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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

_____/

This Document Relates To: Securities Actions

City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

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MDL No. 2672 CRB (JSC)

CLASS ACTION

DECLARATION OF JAMES A. HARROD IN SUPPORT OF (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Judge:	Hon. Charles R. Breyer
Courtroom:	6
Date:	May 10, 2019
Time:	10:00 a.m.

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JAMES A. HARROD declares as follows:

I. INTRODUCTION

1. I, James A. Harrod, am a member of the bars of the State of New York, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. Courts of Appeals for the Second, Third, and Seventh Circuits and am admitted *pro hac vice* in the above-captioned action (the "Action"). I am a Member of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G" or "Lead Counsel"), the Court-appointed Lead Counsel in the Action.[1] BLB&G represents the Court-appointed Lead Plaintiff Arkansas State Highway Employees' Retirement System ("ASHERS" or "Lead Plaintiff"), and named Plaintiff Miami Police Relief and Pension Fund ("Miami Police," and together with ASHERS, "Plaintiffs"). I have personal knowledge of the matters stated in this declaration based on my active supervision of and participation in the prosecution and settlement of the Action.

2. I respectfully submit this Declaration in support of Plaintiffs' motion, under Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed settlement of the Action (the "Settlement"), which the Court preliminarily approved by its Order dated November 28, 2018 (the "Preliminary Approval Order"). ECF No. 5593.

3. I also respectfully submit this Declaration in support of: (i) Plaintiffs' motion for approval of the proposed plan for allocating the proceeds of the Net Settlement Fund to eligible Settlement Class Members (the "Plan of Allocation") and (ii) Lead Counsel's motion, on behalf of all Plaintiffs' Counsel,[2] for an award of attorneys' fees in the amount of 25% of the Settlement Fund, net of expenses; reimbursement of Lead Counsel's Litigation Expenses in the amount of $296,879.86; and reimbursement of $4,940.49 to ASHERs and $2,387.50 to Miami Police for their

[1] Unless otherwise defined in this declaration, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement, dated August 27, 2018 (the "Stipulation" or "Settlement Stipulation"), and previously filed with the Court. *See* ECF No. 5267-1.

[2] Plaintiffs' Counsel means BLB&G and Klausner, Kaufman, Jensen & Levinson, counsel for Miami Police.

costs and expenses directly related to their representation of the Settlement Class (the "Fee and Expense Application").[3]

4. The proposed Settlement provides for the resolution of all claims in the Action in exchange for a cash payment of $48 million for the benefit of the Settlement Class. The proposed Settlement represents an excellent result for the Settlement Class, considering the significant risks in the Action and the amount of the potential recovery. The Settlement provides a considerable benefit to the Settlement Class by conferring a substantial, certain, and immediate recovery while avoiding the significant risks and expense of continued litigation, including the risk that the Settlement Class could recover nothing or substantially less than the Settlement Amount after years of additional litigation and delay.

5. This beneficial Settlement was achieved as a direct result of Plaintiffs' and Lead Counsel's efforts to diligently investigate, vigorously prosecute, and aggressively negotiate a settlement of this Action against highly skilled opposing counsel.

6. Notably, the likely maximum recoverable damages for the Settlement Class are approximately $147 million. (This estimate is based on Plaintiffs' expert's analysis, which Defendants would have attacked if the litigation had continued, arguing that the Class's actual recoverable damages, if any, are much lower.) The proposed Settlement of $48 million thus represents a recovery of approximately 33% of Plaintiffs' estimate of the likely recoverable damages for the Settlement Class (before an award of attorneys' fees and reimbursement of Litigation Expenses). This is particularly noteworthy in comparison to the finding that, from 2009-17, in all securities class actions with estimated damages in the range of $75–$149 million, the median settlements recovered only 5.0% of damages (before reductions for attorneys' fees and

[3] In conjunction with this Declaration, Plaintiffs and Lead Counsel are also submitting the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation (the "Settlement Memorandum") and the Memorandum of Points and Authorities in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee Memorandum").

litigation expenses). *See* Cornerstone Research, *Securities Class Action Settlements 2018 Review and Analysis* (2019), attached as Exhibit 6, at 6.

7. When viewed in this context, the percentage recovery achieved in this case is extremely favorable, even putting aside the substantial loss-causation and damages risks in this case. It is also significant in absolute dollars relative to other securities-class-action recoveries nationwide. The median securities-class-action settlement in the Ninth Circuit between 2009 and 2018 was $8.3 million. *Id*. at 19. Similarly, the median securities-class-action settlement nationwide between 1996 and 2018 was $8.6 million. *Id*. at 18. By comparison, the proposed $48 million Settlement provides an exceptional benefit for the Settlement Class.

8. The benefit that the proposed Settlement will provide to the Settlement Class is also particularly meaningful when considered against the substantial risk that the Settlement Class might recover significantly less (or nothing) if the Action were litigated through additional dispositive motions, trial, and any appeals that would likely follow—a process that could last years. As discussed in more detail below, if this case continued to be litigated, there is no guarantee that Plaintiffs or the Settlement Class could establish Defendants' liability. Defendants would put forth powerful arguments, among other things, that Defendants' statements were not materially false and misleading; that certain of the alleged false and misleading statements were not material to or directed at investors; that Plaintiffs could not prove, particularly in light of the standard described in the Court's Order Re: Plaintiffs' Motion for Partial Summary Judgment on the Issues of Falsity and Scienter Against Volkswagen AG (ECF No. 4521), the scienter of Defendants Winterkorn, Diess, and Horn or any other senior officer of Volkswagen, and thus could not prove that Volkswagen acted with scienter; that the case should not be certified as a class action; and that Plaintiffs could not prove loss causation or damages.

