsel. The Settlement also follows Lead Counsel's extensive investigation, which included, among other things, a review of Sea's press releases, SEC filings, analyst reports, media reports, and other public reports and information. Russello Aff., ¶12. Based on its investigation, Lead Counsel identified two material issues and prepared a challenging amended complaint, which the parties then exhaustively addressed in briefing and argument before the Court, settlement-related mediation statements, and numerous interactions with the mediator. *Id.* The parties also negotiated particular terms of the Settlement directly with each other, which resulted in the Stipulation and related Settlement documentation.

Where, as here, the settlement was negotiated at arm's length by informed and experienced counsel, approval is warranted. *See, e.g.*, *Michels*, 1997 N.Y. Misc. LEXIS 171, at *86. Thus, this factor, along with all of the others, supports a finding that the Settlement is fair, reasonable, and adequate, and should be approved.

IV. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

Under federal precedent, the standard for approval of the POA is the same as the standard for approving settlements, *i.e.*, the POA "must be fair and adequate." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (quoting *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002)). "When formulated by competent and experienced class counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis." *In re Advanced Battery Techs. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014). While the CPLR does not specifically mention plans of allocation, New York courts acknowledge their

importance in common benefit fund settlements. *See 212 Inv. Corp. v. Kaplan*, No. 603029/04, 2008 N.Y. Misc. LEXIS 3348, at *10-*13 (Sup. Ct. N.Y. Cnty. May 27, 2008).

The POA, which is set forth in the Notice, is based on the statutory formula for computing damages under Section 11. Lead Counsel's damages consultant assisted in preparing the POA, and it is a fair method to divide the Net Settlement Fund for distribution based on the claims alleged by Plaintiff. *See* Russello Aff., ¶¶34-35.

Specifically, the Net Settlement Fund will be distributed to Authorized Claimants, *i.e.*, Settlement Class Members who submit timely, valid Proofs of Claim and Release that are approved for payment from the Net Settlement Fund pursuant to the POA. The POA treats all Settlement Class Members in a similar manner: everyone who submits a timely, valid Proof of Claim and Release form, and does not exclude himself, herself, or itself from the Settlement Class, will receive a *pro rata* share of the Net Settlement Fund in the proportion that the Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants, so long as such Authorized Claimant's payment amount is $10.00 or more. *See* Murray Aff., Ex. A, Notice at 3-5.

Lead Counsel believes that the POA is fair and reasonable and respectfully submits that it should be approved. There have been no objections to the POA to date, further supporting approval. *See, e.g.*, *Maley*, 186 F. Supp. 2d at 367.

V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED

The Stipulation calls for the Court to certify the Settlement Class in connection with the proposed Settlement. This Court preliminarily certified the Settlement Class in the Preliminary Approval Order. NYSCEF No. 91, ¶2. Because the elements of CPLR 901 and 902 are satisfied, the Court should grant final certification of the Settlement Class.

A. The Settlement Class Satisfies the Requirements of CPLR 901

"Appellate courts in this State have repeatedly held that the class action statute should be liberally construed." *Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 21 (1st Dep't 1991). In *Pruitt*, shareholders who purchased stock in a public offering brought claims under the Securities Act alleging that the registration statement included materially inaccurate financial information. *Id.* at 18. In reversing the trial court's denial of class certification, *Pruitt* held that class certification was "particularly appropriate" in Securities Act cases because "class members have allegedly sustained damages in amounts insufficient to justify individual actions" and "it would be impractical and inefficient for individual class members to prosecute separate actions" given that millions of shares were issued in the offering. *Id.* at 21. *Pruitt* also held that "the class action remedy is frequently utilized" in Securities Act cases. *Id.*

Under CPLR 901, the Court may grant class certification if: "(1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy." CPLR 901(a).

All five prerequisites of CPLR 901 are met here and, therefore, the preliminary certification of the Settlement Class should be made final. Specifically:

> (1) **Numerosity** is established because Sea issued approximately 66 million shares in the IPO. Numerosity is thus satisfied. *See Borden v. 400 E. 55th St. Assoc., L.P.*, 24 N.Y.3d 382, 399 (2014) (recognizing that "the legislature contemplated classes involving as few as 18 members").
>
> (2) **Commonality** is demonstrated because all potential Settlement Class Members, including Plaintiff, must prove the same facts to establish Defendants' liability, *i.e.*, that the Registration Statement misstated or omitted material facts in

violation of the Securities Act. *See Pruitt*, 167 A.D.2d at 21 (finding "common questions of law and fact" where Securities Act claims turned on "the truth or falsity of the prospectus' statements").

(3) **Typicality** is met because Plaintiff's claims are exactly the same as potential Settlement Class Members' claims and require the Court to address the same legal and factual questions. *See Pruitt*, 167 A.D.2d at 22 (finding that typicality is easily met in Securities Act cases because "plaintiff's claims are identical to those of the other members of the class since he alleges, as would they, that he purchased the stock on the basis of a false and misleading prospectus").

(4) **Adequacy** is satisfied because Plaintiff: (1) is a member of the class he seeks to represent and has the same interests and injuries as other class members; (2) maintained an interest in prosecuting the Action; and (3) retained experienced counsel with a track record in class actions that have effectively advocated for the class's interests. *See Pruitt*, 167 A.D.2d at 24.

(5) **Superiority** is shown because a class action is a more efficient and fair mechanism for litigating Securities Act claims arising from the IPO compared to individual litigations. *See N.Y.C. Coal. to End Lead Poisoning v. Giuliani*, 245 A.D.2d 49, 52 (1st Dep't 1997) ("the possibility of multiple lawsuits and inconsistent rulings also weighs in favor of granting class certification").

B. The Discretionary Factors in CPLR 902 Also Support Certification

The Court can also consider CPLR 902's discretionary factors in deciding whether to grant final certification of the Settlement Class, including: (1) the interest of members of the class in individually controlling the prosecution of separate actions; (2) the impracticability or inefficiency of prosecuting separate actions; (3) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (4) the desirability of concentrating the litigation of claims in this forum; and (5) the difficulties likely to be encountered in the management of a class action. CPLR 902.

Unlike the mandatory factors enumerated in CPLR 901(a), the factors listed in CPLR 902 have been described as pragmatic or "feasibility considerations." *Chimenti v. Am. Express Co.*, 97 A.D.2d 351, 352 (1st Dep't 1983). Indeed, CPLR 902 consists of "[d]iscretionary factors" that are mostly "implicit in CPLR 901." 1 Weinstein, Korn & Miller, CPLR Manual, §7.07(c)(8) (2019); *see also Gilman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 93 Misc.2d 941, 948 (Sup.

Ct. N.Y. Cnty. 1978) (describing CPLR 902 factors as "considerations [that] are implicit in CPLR 901 [that] have hitherto been discussed").

CPLR 902 factors 1, 2, 4, and 5 relate to commonality, typicality, and superiority, all of which, as described above, are readily satisfied. Factor 3 is inapplicable here because no other cases have been filed by any other Settlement Class Members in any court. Indeed, Plaintiff is the only Sea shareholder to prosecute Securities Act claims relating to the IPO.

With respect to factor 4, this Court is a particularly desirable forum for resolving this controversy because of the Commercial Division's expertise in adjudicating business disputes and because Sea's common stock publicly trades on the New York Stock Exchange, the Manhattan-based exchange featured prominently in the Registration Statement. Thus, concentrating the claims in the New York County Commercial Division is desirable and, indeed, necessary, given the absence of any alternate forum in which claims are pending.

For these reasons, each CPLR 901 and 902 factor supports granting final certification of the Settlement Class.

VI. LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO PLAINTIFF IS FAIR AND REASONABLE

Lead Counsel respectfully requests an award of attorneys' fees amounting to one-third of the Settlement Amount, or $3,582,975. The Notice apprised potential Settlement Class Members that Lead Counsel would seek this amount in fees. Murray Aff., Ex. A, Notice at 7. To date, there have been no objections to Lead Counsel's fee request. Additionally, the requested fees have the full support of Plaintiff. *See* Plutte Aff., ¶5. For the reasons detailed below, Lead Counsel respectfully submits that the full amount of the fee request be granted.

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

Pursuant to CPLR 909, Lead Counsel respectfully requests that the Court award attorneys' fees, to be allocated among Plaintiff's Counsel, based on a percentage of the common fund achieved in the Settlement. *See Fernandez*, 2015 N.Y. Misc. LEXIS 2193, at *11-*12 (finding that the preferable method for awarding attorneys' fees in a common fund class action settlement is the percentage method); *Lopez v. Dinex Grp., LLC*, No. 155706/2014, 2015 N.Y. Misc. LEXIS 3657, at *14-*15 (Sup. Ct. N.Y. Cnty. Oct. 6, 2015) (same); *Charles v. Avis Budget Car Rental, LLC*, No. 152627/2016, 2017 N.Y. Misc. LEXIS 5082, at *10-*11 (Sup. Ct. N.Y. Cnty. Dec. 14, 2017) (same); *see also Hayes v. Harmony Gold Mining Co. Ltd.*, 509 F. App'x 21, 24 (2d Cir. 2013) ("the prospect of a percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class").[7]

The Supreme Court recognizes that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for compensation for their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-class action, the customary fee arrangement would be contingent and in the range of one-third of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 904 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.").

[7] Federal courts have concluded that the Private Securities Litigation Reform Act of 1995 ("PSLRA") expresses a preference for the percentage of the fund method, as opposed to the lodestar method, in determining attorneys' fees in securities class actions. *See, e.g.*, *Maley*, 186 F. Supp. 2d at 370. The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000).

The requested one-third fee is well within the range of percentage fees awarded within the Manhattan Supreme Court and New York federal courts in comparable class action cases. *See, e.g.*, *In re NetShoes Sec. Litig.*, Index No. 157435/2018, slip op. at 7 (Sup. Ct. N.Y. Cnty. Dec. 3, 2020) (awarding fees of 33-1/3% plus expenses) (Ex. B); *In re Everquote, Inc. Sec. Litig.*, Index No. 651177/2019, slip op. at ¶14 (Sup. Ct. N.Y. Cnty. June 11, 2020) (awarding fees of 33-1/3% plus expenses) (Ex. C); *Charles*, 2017 N.Y. Misc. LEXIS 5082, at *12-*13 (awarding fees of 33%, plus expenses); *Fernandez*, 2015 N.Y. Misc. LEXIS 2193, at *11-*15 (awarding one-third fees, plus expenses); *Lopez*, 2015 N.Y. Misc. LEXIS 3657, at *15-*20 (awarding one-third fees, plus expenses); *see also In re China Media Express Holdings, Inc.*, No. 11-CV-0804-VM, 2015 U.S. Dist. LEXIS 181933, at *6 (S.D.N.Y. Sept. 18, 2015) (awarding one-third fees, plus expenses); *Landmen Partners Inc. v. Blackstone Grp. L.P.*, No. 08-cv-03601-HB-FM, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding one-third fees, plus expenses).

B. The Fee Request Is Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, New York courts cross-check the proposed award against counsel's lodestar. *See, e.g.*, *Clemons v. A.C.I. Found., Ltd.*, No. 154573/2015, 2017 N.Y. Misc. LEXIS 1788, at *11 (Sup. Ct. N.Y. Cnty. May 11, 2017) ("[a]pplying the lodestar method as a comparison . . ."); *Ryan v. Volume Servs. Am.*, No. 652970/2012, 2013 N.Y. Misc. LEXIS 932, at *14 (Sup. Ct. N.Y. Cnty. Mar. 7, 2013) (same). Under the lodestar method, a court will consider the aggregate hourly value of the services billed by multiplying the hours billed by a reasonable hourly rate. *See Ousmane v. City of New York*, No. 402648/04, 2009 N.Y. Misc. LEXIS 574, at *24-*25 (Sup. Ct. N.Y. Cnty. Mar. 17, 2009). "Upon determining the lodestar amount, the court may, in its discretion . . . increase the lodestar amount by applying a multiplier based on certain more subjective factors, such as the difficulty of the case, the risk of success and the quality of representation." *Id.*

Lead Counsel's fee request is reasonable under the lodestar method. Plaintiff's Counsel and their respective staffs have spent, in the aggregate, 1,614.85 hours prosecuting the Action, producing a total lodestar amount of $1,172,145.75 when multiplied by Plaintiff's Counsel's current billing rates. *See* Affirmation of Joseph Russello Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, ¶3 ("Robbins Geller Aff.");[8] Affirmation of Stephen J. Oddo Filed on Behalf of Robbins LLP in Support of Application for Award of Attorneys' Fees and Expenses, ¶4 ("Robbins Aff."), Affirmation of Arun G. Ravindran Filed on Behalf of Hedin Hall LLP in Support of Application for Award of Attorneys' Fees and Expenses (collectively, the "Fee Affirmations"). The amount of attorneys' fees requested by Lead Counsel herein, approximately $3.583 million, represents a modest multiplier of 3.05 to counsel's aggregate lodestar.

The requested 3.05 multiplier in this Action is well within the range of multipliers commonly awarded in class actions in New York state and federal courts.[9] *See, e.g.*, *Lopez*, 2015 N.Y. Misc. LEXIS 3657, at *19 (awarding fees representing a 3.15 multiplier); *see also In re*

[8] In determining whether counsel's rates are reasonable, the Court should take into account the attorneys' professional reputation, experience, and status. Here, Lead Counsel is among the most experienced securities practitioners with a strong track record of success. *See generally* Robbins Geller Aff. Lead Counsel's hourly rates have been recently considered and judicially approved. *See* Hr'g Tr. at 160:22-24, *In re Am. Realty Cap. Props., Inc. Litig.*, No. 15-MC-40 (AKH) (S.D.N.Y. Jan. 23, 2020) ("I find your lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable"); (Ex. D); H'rg Tr. at 25:12-16, *Kaess v. Deutsche Bank AG*, No. 09-cv-01714 (GHW)(RWL) (S.D.N.Y. June 11, 2020) ("I find that these billable rates [for Robbins Geller] based on the timekeeper's title, specific years of experience, and market rates for similar professionals in their fields . . . to be reasonable in this context.") (Ex. E). These recent judicial findings support the reasonableness of counsel's hourly rates and lodestar. *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 Civ. 3176-JFK, 2007 U.S. Dist. LEXIS 9450, at *22 (S.D.N.Y. Feb. 1, 2007) (approving counsel's hourly rates).

[9] Like in *Fernandez*, Lead Counsel's multiplier is slightly overstated because it does not account for "time that they will be required to spend administering the settlement going forward." 2015 N.Y. Misc. LEXIS 2193, at *15. Nor does it include Lead Counsel's time spent in preparing these materials in support of final approval of the Settlement.

BISYS Sec. Litig., No. 04 Civ. 3840-JSR, 2007 U.S. Dist. LEXIS 51087, at *9-*11 (S.D.N.Y. July 16, 2007) (awarding fees representing a 2.99 multiplier and finding that the multiplier "falls well within the parameters set in this district and elsewhere"); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded.").

Lead Counsel invested substantial time and effort prosecuting this Action against Defendants to successful completion when no other lawyer sought to represent or advance the interests of the Settlement Class in litigation arising out of the IPO. The requested fee, therefore, is manifestly reasonable, whether calculated as a percentage-of-the-fund or under the lodestar method.

C. The Relevant Factors Confirm that the Requested Fee Is Reasonable

In determining an award of attorneys' fees, New York courts consider the following factors: (i) the risks of the litigation; (ii) whether counsel had the benefit of a prior judgment; (iii) the standing of counsel for the plaintiffs and defendants; (iv) the magnitude and complexity of the litigation and responsibility undertaken; (v) the amount recovered; (vi) the case's history and work done by counsel; and (vii) what it would be reasonable for counsel to charge a victorious plaintiff. *See, e.g.*, *Fernandez*, 2015 N.Y. Misc. LEXIS 2193, at *14-*15. Each of these factors supports approval of the requested fee.

1. The Risks of the Action

"[S]hareholder actions are notoriously complex and difficult to prove." *See In re Bayer AG Sec. Litig.*, No. 03 Civ. 1546-WHP, 2008 U.S. Dist. LEXIS 101350, at *11 (S.D.N.Y. Dec. 15, 2008). As detailed above, the Action was no exception because it involved complex issues of law and fact that presented considerable risk to Plaintiff's case, which was being litigated on a fully contingent basis by Lead Counsel. In the face of these significant risks, Lead Counsel secured a

very good result for the Settlement Class without any assurance of being compensated for its time and expenses, and without the benefit of a prior investigation by regulatory or criminal authorities.[10] Accordingly, the risk of litigation weighs heavily in favor of Lead Counsel's fee request.

2. Lead Counsel Did Not Have the Benefit of a Prior Judgment

Given the absence of prior court judgment against Defendants (or an investigation by governmental authorities that would have bolstered Plaintiff's claims), this factor also supports the requested fees.

3. Plaintiff's Counsel and Defense Counsel Are Preeminent Firms in the Securities Class Action Realm

Plaintiff's Counsel are highly skilled practitioners in securities class actions. *See generally* Fee Affirmations. Nonetheless, Plaintiff's Counsel submit that the quality of their representation is best evidenced by the result achieved for the Settlement Class. The Settlement is attributable to the diligence, determination, effectiveness, and reputation of counsel, who developed, litigated, and successfully resolved the Action to obtain a substantial cash recovery for the Settlement Class.

Defendants are represented by lawyers from two of the most well-regarded law firms in the industry, Skadden, Arps, Slate, Meagher & Flom LLP and Paul Hastings LLP, who vigorously defended this Action and spared no effort or expense in representing their clients. Notwithstanding this formidable opposition, Plaintiff's Counsel's ability to present a strong yet targeted case,

[10] Unlike defense counsel, who are paid substantial hourly rates and reimbursed for their expenses on a regular (and rolling) basis, Lead Counsel have not been compensated for any time or expense since the Action began in November 2018, and would have received no compensation or payment of their expenses had the Action not been successfully resolved. Contingent litigation naturally poses extraordinary risks to counsel who undertake it. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (court granted summary judgment for defendants after eight years of litigation, after plaintiffs' counsel incurred over $7 million in expenses, and worked over 100,000 hours, representing an approximate lodestar of $40 million).

coupled with their willingness to commit resources required to prosecute this Action for as long as necessary, enabled them to achieve this very favorable result. Thus, this factor supports the requested fees.

4. The Magnitude and Complexity of the Action and the Responsibility Undertaken

As explained above and in the accompanying submissions regarding the risks and complexity of the litigation, the Action raised challenging issues concerning liability, causation, and damages. The magnitude of the Action is similarly significant given the size of the stock offering, the number of Settlement Class Members, and the extent of the Settlement Class's potential damages. Thus, the magnitude and complexity of the Action support the fee request.

5. The Amount Recovered

The Settlement Amount is an admirable result. As explained above, the defense contended that Settlement Class Members suffered no damages purportedly because information about the platform issues and interim quarterly expenses did not cause a decline in the stock price. Moreover, the Settlement Amount is a reasonable percentage of the Settlement Class's maximum estimated recovery, and this amount is greater than the settlement amounts reached in many other similar class actions pending in the Commercial Division. The Settlement Amount thus supports the fee request. *See, e.g.*, *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 183-84 (E.D. Pa. 2000) (approving settlement amounting to 5.2% of damages for common stock holders).

6. The Action's History and Work Done by Lead Counsel

A detailed description of the procedural history of the Action and Lead Counsel's efforts in prosecuting and resolving the Action is set forth in the accompanying Russello Affirmation. For the sake of brevity, the Court is respectfully referred to that affirmation, which demonstrates that Lead Counsel's time invested in litigating this Action was substantial. Thus, this factor further supports the fee request.

7. The Fees Charged to a Victorious Plaintiff

As detailed above, courts recognize that the typical fee arrangement in contingent non-class cases is one-third of any recovery. Because the requested fee comports with such arrangements, this factor supports the fee request.

D. Plaintiff's Counsel's Expenses Were Reasonably Incurred and Necessary to the Prosecution of this Litigation

Plaintiff's Counsel also respectfully request an award of $32,062.85 in expenses incurred in prosecuting this Action. Plaintiff's Counsel have submitted affirmations regarding these expenses, which include, among other things, the costs of hiring a damages consultant, and mediating the Settlement Class's claims – both of which were critical to achieving the Settlement. *See* Robbins Geller Aff., ¶¶4-5; Robbins Aff., ¶¶5-6. Expenses are properly recovered by counsel in complex litigation such as the Action. *See, e.g.*, *Lopez*, 2015 N.Y. Misc. LEXIS 3657, at *20 ("Courts typically allow counsel to recover their reasonable out-of-pocket expenses"); *accord In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400-CM-PED, 2010 U.S. Dist. LEXIS 119702, at *86 (S.D.N.Y. Nov. 8, 2010) ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.").

The Notice informed potential Settlement Class Members that Lead Counsel would seek up to $75,000 in expenses and, so far, no objections to this amount has been received. Accordingly, Plaintiff's Counsel respectfully request $32,062.85 in expenses, plus interest earned on such amount at the same rate as that earned by the Settlement Fund.

E. Award to Plaintiff Pursuant to 15 U.S.C. §77z-1(a)(4)

Plaintiff also respectfully requests a modest service award of $2,500 for the time he spent representing the Settlement Class.[11] Among other things, Plaintiff reviewed pleadings and briefs in the Action, regularly communicated with counsel, monitored the progress of settlement negotiations, and approved the Settlement. *See* Plutte Aff., ¶¶3-4. Critically, Plaintiff filed the initial complaint and stepped forward to lead the Action despite that no other Sea investors sought to prosecute these claims in state or federal court. Without Plaintiff's efforts, no recovery would have occurred for the benefit of the Settlement Class.

The requested service award is well within the range of such awards granted by New York courts. *See, e.g.*, *NetShoes*, slip op. at 7 (awarding $5,000 award to lead plaintiff) (Ex. B); *Charles*, 2017 N.Y. Misc. LEXIS 5082, at *5-*7 (awarding $10,000 service award); *Hosue*, 2017 N.Y. Misc. LEXIS 3440, at *6-*8 (awarding $5,000 service award); *Lopez*, 2015 N.Y. Misc. LEXIS 3657, at *6-*10 (awarding $20,000 service award); *see also City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, No. 1:12-cv-01203-VEC, 2015 WL 13639234, at *4 (S.D.N.Y. Oct. 19, 2015) (awarding $16,800 to several plaintiffs "to compensate them for their reasonable costs and expenses directly relating to their representation of the Class").

The Notice informed potential Settlement Class Members that Plaintiff would seek an award and, to date, no objections have been received to this request. Thus, Plaintiff respectfully requests that the Court grant the service award of $2,500.

[11] The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of the class." 15 U.S.C. §77z-1(a)(4).

VII. CONCLUSION

The Settlement achieved by Plaintiff confers a substantial benefit on the Settlement Class by providing a $10.75 million common fund. For the foregoing reasons, Plaintiff respectfully requests that this Court enter the proposed Judgment and Order Granting Final Approval of Class Action Settlement, which will be submitted with Lead Counsel's reply submission on March 25, 2021, thereby approving the Settlement and the POA, and awarding attorneys' fees of one-third of the $10.75 million recovery, plus expenses in the amount of $32,062.85, plus interest on both amounts, and an award of $2,500 to Plaintiff.

DATED: February 25, 2021

Respectfully submitted,

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PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing document was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman
Point Size: 12
Line Spacing: Double

2. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this Certification, is 6,909 words. By operation of Microsoft Word's word count function, this number includes legal citations and certain forms of punctuation.

DATED: February 25, 2021

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EXHIBIT A

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2019 Review and Analysis

Table of Contents

Table of Figures and Appendices

Analyses in this report are based on 1,849 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2019. See page 17 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

Highlights

Historically high median settlement amounts persisted in 2019, driven primarily by an increase in the overall percentage of mid-sized cases in the $5 million to $25 million range as well as a decrease in the number of smaller settlements.

- There were 74 settlements totaling $2 billion in 2019. (page 3)
- The median settlement in 2019 of $11.5 million was unchanged from 2018 (adjusted for inflation) and was 34 percent higher than the prior nine-year median. (page 3)
- The average settlement amount in 2019 was $27.4 million, which was 43 percent lower than the prior nine-year average. (page 4)
- There were four mega settlements (settlements equal to or greater than $100 million) in 2019. (page 20)
- The number of small settlements (amounts less than $5 million) declined by 36 percent to 16 cases in 2019, the fewest such settlements in the past decade. (page 4)
- The proportion of settlements in 2019 with a public pension plan as lead plaintiff reached its lowest level in the prior 10 years. (page 12)
- In 2019, 53 percent of settled cases involved an accompanying derivative action, the second-highest rate over the past decade. (page 10)
- Companies that settled cases after a ruling on a motion to dismiss (MTD) were, on average, 50 percent larger (measured by total assets) than companies that settled while the MTD was pending. (page 14)

Figure 1: Settlement Statistics

(Dollars in millions)

	1996–2018	2018	2019
Number of Settlements	1,775	78	74
Total Amount	$103,955.3	$5,156.0	$2,029.9
Minimum	$0.2	$0.4	$0.5
Median	$8.8	$11.5	$11.5
Average	$58.6	$66.1	$27.4
Maximum	$9,172.1	$3,054.4	$389.6

Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. Figure 1 includes all post–Reform Act settlements. Settlements in prior years have included 14 cases exceeding $1 billion. Adjusted for inflation, these settlements drive up the average settlement amount.