9. As also discussed in more detail below, the Settlement was achieved as a direct result of extensive efforts by Lead Counsel. Those efforts included:

i. Conducting a wide-ranging investigation concerning the allegedly fraudulent misrepresentations and omissions made by Defendants during the period from November 19, 2010 through January 4, 2016, inclusive (the

"Class Period"), including consulting with experts and reviewing the voluminous public record;

ii. Drafting the 145-page Consolidated Securities Class Action Complaint (the "First Consolidated Complaint"), filed with the Court on May 16, 2016 (ECF No. 1510), which incorporated material from SEC filings, press releases and other public statements issued by Volkswagen, news articles and other publicly available sources of information concerning Volkswagen, research reports by securities analysts, transcripts of VWAG investor calls, Volkswagen advertisements and marketing materials, and information from government and private actions filed against Defendants;

iii. Successfully opposing (in large part) Defendants' motions to dismiss the First Consolidated Complaint, consisting of approximately 600 pages of briefing and exhibits, by researching and drafting an 81-page opposition brief responding to Defendants' arguments, which Plaintiffs filed with the Court on October 14, 2016 (ECF No. 2041);

iv. Researching and drafting the 175-page First Amended Consolidated Securities Class Action Complaint, filed with the Court on February 3, 2017 (ECF No. 2862) (the "Amended Complaint" or "Complaint"), which included additional allegations based on criminal proceedings against the Company and senior Volkswagen executives;

v. Successfully opposing (in large part) Defendants' motions to dismiss the Amended Complaint, consisting of approximately 80 pages of briefing, by researching and drafting two opposition briefs totaling 33 pages responding to Defendants' arguments, which Plaintiffs filed with the Court on May 8, 2017 (ECF Nos. 3199, 3200);

vi. Moving for partial summary judgment on March 15, 2017, on the elements of falsity and scienter with respect to several of Defendants' alleged false statements (ECF No. 3036);

vii. Consulting with experts and consultants regarding accounting, loss-causation, and damages issues presented by this Action;

viii. Engaging in significant discovery, including drafting and serving extensive discovery requests on Defendants and document subpoenas upon several dozen relevant nonparties, responding to document requests served by Defendants, serving and responding to interrogatories and litigating discovery disputes, and reviewing and analyzing more than four million pages of documents produced by Defendants and third parties;

ix. Preparing a motion for class certification, including working with an expert to prepare a report on market efficiency and class-wide damages;

x. Engaging in intensive, arm's-length negotiations with Defendants, which culminated in the agreement to settle the Action for $48 million in cash; and

xi. Drafting and negotiating the Settlement Stipulation and related settlement documentation.

10. The close attention paid and oversight provided by the Lead Plaintiff, ASHERS, throughout this case is another factor in favor of the reasonableness of the Settlement. In enacting the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), Congress expressly intended to give control over securities class actions to sophisticated investors, and noted that increasing the role of institutional investors in class actions would ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions. H.R. Conf. Rep. No. 104-369, at *34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733. Here, Lead Plaintiff's representatives were actively involved in overseeing the litigation and settlement negotiations. *See* Declaration of Robyn Smith submitted by ASHERS (the "Smith Decl."), attached as Exhibit 1. In addition, named Plaintiff Miami Police was actively involved in the litigation and the negotiations leading to the proposed Settlement. *See* Declaration of Daniel Kerr submitted by Miami Police (the "Kerr Decl."), attached as Exhibit 2.

11. Plaintiffs and Lead Counsel believe that the Settlement is in the best interests of the Settlement Class. Due to their substantial efforts, Plaintiffs and Lead Counsel are well informed of the strengths and weaknesses of the claims and defenses in the Action, and they believe that the Settlement represents a highly favorable outcome for the Settlement Class.

12. In addition to seeking final approval of the Settlement, Plaintiffs seek approval of the proposed Plan of Allocation as fair and reasonable. As discussed in further detail below, Lead Counsel developed the Plan of Allocation with the assistance of Plaintiffs' experienced damages expert, Steven P. Feinstein, Ph.D., C.F.A. The Plan provides for the distribution of the Net Settlement Fund on a pro rata basis to Settlement Class Members who submit Claim Forms that are approved for payment by the Court. Each claimant's share will be calculated based on his or her losses attributable to the alleged fraud, similar to what would have been presented at trial if the Action had not been settled and had continued to trial following motions for class certification and summary judgment, and other pretrial motions.

13. Lead Counsel worked diligently and efficiently to achieve the proposed Settlement in the face of significant risk. Lead Counsel prosecuted this case on a fully contingent basis and advanced all Litigation Expenses and thus bore all the risk of an unfavorable result. For their considerable efforts in prosecuting the case and negotiating the Settlement, Lead Counsel are applying for an award of attorneys' fees for Plaintiffs' Counsel of 25% of the Settlement Fund, net of expenses, and reimbursement of Lead Counsel's Litigation Expenses in the amount of $296,879.86. The benchmark for attorneys' fees in the Ninth Circuit is 25%; therefore, the requested award is comparable to fees in other class actions with contingency-fee risks. In addition, the requested fee results in a multiplier of approximately 1.59 on Plaintiffs' Counsel's lodestar, which is well within the range of multipliers routinely awarded by courts in this Circuit and across the country.

14. Lead Counsel's Fee and Expense Application also seeks reimbursement of Plaintiffs' costs and expenses under the PSLRA totaling $7,327.99 ($4,940.49 to ASHERs and $2,387.50 to Miami Police).

15. For all of the reasons discussed in this declaration and in the accompanying memoranda and declarations, including the quality of the result obtained and the numerous significant litigation risks discussed fully below, Plaintiffs and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation are "fair, reasonable, and adequate" in all respects, and that the Court should approve them under Federal Rule of Civil Procedure 23(e). For similar reasons, and for the additional reasons discussed below, I respectfully submit that Lead Counsel's Fee and Expense Application is also fair and reasonable and should be approved.

II. PROSECUTION OF THE ACTION

A. Background

16. As the Court is aware, this securities class action asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") on behalf of investors who purchased VWAG Ordinary and Preferred ADRs during the Class Period.

17. Defendant VWAG, through itself and its divisions, is a multinational automotive manufacturing company headquartered in Wolfsburg, Lower Saxony, Germany. VWAG is one of the largest automobile manufacturers in the world and is the parent company of the Volkswagen Group, which comprises numerous brands, including Volkswagen, Audi, Seat, Skoda, Bentley, Bugatti, Lamborghini, Porsche, Ducati, Scania, Man, and Volkswagen Commercial Vehicles.

18. This case involves alleged misrepresentations and omissions by Defendants about a key element of Volkswagen's business: its vehicles' compliance with emissions regulations in the United States and other countries. In particular, Plaintiffs allege that Defendants violated the federal securities laws by failing to disclose that Volkswagen sold approximately 585,000 diesel vehicles in the United States and millions of diesel vehicles in other countries that were equipped with illegal "defeat devices." VWAG has admitted that the defeat devices caused the vehicles to emit nitrogen oxide ("NOx"), a regulated pollutant, at levels that complied with U.S. emissions regulations when the vehicles were being tested for regulatory compliance, but caused the vehicles to emit NOx at much higher levels that violated U.S. emissions regulations when the vehicles were being driven in normal road conditions. Plaintiffs further allege in the Action that VWAG's financial statements improperly failed to recognize contingent liabilities relating to the emissions-cheating scheme during the Class Period, artificially inflating VWAG's reported financial results by at least $18 billion. Plaintiffs also allege that Defendants' misrepresentations and omissions artificially inflated the prices of VWAG Ordinary and Preferred ADRs, which declined when the truth was revealed to the market through a series of partial corrective disclosures beginning on September 18, 2015 and ending on January 4, 2016, the last day of the Class Period.

B. Commencement of the Action and Organization of the Case

19. On September 25, 2015, a class action styled *City of St. Clair Shores Police & Fire Ret. Sys. v. Volkswagen AG, et al.*, Case No. 15-CV-1228-LMB-TCB, was filed in the United States District Court for the Eastern District of Virginia, alleging that VWAG, VWGoA, VWoA, AoA, and several of their highest-ranking executives made material misstatements and omissions regarding Volkswagen diesel vehicles' compliance with US emissions standards. The complaint

asserted violations of the federal securities laws on behalf of VWAG ADR investors. Between September 25, 2015 and November 25, 2015, several related class actions alleging similar violations of the federal securities laws were filed in United States District Courts in Virginia, New Jersey, Michigan, and Tennessee on behalf of VWAG ADR investors.

20. On November 24-25, 2015, ASHERS moved in the District of New Jersey, Eastern District of Virginia, and Eastern District of Michigan for its appointment as lead plaintiff and for approval of its selection of BLB&G as lead counsel. ASHERS asserted that it was the "most adequate plaintiff" under the PSLRA on the grounds that it had the "largest financial interest" in the relief sought by the putative class.

21. Three additional plaintiff groups filed motions on November 24, 2015 in the District of New Jersey, Eastern District of Virginia, and Eastern District of Michigan seeking the movants' appointment as lead plaintiff and approval of their selection of lead counsel. The competing lead-plaintiff applications were filed by the George Leon Family Trust; the Chester County Employees Retirement Fund, Delaware County Employees Retirement System, and Charter Township of Clinton Police and Fire Retirement System (collectively, the "Public Pension Funds"); and Pascal Roberge, Cleveland University-KC f/k/a Cleveland Chiropractic College, and the Cleveland Chiropractic College Foundation (collectively, the "Volkswagen Investor Group"). Based on the information provided in their motion papers, ASHERS's losses were at least seven times greater than those of the competing investors.

22. On December 10, 2015, the United States Judicial Panel on Multidistrict Litigation centralized the *Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* in the Northern District of California and transferred the pending securities class actions to this Court for consolidated pretrial proceedings. ECF No. 1.

23. On December 18, 2015, the Court extended the deadline to move for appointment of lead plaintiff to December 31, 2015. ECF No. 355. Recognizing ASHERS's significantly larger financial interest in the Action and that it was the "most adequate plaintiff," all other lead-plaintiff movants withdrew their competing motions for appointment as lead plaintiff.

24. On January 5, 2016, the Court consolidated the VWAG ADR class actions, appointed ASHERS as Lead Plaintiff, and approved ASHERS's selection of BLB&G as Lead Counsel. ECF No. 545.

C. Plaintiffs' Preparation and Filing of the First Consolidated Complaint

25. To prepare the First Consolidated Complaint, Lead Counsel conducted an extensive factual and legal investigation of Plaintiffs' claims. The investigation included, among other things, a review and analysis of (i) documents filed publicly by VWAG with government regulators; (ii) press releases and other public statements issued by VWAG, VWGoA, VWoA, and AoA; (iii) transcripts of VWAG investor conference calls; (iv) advertisements and marketing materials published by VWAG, VWGoA, VWoA, and AoA; (v) research reports concerning VWAG by financial analysts; (vi) information from government and regulatory investigations into VWAG and its subsidiaries and divisions; (vii) news reports and other publicly available sources of information concerning VWAG, VWGoA, VWoA, and AoA; and (viii) complaints filed against VWAG, VWGoA, VWoA, and AoA in this consolidated proceeding, including the Consolidated Consumer Class Action Complaint (ECF No. 1230), Consolidated Amended Reseller Dealership Class Action Complaint (ECF No. 1231), and Consolidated Amended Competitor Dealership Class Action Complaint (ECF No. 1232), as well as the complaints filed in *United States v. Volkswagen AG*, 16-cv-00295-CRB (N.D. Cal. filed Jan. 4, 2016) and *Federal Trade Commission v. Volkswagen Group of America, Inc.*, 16-cv-1534 (N.D. Cal. filed Mar. 29, 2016), and related complaints filed by several State Attorneys General and private plaintiffs.

26. Lead Counsel also consulted with experts to assist in their analysis of the case and preparation of the First Consolidated Complaint. The experts retained by Lead Counsel included (i) a market-efficiency and damages expert, who advised Plaintiffs on damages and prepared a draft market-efficiency report for Plaintiffs' motion for class certification, and (ii) an accounting expert who provided consulting services regarding VWAG's financial statements and Plaintiffs' allegations regarding violations of applicable accounting standards.

27. Following Lead Counsel's extensive investigation and consultation with experts, on May 16, 2016, ASHERS and named Plaintiff Miami Police filed the First Consolidated Complaint.[4] ECF No. 1510. The First Consolidated Complaint asserted claims under § 10(b) of the Exchange Act and Securities and Exchange Commission Rule 10b-5 against Defendants VWAG, VWGoA, VWoA, AoA, Winterkorn, and Diess, as well as claims under § 20(a) of the Exchange Act against Defendants Winterkorn, Diess, Horn, and the former CEO of VWGoA, Jonathan Browning. The claims were based on allegations that Defendants fraudulently misrepresented and concealed material facts regarding Volkswagen's regulatory compliance, financial results, and commitment to producing "environmentally friendly" vehicles. In particular, the First Consolidated Complaint alleged that Defendants violated the federal securities laws by failing to disclose that Volkswagen sold approximately 585,000 diesel vehicles in the United States and millions in other countries that were equipped with "defeat devices," and by misrepresenting that Volkswagen's diesel vehicles complied with US emissions regulations. The First Consolidated Complaint further alleged that VWAG improperly failed to recognize contingent liabilities relating to the emissions-cheating scheme during the Class Period, artificially inflating VWAG's reported financial results by at least $18 billion. Finally, the First Consolidated Complaint alleged that Defendants' false statements artificially inflated the prices of VWAG Ordinary and Preferred ADRs, which resulted in massive losses to investors when the truth was revealed to the public in a series of corrective disclosures from September 2015 to January 2016.

D. Defendants' Motions to Dismiss the First Consolidated Complaint

28. On August 1, 2016, Defendants filed three motions to dismiss the First Consolidated Complaint. ECF Nos. 1705, 1706, 1708. Defendants argued that the First Consolidated Complaint should be dismissed on numerous grounds, including, among others, the following:

[4] Miami Police was added as a Plaintiff in the First Amended Complaint to represent purchasers of VWAG Preferred ADRs, since ASHERS purchased only VWAG Ordinary ADRs.