Author Commentary

2019 Findings

The size of issuer defendant firms (measured by total assets) continued to grow in 2019, increasing by 59 percent over 2018 and 117 percent above the median over the last 10 years. This may be due at least in part to prolonged changes in the population of public companies. In particular, as has been widely observed, the number of publicly traded firms continued to decline in recent years—with the result that remaining public firms are larger.[1]

As discussed by other commentators, large issuer defendants may cause plaintiff counsel to pursue potential claims more vigorously.[2] As in our prior research, we examine the number of docket entries as a proxy for the time and effort by plaintiff counsel and/or case complexity. In 2019, average docket entries were the highest in the last 10 years, primarily driven by cases with relatively large damages, as measured by our simplified proxy for plaintiff-style damages (i.e., "simplified tiered damages" exceeding $500 million).

Overall, our simplified proxy for plaintiff-style damages remained at elevated levels in 2019 compared to earlier years in the decade, in part reflecting the relatively high market capitalization losses associated with cases filed over the last three years.[3]

Another driver of higher plaintiff-style damages is class period length. Indeed, plaintiffs often amend their initial complaints to capture longer alleged class periods. In 2019, the median class period length per the operative complaint as of the time of settlement was 1.7 years—the longest over the last 10 years. In comparison, the median class period alleged in first identified complaints during 2015–2018 (the period during which most of the 2019 settlements were filed) was just under one year. This indicates that between the time of filing and settlement plaintiffs substantially expanded the period over which they claim the alleged fraud occurred.

Despite the large size of cases settled in 2019, public pension plans served as lead plaintiffs less frequently, with their involvement reaching the lowest level over the last 10 years. Prior literature has discussed possible reasons for institutions choosing not to serve as lead plaintiffs, including an imbalance in the cost/benefit of doing so.[4]

One finding that is particularly striking is the decrease in public pension plan lead plaintiffs despite an increase in larger issuer firms with potentially sizable damages exposure.

Dr. Laura E. Simmons
Senior Advisor
Cornerstone Research

Other contributors to the reduction in public pension plan involvement may include changes in the mix of plaintiff law firms serving as lead counsel, and possibly the recent increase in the propensity of plaintiffs to opt out of class actions, including in larger cases (see *Opt-Out Cases in Securities Class Action Settlements: 2014–2018 Update*, Cornerstone Research).

Looking Ahead

Recent trends in securities case filings can inform expectations for developments in settlements in upcoming years.

The number of filings alleging Rule 10b-5 and/or Section 11 claims reached record levels in 2019. In addition, for the second year in a row, median Disclosure Dollar Loss (DDL) for case filings reached unusually high levels (see *Securities Class Action Filings—2019 Year in Review*, Cornerstone Research).

Absent changes in dismissal rates, these results suggest that the volume of securities case settlements, as well as their value, is likely to continue at relatively high levels in upcoming years.

—Laarni T. Bulan and Laura E. Simmons

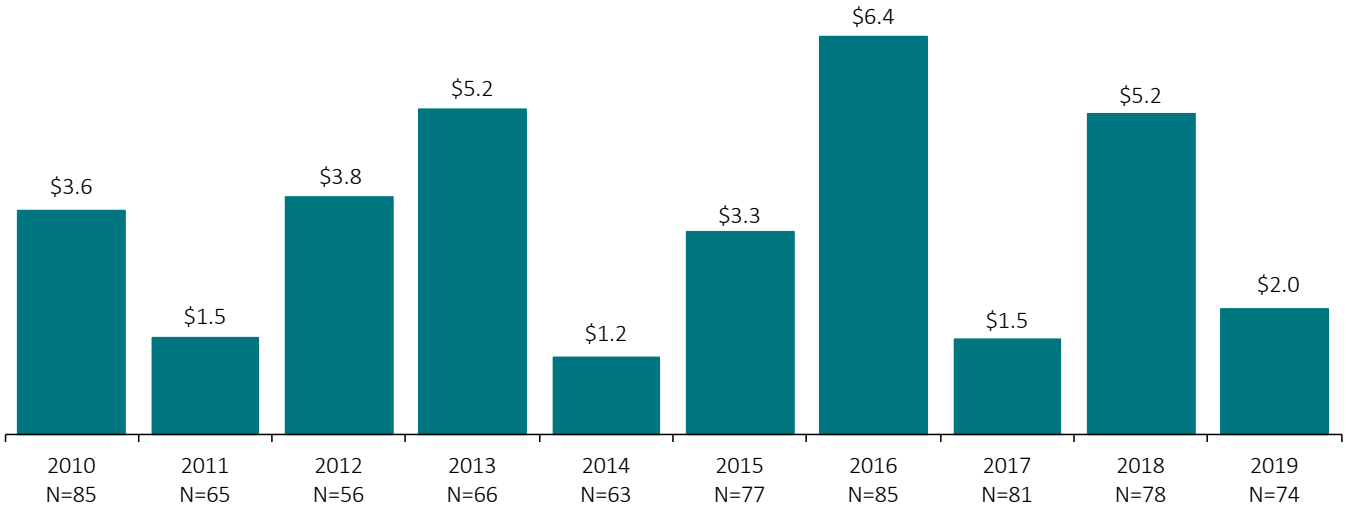
Total Settlement Dollars

- The total value of settlements approved by courts in 2019 declined dramatically from 2018 due to the absence of very large settlements. Excluding 2018 settlements over $1 billion, however, total settlement dollars declined by a modest 3 percent in 2019 (adjusted for inflation).
- The median settlement amount in 2019 of $11.5 million was unchanged from the prior year (adjusted for inflation).
- Compared to the prior nine years, larger median settlement amounts in 2019 were accompanied by higher levels in the proxy for plaintiff-style damages. *(See page 5 for a discussion of damages estimates.)*

The median settlement amount in 2019 was 34 percent higher than the prior nine-year median.

- Mediators continue to play a central role in the resolution of securities class action settlements. In 2019, nearly all cases in the sample involved a mediator.

Figure 2: Total Settlement Dollars
2010–2019
(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. N refers to the number of observations.

Settlement Size

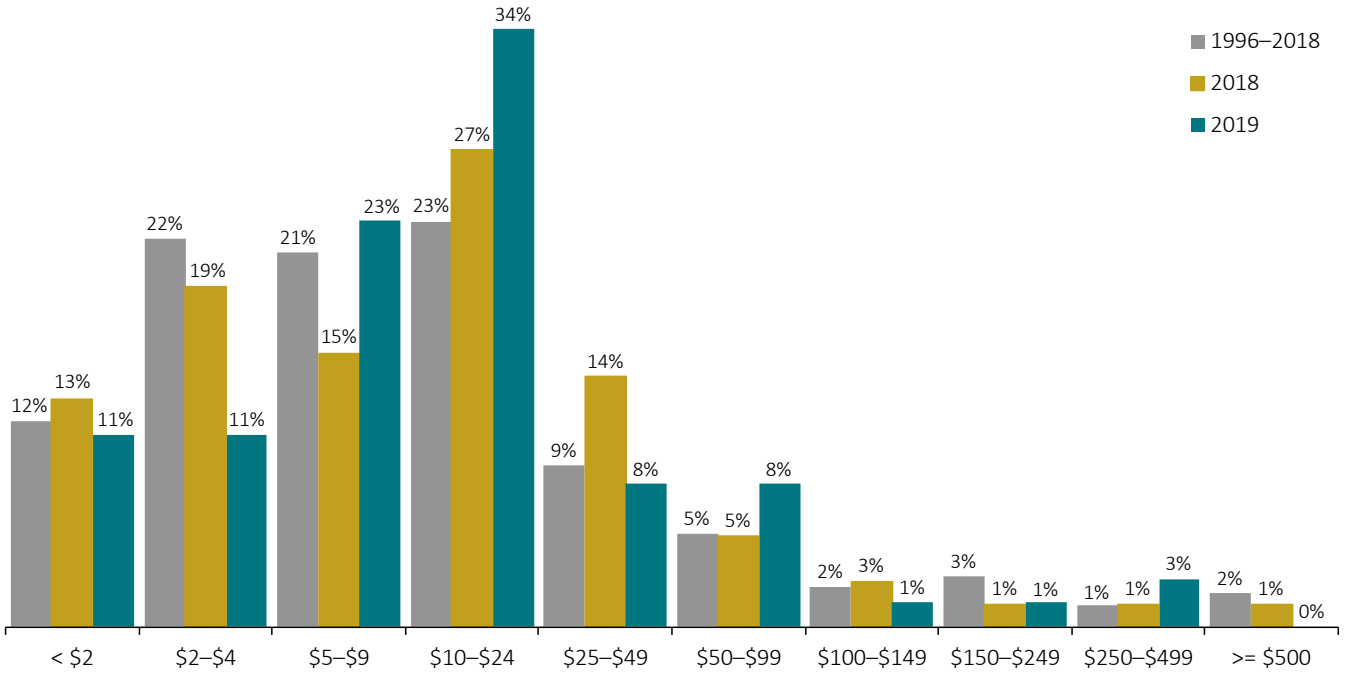
As discussed above, the median settlement amount was unchanged from 2018. Generally, the median is more stable from year to year than the average, since the average can be affected by the presence of even a small number of large settlements.

- The average settlement amount in 2019 was $27.4 million, 43 percent lower than the average over the prior nine years. *(See Appendix 1 for an analysis of settlements by percentiles.)*
- If settlements exceeding $1 billion are excluded from the prior nine-year average, the decline in 2019 was 16 percent.
- There were four mega settlements (equal to or greater than $100 million) in 2019, with settlements ranging from $110 million to $389.6 million. *(See Appendix 4 for additional information on mega settlements.)*
- Despite a decline in the average settlement amount from 2018, the number of small settlements (less than $5 million) also declined by 36 percent to 16 cases in 2019, the fewest such settlements in the past decade. Cases that result in settlement funds less than $5 million may be viewed as "nuisance" suits, a shift upwards from a threshold of $2 million prevalent in early post–Reform Act years.[5]

57 percent of cases settled for between $5 million and $25 million.

Figure 3: Distribution of Post–Reform Act Settlements
1996–2019

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. Percentages may not sum to 100 percent due to rounding.

Damages Estimates

Rule 10b-5 Claims: "Simplified Tiered Damages"

"Simplified tiered damages" uses simplifying assumptions to estimate per-share damages and trading behavior. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.[6]

Cornerstone Research's prediction model finds this measure to be the most important factor in predicting settlement amounts.[7] However, this measure is not intended to represent actual economic losses borne by shareholders. Determining any such losses for a given case requires more in-depth economic analysis.

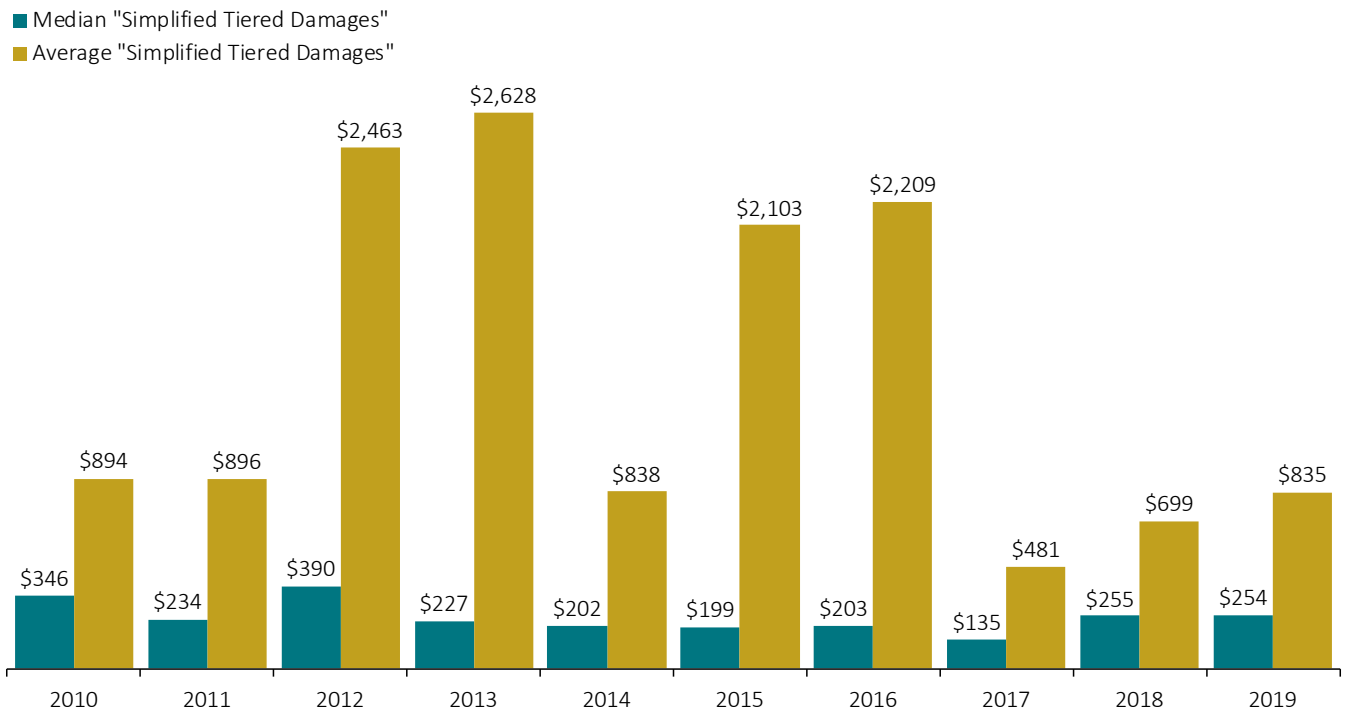
- Median "simplified tiered damages" was largely unchanged from the prior year. *(See Appendix 5 for additional information on the median and average settlements as a percentage of "simplified tiered damages.")*

While median "simplified tiered damages" remained largely unchanged in 2019, average "simplified tiered damages" increased for the third year in a row.

- "Simplified tiered damages" is generally correlated with the length of the class period. Among cases with Rule 10b-5 claims, the median class period length in 2019 was at its highest level in the last 10 years.
- "Simplified tiered damages" is also typically correlated with larger issuer defendants (measured by total assets or market capitalization of the issuer). However, despite the lack of change in median "simplified tiered damages" compared to 2018, median total assets of issuer defendants increased by over 67 percent in 2019.

Figure 4: Median and Average "Simplified Tiered Damages" in Rule 10b-5 Cases
2010–2019

(Dollars in millions)



Note: "Simplified tiered damages" are adjusted for inflation based on class period end dates. Damages are estimated for cases alleging a claim under Rule 10b-5 (whether alone or in addition to other claims).

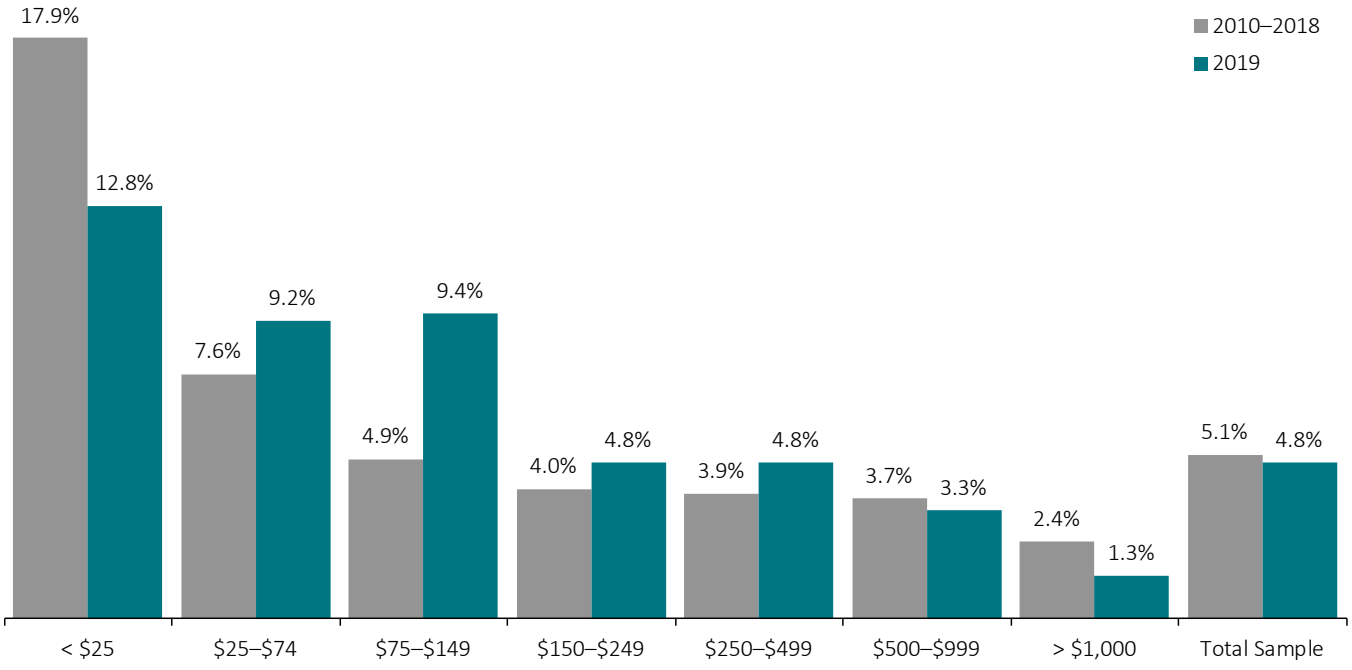
- Larger cases, as measured by "simplified tiered damages," typically settle for a smaller percentage of damages.
- Smaller cases (less than $25 million in "simplified tiered damages") are less likely to include factors such as institutional lead plaintiffs and/or related actions by the Securities and Exchange Commission (SEC) or criminal charges.
- Among cases in the sample, smaller cases typically settle more quickly. In 2019, cases with less than $25 million in "simplified tiered damages" settled within 2.0 years on average, compared to 3.5 years for cases with "simplified tiered damages" greater than $500 million.

At 9.4 percent in 2019, median settlements as a percentage of "simplified tiered damages" for mid-sized cases reached a five-year high.

- The steadily increasing median settlement as a percentage of "simplified tiered damages" observed from 2016 to 2018 reversed in 2019. Appendix 5 shows a substantial increase in 2019 in average settlements as a percentage of "simplified tiered damages." However, this result is driven by a few outlier cases. Excluding these cases, the average percentage for 2019 is not unusual compared to recent years.

Figure 5: Median Settlements as a Percentage of "Simplified Tiered Damages" by Damages Ranges in Rule 10b-5 Cases 2010–2019

(Dollars in millions)



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

’33 Act Claims: “Simplified Statutory Damages”

For cases involving only Section 11 and/or Section 12(a)(2) claims (’33 Act claims), shareholder losses are estimated using a model in which the statutory loss is the difference between the statutory purchase price and the statutory sales price, referred to here as “simplified statutory damages.”[8] Only the offered shares are assumed to be eligible for damages.

“Simplified statutory damages” are typically smaller than “simplified tiered damages,” reflecting differences in the methodologies used to estimate alleged inflation per share, as well as differences in the shares eligible to be damaged (i.e., only offered shares are included).

Median “simplified statutory damages” for ’33 Act claim cases in 2019 was more than 65 percent higher than the prior five-year median.

- Cases with only ’33 Act claims tend to settle for smaller median amounts than cases that include Rule 10b-5 claims.
- In 2019, among settlements involving ’33 Act claims only, the median time to settlement was only slightly longer than cases involving Rule 10b-5 claims only, 3.2 years and 2.9 years, respectively. When compared to the prior year, however, ’33 Act claim cases took more than 36 percent longer to resolve in 2019 (3.2 years compared to 2.3 years).

Figure 6: Settlements by Nature of Claims
2010–2019
(Dollars in millions)

	Number of Settlements	Median Settlement	Median “Simplified Statutory Damages”	Median Settlement as a Percentage of “Simplified Statutory Damages”
Section 11 and/or Section 12(a)(2) Only	77	$7.2	$118.8	7.4%

	Number of Settlements	Median Settlement	Median “Simplified Tiered Damages”	Median Settlement as a Percentage of “Simplified Tiered Damages”
Both Rule 10b-5 and Section 11 and/or Section 12(a)(2)	115	$15.1	$390.0	5.8%
Rule 10b-5 Only	524	$8.5	$212.5	4.6%

Note: Settlement dollars and damages are adjusted for inflation; 2019 dollar equivalent figures are used. Damages are adjusted for inflation based on class period end dates.

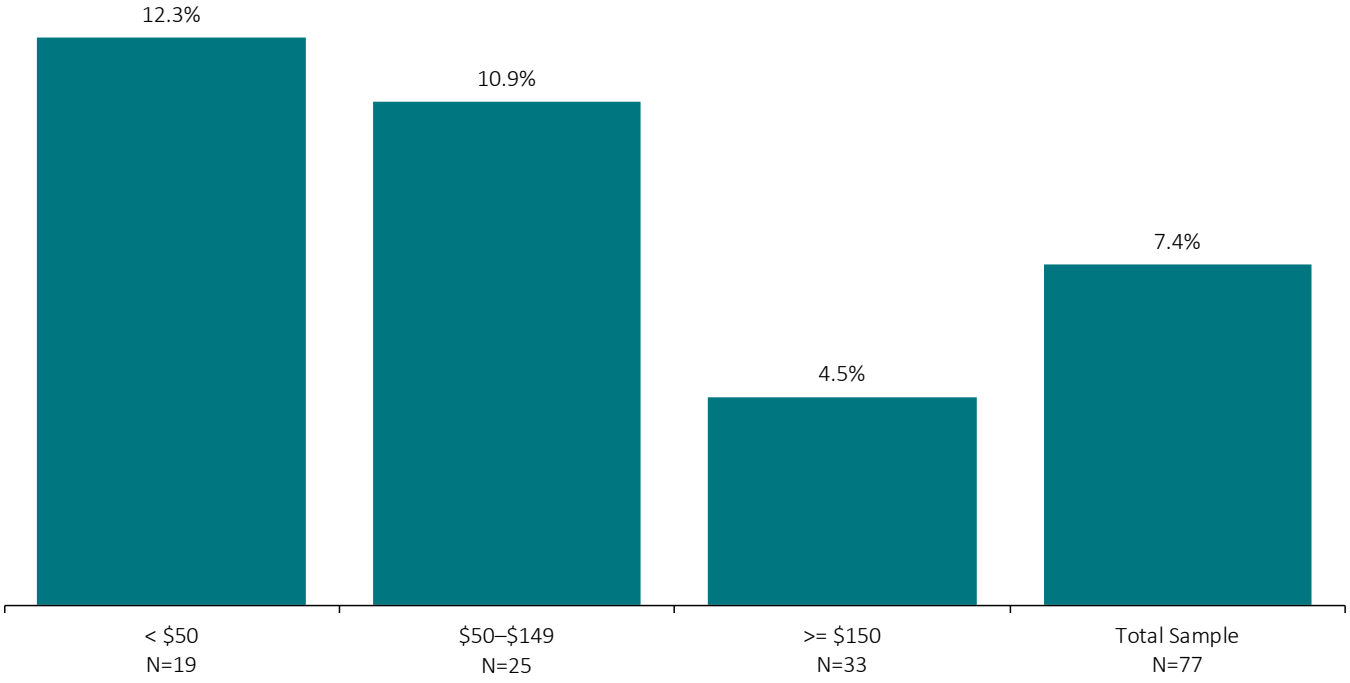
- Settlements as a percentage of "simplified statutory damages" are smaller for cases that have larger estimated damages. This finding holds for cases with '33 Act claims only, as well as those with Rule 10b-5 claims.

90 percent of cases with only '33 Act claims involved an underwriter as a codefendant.

- Over the period 2010–2019, the median size of issuer defendants (measured by total assets) was 68 percent smaller for cases with only '33 Act claims relative to those that included Rule 10b-5 claims.
- The smaller size of issuer defendants in '33 Act cases is consistent with the vast majority of these cases involving initial public offerings (IPOs). From 2010 through 2019, 83 percent of all cases with only '33 Act claims have involved IPOs.

Figure 7: Median Settlements as a Percentage of "Simplified Statutory Damages" by Damages Ranges in '33 Act Cases 2010–2019

(Dollars in millions)



Note: N refers to the number of observations.