(i) The claims asserted by Plaintiffs in the First Consolidated Complaint were barred by the Supreme Court's decision in *Morrison* v. *National Australia Bank Ltd.*, 561 U.S. 247 (2010) because the securities at issue in the Action—sponsored and unlisted "Level 1" ADRs of a foreign issuer that did not require any disclosure or reporting to the SEC—are "predominantly foreign" and cannot serve as the basis for a § 10(b) claim under *Morrison*;

(ii) The Action should be dismissed under the doctrine of *forum non conveniens* because Germany is the more appropriate forum for the litigation of Plaintiffs' § 10(b) claims, which relate almost exclusively to transactions, witnesses, and evidence located in, and decisions made in and disseminated from, Germany;

(iii) Even if Section 10(b) applies and Germany is not an adequate alternative forum, Plaintiffs did not adequately allege the strong inference of scienter required for securities fraud. Defendants advanced a number of scienter arguments, including that (a) Plaintiffs' allegation that Defendant Winterkorn "must have known" about the defeat device before May 2014 was contradicted by Plaintiffs' own allegation that the defeat device was merely "lines of software code" in one of the "sophisticated computer systems" that assisted in the operation of vehicles, and, further, Plaintiffs did not allege that Winterkorn was involved in the creation or installation of the device—instead they merely alleged that there is a "possibility that a range of employees were involved"; (b) with respect to events during and after May 2014, although Winterkorn received a May 23, 2014 memo from VWAG employee Bernd Gottweis (the "Gottweis Memo") noting that some diesel vehicles had excessive NOx output, there was no evidence that Winterkorn knew that a defeat device was actually being used or that he understood the full ramifications of the diesel-emission issues; and (c) because the First Amended Complaint failed to allege any facts demonstrating that a particular officer of VWGoA, VWoA, or AoA made an allegedly false or misleading statement, Plaintiffs failed to allege that any individual with scienter made a false or misleading statement on behalf of these entities, and thus did not state a claim as to those Defendants;

(iv) Plaintiffs failed to adequately allege false statements or omissions. According to Defendants, the alleged misstatements attributed to VWAG, nearly all of which were contained in the Company's annual and quarterly reports filed in Germany, were merely general, aspirational statements about the Company's commitment to being "environmentally friendly," and, as such, were simply "vague statements of optimism" or "puffery" that are not actionable under the federal securities laws. Defendants also argued that their alleged misstatements were not actionable because (a) VWAG had no duty to disclose to investors that Volkswagen was using defeat devices in the diesel vehicles; (b) VWAG did not make false statements by understating its liabilities relating to the emissions violations because the Company did not have a duty to predict the uncertain risks concerning its potential liabilities relating to the emissions violations; (c) Defendants did not address certain of their allegedly false statements, such as those on Volkswagen's vehicle-emissions stickers, toward the investing public; and (d) the statements attributed to VWAG's U.S. subsidiaries are not actionable against VWAG;

(v) Because Plaintiffs failed to sufficiently allege a primary violation of the securities laws, they failed to adequately plead § 20(a) control-person liability against the Individual Defendants; and

(vi) The Court lacked personal jurisdiction over Defendants Winterkorn and Diess.

29. Defendants' voluminous motion-to-dismiss briefing (including Defendants' reply briefs, discussed below) comprised approximately 600 pages of briefing and exhibits.

30. On October 14, 2016, Plaintiffs filed their omnibus opposition to Defendants' motions to dismiss the First Consolidated Complaint. ECF No. 2041. In their opposition brief, Plaintiffs argued that, contrary to Defendants' assertions, Class members' purchases of VWAG ADRs are domestic transactions that satisfy both elements of the two-pronged test of *Morrison*: (i) "transactions in securities listed on domestic exchanges" and (ii) "domestic transactions in other securities." Plaintiffs argued that VWAG itself conceded on its website (albeit before the filing of the First Amended Complaint) that the ADRs "trade in the US" on the US over-the-counter (OTC) market in satisfaction of the first prong of *Morrison*. Regarding *Morrison*'s second prong, Plaintiffs argued that because the ADRs they purchased were sold to US investment advisers for the benefit of the US-resident Plaintiffs and were delivered through DTC, the principal US securities clearing and settlement system, to accounts at US financial institutions, and title was transferred in the United States, Plaintiffs (and other purchasers of VWAG ADRs) incurred "irrevocable liability" in the United States and, therefore, engaged in domestic transactions.

31. In response to Defendants' arguments that the case should be dismissed under the doctrine of *forum non conveniens*, Plaintiffs argued that their choice of forum is entitled to deference and all of the familiar private-interest factors (the residence of the parties and witnesses, the forum's convenience to the litigants, access to evidence, whether unwilling witnesses can be compelled to testify, the cost of bringing witnesses to trial, the enforceability of the judgment, and any other factors contributing to an efficient resolution of the action), as well as the familiar public-interest factors (the local interest in the case, the Court's familiarity with the governing law, the burden on local courts and juries, court congestion, and the costs of resolving a dispute unrelated to the forum) favored this Court.

32. Plaintiffs further argued in their opposition brief that the First Consolidated Complaint alleged a strong inference of scienter based on the following facts alleged in the

Complaint, among others: (i) Winterkorn and his deputies received multiple specific reports and presentations describing the Company's emissions cheating, including the Gottweis Memo, and therefore had contemporaneous knowledge of the fraud; (ii) Winterkorn admitted that he was a micromanager who worked to understand "every last detail" and was "extremely well versed in all aspects of [Volkswagen's] business"; (iii) Winterkorn installed hand-picked confidants as the heads of Volkswagen's diesel-engine development and retained control over engineering details; and (iv) a large number of executives, including Defendants Winterkorn and Horn, as well as at least eight others, each of whom was directly involved in the events underlying the emissions scandal, resigned or were fired or suspended.

33. In response to Defendants' arguments that Plaintiffs had not adequately alleged that Defendants made material misstatements and omissions, Plaintiffs' opposition brief made several detailed arguments that Defendants' statements were false when made and were not puffery or non-actionable opinion statements. Plaintiffs argued that, although Defendants represented during the Class Period that the subject vehicles complied with US and other emissions guidelines and repeatedly touted the "environmental friendliness" of their cars, Defendants subsequently admitted that the cars ***did not*** comply with emissions standards, which alone is enough to establish that Defendants made false statements and omissions. In addition, the fact that Volkswagen intentionally pursued the illegal emissions scheme—despite the clear statutory penalties imposed by EPA and CARB and the Company's own analysis of the billions of dollars it would have to pay for violating those rules—rendered materially false and misleading VWAG's financial results in that they understated the Company's liabilities and residual-value risk and overstated its operating profit, total assets, and shareholders' equity.

34. In their opposition brief, Plaintiffs also argued that the Frist Consolidated Complaint adequately alleged § 20(a) control-person liability against the Individual Defendants because these claims were subject to Rule 8(a)'s notice-pleading standards, but even if Rule 9(b) applied, Plaintiffs had pleaded facts detailing each Defendant's position of control at the Company and his control of the relevant corporate Defendant.

35. Plaintiffs also countered Defendants Winterkorn's and Diess's arguments that this Court lacked personal jurisdiction over them, arguing that (i) both of these Defendants were liable as control persons of the corporate Defendants under § 20(a) of the Exchange Act, and under controlling Ninth Circuit law, these control-person allegations sufficed to establish personal jurisdiction; and (ii) Winterkorn and Diess both made false statements directed at the United States and made numerous business trips here during the Class Period to promote VW's fraudulent "clean diesel" vehicles; Plaintiffs' claims arose from these Defendants' false statements directed at the forum; and exercising jurisdiction over these Defendants was reasonable under all the factors considered by courts.

36. On November 22, 2016, Defendants filed their reply briefs in further support of their motions to dismiss. ECF Nos. 2249, 2250, 2252, 2260, 2261. In their reply submissions, Defendants reinforced many of the same arguments presented in their opening papers, including that (i) *Morrison* compelled the dismissal of Plaintiffs' § 10(b) claims because Plaintiffs failed to demonstrate that Class members' VWAG ADR purchases took place on a "domestic exchange" or that the securities or "relevant actions" in this litigation were not "predominantly foreign" in nature; (ii) the First Amended Complaint should be dismissed on *forum non conveniens* grounds because decisions of the Ninth Circuit (and others) pointed to Germany as the superior forum; and (iii) the First Amended Complaint did not adequately plead scienter as to Winterkorn or Diess, and, thus, Plaintiffs failed to plead scienter as to VWAG.

37. On December 16, 2016, the Court heard oral argument on Defendants' motions to dismiss the First Consolidated Complaint.

38. On January 4, 2017, the Court entered its Order granting in part and denying in part Defendants' motions to dismiss the First Consolidated Complaint. ECF No. 2636. The Court dismissed, without prejudice, the claims with respect to VWAG's financial statements, the claims under § 20(a) of the Exchange Act against Defendants Diess and Horn, and the claims against Browning. In all other respects, the Court denied Defendants' motions to dismiss. Significantly, in the first decision in the country to do so, the Court found that the Supreme Court's decision in

Morrison permits liability under the Exchange Act with respect to unlisted ADRs like those at issue. The Court also granted Plaintiffs leave to amend.

E. Plaintiffs' Preparation and Filing of the Amended Complaint

39. On February 3, 2017, Plaintiffs filed the Amended Complaint. ECF No. 2862. The Amended Complaint asserts claims under § 10(b) of the Exchange Act and Rule 10b-5 against Defendants VWAG, VWGoA, VWoA, AoA, Winterkorn, and Diess, and under § 20(a) of the Exchange Act against Defendants VWAG, Winterkorn, Diess, and Horn. The Amended Complaint, like the prior First Consolidated Complaint, alleges that Defendants made a series of materially false and misleading statements to investors that artificially inflated the prices of VWAG ADRs during the Class Period. The Amended Complaint also includes additional details concerning the aspects of the case that were dismissed by the Court and asserts new allegations based on information provided by the following sources: (i) the criminal plea agreements between the United States and VWAG and between the United States and James Robert Liang; (ii) the Second Superseding Indictment that the United States filed against Richard Dorenkamp, Heinz-Jakob Neuβer, Jens Hadler, Bernd Gottweis, Oliver Schmidt, and Jürgen Peter; (iii) other related documents filed in *United States v. Liang*, No. 2:16-cr-20394-SFC-APP (E.D. Mich.); and (iv) the Criminal Complaint filed against Oliver Schmidt in *United States v. Schmidt*, 2:16-mj-30588-DUTY (E.D. Mich. filed Dec. 30, 2016). These sources provided additional details and information based on VWAG's admissions that the defeat devices caused the affected U.S. vehicles to emit NOx, a regulated pollutant, at levels that complied with US emissions regulations when the vehicles were being tested for regulatory compliance, but caused the vehicles to emit NOx at much higher levels that violated US emissions regulations when the vehicles were being driven in normal road conditions, as well as additional details concerning the Individual Defendants' alleged knowledge of or reckless disregard for the impact of the emissions-cheating scheme on Volkswagen and its financial statements.

F. Defendants' Motions to Dismiss the Amended Complaint

40. On March 21-22, 2017, Defendants filed two motions to dismiss the Amended Complaint. ECF Nos. 3059, 3060. In response to the new allegations in the Amended Complaint, Defendants argued that the Complaint should be dismissed on various grounds, including the following:

(i) The VWAG and Liang plea agreements and the Statement of Facts ("SOF") attached to VWAG's criminal plea agreement had no bearing on VWAG's litigation provisions and contingent liabilities in its financial statements, since the "supervisors" referenced in the plea agreements did not make any of the alleged misstatements related to financial liabilities and no Individual Defendant was a party to the plea agreements or bound by their terms;

(ii) Plaintiffs' new allegations in the Amended Complaint concerning their claims that Defendants fraudulently understated VWAG's liabilities in its annual and interim reports during the Class Period failed to allege any contemporaneous facts or documents that showed an "extreme departure" from the standards of ordinary care with respect to VWAG's litigation provisions and contingent liabilities, as required under 9th Circuit case law;

(iii) Plaintiffs failed to adequately plead that any Defendant acted with scienter in connection with the alleged misstatements in Defendants' marketing materials that Plaintiffs attributed to VWGoA, VWoA, and AoA;

(iv) Even if Plaintiffs had sufficiently pleaded scienter with respect to the marketing materials, because Plaintiffs did not allege specific facts showing that VWAG had "ultimate authority" over the "content of" the challenged statements and "whether and how to communicate" them in the marketing materials, Plaintiffs failed to allege any actionable misstatement as to VWAG under *Janus Capital Group, Inc.* v. *First Derivative Traders*, 564 U.S. 135 (2011); and

(v) Plaintiffs failed to plead § 20(a) control-person liability against Diess with respect to VWAG's third-quarter 2015 interim report, because Plaintiffs failed to allege anything beyond Diess's position as a member of VWAG's Management Board and Chairman of the Management Board of VW Passenger Cars to support their claim that he was involved in the day-to-day operations of the corporate Defendants.