Analysis of Settlement Characteristics

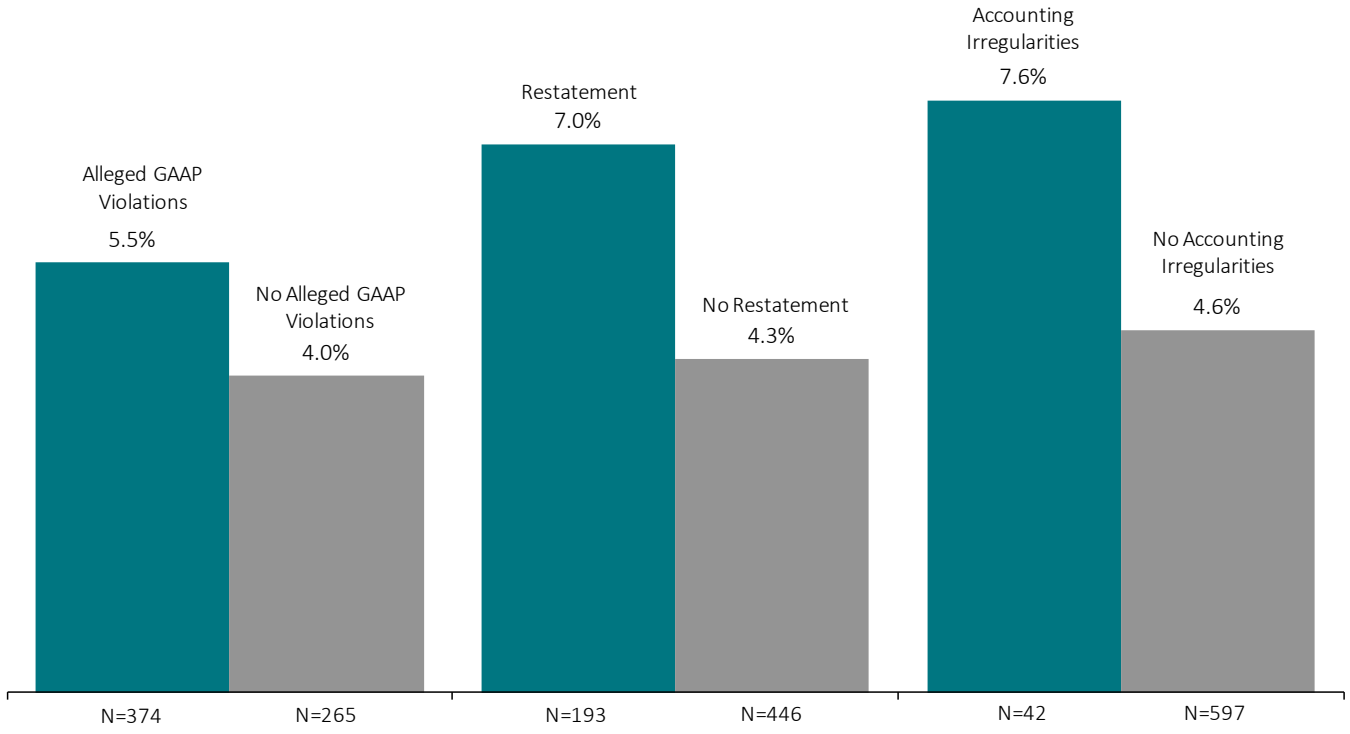
Accounting Allegations

This analysis examines accounting allegations related to issues among securities class actions involving Rule 10b-5 claims: alleged Generally Accepted Accounting Principles (GAAP) violations, violations of other reporting standards, auditing violations, or weaknesses in internal controls over financial reporting.[9] For further details regarding settlements of accounting cases, see Cornerstone Research's annual report on *Accounting Class Action Filings and Settlements*.[10]

- The proportion of settled cases alleging GAAP violations in 2019 was 44 percent, continuing a five-year decline from a high of 67 percent in 2014.
- Settled cases with restatements are generally associated with higher settlements as a percentage of "simplified tiered damages" compared to cases without restatements. In 2019, the median settlement as a percentage of "simplified tiered damages" for cases with restatements was 5.2 percent, compared to 4.1 percent for cases without restatements.
- Among cases settled in 2019 with accounting-related allegations, only 6 percent involved a named auditor codefendant. This was the lowest rate in the past decade and a decline from a high of 24 percent in 2015.
- The proportion of cases with accounting-related allegations that also involved associated criminal charges was 27 percent in 2019, well above the rate of 11 percent among cases settled during 2010–2018.

The frequency of reported accounting irregularities increased among settled cases in 2019 to 9 percent, compared to an average of less than 2 percent from 2015 to 2018.

Figure 8: Median Settlements as a Percentage of "Simplified Tiered Damages" and Accounting Allegations
2010–2019



Note: N refers to the number of observations.

Derivative Actions

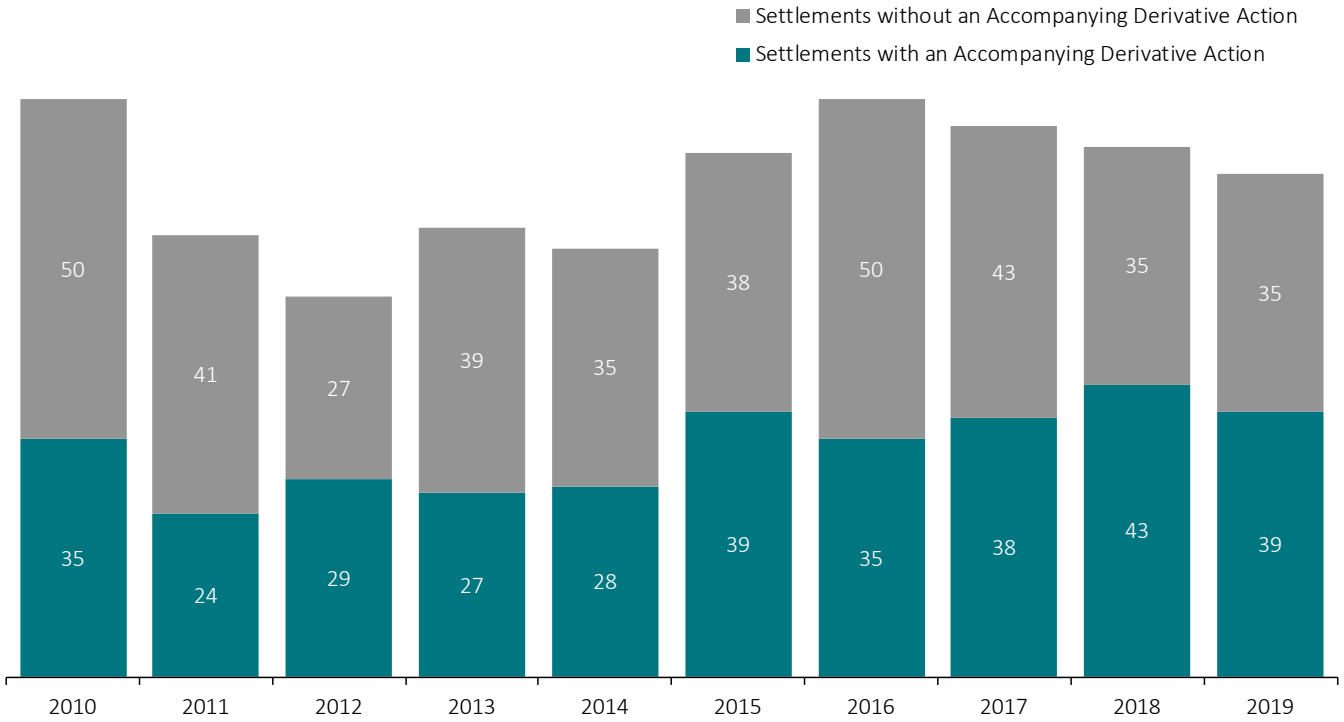
While settled cases involving an accompanying derivative action are typically associated with both larger cases (measured by "simplified tiered damages") and larger settlement amounts, this was not true in 2019.

- The median settlement among cases with an accompanying derivative action was $10 million compared to $14.8 million for cases without a derivative action.
- This may be due at least in part to a substantial increase in derivative actions involving smaller issuers. In 2019, 70 percent of cases involving issuers with less than $250 million in total assets also had an accompanying derivative action, compared to only 46 percent over the prior nine years.

53 percent of settled cases involved an accompanying derivative action, the second-highest rate over the last 10 years.

- Many larger settlements in 2019 involved non-U.S. issuers (44 percent of settlements above $25 million), which have been associated with derivative actions far less frequently than cases involving U.S. issuers. During 2010–2019, only 22 percent of cases involving non-U.S. issuers had accompanying derivative actions.
- In 2019, 36 percent of derivative actions were filed in Delaware, the highest proportion in the past decade. The second most common filing state for derivative suits was California.

Figure 9: Frequency of Derivative Actions
2010–2019



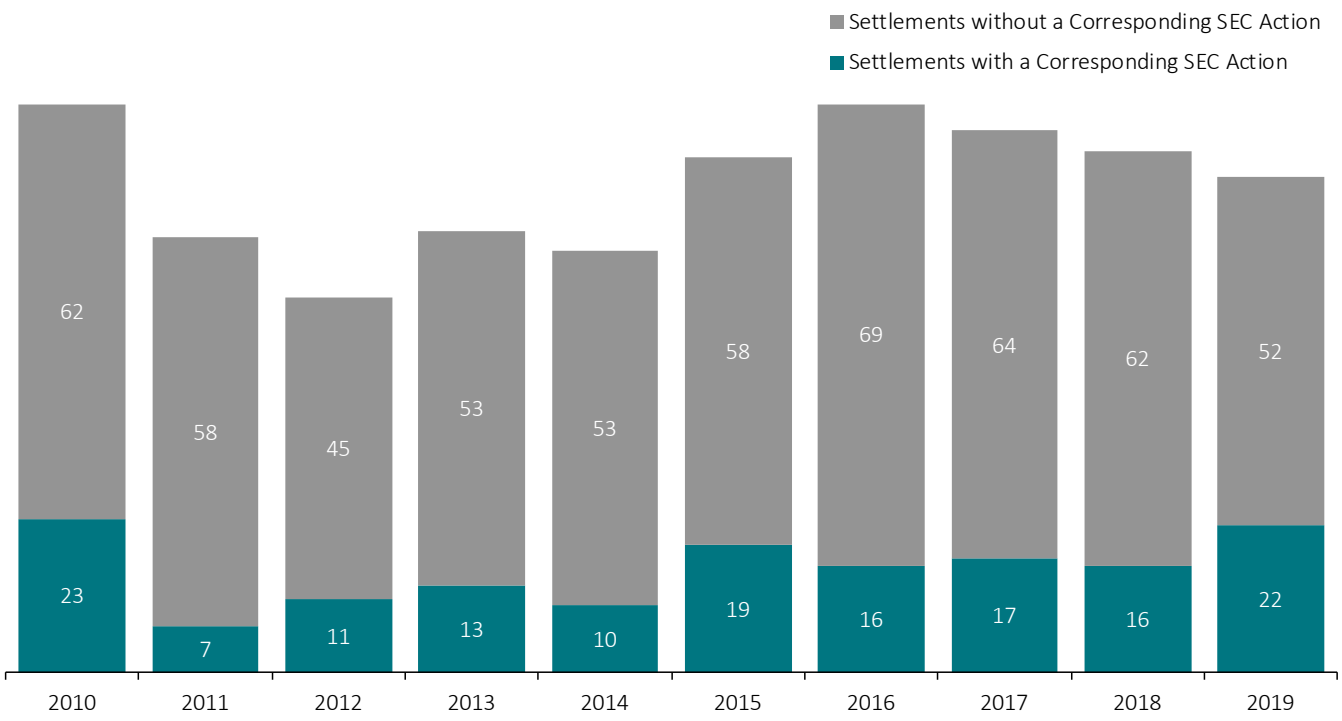
Corresponding SEC Actions

Cases with an SEC action related to the allegations are typically associated with significantly higher settlement amounts and higher settlements as a percentage of "simplified tiered damages."[11]

- In 2019, the median total assets of issuer defendant firms at the time of settlement was $1.3 billion for cases with corresponding SEC actions compared to $1.5 billion for cases without a corresponding SEC action. This was consistent with the overall increase in the asset size of issuers.
- For cases settled during 2015–2019, 42 percent of cases with a corresponding SEC action involved issuer defendants that had either declared bankruptcy or were delisted from a major U.S. exchange prior to settlement.
- Cases with corresponding SEC actions have involved accounting-related allegations less frequently in recent years. From 2010 to 2016, 88 percent of settled cases involved accounting-related allegations, compared to 75 percent from 2017 to 2019.
- Cases involving corresponding SEC actions may also include allegations of criminal activity in connection with the time period covered by the underlying class action. In 2019, more than 40 percent of cases with an SEC action had related criminal charges.

30 percent of settled cases involved a corresponding SEC action, the highest rate over the last 10 years.

Figure 10: Frequency of SEC Actions
2010–2019



Institutional Investors

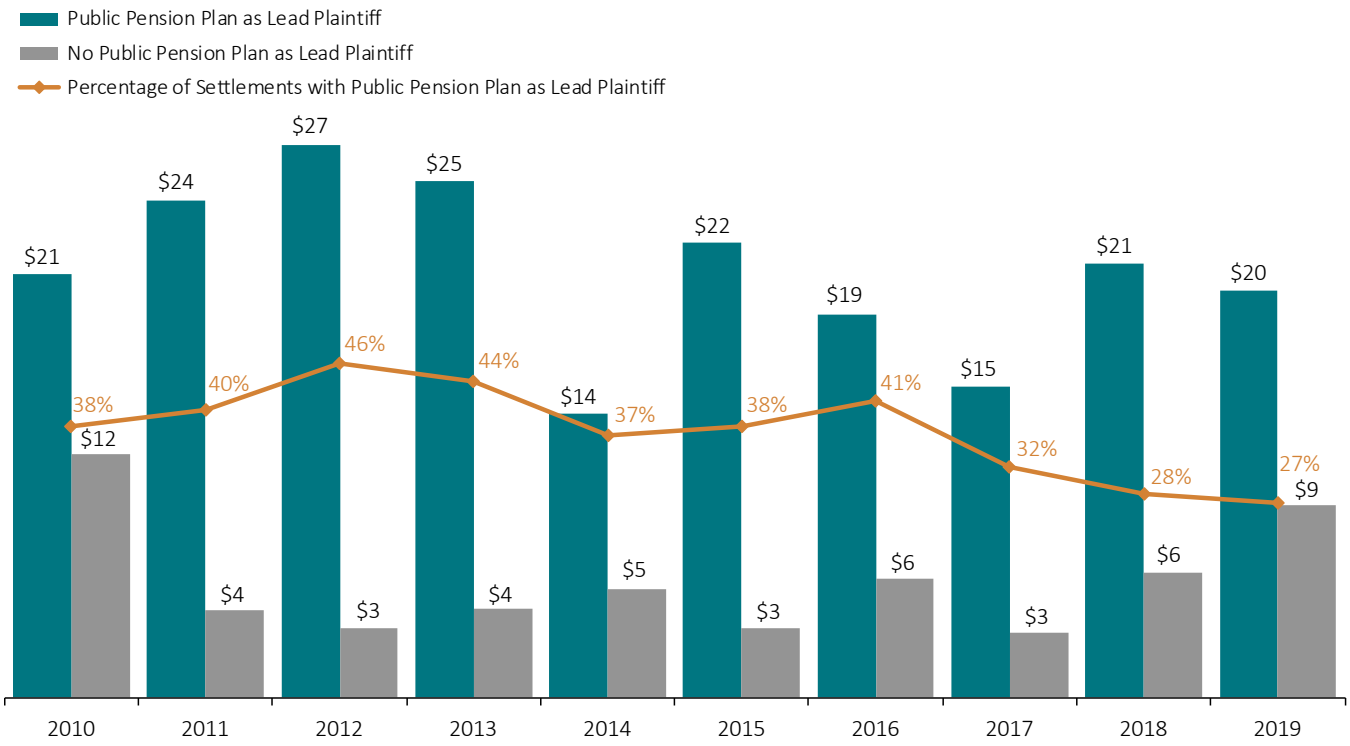
- Institutional investors, including public pension plans (a subset of institutional investors), tend to be involved in larger cases, that is, cases with higher "simplified tiered damages."
- Median "simplified tiered damages" for cases involving a public pension as a lead plaintiff in 2019 were more than three times higher than for cases without a public pension plan as a lead plaintiff.
- In 2019, median market capitalization (measured prior to the settlement hearing date) for issuer defendants in cases involving an institutional investor as a lead plaintiff was $1.6 billion compared to $459.4 million for cases without institutional investor involvement.

The proportion of settlements with a public pension plan as lead plaintiff reached its lowest level in the decade.

- Over the last 10 years, institutional investor lead plaintiffs have also been associated with lower attorney fees in relation to "simplified tiered damages." This may reflect their tendency to be involved in larger cases, in which attorney fees often represent a smaller percentage of the total settlement fund, as well as their potential ability to negotiate lower fees.[12]
- Among 2019 settled cases that do have an institutional investor as a lead plaintiff, 50 percent involved a parallel derivative action and 22 percent involved a corresponding SEC action.

Figure 11: Median Settlement Amounts and Public Pension Plans 2010–2019

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used.

Time to Settlement and Case Complexity

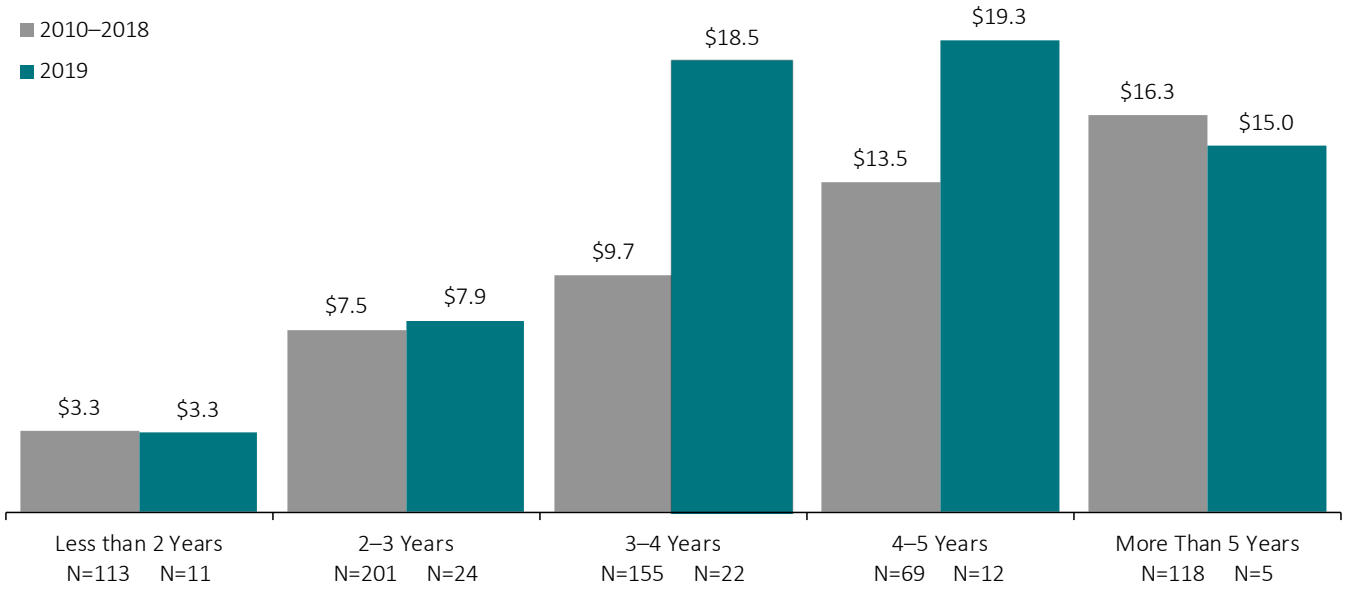
- In 2019, 15 percent of cases settled within two years of filing, consistent with the rate over the last 10 years. The average time from filing to settlement in 2019 was 3.3 years.
- Compared to cases that settled more quickly, cases that required three to five years to settle in 2019 had a higher frequency of factors such as a public pension as a lead plaintiff and/or the presence of a corresponding SEC action.
- Only 7 percent of cases in 2019 took more than five years to settle, the lowest rate in the past decade. Of these, 80 percent involved institutional investors. The median assets of the defendant firms in these cases were also substantially higher at $68 billion, compared to a median of $1.2 billion in other cases.
- In 2019, cases that took more than five years to settle had a lower median settlement amount than cases that took three to five years to settle. This is despite the higher median "simplified tiered damages" of $602 million for cases that took more than five years to settle, compared to $375 million for cases that took three to five years to settle.

Median "simplified tiered damages" for Rule 10b-5 cases settling in less than two years were substantially smaller compared to settlements that took longer to resolve.

- The number of docket entries as of the settlement may reflect case complexity. This factor has also been used in prior research as a proxy for attorney effort.[13] The number of docket entries is highly correlated with the duration from filing to settlement hearing date, issuer size, criminal allegations, accounting allegations, as well as the size of "simplified tiered damages." Median docket entries for cases settled in 2019 were largely unchanged from prior years, but the average number of docket entries reached its highest level in the past decade.

Figure 12: Median Settlement by Duration from Filing Date to Settlement Hearing Date
2010–2019

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. N refers to the number of observations.

Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),[14] this report analyzes settlements in relation to the stage in the litigation process at the time of settlement.

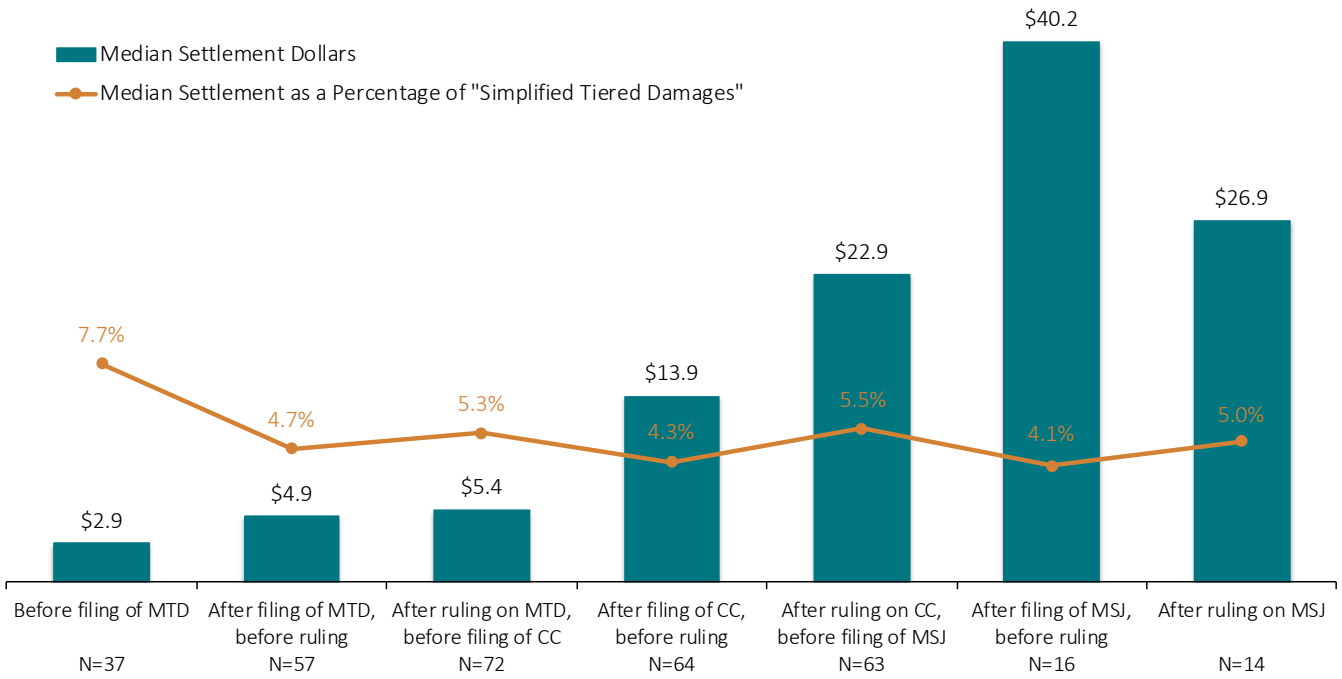
- In 2019, cases settled after a motion to dismiss (MTD) was filed but prior to a ruling on the MTD had a median settlement of $8.5 million, significantly lower than for cases settled at later stages.
- In addition, among 2019 settlements, median total assets of issuer defendants at the time of settlement were almost 50 percent larger for cases settled following a ruling on a MTD than for cases where the MTD was pending at the time of settlement.

The average time to reach a ruling on a motion for class certification among settlements was 2.3 years.

- In the five-year period from 2015 to 2019, median "simplified tiered damages" for cases settled after a filing of a motion for summary judgment (MSJ) was over four times the median for cases settled before a MSJ filing. This contributed to higher settlement amounts but lower settlements as a percentage of "simplified tiered damages" for cases settled at this stage.

Figure 13: Median Settlement Dollars and Resolution Stage at Time of Settlement
2015–2019

(Dollars in millions)



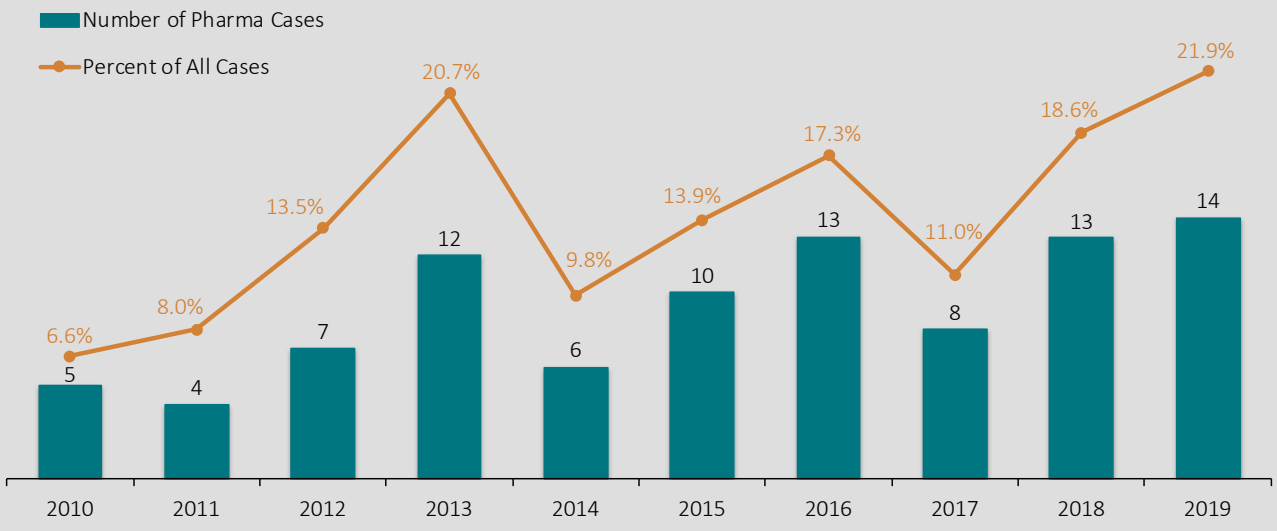
Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. MTD refers to "motion to dismiss," CC refers to "class certification," and MSJ refers to "motion for summary judgment." This analysis is limited to cases alleging Rule 10b-5 claims.

Spotlight: Settlements in the Pharmaceutical Industry

Cases with issuer defendants in the pharmaceutical industry, as defined by their SIC code (pharma cases), reached an all-time high in 2019, both in the absolute number and percentage of cases. While in prior years pharma cases tended to involve relatively large "simplified tiered damages," in 2019, the median was $163 million—36 percent lower than the median for all cases in 2019. Settlements for cases in this sector have a number of characteristics that differ from the overall sample, including several of those that are important determinants of settlement outcomes. *(See Appendix 2 for additional information on settlements by industry.)*

- Pharma cases are less likely to have a public pension acting as a lead plaintiff. From 2010 to 2019, only 22 percent of pharma cases had a public pension as lead plaintiff compared to 39 percent for non-pharma cases.
- Violations of GAAP are also less likely among pharma cases than non-pharma cases. From 2010 to 2019, only 19 percent of pharma cases alleged violations of GAAP compared to 62 percent of non-pharma cases.
- Restatements of financials were also less common among pharma cases—14 percent—compared to 30 percent in non-pharma cases from 2010 to 2019.
- Pharma cases are less likely to involve '33 Act claims related to an offering. During 2010–2019, only 17 percent of pharma cases involved '33 Act claims, whereas such claims were alleged in 28 percent of non-pharma cases.

Figure 14: Settlements in the Pharmaceutical Industry
2010–2019



These differences explain, in part, why pharma cases with Rule 10b-5 allegations tend to settle for smaller percentages of "simplified tiered damages." The median settlement as a percentage of "simplified tiered damages" for pharma cases over the past 10 years is 3.7 percent while for non-pharma cases that figure is 5.8 percent.[15]

Cornerstone Research's Settlement Prediction Analysis

This research applies regression analysis to examine the relationships between settlement outcomes and certain security case characteristics. Regression analysis is employed to better understand and predict the total settlement amount, given the characteristics of a particular securities case. Regression analysis can also be applied to estimate the probabilities associated with reaching alternative settlement levels. It is also helpful in exploring hypothetical scenarios, including how the presence or absence of particular factors affects predicted settlement amounts.

Determinants of Settlement Outcomes

Based on the research sample of post–Reform Act cases that settled through December 2019, the factors that were important determinants of settlement amounts included the following:

- "Simplified tiered damages"
- Maximum Dollar Loss (MDL)—market capitalization change from its peak to post-disclosure value
- Most recently reported total assets of the issuer defendant firm
- A measure of how long the issuer defendant has been a public company
- Number of entries on the lead case docket
- The year in which the settlement occurred
- Whether there were accounting allegations related to the alleged class period
- Whether there was a corresponding SEC action against the issuer, other defendants, or related parties
- Whether there was a criminal indictment/charge against the issuer, other defendants, or related parties related to similar allegations in the complaint
- Whether an outside auditor or underwriter was named as a codefendant
- Whether Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims
- Whether the issuer defendant was distressed
- Whether a public pension was a lead plaintiff
- Whether the plaintiffs alleged that securities other than common stock were damaged

Regression analyses show that settlements were higher when "simplified tiered damages," MDL, issuer defendant asset size, the length of time the company has been public, or the number of docket entries was larger, or when Section 11 and/or Section 12(a) claims were alleged in addition to Rule 10b-5 claims.

Settlements were also higher in cases involving financial restatements, a corresponding SEC action, a public pension involved as lead plaintiff, a third party such as an outside auditor or underwriter that was named as a codefendant, or securities other than common stock that were alleged to be damaged.

Settlements were lower if the settlement occurred in 2012 or later, or if the issuer was distressed.

More than 70 percent of the variation in settlement amounts can be explained by the factors discussed above.

Research Sample

- The database used in this report contains cases alleging fraudulent inflation in the price of a corporation's common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price and M&A cases).
- The sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation's common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations.
- The current sample includes 1,849 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2019. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[16]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[17] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[18]

Data Sources

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

Endnotes

1 See, e.g., "Where Have All the Public Companies Gone?," *Bloomberg Opinion*, April 9, 2018.

2 See Stephen J. Choi, Jessica Erickson, and Adam C. Pritchard, "Risk and Reward: The Securities Fraud Class Action Lottery," U.S. Chamber Institute for Legal Reform, February 2019.

3 See *Securities Class Action Filings—2019 Year in Review*, Cornerstone Research (2020).

4 See Charles Silver and Sam Dinkin, "Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions," *DePaul Law Review* 57, no. 2 (2008): 471–508.

5 See Stephen J. Choi, Jessica Erickson, and Adam C. Pritchard, "Risk and Reward: The Securities Fraud Class Action Lottery," U.S. Chamber Institute for Legal Reform, February 2019.

6 The "simplified tiered damages" approach used for purposes of this settlement research does not examine the mix of information associated with the specific dates listed in the plan of allocation, but simply applies the stock price movements on those dates to an estimate of the "true value" of the stock during the alleged class period (or "value line"). This proxy for damages utilizes an estimate of the number of shares damaged based on reported trading volume and the number of shares outstanding. Specifically, reported trading volume is adjusted using volume reduction assumptions based on the exchange on which the issuer defendant's common stock is listed. No adjustments are made to the underlying float for institutional holdings, insider trades, or short-selling activity during the alleged class period. Because of these and other simplifying assumptions, the damages measures used in settlement outcome modeling may be overstated relative to damages estimates developed in conjunction with case-specific economic analysis.

7 See Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons, *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017).

8 The statutory purchase price is the lesser of the security offering price or the security purchase price. Prior to the first complaint filing date, the statutory sales price is the price at which the security was sold. After the first complaint filing date, the statutory sales price is the greater of the security sales price or the security price on the first complaint filing date. Similar to "simplified tiered damages," the estimation of "simplified statutory damages" makes no adjustments to the underlying float for institutional holdings, insider trades, or short-selling activity. Shares subject to a lock-up period are not added to the float for purposes of this calculation.

9 The three categories of accounting issues analyzed in Figure 8 of this report are: (1) GAAP violations; (2) restatements—cases involving a restatement (or announcement of a restatement) of financial statements; and (3) accounting irregularities—cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.

10 See *Accounting Class Action Filings and Settlements—2018 Review and Analysis*, Cornerstone Research (2019). Update forthcoming in March 2020.

11 It could be that the merits in such cases are stronger, or simply that the presence of a corresponding SEC action provides plaintiffs with increased leverage when negotiating a settlement. For purposes of this research, an SEC action is evidenced by the presence of a litigation release or an administrative proceeding posted on www.sec.gov involving the issuer defendant or other named defendants with allegations similar to those in the underlying class action complaint.

12 See, e.g., Lynn A. Baker, Michael A. Perino, and Charles Silver, "Setting Attorneys' Fees in Securities Class Actions: An Empirical Assessment," *Vanderbilt Law Review* 66, no. 6 (2013): 1677–1718.

13 Docket entries reflect the number of entries on the court docket for events in the litigation and have been used in prior research as a proxy for the amount of plaintiff attorney effort involved in resolving securities cases. See Laura Simmons, "The Importance of Merit-Based Factors in the Resolution of 10b-5 Litigation," University of North Carolina at Chapel Hill Doctoral Dissertation, 1996; Michael A. Perino, "Institutional Activism through Litigation: An Empirical Analysis of Public Pension Fund Participation in Securities Class Actions," St. John's Legal Studies Research Paper No. 06-0055, 2006.

14 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/.

15 These results do not hold when looking at pharma cases with only '33 Act claims from 2010 to 2019, which had a median settlement as a percentage of "simplified statutory damages" of 7.5 percent compared to 7.4 percent for the rest of the sample.

16 Available on a subscription basis. For further details see https://www.issgovernance.com/securities-class-action-services/.

17 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.

18 This categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount and the settlement hearing date is left unchanged.

Appendices

Appendix 1: Settlement Percentiles

(Dollars in millions)

	Average	10th	25th	Median	75th	90th
2010	$42.4	$2.3	$5.0	$13.2	$29.3	$93.3
2011	$23.8	$2.1	$3.0	$6.5	$20.5	$47.5
2012	$68.2	$1.3	$3.0	$10.5	$39.5	$128.0
2013	$79.4	$2.1	$3.3	$7.1	$24.3	$90.5
2014	$19.7	$1.8	$3.1	$6.5	$14.2	$54.0
2015	$42.5	$1.4	$2.3	$7.0	$17.5	$101.4
2016	$75.2	$2.0	$4.5	$9.1	$35.2	$155.5
2017	$19.0	$1.6	$2.7	$5.2	$15.6	$36.0
2018	$66.1	$1.5	$3.7	$11.5	$25.2	$53.0
2019	$27.4	$1.5	$5.6	$11.5	$20.0	$50.0
1996–2019	$45.5	$1.8	$3.7	$8.9	$22.3	$74.4

Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used.

Appendix 2: Select Industry Sectors 2010–2019

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Financial	103	$19.8	$472.5	4.7%
Technology	102	$8.7	$212.2	5.3%
Pharmaceuticals	91	$8.6	$237.0	3.7%
Retail	37	$9.1	$211.7	3.9%
Telecommunications	34	$9.6	$270.8	4.4%
Healthcare	15	$8.5	$132.8	6.4%

Note: Settlement dollars and "simplified tiered damages" are adjusted for inflation; 2019 dollar equivalent figures are used. "Simplified tiered damages" are calculated only for cases involving Rule 10b-5 claims.

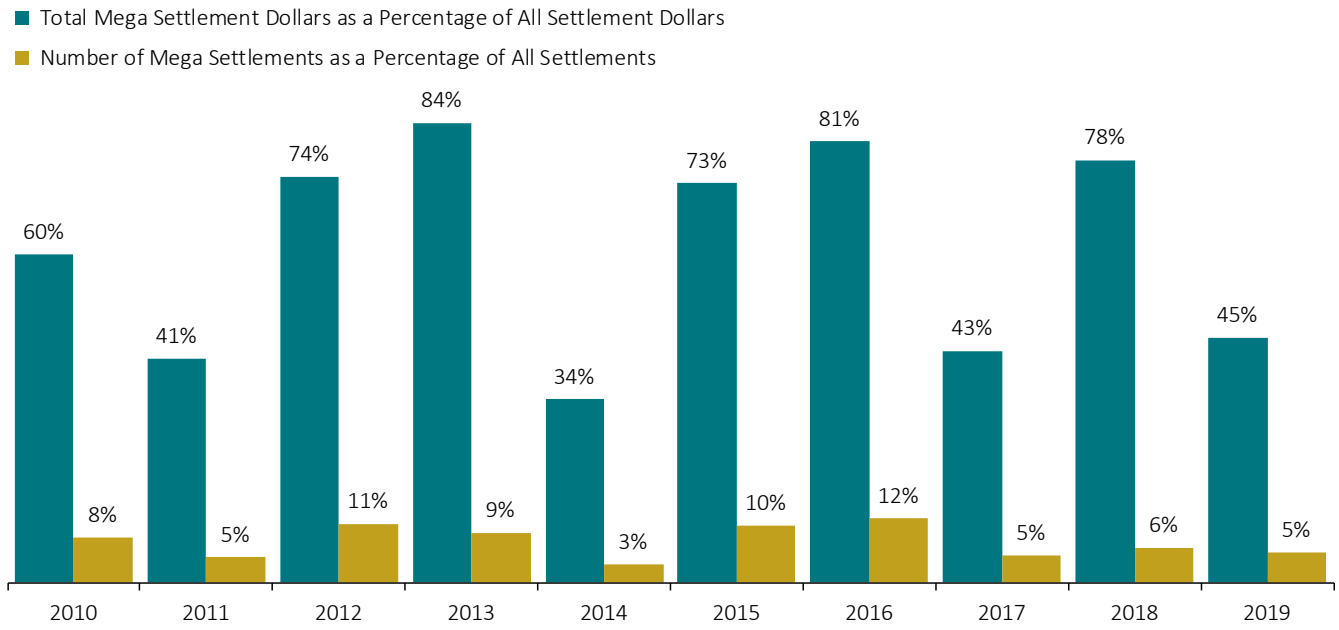
Appendix 3: Settlements by Federal Circuit Court
2010–2019

(Dollars in millions)

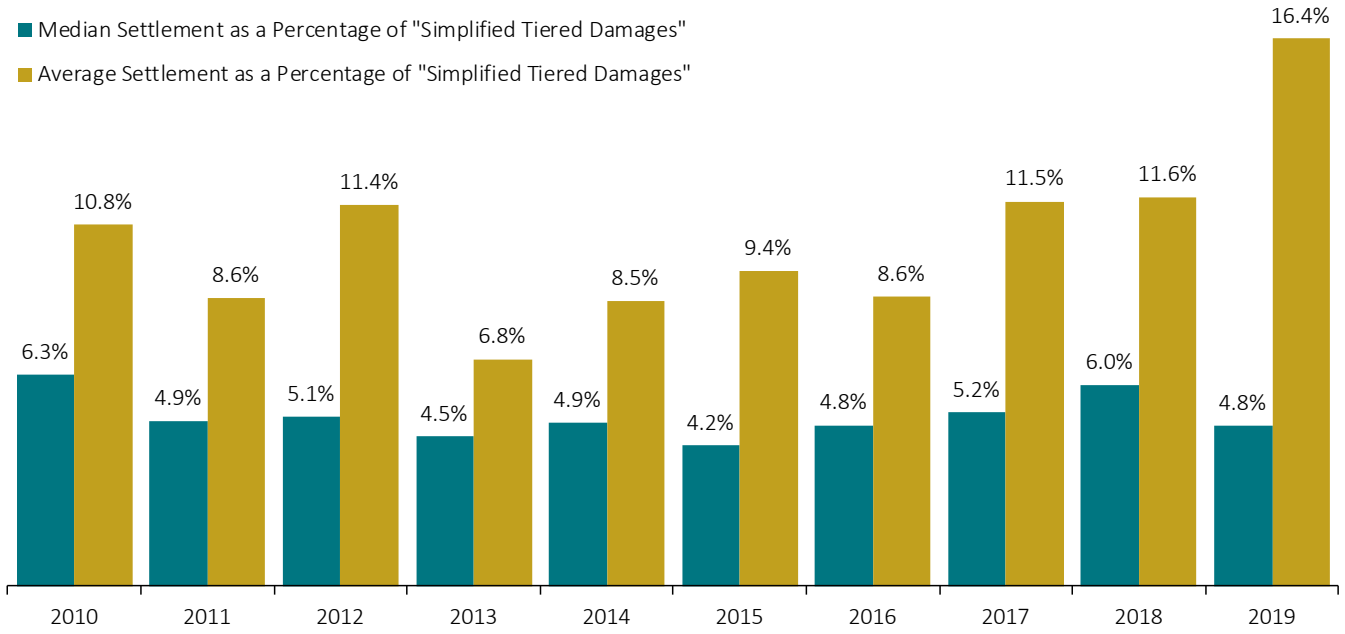
Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	22	$8.5	3.3%
Second	180	$10.2	4.8%
Third	49	$8.6	5.0%
Fourth	27	$14.5	3.6%
Fifth	34	$9.9	4.5%
Sixth	29	$13.2	7.3%
Seventh	39	$11.3	4.4%
Eighth	13	$13.8	6.1%
Ninth	189	$8.0	4.9%
Tenth	16	$6.7	6.0%
Eleventh	35	$6.3	5.2%
DC	3	$29.5	1.9%

Note: Settlement dollars are adjusted for inflation; 2019 dollar equivalent figures are used. Settlements as a percentage of "simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims.

Appendix 4: Mega Settlements
2010–2019



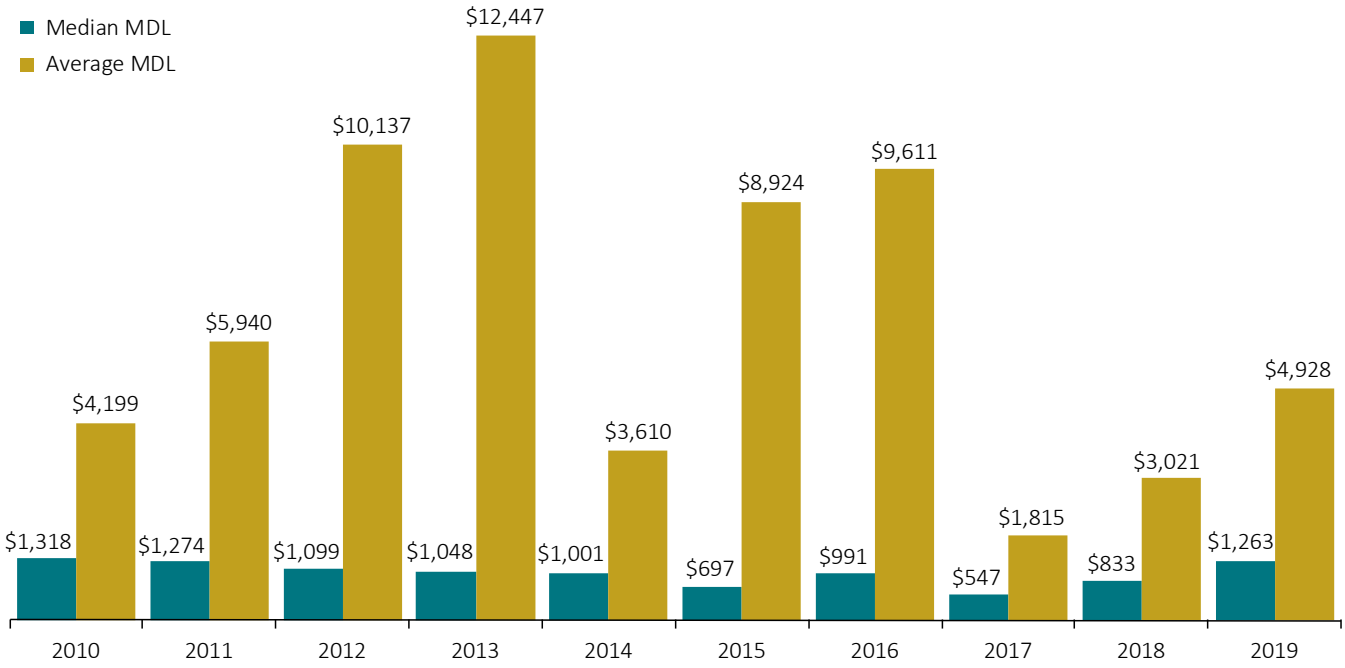
Appendix 5: Median and Average Settlements as a Percentage of "Simplified Tiered Damages" 2010–2019



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims.

Appendix 6: Median and Average Maximum Dollar Loss (MDL) 2010–2019

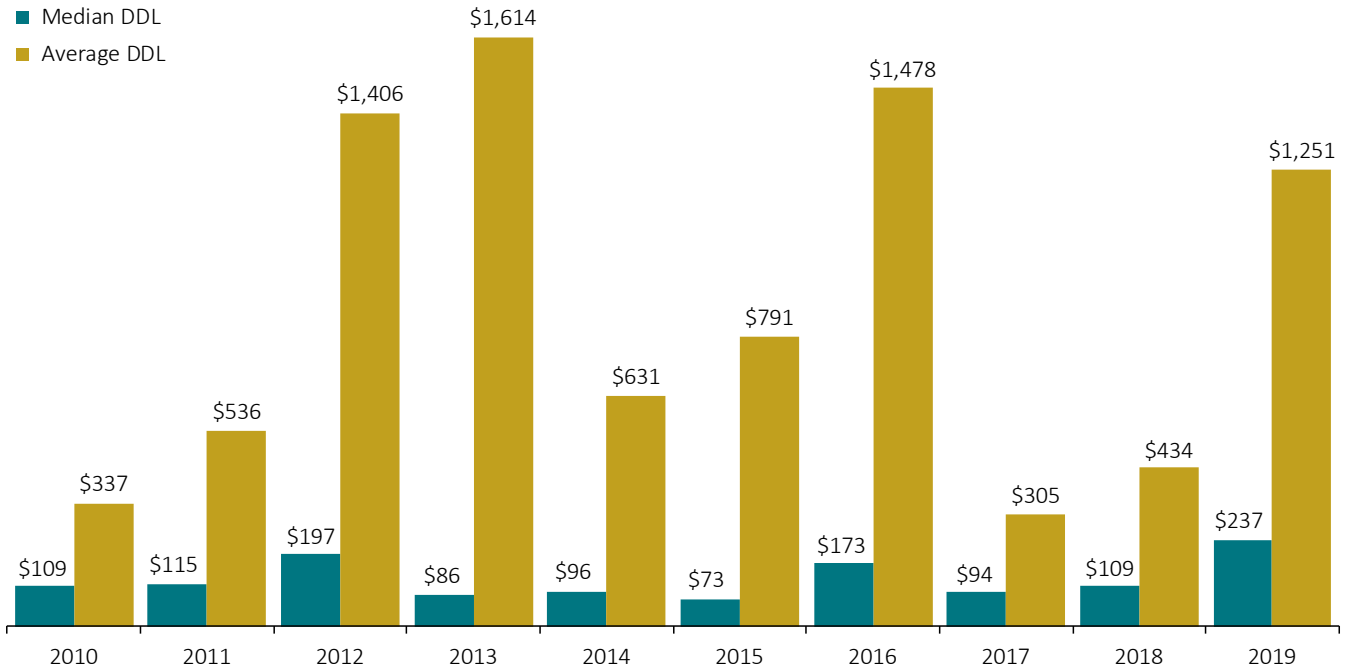
(Dollars in millions)



Note: MDL is adjusted for inflation based on class period end dates. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period.