41. On May 8, 2017, Plaintiffs filed their briefs in opposition to Defendants' motions to dismiss the Amended Complaint. ECF Nos. 3199, 3200. In their opposition papers, Plaintiffs argued that, contrary to Defendants' assertions,

(i) Plaintiffs adequately alleged that Defendants VWAG, Winterkorn, and Diess acted with scienter in making false statements regarding VWAG's financial condition because (a) contrary to the Company's statements in each of its annual reports during the Class Period, VWAG's financial statements violated IAS 37, which required the Company to recognize provisions for contingencies; and (b) the Complaint included substantial new allegations

drawn from the Company's admissions in its criminal plea agreement, as well as the criminal charges brought by the United States against senior VW executives, demonstrating that VWAG, Winterkorn, and Diess knew or should have known about the litigation provisions or contingent labilities related to the defeat devices;

(ii) The Court should not reconsider its holding in its January 4, 2017 order that Plaintiffs adequately pleaded scienter with respect to VW's materially false and misleading marketing materials because Defendants cited no change in controlling law or newly discovered evidence and the Court did not commit clear error, nor was the initial decision manifestly unjust, as this Court had previously held are the preconditions for reversing a prior decision;

(iii) Similarly, the Court should not reconsider its ruling that VWAG had "ultimate authority" over the false statements made by the Company's subsidiaries in the marketing materials because, in accordance with the Supreme Court's decision in *Janus*, the Complaint sufficiently alleged VWAG's "ultimate authority" over its subsidiaries given that it developed, reviewed, and approved the marketing and advertising campaigns designed to sell the illegal diesel cars; and

(iv) Plaintiffs adequately pleaded Diess's control-person liability and his scienter as to VWAG's third-quarter 2015 report because the Complaint contained substantial additional allegations that Dies was "active in the day-to-day affairs," and "had the power to control corporate actions," of VWAG.

42. On June 5, 2017, Defendants filed their reply briefs in further support of their motions to dismiss the Amended Complaint, reinforcing the arguments presented in their opening papers. ECF Nos. 3303, 3304.

43. On June 27, 2017, the Court heard oral argument on Defendants' motions to dismiss the Amended Complaint.

44. On June 28, 2017, the Court entered an Order granting in part and denying in part Defendants' motions to dismiss the Amended Complaint. ECF No. 3392. The Court dismissed, with prejudice, the claims with respect to VWAG's financial statements issued before May 2014, the claims against Defendant Diess with respect to VWAG's third-quarter 2015 financial statements, and the claims against Diess under § 20(a) of the Exchange Act. In all other respects, the Court denied Defendants' motions to dismiss. Significantly, the Court's decision expanded the case to include claims related to VWAG's post-May 2014 financial statements, which the Court had dismissed in its prior motion to dismiss ruling.

G. Plaintiffs' Motion for Partial Summary Judgment

45. On March 15, 2017, while Defendants were briefing their motions to dismiss the Amended Complaint, Plaintiffs filed a motion for partial summary judgment (the "Motion for Partial Summary Judgment"). ECF Nos. 3036-3039. In their Motion for Partial Summary Judgment, Plaintiffs asserted that VWAG's guilty plea in U.S. federal court to three felonies related to its diesel-emissions-cheating scheme established, as a matter of law, that certain of VWAG's false statements alleged in the Amended Complaint were false and were made with scienter. Plaintiffs argued that partial summary judgment was appropriate because there was no material dispute, based on the admitted facts in the SOF attached to VWAG's criminal plea agreement, that VWAG knowingly made these materially false and misleading statements concerning the "environmental friendliness" and emissions compliance of its "clean diesel" vehicles.

46. On March 26, 2017, VWAG filed a motion seeking to defer proceedings on Plaintiffs' Motion for Partial Summary Judgment until after the Court ruled on Defendants' motion to dismiss the Amended Complaint. ECF No. 3090. On March 28, 2017, the Court granted VWAG's motion and ordered that VWAG was not required to respond to the Motion for Partial Summary Judgment until the Court disposed of the motion to dismiss the Amended Complaint. ECF No. 3096. Based on this timeline, Defendants were to submit their opposition to the Motion for Partial Summary Judgment in August 2017.

47. On August 25, 2017, Defendants filed their opposition to Plaintiffs' Motion for Partial Summary Judgment. ECF No. 3729. In its opposition brief, VWAG argued that the SOF attached to VWAG's plea agreement did not establish, beyond any genuine issue of material fact, (i) that VWAG made the challenged statements with scienter or (ii) the falsity of the challenged statements in VWAG's financial reports. VWAG argued, among other things, that VWAG's acceptance of responsibility for its employees' conduct in the plea agreement did not establish securities fraud through *respondeat superior* principles, and Plaintiffs could not rely on scheme liability to escape their burden to prove scienter.

48. On September 28, 2017, Plaintiffs filed their reply in support of their Motion for Partial Summary Judgment. ECF No. 3994.

49. On December 6, 2017, the Court issued an Order granting Plaintiffs' motion for partial summary judgment with respect to one of the alleged false and misleading statements and denying the motion with respect to each of the other statements. ECF No. 4521. In its decision, the Court articulated its standard regarding what evidence Plaintiffs would need to establish proof of VWAG's scienter in making the alleged false statements to VWAG investors. In articulating that standard, the Court made clear that Plaintiffs could establish scienter only by showing that one of the Individual Defendants, or another VW employee, who made the statements had knowledge or acted recklessly with respect to the emissions fraud, and that corporate scienter could not be established as a matter of law based on the collective scienter of VWAG executives. While the Court did not ultimately decide the question, its reasoning potentially narrowed Plaintiffs' paths to proving the executives' scienter and by imputation Volkswagen's scienter.

H. Plaintiffs' Discovery Efforts

50. On August 2, 2017, the Parties filed a Joint Case Management Statement and [Proposed] Order stating the Parties' proposed schedule for discovery in the Action. ECF No. 3595. On August 10, 2017, the Court entered an Order approving the Parties' Case Management Statement (ECF No. 3620), and the Parties then began discovery.

51. In accordance with the Parties' agreed schedule, on August 31, 2017, Defendants filed their answers to the Complaint. ECF Nos. 3750, 3752, 3753.

52. Between September 2017 and July 2018, the Parties exchanged initial disclosures under Fed. R. Civ. P. 26(a)(1), served and responded to interrogatories, served and responded to document requests, and engaged in extensive correspondence and numerous meet-and-confers over search terms and custodians for their respective document searches and productions.