Appendix 7: Median and Average Disclosure Dollar Loss (DDL) 2010–2019

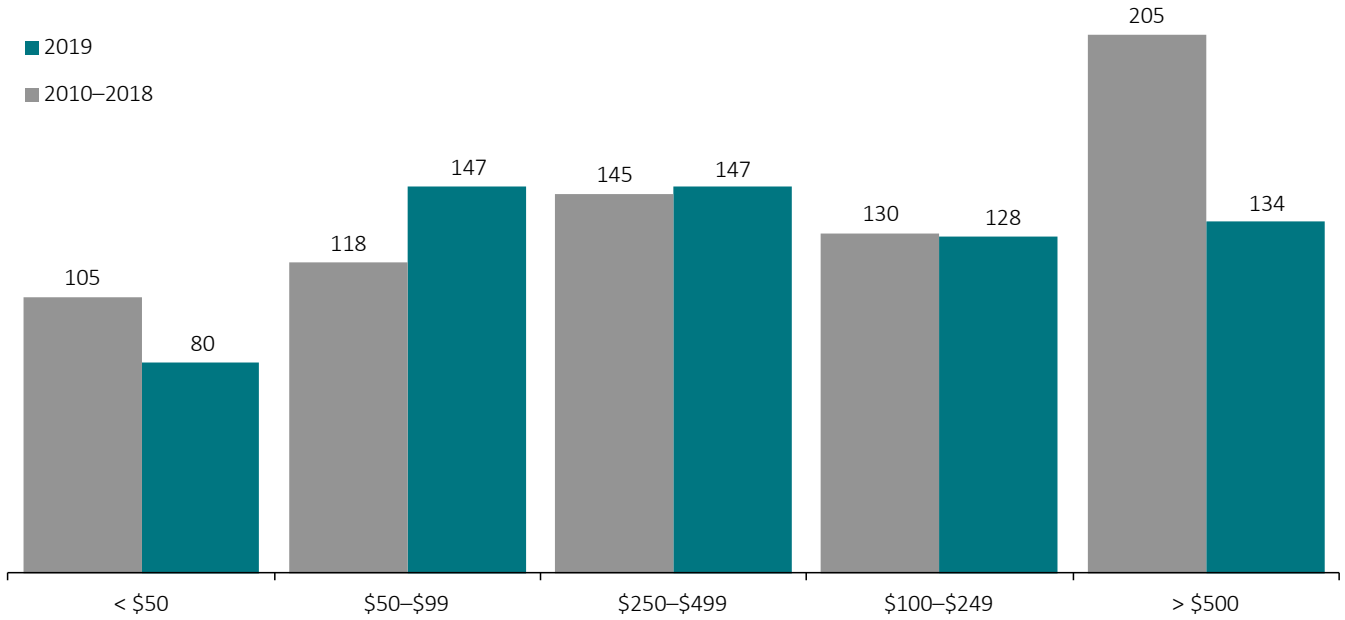
(Dollars in millions)



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

Appendix 8: Median Docket Entries by "Simplified Tiered Damages" Range 2010–2019

(Dollars in millions)



Note: "Simplified tiered damages" are calculated only for cases alleging Rule 10b-5 claims.

About the Authors

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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 damages and class certification issues, insider trading, merger valuation, risk management, market manipulation and trading behavior, and real estate markets. She has also consulted on cases related to financial institutions and the credit crisis, municipal bond mutual funds, asset-backed commercial paper conduits, credit default swaps, foreign exchange, and securities clearing and settlement.

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

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Laura Simmons is a senior advisor with Cornerstone Research. She is a certified public accountant and has more than 25 years of experience in accounting practice and economic and financial consulting. Dr. Simmons has focused on damage and liability issues in securities and ERISA litigation, as well as on accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in litigation involving accounting analyses, securities case damages, ERISA matters, and research on securities lawsuits.

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

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research in the writing and preparation of this annual update.

Many publications quote, cite, or reproduce data, charts, or tables from Cornerstone Research reports. The authors request that you reference Cornerstone Research in any reprint, quotation, or citation of the charts, tables, or data reported in this study.

Please direct any questions and requests for additional information to the settlement database administrator at settlementdatabase@cornerstone.com.

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EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

IN RE NETSHOES SECURITIES LITIGATION	Index No. 157435/2018 Hon. Andrew Borrok (Part 53)

~~[PROPOSED]~~ JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the Court is advised that the Parties, through their counsel, have agreed, subject to Court approval following Notice to the Settlement Class and a hearing, to settle and dismiss with prejudice the Litigation upon the terms and conditions set forth in the Stipulation of Settlement, dated August 25, 2020 (the "Stipulation" or "Settlement");[1] and

WHEREAS, on August 28, 2020, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order"), which preliminarily approved the Settlement and approved the form and manner of Notice to the Settlement Class of the Settlement, and said Notice has been made, and the Settlement Fairness Hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and proceedings herein, and it appearing to the Court upon examination that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and upon a Settlement Fairness Hearing having on December 3, 2020,
been held after Notice to the Settlement Class of the Settlement to determine if the Settlement is fair, reasonable, and adequate and whether the Judgment should be entered in the Litigation;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of the Litigation and over all of the Parties and all Settlement Class Members for purposes of the Settlement.

---

[1] As used herein, the term "Parties" collectively means Lead Plaintiff 1199SEIU Health Care Employees Pension Fund ("1199SEIU" or "Lead Plaintiff"), on behalf of itself and the Settlement Class, and Defendants Netshoes (Cayman) Limited ("Netshoes" or the "Company"), Márcio Kumruian, Leonardo Tavares Dib, Francisco Alvarez-Demalde, Nilesh Lakhani, Hagop Chabab, Wolfgang Schwerdtle, Nicolas Szekasy, Donald Puglisi, Goldman Sachs & Co., J.P. Morgan Securities LLC, Banco Bradesco BBI S.A., Allen & Company LLC, and Jefferies LLC (collectively, "Defendants").

C. The form, content, and method of dissemination of Notice given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual Notice to all Settlement Class Members who could be identified through reasonable effort.

D. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of §904 of the New York Civil Practice Law and Rules ("CPLR"), due process, and all other applicable laws and rules, and it is further determined that all members of the Settlement Class are bound by this Judgment.

E. The Court finds, pursuant to CPLR §§901 and 902, as follows, that:

(i) the Settlement Class is so numerous that joinder of all members is impracticable;

(ii) there are questions of law and fact common to the Settlement Class;

(iii) the claims of Lead Plaintiff are typical of the claims of the Settlement Class;

(iv) Lead Plaintiff and Lead Counsel have fairly and adequately protected the interests of the Settlement Class;

(v) the requirements of CPLR §904 have been satisfied;

(vi) the requirements of the Supreme Court of New York, Commercial Division Rules and due process have been satisfied in connection with the Notice;

(vii) the Litigation is hereby finally certified (in connection with Settlement only) as a class action pursuant to CPLR §§901 and 902, on behalf of a Settlement Class consisting of all persons who purchased or otherwise acquired Netshoes common stock before May 15, 2018. For purposes of the releases set forth herein, "Settlement Class" and

"Settlement Class Members" shall include any Person purporting to assert a claim on behalf of any Settlement Class Member, or any Person asserting a claim based on a purchase or acquisition of Netshoes common stock made by any Settlement Class Member. Excluded from the Settlement Class are: (1) Defendants; (2) members of the immediate families of each Individual Defendant; (3) the respective parents and subsidiaries of Netshoes and the Underwriter Defendants; (4) the officers and directors of Netshoes; (5) any entity in which any such excluded party has a direct or indirect majority ownership interest; and (6) the legal representatives, heirs, successors, or assigns of any such excluded party. Notwithstanding any aforementioned exclusions from the definition of "Settlement Class," Investment Vehicles shall not be excluded from the Settlement Class. Also excluded from the Settlement Class is any Person who would otherwise be a Member of the Settlement Class, but who validly and timely requests exclusion in accordance with the requirements set by the Court. No Persons have requested exclusion from the Settlement Class; and

(viii) Lead Plaintiff is hereby certified as the Settlement Class Representative and Lead Counsel are certified as Class Counsel.

F. The Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate.

(i) The Settlement was negotiated at arm's-length by Lead Plaintiff on behalf of the Settlement Class and by Defendants, all of whom were represented by highly experienced and skilled counsel. The Litigation settled only after, among other things: (1) a mediation conducted by an experienced mediator who was familiar with the Litigation; (2) the exchange between Lead Plaintiff and the Netshoes Defendants of detailed mediation statements before the mediation that highlighted the factual and legal issues in dispute; (3) Plaintiff's Counsel's extensive investigation, which included, among other things, a

review of Netshoes' press releases, U.S. Securities and Exchange Commission filings, documents filed in separate suits involving Netshoes' subsidiaries, analyst reports, media reports, and other publicly disclosed reports and information about the Defendants; (4) the drafting and submission of detailed complaints; and (5) motion practice directed to the complaints. Accordingly, both Lead Plaintiff and the Defendants were well-positioned to evaluate the settlement value of the Litigation. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the Settlement had not been achieved, both Lead Plaintiff and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Lead Plaintiff's or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

G. Lead Plaintiff and Lead Counsel have fairly and adequately represented the interests of Settlement Class Members in connection with the Settlement.

H. Lead Plaintiff, all Settlement Class Members, and Defendants are hereby bound by the terms of the Settlement, as set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Settlement on the terms set forth in the Stipulation is finally approved as fair, reasonable, and adequate. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Litigation and all of the claims asserted against the Defendants in the Litigation by Lead Plaintiff are hereby dismissed with prejudice. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

2. All Released Plaintiff Parties and Released Defendant Parties, as defined in the Stipulation, are released in accordance with, and as defined in, the Stipulation.

3. Upon the Effective Date, Lead Plaintiff and each Settlement Class Member shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Defendant Parties, whether or not such Settlement Class Member executes and delivers a Proof of Claim and Release.

4. Upon the Effective Date, each of the Released Defendant Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released all Released Plaintiff Parties from all Released Defendants' Claims.

5. All Settlement Class Members who have not objected to the Settlement in the manner provided in the Notice are deemed to have waived any objections by appeal, collateral attack, or otherwise. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided pursuant thereto, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

6. All Settlement Class Members who have failed to properly submit requests for exclusion (requests to opt-out) from the Settlement Class are bound by the terms and conditions of the Stipulation and this Judgment.

7. All other provisions of the Stipulation are incorporated into this Judgment as if fully rewritten herein.

8. Lead Plaintiff and all Settlement Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against any of the Released Defendant Parties. Claims to enforce the terms of the Stipulation are not released. Notwithstanding the foregoing, nothing in the Stipulation, or its exhibits, shall be construed as limiting, modifying, or otherwise affecting any (a) insurance coverage or policies that may be available to any of the Released Defendant Parties; or (b) rights

or obligations between or among Defendants or any combination of Defendants, including claims for indemnification.

9. Neither the Stipulation nor Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or Settlement:

(a) shall be offered or received against Defendants as evidence of, or evidence in support of, a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; however, Defendants may refer to it to effectuate the liability protection granted to them hereunder;

(b) shall be construed as or received in evidence as an admission, concession, or presumption against Lead Plaintiff or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable in the Litigation would have exceeded the Settlement Fund; and

(c) notwithstanding the foregoing, Defendants, Lead Plaintiff, Settlement Class Members, and/or the Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. The Court hereby finds and concludes that due and adequate Notice was directed to all Persons who are Settlement Class Members, advising them of the Plan of Allocation and of

their right to object thereto, and a full and fair opportunity was accorded to all Persons who are Settlement Class Members to be heard with respect to the Plan of Allocation.

12. The Court hereby finds that the Plan of Allocation is fair and reasonable and the Claims Administrator is directed to administer the Settlement in accordance with the Stipulation.

13. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice sent to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Settlement Class Members, with due consideration having been given to administrative convenience and necessity.

14. Nothing in the Settlement restricts the ability of any Party to advocate in favor of or against the applicability of any offset to any claims asserted in any other action based on any amount paid to Authorized Claimants through the Settlement.

15. The Court hereby awards Plaintiff's Counsel attorneys' fees of 33 1/3 % of the Settlement Amount, plus Plaintiff's Counsel's expenses in the amount of $64,351.32 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of the Litigation and substantial risks of non-recovery, time and effort involved, and result obtained for the Settlement Class.

16. The Fee and Expense Award and interest earned thereon shall immediately be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

17. Lead Plaintiff 1199SEIU is awarded $5,000. Such payment is appropriate considering its active participation as Lead Plaintiff in the Litigation, as attested to by its declaration submitted to the Court. Such payment is to be made from the Settlement Fund.

18. In the event that the Stipulation is terminated in accordance with its terms: (a) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (b) the Litigation shall proceed as provided in the Stipulation.

19. The Court finds that during the course of the Litigation, the Parties and their respective counsel at all times complied with the requirements of 22 New York Code, Rules and Regulation §130-1 and all other similar statutes.

20. Without further order of the Court, the Parties may agree in writing to such amendments, modifications, and expansions of the Stipulation and reasonable extensions of time to carry out any of the provisions of the Stipulation, provided that such amendments, modifications, expansions, and extensions do not materially alter the rights of the Settlement Class Members or the Released Parties under the Stipulation.

21. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest, and expenses in the Litigation; and (d) all Parties hereto for the purpose of construing, enforcing, and administrating the Stipulation.

IT IS SO ORDERED
12.3.20

Hon. Andrew Borrok, J.S.C.

JUDGMENT

FILED
DEC 10 2020
AT 09:55 A M

FILED
Dec 10 2020
NEW YORK

10 th Dec. 2020

Milton Adam Tingling

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

In re EVERQUOTE, INC. SECURITIES LITIGATION	:	Index No. 651177/2019
	:	The Honorable Andrew S. Borrok, J.S.C.
	:	Part 53
This Document Relates To:	:	
	:	Motion Sequence No. 007
THE CONSOLIDATED ACTION	:	
	:	CLASS ACTION

JUDGMENT AND ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

WHEREAS, the Court is advised that the Parties,[1] through their counsel, have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle this Action upon the terms and conditions set forth in the Stipulation of Settlement dated February 4, 2020 (the "Stipulation" or "Settlement"); and

WHEREAS, on March 6, 2020, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice, which preliminarily approved the Settlement, and approved the form and manner of notice to the Settlement Class of the Settlement, and said notice has been made, and the fairness hearing having been held; and

NOW, THEREFORE, based upon the Stipulation and all of the filings, records and proceedings herein, and it appearing to the Court upon examination that the Settlement set forth in the Stipulation is fair, reasonable and adequate, and upon a Settlement Fairness Hearing having been held after notice to the Settlement Class of the Settlement to determine if the Settlement is fair, reasonable, and adequate and whether the Judgment should be entered in this Action;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein.

B. This Court has jurisdiction of the subject matter of this Action and over all of the Parties and all Settlement Class Members for purposes of the Settlement.

---

[1] As used herein, the term "Parties" means Plaintiffs Sean F. Townsend and Mark Townsend (collectively, "Plaintiffs"), on behalf of themselves and the Settlement Class, and Defendants EverQuote, Inc., Seth Birnbaum, John Wagner, David Blundin, Sanju Bansal, John Lunny, George Neble, John Shields, Mira Wilczek, David Mason, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Canaccord Genuity LLC, JMP Securities LLC, Needham & Company LLC, Oppenheimer & Co. Inc., Raymond James & Associates, Inc. and William Blair & Company L.L.C. (collectively, the "Defendants"), by their respective counsel.

C. The form, content, and method of dissemination of notice given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort.

D. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of §904 of the New York Civil Practice Law and Rules ("CPLR"), due process, and all other applicable laws and rules, and it is further determined that all members of the Settlement Class (defined below) are bound by this Judgment.

E. The Court finds, pursuant to CPLR §§901 and 902, as follows, that:

(i) the Settlement Class is so numerous that joinder of all members is impracticable;

(ii) there are questions of law and fact common to the Settlement Class;

(iii) the claims of Plaintiffs are typical of the claims of the Settlement Class;

(iv) Plaintiffs and Lead Counsel have fairly and adequately protected the interests of the Settlement Class;

(v) the requirements of CPLR §904 have been satisfied;

(vi) the requirements of the Supreme Court of New York – Commercial Division Rules and due process have been satisfied in connection with the Notice;

(vii) that the Action is hereby finally certified (in connection with Settlement only) as a class action pursuant to CPLR §§901 and 902, on behalf of a settlement class (the "Settlement Class") consisting of all persons who purchased or otherwise acquired EverQuote common stock pursuant or traceable to the Company's Registration Statement and Prospectus

issued in connection with EverQuote's June 2018 initial public offering. For purposes of the releases set forth herein, "Settlement Class" and "Settlement Class Members" shall include any Person purporting to assert a claim on behalf of any Settlement Class Member, or any Person asserting a claim based on a purchase or acquisition of EverQuote common stock made by any Settlement Class Member. Excluded from the Settlement Class are Defendants, the officers and directors of EverQuote (at all relevant times), members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which any Defendant has a controlling interest; provided, however, that any Investment Vehicle shall not be excluded from the Settlement Class solely because they are, or are managed by, affiliates or subsidiaries of a Defendant. However, to any extent that any Defendant or any entity might be deemed to be an affiliate or subsidiary thereof (i) managed or advised, and (ii) directly or indirectly held a beneficial interest in, said Investment Vehicle during the Settlement Class Period, that beneficial interest in the Investment Vehicle is excluded from the Settlement Class. No persons or entities have requested exclusion from the Settlement Class; and

(viii) Plaintiffs are hereby certified as the Settlement Class Representatives, and Lead Counsel are certified as Lead Settlement Class Counsel.

F. The Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate.

(i) The Settlement was negotiated at arm's length by Plaintiffs on behalf of the Settlement Class and by Defendants, all of whom were represented by highly experienced and skilled counsel. The case settled only after, among other things: (a) a mediation conducted by an experienced mediator who was familiar with this Action; (b) the exchange between the Plaintiffs and the EverQuote Defendants of detailed mediation statements before the mediation which highlighted the factual and legal issues in dispute; (c) Plaintiffs' Counsel's extensive

investigation, which included, among other things, a review of EverQuote's press releases, U.S. Securities and Exchange Commission filings, analyst reports, media reports, and other publicly disclosed reports and information about the Defendants; (d) the drafting and submission of detailed complaints; (e) motion practice directed to the Complaint and to a discovery stay; and (f) completion of confirmatory discovery. Accordingly, both the Plaintiffs and Defendants were well-positioned to evaluate the settlement value of this Action. The Stipulation has been entered into in good faith and is not collusive.

(ii) If the Settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court takes no position on the merits of either Plaintiffs' or Defendants' arguments, but notes these arguments as evidence in support of the reasonableness of the Settlement.

G. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest of the Settlement Class Members in connection with the Settlement.

H. Plaintiffs, all Settlement Class Members, and Defendants are hereby bound by the terms of the Settlement set forth in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. The Settlement on the terms set forth in the Stipulation is finally approved as fair, reasonable, and adequate. The Settlement shall be consummated in accordance with the terms and provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

2. All Released Parties as defined in the Stipulation are released in accordance with, and as defined in, the Stipulation.

3. Upon the Effective Date, Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever

released, relinquished, and discharged all Released Claims against the Released Parties, whether or not such Settlement Class Member executes and delivers a Proof of Claim and Release.

4. Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released Plaintiffs, Plaintiffs' Counsel, and each and all of the Settlement Class Members from all Released Defendants' Claims.

5. All Settlement Class Members who have not objected to the Settlement in the manner provided in the Notice of Proposed Settlement of Class Action ("Notice") are deemed to have waived any objections by appeal, collateral attack, or otherwise. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided pursuant thereto, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

6. All Settlement Class Members who have failed to properly submit requests for exclusion (requests to opt out) from the Settlement Class are bound by the terms and conditions of the Stipulation and this Judgment.

7. All other provisions of the Stipulation are incorporated into this Judgment as if fully rewritten herein.

8. Plaintiffs and all Settlement Class Members are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released Claims against any of the Released Parties.

9. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) Shall be offered or received against Defendants as evidence of, or evidence in support of, a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants, in any civil, criminal, or administrative action or proceeding, other than such

proceedings as may be necessary to effectuate the provisions of the Stipulation; however, Defendants may refer to it to effectuate the liability protection granted them hereunder;

(b) Shall be construed as or received in evidence as an admission, concession, or presumption against Plaintiffs or any of the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable in this Action would have exceeded the Settlement Fund; and

(c) Notwithstanding the foregoing, Defendants, Plaintiffs, Settlement Class Members and/or the Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10. The Court hereby finds and concludes that due and adequate notice was directed to all Persons and entities who are Settlement Class Members advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are Settlement Class Members to be heard with respect to the Plan of Allocation.

11. The Court hereby finds that the Plan of Allocation is fair and reasonable and the Claims Administrator is directed to administer the Settlement in accordance with the Stipulation.

12. The Court hereby finds and concludes that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice sent to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund established by the Stipulation among Settlement Class Members, with due consideration having been given to administrative convenience and necessity.

13. Nothing in the Settlement restricts the ability of any Party to advocate in favor of or against the applicability of any offset to any claims asserted in any other action based on any amount paid to Authorized Claimants through the Settlement.

14. The Court hereby awards Plaintiffs' Counsel attorneys' fees of one-third of the Settlement Amount, plus Plaintiffs' Counsel's expenses in the amount of $29,238.07, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the contingent nature of the case and the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Settlement Class.

15. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

16. Plaintiffs Sean F. Townsend and Mark Townsend are awarded $1,500 each. Such payments are appropriate considering their active participation as Plaintiffs in this Action, as attested to by their declarations submitted to the Court. Such payment is to be made from the Settlement Fund.

17. In the event that the Stipulation is terminated in accordance with its terms: (i) this Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Action shall proceed as provided in the Stipulation.

18. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of 22 N.Y.C.C.R. §130-1 and all other similar statutes.

19. Without further order of the Court, the Parties may agree in writing to such amendments, modifications, and expansions of the Stipulation and reasonable extensions of time to carry out any of the provisions of the Stipulation, provided that such amendments, modifications, expansions, and extensions do not materially alter the rights of the Settlement Class Members or the Released Parties under the Stipulation.

20. Without affecting the finality of this Judgment in any way, this Court retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, interest, and expenses in the Action; and (d) all Parties hereto for the purpose of construing, enforcing, and administrating the Stipulation.

DATED: 6/11/20

THE HONORABLE ANDREW BORROK, J.S.C.

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

In Re:

15-MC-40 (AKH)

AMERICAN REALTY CAPITAL
PROPERTIES, INC. LITIGATION,

Fairness Hearing

----------x

New York, N.Y.
January 23, 2019
10:15 a.m.

Before:

HON. ALVIN K. HELLERSTEIN

District Judge

APPEARANCES

ROBBINS GELLER RUDMAN & DOWD LLP
Attorneys for TIAA and Class Plaintiffs
BY: DEBRA J. WYMAN, ESQ.
MICHAEL J. DOWD, ESQ.
ROBERT M. ROTHMAN, ESQ.
ELLEN GUSIKOFF-STEWART, ESQ.

GLANCY PRONGAY & MURRAY LLP
Attorneys for the Witchko Derivative
BY: MATTHEW M. HOUSTON, ESQ.

MILBANK LLP
Attorneys for Defendant ARCP
BY: SCOTT A. EDELMAN, ESQ.

THE COURT: Who is going to do the application for Robbins Geller?

MR. DOWD: I will, your Honor. Michael Dowd.

THE COURT: Good morning, Mr. Dowd.

MR. DOWD: Good morning, your Honor.

THE COURT: I've read your extensive declaration, that is, the declaration of Ms. Wyman.

I want to take up just your fees, your activities. The first to file the class action lawsuit were four firms, who don't seem to be involved: Pomerantz LLP, Wolf Popper LLP, Wolf Haldenstein LLP, and the Rosen Law Firm. Is it clear that they are making no claim?

MR. DOWD: They are making no claim, your Honor.

THE COURT: OK. Did they do anything in the lawsuit?

MR. DOWD: No, your Honor. I mean, I'm sure they filed complaints early on. But the Court, when it appointed us lead plaintiff, told us to work with other firms and form a working group, a global working group. And there were a group of firms, I believe it was nine firms, that agreed to be part of that working group and to work on the case. And we've submitted their time with our time. And those are the only attorneys that would be entitled to fees in this casement.

THE COURT: The second thing, I did not appreciate how many counsel there were. My impression was that there were three or four at the time that I said what you said.

MR. DOWD: Pardon me, your Honor?

THE COURT: I didn't know there were nine other law firms involved.

MR. DOWD: There were, your Honor. The Court --

THE COURT: I didn't know that, I said. When I asked you to coordinate services and organize the plaintiffs' group, I thought there were just two or three law firms.

MR. DOWD: No, they were not. And they each had clients in the case, except I believe there was one firm that did not. But they each had clients. They were all class reps. They were all either on our "may call" or "will call" witness list. And so they provided valuable service. And they did a lot of work in the case. We've limited it and tried to give them discrete projects or dealing with just their plaintiffs, you know, because that's what we thought the Court wanted with the working group, and we did do that. Their time is about 10 percent of our time. And I think that's fair considering what they did in the case.

THE COURT: You have a rather detailed description of the various things you were doing.

MR. DOWD: Yes, your Honor. That would be in Ms. Wyman's, the longer declaration.

THE COURT: The declaration in support of application for award of attorney's fees and expenses is what I'm looking at. I have the larger one as well.

Ms. Wyman's affidavit identifies the lawyers -- all your firm?

MR. DOWD: Yes. They're all our firm.

THE COURT: Why so many lawyers?

MR. DOWD: Well, your Honor, there are different people that helped with different tasks. When I looked at it, this is what struck me. We had a working group that I really thought were the people that were going to be responsible for trying this case. That group was about 15 people, 13 lawyers and the two forensic accountants that were involved in it from beginning to end. Those 15 people account for about 72 percent of our lodestar, $47 million, just those 15 people. They were all people that the Court would probably be familiar with or would have seen their names. Certainly most of us have been here in court.

And then if you add in the four people at our office, three of our internal staff attorneys and another associate, that were primarily responsible for the document review, so that would be another four people, bringing it to 19. I think those people together would account for about 82 percent of our entire lodestar.

So it may look like a lot of people because there were timekeepers that did individual things or who were on the case for a given period of time. But if you look at those people that really drove the case, you're talking about the 15 main

people that did everything. That's 72 percent of the time. And if you take in those other four that were responsible for a lot of the document work, that's, I think, about 82 percent of the lodestar.

THE COURT: 12 people billed more than a thousand hours.

MR. DOWD: Yes, your Honor.

THE COURT: How many people were involved in your firm, Mr. Edelman? Roughly.

MR. EDELMAN: Your Honor, I would bet a comparable number. This was complicated litigation in a big case.

THE COURT: I understand.

MR. EDELMAN: That doesn't sound at all outlandish to me. Their the core team.

THE COURT: OK. Then I pass that observation.

MR. DOWD: That's just Mr. Edelman's firm. There were also Grant Thornton's lawyers.

THE COURT: They had a separate job to do.

MR. DOWD: Well, and we had to do the job on the other side of them as well.

THE COURT: That's true.

MR. DOWD: They had, at summary judgment --

THE COURT: Mr. Dowd, I withdraw that implied criticism.

The hourly rates, for example, what did Jason Forge

do?

MR. DOWD: Jason Forge, your Honor? Jason Forge was a critical part of this team. He worked on the case primarily towards the end at summary judgment, when he got ready for trial. He did fantastic work with their damages experts. He was a former assistant U.S. attorney. He was an AUSA who did huge cases in LA and San Diego before I talked him into coming over to our firm. He's a great lawyer, your Honor. He's been in front of you. I don't think he argued in this case. He was certainly in the courtroom. He's argued in other cases that I've been on with him in front of this Court. So you've met him.

THE COURT: Now, the top billing rate of $1,150 of Samuel Rudman, $1,250, he only had 29 hours.

MR. DOWD: It's really, it's probably Mr. Coughlin, myself, and Mr. Robbins.

THE COURT: Several billing more than a thousand dollars. Those seem like New York rates rather than San Diego rates.

MR. DOWD: Well, Mr. Rudman is in New York. But I think you should look at the rates for lawyers that do this type of litigation. If you look, the *National Law Journal* said over a thousand dollars an hour is common now for partners. If you look at some of the firms on the other side of this case --

THE COURT: I wouldn't try.

MR. DOWD: We submitted a declaration showing that Weil Gotshal -- and they were on the other side of this case, good lawyers -- we showed that they filed an application in the Sears bankruptcy earlier last year, and they had nine lawyers, at $1500 an hour, and dozens at over a thousand dollars an hour. So higher than us.

THE COURT: The bankruptcy rates are out of sight, and that's often because the allowances are heavily discounted.

Tell me now how the other firms worked.

MR. DOWD: How did the other firms work? What did they do, your Honor?

THE COURT: What did they do, yes.

MR. DOWD: Well, I can tell you that, for example, if you just go down the list, if you start with Lowey Dannenberg, for example. They represented Corsair. And Corsair was a shareholder and class member for the Cole shares and also the May 2014 common stock offering. Corsair produced, I believe, 145,000 pages of documents, all of which had to be reviewed for privilege. They were on our "will call" witness list. They are on, I believe, also a "may call" witness list. Their client was deposed. They also assisted with the summary judgment briefing on the discrete project that Ms. Wyman gave them.

THE COURT: What project was that?

MR. DOWD: Do you remember which briefing it was?

MS. WYMAN: Your Honor, we needed some assistance with the research of some tricky issues, and we asked them to help us with that, and they prepared --

THE COURT: You what?

MS. WYMAN: We asked them to help us with some research and prepared an insert to one of the briefs.

MR. DOWD: So you're looking at, your Honor, document review, analysis of the claims, data collection, motion to dismiss, negotiation of discovery disputes. Ms. Wyman would have had to coordinate with them for what their --

THE COURT: You're taking it out of their declaration, what you just said.

MR. DOWD: Pardon me?

THE COURT: What you just read, is that from their declaration?

MR. DOWD: It's from their declaration, yes, your Honor, that was submitted.

THE COURT: Now, Motley Rice makes no description in its declaration. What did they do?

MR. DOWD: Motley Rice, your Honor, they had two clients in the case. They had the national sheet metal workers union. And they were on both the Cole and the May 2014 offering. They were on our "will call" witness list, Mr. Myers. They had also Union Asset Management, which was a German entity that was on the July and December 2013 bond

claims. They had two witnesses that they produced, Mr. Riechwald and Mr. Fischer, who came over from Germany, as I recall, to have their depositions taken. Similarly, Sheet Metal Workers had Mr. Myers, so they had three days of deposition testimony. And all three of those witnesses were on our "will call" witness list. They are coming.

They also assisted us, as I recall, with the motion to dismiss briefing that related, I think, to the Exxon exchange. They attended the first mediation. And they would have spent a lot of time on depo prep and the depositions. And they also would have interacted, I'm sure, with Ms. Wyman in terms of document production and disputes with the defendants, so that, you know, their views would be expressed to the defendants as well.

THE COURT: Johnson Fistel.

MR. DOWD: Johnson Fistel, your Honor, represented their client in the case. There was a class rep. It was Paul Matten. He was an ARCT IV shareholder. He was on our "may call" witness list, I believe. They also assisted, they gave us an associate who came to our office, I believe, in New York, and assisted with document review of the defendants' documents. They also produced documents for their client. And I believe Mr. Matten was also interviewed by the Department of Justice when they were insistent that they wanted one of our class reps, or a couple of our class reps, to be interviewed about

their case.

THE COURT: Cohen Milstein.

MR. DOWD: Cohen Milstein, your Honor, represented the New York City funds. They were in the July 2013 offering, the Cole offering, the May 2014 offering. They produced two witnesses on behalf of the New York City funds, Horan and Jeter. They were both deposed. They were both on our "will call" witness list. They had, your Honor, as I recall, produced 190,000 pages of documents, which had to be reviewed. And they would have been involved, I'm sure, in checking class cert issues. And I believe they assisted also with the motion to dismiss briefing as well, your Honor. So they provided a valuable service. A lot of their work was related to New York City funds. Obviously, if we were trying a case in front of your Honor, in front of a New York jury, it would certainly be helpful to have New York City funds here.

THE COURT: What would they testify on?

MR. DOWD: They would have testified about their purchases in all the different offerings as class reps.

THE COURT: Those would have come in by stipulation.

MR. DOWD: Your Honor, they don't come in by stipulation.

THE COURT: Well, it's a matter of record what they bought and when they bought.

MR. DOWD: Yes. And no one says, we're going to

stipulate to it, your Honor. I've tried a couple of these cases.

THE COURT: There would have been stipulations.

MR. DOWD: Well, I've tried cases, and there weren't stipulations.

THE COURT: You would not need any witnesses on this, and I don't know that the witnesses would have contributed anything.

I'm reacting because a million dollars for each of these law firms, given the $65 million of lodestar that you put into the case, seems excessive.

MR. DOWD: I don't think it was, your Honor. I think what they did, in terms of their clients and document production, producing the documents, defending them at depositions -- we didn't take their depositions. The defendants deposed them.

THE COURT: I understand. But the knowledge of a class member is derivative and really irrelevant. The knowledge is derivative of what the lawyer finds and irrelevant because it doesn't prove any proposition against the defendants. I understand that these depositions are taken as a matter of course by defendants, and they have to be, the clients have to be represented and there's a certain time of preparation, but over a million dollars for each, without time records showing anything, I haven't seen any time records for

them.

MR. DOWD: Well, your Honor, again, we started out from a different premise. We seek a percentage of the fee, a percentage of the fund, as our fee. And that's the trend in the Second Circuit. I know I've argued with your Honor about this in the past. But that's how we seek a fee. When my firm is working on a case --

THE COURT: I just don't do that, Mr. Dowd. I told you in the past, I believe that people who just do it on a basis of percentage do not want to go through the rigor of review and time. I'll award lodestar. And I'll be candid with you right now; you will get an award for your lodestar as well, not as much as you asked for, but you'll get an award. I'm not sure about those other firms. I don't know what they contributed. I don't have a justification of their time. I don't know what activities took up their time. I don't know how they distributed their work between partners and associates. I don't understand the substantial expense factors that they put into this case. It's hard questions.

MR. DOWD: They did break down their time by who the timekeepers were. And they also broke down their expenses. Those are attached to their declarations that they each submitted.

But, again, your Honor, when my firm goes into a case, we negotiated with TIAA. We negotiated for a percentage fee.

And we're not sitting there thinking, let's bring in 50 for attorneys to sit in a room reviewing documents so we can build up our lodestar. And that's the problem with the lodestar analysis. I'm just being honest with your Honor. It encourages lawyers to hire for people that do nothing to add value to the case. And we don't do that.

THE COURT: You don't do that.

MR. DOWD: No, we don't. We work for a percentage. That's what we asked for. If we put people on an assignment, it's because we needed it done. You know, at summary judgment the defendants had like 60 people in the courtroom.

THE COURT: You had expenses paid outside bankruptcy counsel, $171,000, so that they can file a motion in the bankruptcy court to get permission so that they could litigate in this court.

MR. DOWD: That's correct, your Honor.

THE COURT: That's a lot of money.

MR. DOWD: I understand that, your Honor. And when the Court ordered us to go protect those claims and get the stay lifted, we had to hire bankruptcy counsel. It's not like --

THE COURT: Did you pay them, or are they waiting to get paid?

MR. DOWD: No, we paid them.

THE COURT: You are out of pocket.

MR. DOWD: That's out of pocket for us.

And, again, you know, there was a court order saying, you know, go defend the thing in bankruptcy. I'm not a bankruptcy lawyer.

THE COURT: That's right. It is a large amount.

MR. DOWD: I understand.

THE COURT: One is a simple motion, to lift stay, which is ordinarily granted in relationship to a large case like this.

MR. DOWD: And then I think they also had to keep monitoring it, and I think they probably made other appearances. I'm not positive -- I know they did. Right?

THE COURT: It's too high a fee.

MR. DOWD: I understand, your Honor. And we paid out of pocket. We're not trying to give money away. I mean, if you cut it, it just cuts my money. I don't think they're going to give it back.

THE COURT: Why weren't they required to make an application?

MR. DOWD: Because we didn't consider them part of a contingent fee. They wanted to get paid hourly, and that's what we paid.

THE COURT: You paid over a million dollars to Crowninshield Financial Research, Inc.

MR. DOWD: We absolutely did, your Honor.

THE COURT: And you have people on in your firm who do the same work. No?

MR. DOWD: They do similar work. And frankly a lot of the partners at our firm know a lot about damages. I mean, that million dollars, your Honor, was, we had to spend it. I cannot tell you how much work they did.

THE COURT: Were they going to be witnesses?

MR. DOWD: Pardon me?

THE COURT: Were they going to be --

MR. DOWD: Yes. It's Dr. Feinstein. He also testified in front of you on class cert. He was going to testify again at trial, your Honor.

THE COURT: Was his deposition taken?

MR. DOWD: His deposition was taken four times, your Honor.

THE COURT: So this million dollars reflects that activity.

MR. DOWD: Absolutely. And the defendant has six experts, on just loss causation. And you throw in truth on the market, they had 12. And I guarantee you, because I've worked with some of them, they paid a lot more than a million dollars for their 12 guys or six people, whatever you want to call them.

THE COURT: They're not asking me to give them any allowances to have a law firm relationship with a client who

will or will not pay, I think, in advance. I will not give you that. You paid William H. Purcell Consulting over $350,000 --

MR. DOWD: We did.

THE COURT: -- for testimony concerning due diligence issues. I remarked that I did not see the due diligence issues as having experts. It was really a fact and a law issue.

MR. DOWD: Yes. And then defendants --

THE COURT: I understand that, given defendants' insistence to have experts of that like, and a certain degree of uncertainty whether they will or will not be able to use them, you need to have your own.

MR. DOWD: Correct. And they had three.

THE COURT: What about Harvey Pitt?

MR. DOWD: Harvey Pitt, your Honor --

THE COURT: $200,000 to Harvey Pitt --

MR. DOWD: Like 198,000.

THE COURT: -- to trace securities.

MR. DOWD: Well, and he was also going to testify about the SEC regulatory framework.

THE COURT: I told you I wasn't going to allow that.

MR. DOWD: No, I think you said I could award for that. In fact, I'm pretty sure you awarded that --

THE COURT: No. When I commented, you said that he was going to trace shares, a job that an accountant could do.

MR. DOWD: I think you also said he could testify

about the SEC regulatory framework as well.

THE COURT: No, I did not.

MR. DOWD: I think you did, your Honor.

And, you know, your Honor, a lot of Mr. Pitt's bill is because the defendant showed up with between 15 and 20 lawyers in Washington, D.C., to take his deposition for two days. At the end of the first day, I walked out, because I said, this is a waste of time. And then defendants filed a letter brief complaining that I had walked out. And we had to go back for a second day.

I didn't want to have Harvey Pitt get deposed twice to talk about stuff that, you know, frankly I thought was not that remarkable.

THE COURT: You have almost $50,000 paid to John Barron and $384,000 to the firm that Barron went to.

MR. DOWD: Correct. Barron.

THE COURT: Barron.

MR. DOWD: We could have had several experts on accounting. And we found a REIT auditor and accountant who was going to testify to both, as to the company and as to Grant Thornton. I think his expenses are very reasonable.

THE COURT: I find your lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable. I'll go into lodestar a bit later.

The next firm I want to hear from is Lowey Dannenberg.

MR. SKELTON: Good morning, your Honor. Thomas Skelton of Lowey Dannenberg. Ms. Hart sends her apologies. She had a client meeting in California with a client who was in hospice care and may pass at any time and felt that she needed to keep that appointment.

THE COURT: Thank you.

MR. SKELTON: Your Honor, my firm represents the Corsair group of funds. They had a $19 million loss and were the second largest shareholder at the lead plaintiff stage. We were obviously not appointed lead counsel. Throughout the course of the case, we took our direction from Robbins Geller. We worked on numerous aspects of the case, including, as set forth in Ms. Hart's declaration, motions to dismiss, motions for class certification, motions for summary judgment.

THE COURT: What did you do on the motion to dismiss?

MR. SKELTON: We did discrete projects and we reviewed motion papers at the direction of lead counsel, particularly in any issues that might have related to Corsair. And they would apply throughout the case. Much of our work was specifically directed to issues that related to Corsair. For example, one of the issues that went throughout the case was the issue of tracing, as Mr. Dowd alluded to. We were able to find documents through our document platform that showed, in connection with the May 2014 offering, that Corsair purchased shares at the offering price on the date of the offering from

one of the underwriters at a price that was outside of the trading price on that given day.

THE COURT: That's an accountant's work for Corsair. Why was it your work?

MR. SKELTON: Corsair retained to us perform these services and to represent them in the case. And the issue was whether we could trace the shares to the offering. And our work, we did the work analyzing the documents and providing the information to --

THE COURT: But normally that work would be done internally within a company. Corsair is what, a management company?

MR. SKELTON: It's an investment manager, yes.

THE COURT: Investment manager.

MR. SKELTON: Yes.

THE COURT: An investment manager knows what he bought, what he sold, when he bought it, how much he paid.

MR. SKELTON: An investment manager would have had to find all the documents and analyze them. We analyzed them in the context of the arguments that the defendants were making regarding tracing. They argued that we couldn't trace the shares to the offering because shares are fungible and they're held electronically and therefore we couldn't recover on the Section 11 claims. And the client, this is --

THE COURT: You bought these shares on the offerings,

did you not?

MR. SKELTON: Corsair brought the shares on the offering, yes.

THE COURT: Which offering did you buy on?

MR. SKELTON: The May 2014 offering, as well as Cole merger shares. But the offering at issue was the May 2014 offering.

THE COURT: Did you buy from the underwriters?

MR. SKELTON: Yes.

THE COURT: So what was the big problem?

MR. SKELTON: The problem was that the defendants were arguing in the in limine motions and in summary judgment that we couldn't trace the shares to the offering because shares are fungible and, because we couldn't say that these particular shares did not exist before the offering, we couldn't recover on the Section 11 claim.

THE COURT: That's a legal issue.

MR. SKELTON: Yes. And we needed to argue that legal issue with supporting documents. And the documents we were able to find showed that Corsair purchased, on the date of the offering, at the offering price, from one of the underwriters. And we compared that to publicly available information that showed that the lowest trading price of the day was above the price at which Corsair purchased, so therefore they must have purchased on the offering. This is not a routine analysis that

Corsair would do. They didn't understand the nuances of Section 11, of the 1933 Act. We did. They retained us to do this, and that was part of what we did. And we were able to establish, through documentary evidence, that the shares were purchased on the offering. And ultimately, your Honor ruled in favor of the plaintiffs on that issue.

Other matters that we dealt with --

THE COURT: What was your contribution to the result?

MR. SKELTON: Corsair was a certified class representative. They purchased the shares on the open market. They purchased shares in the Cole offering. They purchased shares in the May secondary offering. All of our work, your Honor, was done either at the direction of lead counsel or in consultation with lead counsel, and consult --

THE COURT: Did you take any depositions of the defendants?

MR. SKELTON: We did not, your Honor. We were not asked to do that.

THE COURT: So all you did was represent your client.

MR. SKELTON: Well, we represented our client, who had issues relating to the various -- the offering and the merger and common shares. We were asked to perform tasks on the summary judgment motion, on class certification.

THE COURT: In relationship to your client.

MR. SKELTON: Well, generally, in relation -- in

relation to our client and other tasks that Ms. Wyman called me and asked me if we could do certain research projects related to omissions and related to the admissibility of the financial restatement, which was an earlier issue that came up during the case. Our client produced 145,000 pages of documents. We reviewed the documents for responsiveness and privilege. We dealt with issues relating to the ESI and follow-up questions from the defendants regarding the documents that were produced. Mr. Mishaan of Corsair was deposed. Mr. Rothman from Robbins Geller attended the prep sessions, worked with us to get ready for the deposition. He attended the deposition. And the deposition went very well, and Corsair was certified as a class representative by your Honor.

THE COURT: What did the interview with the Department of Justice and the Securities and Exchange Commission have to do with this lawsuit?

MR. SKELTON: Well, it involved parallel proceedings that the SEC and the U.S. Attorney's Office were contemplating bringing. They wanted to interview Corsair as a witness, and we prepared our client -- and he was the same person who was ultimately deposed.

THE COURT: So why should the class pay for that?

MR. SKELTON: Well, that was time that was spent learning facts that the government had, and they presented hypotheticals to us that helped us to understand some of the

issues that they were considering. And we recognized that the government has different burdens of proof and different elements, but the underlying facts and the approach that the government was taking helped to us understand better the underlying facts in this case.

THE COURT: Why shouldn't that be a fee chargeable to your client, rather than to the class?

MR. SKELTON: Well, the information that we learned and that the client provided to the government was very similar to the information that was being argued in the case. The adjusted funds from operations was one of the issues that was discussed at that meeting. And we believed that that helped sharpen our focus. And Mr. Mishaan, who was the witness at the SEC and DOJ meeting, was also the deponent that Corsair proffered for his deposition.

THE COURT: These interviews with the Department of Justice and with the SEC were not on the record, were they?

MR. SKELTON: No, your Honor.

THE COURT: They couldn't be used in the lawsuit.

MR. SKELTON: No, they could not be used to be submitted as evidence. But it was helpful to us in understanding the government's approach and learning facts about the case that helped us proceed.

Just to put a finer point on it, your Honor, the interview was a short interview. It lasted a couple hours. We

had a prep session the day before. It was not a lengthy period of time. But we do believe that the information that we learned during that process was helpful.

THE COURT: How much of your fees went into that?

MR. SKELTON: I could find it in our time sheets and submit this, your Honor, but it was probably six to eight hours of my time and a couple of hours of Ms. Hart's time.

MR. DOWD: Your Honor, could I just mention one thing? This happens in our cases sometimes, and it did here, where DOJ reaches out and says, we want a victim witness, and since you already have a lawsuit, we want your victim witness. And the first thing I say to them and I'm sure is what we said in this case -- I think Mr. Forge dealt with it -- is, get out of here, go find your own witnesses. And then they say, well, you know, if we want, we can subpoena your witnesses.

And so I think at times, you get stuck in this position with the U.S. Attorney's Office. And I say, you got to go in there and protect them because I don't know what they're going to write down, that your witness may or may not have said, and turn over in Jencks Act discovery before their trial.

And so you have to protect your witness. And it's not our fault, your Honor. We always tell them just go away, find your own witnesses, OK, you do your job, we'll do ours. It's not like they are going to help us.

And I say that with all due respect. I used to be an assistant U.S. attorney, so --

THE COURT: One last question. If I were to give a lesser bonus to your and to the other firms than I give to Robbins Geller, would that it be unjust?

MR. SKELTON: Well, as I understand it, your Honor, Robbins Geller as lead counsel has the discretion, unless your Honor orders otherwise, to distribute the fees in accordance with its discretion as to the contributions that were made by the firms. We believe that our contribution was valid and meritorious, but of course Robbins Geller, they did the lion's share of the work, they took the depositions, they did a phenomenal job and they got a phenomenal result.

THE COURT: My thought was that I would make awards to each of your firms so that Robbins Geller would not have the burden of redistribution.

MR. SKELTON: That is certainly within your discretion, your Honor, to do that and to award what you think our firms' contribution was. We do believe we contributed to the success of the case. I believe that Robbins Geller agrees with that. Obviously Robbins Geller did the lion's share of the work. They took the depositions. And they created a tremendous result. So I'm not going to sit here and tell you that your Honor has to award me the same multiplier that Robbins Geller gets. They were lead counsel. But we do

believe that our contribution was meritorious and that our time was valid and that our application should be granted.

THE COURT: Thank you.

MR. SKELTON: Thank you, your Honor.

THE COURT: Tell me your name again?

MR. SKELTON: Thomas Skelton from Lowey Dannenberg.

THE COURT: I'll hear Motley Rice next.

MR. DOWD: Your Honor, I'm not sure that all the co-counsel came. I mean, we were here to present for them, just like everything else in this case. We tried to keep a tight rein on everybody just so that there wouldn't be waste of time. And I'm pretty sure Cohen Milstein was here on Tuesday and they may have sent a different person today because they couldn't be here again today. But most of the people, we told them, we submitted your time and we'll argue for you. And that's typically the way we did things in this case. We didn't want ten firms showing up. I mean, the Court's order said, "As reported in yesterday's status conference, lead plaintiff's counsel, Robbins Geller, will work with and lead a working group of all interested plaintiff's counsel." And that's what we did.

THE COURT: I understand, Mr. Dowd. But I have to examine the reasonableness of all the constituent parts of your fee, of your fee request, notwithstanding that you're requesting for everybody.

I'm looking at Mr. Levin's declaration, Mr. Levin being a member of Motley Rice. That firm does not have offices in New York, does it?

MR. DOWD: I don't know whether they have an office in New York.

They do. Mr. Rothman says they do.

THE COURT: But the lawyers that worked on the case, were they from the New York office or another office?

MR. ROTHMAN: There was one lawyer who was either from Westchester or Kentucky, maybe from Connecticut, and the rest, Mr. Levin is in the South Carolina office.

THE COURT: It doesn't seem to be right to charge for transportation. I will disallow that charge.

I don't know what they did. What did they do in the case?

MR. DOWD: Well, I talked to you about that already, your Honor. They had the sheet metal workers. They produced Mr. Myers for his deposition. They also had Union Asset Management.

THE COURT: Tell me what they did to contribute to the victory.

MR. DOWD: Well, that does contribute to the victory, your Honor. You're producing deponents and witnesses who bought different offerings that contribute to the victory. I mean, they flew these guys over, as I understand it, from

Germany to have their depositions taken, which is probably part of the travel expenses in this case. They assisted with the motion to dismiss briefing on the Exxon exchange. They attended the first mediation. They did all that depo prep and depo work. They produced respectively about, between them, the two plaintiffs, over 26,000 pages of documents, your Honor.

THE COURT: Johnson Fistel.

MR. DOWD: Johnson Fistel we talked about as well. That was Paul Matten. He was one of the ARCT IV witnesses. They also assisted with the document review. They lent us an associate to assist with document review.

They also produced about 1100 pages of documents on behalf of Mr. Matten. I believe their client was also interviewed by the DOJ.

THE COURT: The Weiss law firm, are they here? Is Weiss here?

MR. DOWD: I don't believe so, your Honor. Again, we kept tight reins on everybody to try to keep the numbers down.

THE COURT: This is an interest in their fee, not a matter of -- they're not getting paid for coming here today. They just have an interest in getting paid.

What about the Weiss law firm? What did they do?

MR. DOWD: Their client was Simon Abadi. He was, I believe, in the Cole offering. And they produced documents for their client. Their client was deposed in the case. He was on

one of the "may call" witness lists. And so they did do work that related to their client in the case.