53. During discovery numerous disputes arose, most of which were resolved by agreement of the parties. However, several disputes were presented to Magistrate Judge Jacqueline Scott Corley for resolution, including the following:

(i) Plaintiffs' request for access to the documents produced by Defendants in the related multidistrict litigation ("MDL") cases, which the Court denied;

(ii) Plaintiffs' motions to compel the Volkswagen Defendants to produce documents concerning European Union emissions standards and the "acoustic function" technology, which the Court granted;

(iii) Plaintiffs' motion to compel Defendants to produce the list of document custodians from the MDL and documents from custodians in addition to those agreed by Defendants, which the Court granted in part and denied in part; and

(iv) Defendants' motion to compel Plaintiffs to search document custodians in addition to those agreed by Plaintiffs, which the Court denied.

54. In addition to the foregoing, Plaintiffs filed an unopposed motion to depose two former VWGoA employees who were in federal prison, which the Court granted.

55. During discovery, the parties negotiated production of documents from the files of approximately 50 custodians, and, in total, Defendants and third parties produced over 4 million pages of documents to Plaintiffs. Plaintiffs produced over 26,000 pages of documents to Defendants.

56. Lead Counsel's attorneys reviewed, coded, and analyzed the documents produced by Defendants and third parties, prioritizing them by custodian and through the use of targeted search terms. At the time the Settlement was reached, Lead Counsel's review of the documents was ongoing.

57. The documents produced by Defendants included many documents in German, which required translation into English. Also, at the time the Settlement was reached, Lead Counsel was negotiating with Defendants' Counsel regarding the taking of depositions in Germany under German law, and Lead Counsel had numerous discussions with German counsel regarding the possibility of conducting nonvoluntary depositions of former VW employees in Germany.

I. Plaintiffs' Motion for Class Certification

58. Plaintiffs' motion for class certification was scheduled to be filed on July 27, 2018. When the Parties reached the settlement in principle on July 18, 2018, Plaintiffs had substantially completed drafting their opening brief in support of that motion. Plaintiffs had also engaged Dr. Feinstein to prepare a report on the efficiency of the market for Volkswagen ADRs and the ability

to calculate damages on a class-wide basis, had several discussions with him, and reviewed his draft expert report in preparing the motion for class certification.

J. Settlement Negotiations

59. The Parties began to explore a potential settlement of the Action in the spring of 2018 through discussions between counsel.

60. In the settlement discussions, Plaintiffs provided Defendants with information concerning Class-wide damages and other merits-based considerations related to settlement. In response, Defendants provided Plaintiffs with competing information concerning both damages and the merits of the case. Plaintiffs and their counsel carefully analyzed the information provided by Defendants, considered arguments and risks associated with their positions, consulted with their economic-damages expert concerning Defendants' positions, and provided detailed written responses on those points.

61. The exchanges between the parties ultimately facilitated a series of intense, arm's-length negotiations in June and July 2018. Through those negotiations, the Parties reached an agreement in principle to settle and release all claims against Defendants in the Action in return for a cash payment of $48 million to be paid by VWAG on behalf of all Defendants for the benefit of the Settlement Class, subject to the execution of a formal stipulation and agreement of settlement and related papers.

III. THE SETTLEMENT STIPULATION AND PRELIMINARY APPROVAL OF THE SETTLEMENT

62. Following the agreement in principle, the Parties negotiated the final terms of the Settlement and drafted the Stipulation and Agreement of Settlement and related settlement papers. On August 27, 2018, the Parties executed the Stipulation, which embodies the final and binding agreement to settle the Action. On August 28, 2018, Plaintiffs submitted the Parties' Stipulation to the Court as part of Plaintiffs' motion for preliminary approval of the Settlement (the "Preliminary Approval Motion"). ECF No. 5267.

63. On November 28, 2018, the Court entered the Preliminary Approval Order, which preliminarily approved the Settlement, conditionally certified the Settlement Class for settlement purposes, appointed Plaintiffs as class representatives, appointed Lead Counsel as class counsel, approved the proposed procedure to provide notice of the Settlement to potential Settlement Class Members, and set May 10, 2019 as the date for the final-approval hearing. ECF No. 5593. On or about December 10, 2018, the $48 million Settlement Amount was deposited into an escrow account and has been earning interest for the benefit of the Settlement Class.

IV. RISKS OF CONTINUED LITIGATION

64. The Settlement provides an immediate and certain benefit to the Settlement Class in the form of a $48 million cash payment. The recovery represents a significant portion of the recoverable damages in the Action as determined by Plaintiffs' damages expert, particularly after considering Defendants' arguments concerning loss causation. As explained below, Defendants had substantial defenses with respect to liability, loss causation, and damages in this case. These arguments created a significant risk that, after years of protracted litigation, Plaintiffs and the Settlement Class would achieve no recovery at all, or a far smaller recovery than the Settlement Amount.

A. The Risks of Prosecuting Securities Actions

65. In recent years, securities class actions have become riskier and more difficult to prove, given changes in the law, including numerous United States Supreme Court decisions. For example, data from Cornerstone Research show that, in each year between 2009 and 2013, approximately half of all securities class actions filed were dismissed, and the percentage of dismissals was as high as 57% in 2013. *See* Cornerstone Research, *Securities Class Action Filings 2018 Year In Review* (2019), attached as Exhibit 7, at 16. In fact, well-known economic consulting firm NERA found that the resolutions of securities class actions in 2018 "were once again dominated by a record number of dismissals, which outnumbered settlements two-to-one for the first time." NERA, Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* (2019), attached as Exhibit 8, at 23.

66. Even when they have survived motions to dismiss, securities class actions are increasingly dismissed at the class-certification stage, on *Daubert* motions, or at summary judgment. For example, class certification has been denied in several recent securities class actions. *See, e.g.*, *Colman v. Theranos, Inc.*, 325 F.R.D. 629, 651 (N.D. Cal. 2018); *In re Finisar Corp. Sec. Litig.*, 2017 WL 6026244 (N.D. Cal. Dec. 5, 2017), *reconsideration denied*, 2018 WL 3472334 (N.D. Cal. Jan. 18, 2018), *leave to appeal denied sub nom. Okla. Firefighters Pension & Ret. Sys. v. Finisar Corp.*, 2018 WL 3472714 (9th Cir. July 13, 2018); *Smyth v. China Agritech, Inc.*, 2013 WL 12136605 (C.D. Cal. Sept. 26, 2013); *In re STEC Inc. Sec. Litig.*, 2012 WL 6965372 (C.D. Cal. Mar. 7, 2012).