THE COURT: Stull Stull & Brody.

MR. DOWD: Stull Stull & Brody represented Dr. Esposito and another gentleman named Noah Bender. Esposito was one of the witnesses that really gave a standing on ARCT IV. He was together with Mr. Matten. But Dr. Esposito was deposed, and he was on our "will call" witness list because he gave a standing on the ARCT IV issue. And so they would have represented Dr. Esposito at his deposition and assisted with anything related to Dr. Esposito's briefing.

THE COURT: Gardy & Notis.

MR. DOWD: Gardy & Notis, your Honor, they had a client who was not named as a class rep in this case named Shenker. I think that he sought lead plaintiff appointment. However, because they were on the Cole exchange, they went down to Maryland because there had been a securities case against Cole, and they tried to make sure, their primary role was to make sure that our claims, our claims asserted in this case, didn't get cut out in the release in the Maryland Cole case. Not only did they argue below in this case, in the district court, but then I believe they also argued it on appeal as well, your Honor. And so that was their main role in the case, was objections and appeals in the Cole case to protect our clients to make sure their claims didn't get released in

Maryland, in sort of an end-around. And so that was the work we gave them to do, and they did it, and they did it well.

THE COURT: The Polaszek Law Firm.

MR. DOWD: The Polaszek Law Firm represented the City of Tampa funds. They were on the May 2014 offering. They produced their client, who was one of the class reps, was Ernest Carrera, on behalf of Tampa, obviously, and he was on our "may call" witness list at the end of the day. They produced documents. Their client was deposed.

Frequently, when I looked at their lodestar, I was thinking I would have thought it would have been higher. But that was just my view.

THE COURT: Cohen Milstein.

MR. DOWD: Cohen Milstein we discussed. They represented the New York City funds. They were on a host of offerings, I think three different offerings. They produced two witnesses, Mr. Horan and Mr. Jeter. They were both deposed. They were both on our "will call" witness list. They did significant work in the case. They produced 190,000 pages of documents that had to be reviewed for privilege and responsiveness. And they also assisted with the motion to dismiss briefing in the case, as I recall. And so I think that their work was very good, and they did a good job, and helped us with the case.

MR. LOMETTI: Your Honor, I'm sorry. It's Chris

Lometti from Cohen Milstein. Julie Reiser was here on Tuesday, is in court in California, had a mediation, actually, in California today. She couldn't be here. I'm here if you have any additional questions.

But I think there may have been four offerings that the New York City funds were involved with.

THE COURT: Did you take part in any depositions against defendants?

MR. LOMETTI: No, your Honor.

THE COURT: Or any motions?

MR. LOMETTI: I think the firm worked on the motion to dismiss, on class cert issues, and I believe -- Michael, correct me if I'm wrong -- but there was some work that the firm did in relation to the investment managers in general. New York City funds had five investment managers, and there was a time where the defendants were possibly wanting to depose some or all of them and we had to fight that, and which we did successfully. And we may have been involved with other investment manager-type issues as well in the case, your Honor.

MR. DOWD: That's correct, your Honor.

THE COURT: Thank you.

And Levi & Korsinsky.

MR. DOWD: They had clients Mitchell and Bonnie Ellis. They were on the ARCT IV offering. They were on our "may call" witness list. They produced documents. The defendants did not

take their depositions. I noted that their expenses were zero, which was consistent with that. But that would have been their primary role: protecting their client, producing documents, reviewing them, and responding to issues on motion to dismiss that dealt with their clients.

THE COURT: If I were to give you whatever I give you, as a fee for everyone, what would be the methodology of distribution?

MR. DOWD: What would be our process? I think we would have to --

THE COURT: Your theory of distribution.

MR. DOWD: We would have to look at what everyone did and then figure out how to divide it. A large part of it would be based on what the Court ordered and how much we got, and we would have to think that through and then talk to the firms and make a decision. That's what would happen. It's not like there's some mathematical equation that we use.

THE COURT: I feel I want to reward your law firm more than the others proportionally.

MR. DOWD: Your Honor, I will say this. In this case, we kept those co-counsel to 10 percent of our lodestar, basically. And they did work on the case. And they did good work, with everything they had to do. And they cooperated with us. And they worked with their witnesses. And it added value to the case. I don't think it's fair --

THE COURT: I'm sure they did. But the driving force in this case --

MR. DOWD: Absolutely.

THE COURT: -- and the reason that the result is uncommon, was the work of your firm.

MR. DOWD: I understand, your Honor. But I can't stand here and denigrate these other firms that I feel made a legitimate contribution to this case. And I won't do it.

THE COURT: OK. I'll take a short break and then I'll --

MR. DOWD: Your Honor, I would like to address some other issues too for the Court's consideration.

THE COURT: Go ahead.

MR. DOWD: Is that all right?

THE COURT: Yes, go ahead.

MR. DOWD: Because I know the Court goes with the lodestar approach. I understand. But, you know, in this case, TIAA, the lead plaintiff, did a great job. And the Court actually said they did an excellent job in this case. They held our feet to the fire. We had an ex ante negotiated fee agreement with them, before we were appointed lead plaintiff, calling for 12.4 percent of the fee.

THE COURT: How much?

MR. DOWD: 12.4 percent. You have to do some math on it. But that's what it comes out to. That's where the 127

million comes from, your Honor.

TIAA is one of the largest retirement systems in the world, your Honor. They have almost a trillion dollars in assets.

THE COURT: I'm familiar with that.

MR. DOWD: All I'm saying is, they're used to dealing with lawyers, and they drove a good bargain on behalf of themselves and the class at 12.4 percent. If you look at the Second Circuit law, it says an ex ante negotiated fee agreement, the Second Circuit has said, should be given serious consideration by the court. Other judges in this court have said it's entitled to a presumption of reasonableness or correctness, starting with Judge Lynch, back in the *Global Crossing* case, probably almost 15 years ago.

THE COURT: From the point of view of a client wanting to litigate, there's a choice of paying as you go on a time basis, but the model for defendants is, the client takes each bill that comes and looks at it and says, well, I don't need this service or that service or you billed me too much on that, and you make adjustments. And at the end of the day, when you have a recovery, if the client has been paying you on a time basis and you want a bonus, the client will often say, well, I hired you because you're good, and I hired you because I'm willing to pay the high rates that you charge. So why should I also pay a bonus?

You're getting a percentage from TIAA in lieu of pay as you go. Therefore you've had to wait. And therefore, from the perspective of TIAA, which is one of the beneficiaries of many in this lawsuit, it's not really arm's-length bargaining.

MR. DOWD: It is, though, your Honor.

THE COURT: It's an indication.

MR. DOWD: I understand.

THE COURT: I accept it as an indication.

MR. DOWD: I'll telling you just what some other courts have said.

THE COURT: I understand.

MR. DOWD: That 12.4 --

THE COURT: I understand some give lodestar and some give percentages.

MR. DOWD: Right.

THE COURT: I give lodestar. I don't give percentages.

MR. DOWD: But the negotiated fee agreement is given a presumption of reasonableness in courts. And that 12.4 percent, your Honor, it's lower, lower than what a lot of people get. It is a contingent fee. We're not getting paid by the hour. It's contingent-fee litigation. And people do it on a percentage basis. That's how it works. And in this courthouse last year somebody got 25 percent on 250 million. The Second Circuit in November affirmed 13 percent on 2.3

billion, your Honor, in a case.

THE COURT: The Court of Appeals does not want to substitute itself for my judgment in the case. It's tough work. There are very few legal principles involved.

MR. DOWD: Your Honor, can I just ask you to consider two other issues?

The defendants, in connection with the audit committee investigation and, you know, our suit, as well as other issues, totaled $264 million that they spent. Now, that's not just our case.

THE COURT: Say that again.

MR. DOWD: 264 million.

THE COURT: Who?

MR. DOWD: The defendants. That's what ARCP paid for everything that resulted from the audit committee investigation, a lot of which we had to duplicate and a lot of which was probably directly on our case. They spent $69 1/2 million just in the first three quarters of 2019. In the first three quarters of 2019 I know the lion's share of that money had to be defending our case. 69 1/2 million, that's more than my lodestar, just for three quarters last year.

I would ask the Court to consider that. These numbers are not crazy.

When you look at what happened in this case, your Honor, I mean, the quality of the representation, I can tell

you, your Honor --

THE COURT: I'm not going to cut your lodestar, if that's what you're worrying about.

MR. DOWD: No, no, I'm not worried about that. I'm worried about trying to get more than my lodestar.

THE COURT: You'll get more.

MR. DOWD: I would like to get as much as I could.

THE COURT: I could give you all 12.2 percent, but I'm not going to give you that much.

MR. DOWD: All right, your Honor. Just consider this. Bloomberg News, 2017, had an analyst that said this case would settled for between 33 and 117 million dollars. We got 1.052 billion. Last summer, JPMorgan said, based on what they paid the opt-out litigants in this case, which were huge funds, huge funds -- Vanguard, PIMCO, BlackRock -- they said that we get 450. And we got 1.025 billion, your Honor.

I just, I can't sit down before I tell you that. I mean, we did a remarkable job. And we should benefit from that -- for not taking the 450 and coming in and getting the same lodestar award, for saying, no, we're going to roll the dice on summary judgment and make this case worth more for the class, your Honor. And that's what we did. And we should be rewarded for taking that risk.

That's all I ask the Court to consider. I know the Court wants to rule, and I don't want to belabor it, but I ask

you to consider that.

THE COURT: What did you perceive to be the risk, the probability, of my granting summary judgment to the defendant?

MR. DOWD: I don't know. To be honest, your Honor, I thought that we could very possibly get thrown out on Grant Thornton, who ended up paying 50 million --

THE COURT: What did you think that?

MR. DOWD: I don't know. Because I think that auditors get out of these cases an awful lot. I think they did a study and only like 2 percent --

THE COURT: They were not responsible for the AFFO --

MR. DOWD: Exactly.

THE COURT: But they were responsible to know how their numbers were being used.

MR. DOWD: No, I understand that.

THE COURT: And their numbers were being used in a way that you considered and you were likely to prove to be false and misleading.

MR. DOWD: But it was a risk. And you look at some of these other people that filed opt-out cases, they weren't taking that risk.

THE COURT: I don't mean to denigrate what you did. Because I think what you did was very good. A 50 percent discount of proveable damage is a much lower figure than that, because the number of over $2 billion ascribable to the overall

damage is subject to many, many pitfalls, failures of claims and the like. So your achieving over a billion dollars is highly significant.

MR. DOWD: Thank you.

THE COURT: And I don't want to take away from it. I think you did outstanding work. I think you have to be rewarded for your persistence and your stubbornness and for your leadership in the case. You stood up to the most powerful law firms in the City of New York and were their equal.

MR. DOWD: Thank you, your Honor.

THE COURT: However, your lodestar rates for partners are pretty high.

MR. DOWD: They're also lower than the rates of the firms on the other side.

THE COURT: Yes. But they had to get it on a pay-as-you-go basis, and you're getting it from me.

MR. DOWD: Well, that's even better, your Honor.

THE COURT: You have a significantly lower expense.

MR. DOWD: They're $1500 an hour, your Honor.

THE COURT: I know.

MR. DOWD: They got it in 2014 and 2015, some of these firms. That money is worth 50 percent more now, because they got it then and they had higher rates than us. You know, I mean, it's not -- our rates are not high, you know what. I mean --

THE COURT: We have an imperfect world.

MR. DOWD: I understand that. But, you know, my world isn't much different from theirs when it comes to, you know, meeting salary obligations and funding expenses and everything else. I don't get paid on the 30th day of every month like they do.

THE COURT: Is the transportation from San Diego -- you're in San Diego, right?

MR. DOWD: Yes, your Honor.

THE COURT: And Ms. Wyman is in San Diego.

MR. DOWD: Yes.

THE COURT: Are your transportation costs chargeable as an expense?

MR. DOWD: Yes, it is an expense.

THE COURT: You're taking advantage of a lower cost structure in San Diego, significantly lower structure. Charging the transportation cost and asking to be paid New York rates, that's significant.

MR. DOWD: Your Honor, our transportation costs were significantly higher because we cut out a lot of the airline fees. So out of pocket I'm losing about 130 grand on that, your Honor.

THE COURT: I'll take a short recess.

(Recess)

THE COURT: I've considered the arguments, read the

fee justifications and the expense itemizations. I find the lodestars of each of the firms reasonable and appropriate and the expenses reasonable as well.

My award for all of the counsel who will be sharing this fee is $100 million, plus allowance of expenses of $5,164,539.91.

It comes out to a multiplier of 1.376, but regardless of the accuracy of my arithmetic, the number is $100 million of fee and $5,164,539.91.

I believe that, in this case, as I said before, the services delivered by the Robbins Geller firm were outstanding, that Ms. Wyman, Mr. Dowd, and your colleagues, Mr. Rothman, did outstanding work. I think in the fees of some of the other firms it was hard for me to see the same amount of productivity, in terms of obtaining the result, and in some cases whether or not all the fees that were presented were fees that should be allowed. But it's very hard to pierce through this, as Mr. Dowd has suggested that everything went into the final result, and so I determined that each of the firms would be considered as having had a full lodestar, and that the add-on, the bonus, would be done in the aggregate for all firms.

How the fees are ultimately allocated is something, I guess, the firms are going to have to work out for themselves. As I understand it, I have no continuing jurisdiction, should

there be any dispute.

There's no interest to be awarded on this amount. It will be paid, how did you say, about third, Mr. Dowd, one third on when?

MR. DOWD: Yes, your Honor. There's a third now, a third in 90 days, and a third on the initial distribution, the big distribution.

THE COURT: OK. And it will be payable by the funds that have already been paid by the defendants.

MR. DOWD: Yes, your Honor. The money, we got the money in October, your Honor.

THE COURT: All the money.

MR. DOWD: Yes. And that actually, if we had awaited the final approval like a lot of firms do -- they don't fight for that. We've made the class about $4 million on that alone, just by standing, holding out for that.

THE COURT: That's not unusual. Payment on the agreement.

MR. DOWD: A lot of people won't fight for it anymore, your Honor.

THE COURT: OK. That's my award. And I congratulate all of you. Thank you very much.

MR. DOWD: Thank you, your Honor.

MS. WYMAN: Thank you, your Honor.

MS. GUSIKOFF STEWART: Thank you, your Honor.

MR. HOUSTON: Your Honor --

THE COURT: Two minutes.

MR. DOWD: Your Honor, we have an order that we adjusted, I think we filed it yesterday, to reflect a third, a third, a third. And I think our expenses went down about $9,000.

THE COURT: Hand it up. Then I'll talk to Mr. Houston.

MR. DOWD: Oh, it has a percentage in it. So if you want us to just submit one later?

THE COURT: Yes.

MR. DOWD: Or I can write it in now, whichever you prefer.

THE COURT: You can write it in now.

Meanwhile, I'll hear from Mr. Houston.

MR. HOUSTON: Your Honor, very briefly. We had a couple issues with process on the submissions in the derivative matter. We have asked for, with counsel for VEREIT, that we be given the opportunity to file a reply statement once they have gone through our time records and identified their issues. We think this will create the greatest and clearest record.

THE COURT: I think this is what you do. Without giving me anything, give Mr. Edelman what you propose. Mr. Edelman will then give you his objections. You will negotiate to whatever extent you feel appropriate. And then

there will be a filing on a joint basis, just the way you do with a 2(e) letter, so I don't get separate filings. So just give me the outside date by which you can accomplish all that. Discuss it with Mr. Edelman. And then we'll issue an order.

MR. HOUSTON: Your Honor, that was the second issue. We have discussed some dates. We had asked for a month to put together the records in accordance with your Honor's directive on Tuesday.

THE COURT: How much time do you want?

MR. HOUSTON: OK. So we'll take that month. Mr. Edelman, how long do you want? Do you want your two weeks that you suggested, or longer than that, to review what we are submitting?

MR. EDELMAN: Your Honor, so as I understand it, you want us to do a joint letter.

THE COURT: At the end.

MR. EDELMAN: At the end?

THE COURT: Outlining the positions.

MR. EDELMAN: And do you want us to be limited to the page limits? Because as I understand it, Mr. Houston is planning on now submitting a different set of time records.

THE COURT: What do you propose?

MR. EDELMAN: I would propose that Mr. Houston submit whatever he wants to submit. To the extent that there was stuff in the time records that shouldn't have been in there,

take them out, put them in a letter responding to our position. We put in a letter responding to that. And then your Honor is in a position to decide. And we do it as quickly as we can. We've already had extensive briefing and argument on this.

MR. HOUSTON: The only problem with that is that we never did get the chance to respond to the initial issues. And Mr. Edelman has already said that, on review of the next submission of records, there may be additional issues.

THE COURT: Mr. Houston, February 21, you file with the Court your submission, backed up by whatever supporting data you think is appropriate.

Mr. Edelman, on March 13, you respond.

MR. EDELMAN: Thank you, your Honor.

THE COURT: And Mr. Houston, another week, March 20, to reply. And I'll endeavor to decide on the papers or, if I need to see you, I'll do that as well.

OK? Are those dates satisfactory?

MR. EDELMAN: Thank you, your Honor.

MR. HOUSTON: Yes. Thank you, your Honor.

THE COURT: All right.

Anything further?

MR. EDELMAN: Yes. Your Honor, on behalf of VEREIT and, I think, all the counsel, we want to thank you for all your work and your attention and your good humor throughout what was a very contentious fight. Thank you.

MR. DOWD: Thank you, your Honor. And I would also thank your staff as well. They were fabulous too.

THE COURT: Yes. The staff is fantastic and they make people look good, to the extent I look good. Metaphorically speaking.

It's been a pleasure to have you. It's not common to have a case this well argued, this well presented. There were lots of discovery issues throughout. Your ability to cooperate in this procedure that I have facilitated my work enormously, and where I couldn't resolve it, we had hearings on a short basis. My goal in this, which I don't suppose was accomplished, was to reduce transaction costs as much as possible and move the case along as much as I could. You'll judge me whether I succeeded or not, but that was my goal. And I think it was facilitated by the way you cooperated with each other, while at the same time representing your respective clients most zealously. So I thank you.

MR. DOWD: Thank you.

MR. EDELMAN: Thank you, your Honor.

MS. WYMAN: Thank you, your Honor.

THE COURT: When is finality, Mr. Dowd?

MR. DOWD: Well, there's no objection, so it should be 30 days from judgment, which I believe the Court entered yesterday.

THE COURT: What about my not giving a fee award yet?

I've done everything in the class action.

MR. DOWD: Oh, no, they are separate cases. They weren't even consolidated ever. They were coordinated for discovery but not consolidated, so my case is down right now, and it will be final in 30 days because there are no objections.

MR. EDELMAN: Also, it's our understanding that the derivative judgment makes that case final and the fee issue is separate.

THE COURT: Will be supplementary to the judgment.

MR. HOUSTON: Yes. That's right, your Honor.

THE COURT: OK. Thank you.

MR. DOWD: Thank you.

MR. EDELMAN: Thank you again, your Honor.

(Adjourned)

EXHIBIT E

K6BKDEUC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NORBERT G. KAESS, et al,

Plaintiffs,

v. 09 CV 1714 (GHW)(RWL)
Telephone Conference

DEUTSCHE BANK AG, et al.,

Defendants.

----------x

New York, N.Y.
June 11, 2020
4:30 p.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

GLANCY PRONGAY & MURRAY LLP
Attorneys for Plaintiffs
BY: BRIAN P. MURRAY
-and-
ROBBINS GELLER RUDMAN & DOWD LLP
BY: THEODORE J. PINTAR
ERIC NIEHAUS
KEVIN LAVELLE

CAHILL GORDON & REINDEL LLP
Attorneys for Deutsche Bank Defendants
BY: DAVID JANUSZEWSKI
SAMUEL MANN

SKADDEN ARPS SLATE MEAGHER & FLOM LLP
Attorneys for Underwriter Defendants
BY: WILLIAM J. O'BRIEN
ANDREW BEATTY

(The Court and all parties appearing telephonically)

THE COURT: This is Judge Woods.

Is there a court reporter on the line?

(Pause)

THE COURT: Let me just say a few words at the outset of today's conference.

First, you should conceive of this conference as if it was happening in the courtroom. As you know, the dial-in information for this call is publicly available; members of the public and the press are welcome to dial in.

Second, let me ask you to all keep your phones on mute at all times when you're not speaking on the phone. I can hear some background noise right now, shuffling some paper. We should not hear any background noise during the course of the conference. Please keep your phones on mute at all times when you are not speaking during the conference. That will help us to keep a clear record of what we say today.

Third, I'd like to ask each of the people who will speak during this conference to please identify themselves each time that they speak during this conference. So, if you speak during this conference, you should say your name each time that you speak. You should do that regardless of whether or not you've spoken previously during the conference. That will help us to keep a clear record of today's conference.

Last, as you've heard, there is a court reporter on

the line. You should not be surprised if he chimes in at any point. If he does, and if he asks you to do something to help him to hear or understand what you're saying, please do what he asks. That will help us to, again, keep a clear record of the conference today.

Because there is a court reporter on the line transcribing the conference, I'm ordering that there be no recordings or rebroadcasts of any portion of the conference.

So, with those introductory remarks in hand, let me turn to the parties.

I'd like to ask for counsel for each side to identify counsel who are on the line for each of the parties and any representatives for each of the parties. What I'm going to ask is that, if you can, that one person from each side identify herself and the members of her team; that way, we won't have to hear many people chiming in at a time.

So let me begin with counsel for plaintiffs.

Who's on the line for plaintiffs?

MR. PINTAR: Good afternoon, your Honor. It's Ted Pintar, and I'm here with Eric Niehaus and Kevin Lavelle, from Robbins Geller Rudman & Dowd, for plaintiffs.

THE COURT: Good. Thank you very much.

Who is on the line for defendants?

MR. MURRAY: Excuse me. I hate to interrupt, but this is also for plaintiffs, Brian Murray, from Glancy Prongay &

Murray. Sorry to interrupt you.

Now the defendants.

THE COURT: Fine.

Counsel for defendants?

MR. JANUSZEWSKI: Good afternoon, your Honor. This is David Januszewski, and I have my colleague, Samuel Mann. We are both from Cahill Gordon & Reindel, representing Deutsche Bank and the Deutsche Bank defendants. And on the line, we also have, from Deutsche Bank, Stella Tipi, in-house counsel at Deutsche Bank.

THE COURT: Good. Thank you very much.

So, counsel --

MR. O'BRIEN: I'm sorry. Good afternoon, your Honor. I just wanted to introduce myself and my colleagues. William J. O'Brien and Andrew Beatty, from the firm of Skadden Arps Slate Meagher & Flom, on behalf of the underwriter defendants.

THE COURT: Good. Thank you very much.

So, counsel, first, let me thank you all for being on the call. I scheduled this conference as a settlement hearing or approval hearing with respect to the proposed resolution of this case. I have reviewed all of the materials that have been submitted on the docket to date in connection with this matter. I'd like to hear, however, from each of the parties, to hear, in particular, if there's anything that any of you would like to add to any of your written submissions in connection with

the proposed resolution of the case.

Let me begin with counsel for plaintiffs.

Counsel?

MR. PINTAR: Again, good afternoon, your Honor. Ted Pintar, for plaintiffs.

I had a number of things I wanted to mention just at the outset. Obviously, we're here on the final approval of an $18.5 million settlement. We are very proud of that result. As we have indicated, and I won't repeat all of what's in the papers, but it represents a very significant percentage of reasonably recoverable damages.

On February 27, 2020, this Court entered its preliminary approval order. Pursuant to that order, notice was disseminated. The claims administrator mailed over 112,000 notice packages, published the summary notice in the Wall Street Journal and Business Wire, and set up a settlement website where the notice and other settlement-related documents were posted.

And, as a result, there was one objection. It's not clear to me whether that has been withdrawn. I won't attempt to characterize Mr. Agay's email. We submitted it to the Court. He indicates, however, that he would not be participating today. There were only four opt-outs. And I do have some information on claims to date. Over 11,000 claims have been submitted, and they are still processing claims --

the mailed claims, so that number is likely to rise even from there.

So, we believe that not only is it a good settlement, that the class has reacted very positively to it, and, as you know, today we're asking the Court to enter three orders: The final judgment, the order approving plan of allocation, and the order awarding attorneys' fees and expenses and award to class plaintiffs. Other than that, your Honor, I certainly don't have anything to add to our papers. I'm happy to address any questions the Court may have, though.

THE COURT: Good. Thank you very much, counsel.

Let me hear from each of the groups of defendants.

First, counsel for the Deutsche defendants.

MR. JANUSZEWSKI: Yes, your Honor. Again, this is David Januszewski, from Cahill Gordon.

We have nothing to add to what was submitted, which was designed to address the objection that my friend just addressed. We have nothing to add to that.

THE COURT: Good. Thank you very much.

Counsel for the remaining defendants, anything that you'd like to add to your written submissions?

MR. O'BRIEN: Yes. William O'Brien, from the firm of Skadden Arps Slate Meagher & Flom, on behalf of the underwriter defendants.

And like Mr. Januszewski, we have nothing further to

add.

THE COURT: Good. Thank you very much.

Is there anyone else on the line who wishes to be heard?

So, hearing none, counsel, I'm going to approve the proposed resolution of this action, or series of actions. What I'd like to do is to ask you to place your phones, again, on mute, if you would, please. I'd like to review the reasoning for my decision. I'm going to do so now orally. At the end, I'll take up the two orders and judgment that the parties have proposed. Let me begin with, first, an overview.

So, I. Overview:

Plaintiffs brought this securities class action in February 2009 on behalf of all persons who purchased the 7.35 percent Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X and/or the 7.60 percent Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III securities from Deutsche Bank AG pursuant to public offerings from November 6, 2007, to February 14, 2008. Plaintiffs allege that defendants violated Sections 11, 12(a)(2), and 15 of the Securities Act (the "Securities Act") and (15, U.S.C., Section 77k, 771(a)(2), and 77o) by omitting material facts from the offering documents. See declaration of Eric I. Niehaus ("Niehaus dec."), Docket No. 308, paragraph 3.

Since then, plaintiffs have extensively litigated this

case. The parties have engaged in significant motion practice, and have completed fact discovery. Niehaus declaration paragraphs 3-4. Now, plaintiffs seek final approval of the class action settlement and approval of their plan for allocating the net proceeds of the settlement. Plaintiffs' counsel also seek an award of attorneys' fees and litigation costs, and the lead plaintiffs seek an award for expenses incurred while representing the class.

Judge Batts presided over this case for almost the entire time that it has been pending in this court. The case was reassigned to me on February 20, 2020, after Judge Batts' untimely death.

II. Class Certification:

On October 2, 2018, pursuant to Rule 23 of the Federal Rules of Civil Procedure, Judge Batts granted plaintiffs' motion to certify a class defined as: All persons or entities who purchased or otherwise acquired the 7.35 percent Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X ("7.35 percent Preferred Securities"), and/or the 7.60 percent Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III ("7.60 percent Preferred Securities"), pursuant or traceable to the public offerings that commenced on or about November 6, 2007, and February 14, 2008. Excluded from the class are defendants, the officers and directors of Deutsche Bank, and the underwriter defendants at

all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns and any entity in which defendants have or had a controlling interest. Docket No. 224 at 10.

III. Approval of the Settlement Agreement:

Rule 23(e) requires court approval for a class action settlement to ensure that it is procedurally and substantively fair, reasonable, and adequate. Federal Rule of Civil Procedure 23(e). To determine procedural fairness, courts examine the negotiating process leading to the settlement. Wal-Mart Stores, Inc. v. Visa USA, Inc., 396 F.3d 96, 116 (2d Cir. 2005). To determine substantive fairness, courts analyze whether the settlement's terms are fair, adequate, and reasonable according to the factors set forth in City of Detroit v. Grinnell Corp., 495 F.2d 448 (2d Cir. 1974).

The court examines procedural and substantive fairness in light of the “strong judicial policy favoring settlements” of class action suits. Wal–Mart Stores, 396 F.3d at 116. A “presumption of fairness, adequacy, and reasonableness may attach to a class action settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery." Id. "Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." In re EVCI Career Colls. Holding Corp. Sec. Litig., 2007 WL 2230177, at *4

(S.D.N.Y. July 27, 2007).

A. Procedural Fairness:

The settlement is procedurally fair, reasonable, adequate and not a product of collusion. The settlement was reached after the parties had conducted a thorough investigation and evaluated the claims and defenses; the agreement in principle was reached after sessions with the Honorable Judge Layn R. Phillips, a former United States District Judge and an experienced mediator of securities class actions and other complex litigation. Niehaus declaration paragraph 6, 129. In advance of the mediation, the parties exchanged detailed mediation statements addressing both liability and damages. Id. The parties reached a final resolution on September 12, 2019, with the assistance of Judge Phillips, after formal mediation. Id.

B. Substantive Fairness:

The settlement is also substantively fair. The factors set forth in Grinnell provide the analytical framework for evaluating the substantive fairness of a class action settlement. The Grinnell factors are: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the

ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a recovery in light of all of the attendant risks of litigation. Grinnell 295 F.2d at 463. Litigation here through trial will be complex, expensive, and long. It has been complex, expensive, and long. Thus, the first Grinnell factor weighs in favor of final approval. See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 330 F.R.D. 11, 36 (E.D.N.Y 2019) ("Settlement is favored if settlement results in substantial and tangible present recovery, without the attendant risk and delay of trial.").

With respect to the second factor, the class members' reaction to the settlement has been overwhelmingly positive. Of the 112,397 notice packets mailed to potential members of the settlement class, four exclusion requests were received. Supplemental declaration of Ross D. Murray (Supplemental Murray Dec.") Docket No. 324, Paragraphs 4, 6. Only one class member, Mr. Richard Agay, objected. See Richard Agay letter ("Agay letter") Docket No. 320-21.

That objection did not challenge the settlement, the resolution of this case, the reasons for the settlement, the manner in which class plaintiffs and lead counsel prosecuted the litigation, the work lead counsel performed, or lead

counsel's fee and expense application. Instead, the objection asserted only that Mr. Agay received his copy of the notice late, and that he was confused by certain aspects of the submission, and that the claims administrator did not sufficiently respond to Mr. Agay's telephonic inquiry. On June 5, 2020, Mr. Agay emailed lead counsel in an email that I construe as him withdrawing his objections, perhaps because he recognized that he was apparently persuaded by the response of the parties showing that he was not entitled to recovery in the suit. See Docket No. 329. While Mr. Agay received his notice later than expected, he received it with enough time to submit objections, and the delay was caused by a failure at his broker. His objection does not suggest that the overall distribution or notice program was ineffective in design or execution.

The absence of objections, with the exception of one retail investor, who literally withdrew his objection, coupled with the minimal number of requests for exclusion, strongly supports the finding that the settlement plan of allocation and fee and expense requests are fair, reasonable, and adequate. See In re Citigroup, Inc. Sec. Litig., 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013); In re Bisys Sec. Litig., 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007); In re Veeco instruments Inc. Sec. Litig., 2007 U.S. Dist. LEXIS 85629, at *40.

In sum, the overall favorable response demonstrates

that the class approves of the settlement and supports final approval.

The plaintiffs completed fact discovery, so counsel "had an adequate appreciation of the merits of the case before negotiating." Beckman v. KeyBank, N.A., 293 F.R.D. 467, 475 (S.D.N.Y. 2013)(quoting In re Warfarin Sodium Antitrust Litig., 391 F.3d 516, 537 (3rd Cir. 2004); see also Niehaus declaration paragraph 5. Lead plaintiffs spent significant time and resources analyzing and litigating the legal and factual issues of this case, including an extensive factual and legal investigation into the settlement class's claims and engaging in the detailed formal mediation process. Niehaus declaration paragraph 5.

Turning to the fourth and fifth factors, the risk of establishing liability and damages further weighs in favorable of final approval. "Litigation inherently involves risks." In re PaineWebber Ltd. Partnerships Litig., 171 F.R.D. 104, 126 (S.D.N.Y. 1997). Indeed, the primary purpose of settlement is to avoid the uncertainty of a trial on the merits. See Velez v. Majik Cleaning Serv., Inc., 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007). Here, plaintiffs face significant risks as to both liability and damages; defendants challenged the premise that the allegedly omitted information was material and the notion that plaintiffs could prove that the drop in price was related to the allegedly omitted information. See Niehaus

declaration paragraphs 106, 115 to 17. The proposed settlement eliminates these uncertainties. These factors, therefore, weigh in favor of final approval.

The risk of obtaining class certification is nonexistent here. Therefore, the sixth Grinnell factor weighs in favor of final approval. Settlement generally eliminates the risk, expense, and delay inherent in the litigation process as a whole.

Turning to the seventh factor, there is nothing to suggest that Deutsche Bank or the underwriter defendants would be unable to withstand a greater judgment than the settlement amount. "But a defendant is not required to empty its coffers before a settlement can be found adequate." Shapiro v. JP Morgan & Co., 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014)(quotation omitted).

Deutsche Bank's financial circumstances -- or I should say the defendants' financial circumstances do not ameliorate the force of the other Grinnell factors, which lead to the conclusion that the settlement is fair, reasonable, and adequate.

Finally, the amount of the settlement, in light of the best possible recovery and the attendant risks of litigation, weighs in favor of final approval. The determination of whether a settlement amount is reasonable "is not susceptible of a mathematical equation yielding a particularized sum." In

re Austrian & German Bank Holocaust Litig., 80 F.Supp. 2d 164, 178 (S.D.N.Y. 2000). Instead, "There is a range of reasonableness with respect to a settlement - a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972).

Here, lead plaintiffs assert that the settlement would constitute 47 percent of the estimated recoverable damages. Niehaus declaration paragraph 19. This is a reasonable result when compared to the median ratio of settlement to investor losses of 2.1 percent for securities class action settlements in 2019. Id. Therefore, the amount of this immediate recovery is reasonable, and this factor weighs in favor of final approval.

Weighing the Grinnell factors, I find that the settlement is substantively fair and weigh in favor of final approval.

IV. Plan of Allocation:

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized - namely, it must be fair and adequate...an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." In Re WorldCom, Inc. Sec. Litig., 388 F. Supp. 2d

319, 344 (S.D.N.Y. 2005)(citation and quotation omitted). "A plan of allocation need not be perfect," in re EVCI Career Colleges Holding Corp. Sec. Litig., 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007)(collecting cases), or "tailored to the rights of each plaintiff with mathematical precision," PaineWebber, 171 F.R.D. at 133; see also RMed International, Inc. v. Sloan's Supermarkets, Inc., 2000 WL 420548, at *2 (S.D.N.Y. April 18, 2000) (recognizing that "aggregate damages in securities fraud cases are generally incapable of mathematical precision"). Thus, "In determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel." In re EVCI Career Colleges Holding Corp. Sec. Litig., 2007 WL 2230177, at *11.

Lead counsel, who are experienced and competent in complex class actions, prepared the plan of allocation in connection with plaintiffs' damages expert. Niehaus declaration paragraphs 100, 134. The settlement fund, minus attorneys' fees and expenses, will be allocated on a pro rata basis according to the relative size of class members' "Recognized claims." Id. at paragraphs 9, 10. The expert has calculated an estimated individual class members' claim based on (i) allegations when the alleged concealed facts and trends became known (i.e., realization events); (ii) an event study that estimates price changes in the securities as a result of realization events; and (iii) the statutory formula used to

calculate recoverable damages during the settlement class period. Declaration of Steven P. Feinstein ("Feinstein dec"), Docket No. 177-1, paragraphs 29-42.

Because the plan of allocation has a clear rational basis, equitably treats the class members, and was devised by experienced and estimable class counsel, the Court finds it fair and adequate. See In re Telik, Inc. Sec. Litig., 576 F.Supp. 2d, 570, 581 (S.D.N.Y. 2008).

V. Dissemination of Notice:

On February 27, 2020, the Court entered an order granting preliminary approval of the settlement as "fair, reasonable and adequate" to class members. In accordance with that order, lead counsel retained Gilardi & Co. LLC ("Gilardi") as claims administrator to supervise and administer the notice procedure in connection with the settlement and to process all claims. Declaration of Ross D. Murray ("Murray dec"), Docket No. 310, paragraph 2.

Gilardi sent a copy of the notice to potential members of the settlement class. First, Gilardi mailed, by first class mail, the notice packet to 283 nominees - banks, brokerage companies, and other institutions - that Gilardi had in its proprietary database. Id. at paragraph 5.

Next, Gilardi mailed the notice packet to 4,643 additional institutions or entities on the U.S. Securities and Exchange Commission's ("SEC") list of active brokers and

dealers. Id. paragraph 5.

Gilardi also delivered electronic copies of the notice packet to 381 registered electronic filers, primarily institutions and third-party filers, and to the depository trust company ("DTC") on the DTC legal notice system ("LENS"), which enables bank and broker nominees to contact Gilardi for copies of the notice for their beneficial holders. Id. paragraph 7. Gilardi received multiple responses and additional names of potential settlement class members from individuals or other nominees, with requests for over 64,000 notice packets to be forwarded directly to nominees' customers. Id. paragraph 9. Gilardi also published the summary notice in the Wall Street Journal and transmitted it over Business Wire. Id. paragraph 11. Gilardi also posted the date and time of the hearing on the settlement website. Id. paragraph 12.

Gilardi ultimately mailed a total of 112,397 notice packets, including mailing notice packets to persons a second time when the first set were returned as undeliverable. Supplemental Murray declaration paragraph 4.

These notices apprised settlement class members, among other things, of: (i) the amount of the settlement; (ii) the reasons why the parties are proposing the settlement; (iii) the maximum amount of attorneys' fees and expenses that will be sought; (iv) the identity and contact information for representatives of lead counsel available to answer questions

concerning the settlement; (v) the right of settlement class members to object to the settlement; (vi) the right to request exclusion from the settlement class; (vii) the binding effect of a judgment on settlement class members; (viii) the dates and deadlines for certain settlement-related events; and (ix) the way to obtain additional information about the action and the settlement by contacting lead counsel and the settlement administrator. See Federal Rule of Civil Procedure 23(c)(2)(B).

I find that these efforts fairly and adequately advised class members of the terms of the settlement, as well as the right of Rule 23 class members to opt out of, or to object to the settlement, and to appear at the final fairness hearing today. I find that the notice and its distribution comported with all constitutional requirements, including those of due process.

VI. Attorneys' Fees, Costs and Expenses:

Lead counsel requests attorneys' fees in the amount of what the Court calculates to be $6,166,666.67 plus interest earned at the same rate as the settlement fund. This amounts to one-third of the settlement fund, or 33.3 percent of the settlement fund. Lead counsel also seeks reimbursement of: (i) $1,203,502.39 in litigation expenses in total, with Robbins Geller Rudman & Dowd LLP ("Robbins Geller") seeking $1,170,981.31, Glancy Prongay & Murray seeking $28,740.22, and

Murray Frank LLP seeking $3,780.86; and (ii) to approve the award to the lead plaintiffs, or class plaintiffs, of "20,000 in the aggregate pursuant to 15, U.S.C., Section 77Z-1(a)(4) in connection with their representation of the class." Niehaus declaration paragraph 17.

Now, the trend in the Second Circuit is to use the percentage of the fund method to compensate attorneys in common fund cases, although the Court has discretion to award attorneys' fees based on the lodestar method or the percentage of recovery method. See Fresno County Employees' Ret. Association v. Isaacson/Weaver Family Trust, 925 F.3d 63, 68 (2d Cir. 2019).

The notice provided to class members advised that class counsel would apply for attorneys' fees for up to 33.3 percent of the settlement fund, in addition to litigation costs not to exceed 1.3 million. See Gilardi declaration Exhibit A Notice at 2. No class member objected to the request.

A. Goldberger Factors:

Reasonableness is the touchstone when determining whether to award attorneys' fees. In Goldberger v. Integrated Resources, Inc., 209 F.3d 43 (2d Cir. 2000), the Second Circuit set forth the following six factors to determine the reasonableness of a fee application: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the

litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. Id at 50.

1. Class Counsel's Time and Labor:

Plaintiffs' counsel have expended more than 26,000 hours of attorney time in total over the course of this action, the vast majority of which was time expended by of counsel at Robbins Geller. Declaration of Eric Niehaus in support of lead counsel's motion for an award of attorneys' fees ("Niehaus fee declaration"), Docket No. 311 paragraph 5. Niehaus declaration paragraph 135.

2. Magnitude and Complexity of the Litigation:

The size and difficulty of the issues in a case are significant factors to be considered in making a fee award. In re Prudential Sec, Inc. Ltd. Partnership Litig., 912 F. Supp. 97, 100 (S.D.N.Y. 1996). "In evaluating the settlement of a securities class action, federal courts, including this Court, have long recognized that such litigation is notably difficult and notoriously uncertain." In re Flag Telecom Holdings Ltd. Sec. Litig., 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (quotation omitted). This case is one of substantial magnitude. In addition to all of the complications that are attendant to any large securities class action, this matter involved events that happened over ten years ago, extensive discovery, and litigation. The amount sought by plaintiffs'

counsel is commensurate with the magnitude and complexity of this litigation.

3. The Risk of Litigation:

As discussed, lead counsel faced significant risk in prosecuting this action and proving the merits of the claims. All of the fact-finding has concluded. Given the complexity of the case, the risk at summary judgment and trial is significant. Defendants adamantly denied any wrongdoing, and, in the event that litigation had continued, would have continued to aggressively litigate their defenses through summary judgment, Daubert motions, trial, and any appeals.

4. Quality of Representation:

Lead counsel has considerable expertise in securities litigation. See Robbins Geller resume, Niehaus fee declaration, Exhibit G; see also declaration of Brian P. Murray filed on behalf of Glancy Prongay & Murray LLP in support of application for award of attorneys' fees and expenses ("Murphy fee declaration"). Robbins Geller attorneys are currently "lead or [are] named counsel in hundreds of securities class action or large institutional-investor cases" and are "responsible for the largest securities class action in history." Niehaus fee declaration, Exhibit G. RiskMetrics Group has recognized Glancy Prongay & Murray as one of the top plaintiffs' law firms in the United States in its securities class action services report for every year since the inception

of the report in 2003. See Murphy fee declaration, Exhibit I.

The high quality of defense counsel opposing plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the settlement. Cahill Gordon & Reindel and Skadden Arps Slate Meagher & Flom are two prominent defense firms, and "the ability of plaintiffs' counsel to obtain a favorable settlement for the class in the face of such formidable opposition confirms the quality of their representation of the class." In re Marsh ERISA Litig., 265 F.R.D. 128, 148 (S.D.N.Y. 2010).

Accordingly, the Court finds that this Goldberger factor weighs in favor of the requested fee award.

5. The Requested Fee in Relation to the Settlement:

Generally, courts consider the size of a settlement to ensure that the percentage awarded does not constitute a windfall. In this case, the requested fee is 33.3 of the settlement, within the range of reasonableness, in light of other class action settlements in this circuit. See Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009)("Class counsel's request for 33 percent of the settlement fund is typical in class action settlements in the Second Circuit.").

6. Public Policy Considerations:

When determining whether a fee award is reasonable, courts consider the social and economic value of the class

action "and the need to encourage experienced and able counsel to undertake such litigation." In re Sumitomo Copper Litig., 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999). "Courts have, as a generic matter, frequently observed that the public policy of vigorously enforcing the federal securities laws must be considered in calculating an award." In re BioScrip, Inc. Sec. Litig., 273 F.Supp. 3d 474, 502 (S.D.N.Y. 2017)(quotation omitted) affirmed sub nom. Fresno County Employees Retirement Association v. Isaacson/Weaver Family Trust, 925 F.3d 63 (2d Cir. 2019).

Vigorous, private enforcement of the federal securities laws can only occur if private investors can obtain some parity in representation with that available to large corporate defendants. Accordingly, public policy favors granting lead plaintiffs' fee request.

After considering all of the Goldberger factors, the requested fee award appears to be reasonable.

B. Lodestar "Cross Check":

In Goldberger, the Second Circuit "encouraged the practice of requiring documentation of hours as a 'cross check' on the reasonableness of the requested percentage." Goldberger, 209 F.3d at 50. "Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." Id.

As of April 17, 2020, plaintiffs' counsel have

expended over 26,000 hours in total in this case, resulting in a total lodestar of $16,069,646. Niehaus fee declaration paragraph 4, Exhibit A; Murphy fee declaration, Exhibit A. Robbins Geller expended 17,356.85 hours with a lodestar of $12,021,477, Glancy Prongay & Murray LLP expended 8,097.8 hours with a lodestar of $3,639,826.50, the Frank Murray LLP expended 562.2 hours with a lodestar of $355,902.50. Id. Plaintiffs' counsel submitted declarations and time reports in support of their motion for attorneys' fees. Id. Counsel submitted a summary time records detailing the billable rate and hours worked by each attorney and professional support staff in this case. I find that these billable rates based on the timekeeper's title, specific years of experience, and market rates for similar professionals in their fields nationwide and in New York, where Robbins Geller LLP is based, to be reasonable in this context.

Based on plaintiffs' counsel's requested fee - one-third of the settlement, or by the Court's calculation, $6,166,666.67 - the lodestar yields a negative "cross-check" multiplier of about 0.38; therefore, the fee is well below the typically awarded multipliers in this circuit. "Courts regularly award lodestar multipliers from 2 to 6 times lodestar in this circuit." Fleisher v. Phoenix Life Insurance Company, 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9, 2020)(quotation omitted)(collecting cases). Thus, the lodestar

"cross-check" confirmation that plaintiffs' counsel requested fee is reasonable.

The Court therefore finds that, based on the Goldberger factors and the lodestar "cross-check," that plaintiffs' counsel's requested fees are reasonable.

C. Litigation Expenses:

Plaintiffs' counsel requests $1,203,502.39 total in litigation expenses, including filing fees, process service, mailing expenses, document management and hosting services, investigative and expert witnesses, legal research, travel and mediation. See Niehaus fee declaration paragraph 5, Exhibit B. Robbins Geller seeks $1,170,981.31, Glancy Prongay & Murray seeks $28,740.22, and Murray Frank LLP seeks $3,780.86. The largest component of plaintiffs' counsel's expenses was the cost of experts and consultants, amounting to $750,458, or approximately 62 percent of total expenses. Niehaus fee declaration paragraph 6. The next largest components of plaintiffs' counsel's expenses were for transportation, hotels, and meals ($227,852.66), court transcripts and deposition materials ($68,030.54), and mediation ($27,210). See Niehaus fee declaration, Exhibit B. The notice disclosed that lead counsel would seek up to $1,300,000 in litigation expenses. No objection to these expenses was received.

"It is well-established that counsel who create a common fund are entitled to the reimbursement of expenses that

they advance to a class." In re Giant Interactive Group, Inc., 279 F.R.D. 151, 165 (S.D.N.Y. 2011); see also In re Indep. Energy Holdings, 302 F.Supp. 2d 180, 183 Note 3 (S.D.N.Y. 2003). "Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients as long as they were 'incidental and necessary to the representation of those clients.'" (quotation omitted). The expenses for which lead counsel seeks payment are the type of expenses that courts typically approve. See In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 468 (S.D.N.Y. 2004). Therefore, the Court finds that the requested litigation expenses are reasonable and necessary to the representation of the class and are appropriately reimbursed to class counsel.

D. Lead Plaintiffs' Expenses:

Lead plaintiffs seek an award of $20,000 for both of them in recognition of the time and expense that they incurred on behalf of the class. Motion in support, Docket No. 307, at 31; see also Niehaus declaration paragraph 17. 15, U.S.C., Section 77Z-1(a)(4) allows "the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class."

As set forth in their declaration, lead plaintiffs dedicated a significant amount of time to the successful

prosecution of this action, including by reviewing pleadings and motions, discussing strengths and risks of the case, and consulting with lead counsel regarding settlement. Kaess and Farrugio declaration paragraphs 2 through 12. These are the kinds of activities which regularly are found to support awards to class representatives.

As set forth in their declaration, lead plaintiffs assert that the value of their time and resources invested in this case is substantially in excess of the $20,000 award that they seek here. Id. And the application here is consistent with the notice, which disclosed that "Class plaintiffs may seek an award pursuant to 15, U.S.C., Section 77z-1(a)(4) in connection with their representation of the class in an amount not to exceed $20,000 in the aggregate." Murphy fee declaration, Exhibit A notice.

Thus, I find that the requested award of $20,000 to lead plaintiffs is reasonable.

VII. Conclusion:

In conclusion, I approve the class action settlement for $18,500,000 and approve the plan for allocating the net proceeds of the settlement. I also award plaintiffs' counsel attorneys' fees in the amount of what the Court calculates to be $6,166,666.67, plus interest earned at the same rate as the settlement fund. This amounts to one-third of the settlement fund, or 33.3 percent of the settlement fund. I am also

awarding $1,203,502.39 in litigation expenses to be divided as outlined by lead counsel. Finally, I award lead plaintiffs $20,000 in the aggregate for time and expenses incurred while representing the class.

So, counsel, thank you very much for your patience as I got through the reasoning for my decision to approve the settlement here.

I received the proposed orders and judgment, and I expect to act on those promptly after today's conference.

Is there anything else that we should take up now, before we adjourn?

First, counsel for plaintiffs?

MR. PINTAR: Not for plaintiffs, your Honor. Again, Ted Pintar. Thank you very much.

THE COURT: Thank you.

Counsel for the Deutsche Bank defendants?

MR. JANUSZEWSKI: Your Honor, David Januszewski.

Nothing else from us.

THE COURT: Good. Thank you.

Counsel for the underwriter defendants?

MR. O'BRIEN: Yes. William O'Brien, from Skadden Arps Slate Meagher & Flom LLP.

Nothing further from us as well.

THE COURT: Good. Thank you, all.

COUNSEL: Thank you. * * *