67. Multiple securities class actions also recently have been dismissed at the summary-judgment stage. *See*, *e.g.*, *Fosbre v. Las Vegas Sands Corp.*, 2017 WL 55878 (D. Nev. Jan. 3, 2017), *aff'd sub nom*. *Pompano Beach Police & Firefighters' Ret. Sys. v. Las Vegas Sands Corp.*, 732 F. App'x 543 (9th Cir. 2018); *Perrin v. Sw. Water Co.*, 2014 WL 10979865 (C.D. Cal. July 2, 2014); *In re Novatel Wireless Sec. Litig.*, 830 F. Supp. 2d 996, 1015 (S.D. Cal. 2011); *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010); *In re REMEC Inc. Sec. Litig.*, 702 F. Supp. 2d 1202, 1211 (S.D. Cal. 2010). And even cases that have survived summary judgment have been dismissed before trial on *Daubert* motions. *See*, *e.g.*, *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181 (D. Mass. 2012), *aff'd*, 752 F.3d 82 (1st Cir. 2014) (granting summary judgment *sua sponte* in favor of defendants after finding that plaintiffs' expert was unreliable).

68. Even when securities-class-action plaintiffs are successful in moving for class certification, prevailing at summary judgment, and overcoming *Daubert* motions and have gone to trial, there are still real risks that there will be no recovery or substantially less recovery for class members than in a settlement. For example, in *In re BankAtlantic Bancorp, Inc*. *Securities Litigation*, a jury rendered a verdict in plaintiffs' favor on liability in 2010. *See* 2011 WL 1585605, at *6 (S.D. Fla. Apr. 25, 2011). In 2011, the district court granted defendants' motion for judgment as a matter of law and entered judgment in favor of defendants on all claims. *See id*. at *38. In

2012, the Eleventh Circuit affirmed the district court's ruling, finding that there was insufficient evidence to support a finding of loss causation. *See Hubbard v. BankAtlantic Bancorp, Inc*., 688 F.3d 713, 725 (11th Cir. 2012).

69. There is also an increasing risk that an intervening change in the law can result in the dismissal of a case after significant effort has been expended. The Supreme Court has heard several securities cases in recent years, often announcing holdings that dramatically changed the law in the midst of long-running cases. *See Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318 (2015); *Halliburton Co. v. Erica P. John Fund, Inc*., 573 U.S. 258 (2014); *Comcast Corp. v Behrend*, 569 U.S. 27 (2013); *Janus*, 564 U.S. 135; *Morrison*, 561 U.S. 247. As a result, many cases have been lost after thousands of hours had been invested in briefing and discovery. For example, in *In re Vivendi Universal, S.A. Securities Litigation*, after a verdict for class plaintiffs finding that Vivendi acted recklessly with respect to 57 statements, the district court granted judgment for defendants following the change in the law announced in *Morrison*. *See* 765 F. Supp. 2d 512, 524, 533 (S.D.N.Y. 2011).

70. In sum, securities class actions face serious risks of dismissal and nonrecovery at all stages of the litigation.

B. The Substantial Risks in Proving Defendants' Liability and Damages in This Case

71. Even though Plaintiffs prevailed at the motion-to-dismiss stage on the majority of their claims against Defendants, they continued to face substantial risks that the Court would find that they failed to establish liability, loss causation, or damages as a matter of law at summary judgment; if the Court were to permit the claims to proceed to trial, that a jury (or appeals court) would find against Plaintiffs; and even if Plaintiffs prevailed at trial, that the verdict would be overturned by an appellate court or reduced through other post-trial proceedings. Even the claims that were ultimately sustained had first been subjected to two motions to dismiss and significant arguments and risks, including the risks posed at the outset of the case concerning whether claims concerning the ADRs at issue would be allowed to go forward over arguments that they were

excluded under the Supreme Court's *Morrison* decision. Thus, while Plaintiffs and Lead Counsel believe they advanced strong claims on the merits, Defendants vigorously contested liability with respect to nearly every element of Plaintiffs' claims.

1. The Risks of Proving Falsity and Materiality

72. As detailed above, the core allegations in this case were that Defendants violated the federal securities laws by making materially false and misleading statements and failing to disclose material facts about Volkswagen diesel vehicles' compliance with NOx-emissions regulations in the United States and other countries. Although the claims asserted in the Action were supported by VWAG's admission in its federal criminal plea agreement that it made false statements about its compliance with those emissions regulations, Defendants vigorously denied that this admission meant that they also violated the federal securities laws. Defendants raised numerous compelling arguments in their motions to dismiss and in their opposition to the Motion for Partial Summary Judgment, which would have formed the basis for similar arguments based on the evidence to be adduced in discovery. Indeed, the challenges of proving that Defendants' alleged misrepresentations were both materially false and made with scienter are illustrated by the Court's denial of the Motion for Partial Summary Judgment with respect to all but one of the alleged misstatements.

73. As noted above, Defendants have argued, and would have continued to argue, that many of the alleged misstatements they made were immaterial because the statements vaguely referred to VW's "environmental friendliness" without referring to compliance with emissions regulations. The Complaint alleges that, during the Class Period, VWAG's annual and quarterly reports included, among others, the following statements about VWAG's commitment to being "environmentally friendly":

(i) "With our attractive and *environmentally friendly* range of vehicles, which we are steadily and rationally expanding, and the excellent position of the separate brands in the markets worldwide, we are able to leverage the Group's strengths and to systematically increase our competitive advantage. Our activities are oriented on setting new ecological standards in the areas of vehicles, powertrains and lightweight construction." (Complaint ¶ 433) (emphasis added);

(ii) "Chairman of the Board of Management Prof. Dr. Martin Winterkorn stressed that the Group enjoys a strong position thanks to its range of highly

efficient and *environmentally friendly* diesel, petrol and natural gas engines . . . ." (Complaint ¶ 454) (emphasis added);

(iii) "We offer an extensive range of *environmentally friendly*, cutting-edge, high-quality vehicles for all markets and customer groups that is unparalleled in the industry." (Complaint ¶ 457) (emphasis added); and

(iv) "Our attractive and *environmentally friendly* model portfolio impresses customers around the globe. The trust placed in us by customers, as well as our high quality and efficiency standards, allow us to meet and even exceed our financial targets." (Complaint ¶ 462) (emphasis added).

74. Defendants would have continued to argue, as they did in their motions to dismiss, that these statements were immaterial as a matter of law because they were vague, aspirational statements of puffery upon which no investor would have reasonably relied. Indeed, courts in the Ninth Circuit, as well as across the country, have often found merely aspirational statements of corporate culture to be too vague for a reasonable investor to have relied upon them. For this reason, there was a significant risk that, had the litigation continued to trial, a jury could have found that these statements did not trigger liability under the securities laws.

75. Also, there was a significant risk that Plaintiffs would be unable to prove their allegation that VWAG made misleading and materially false statements by understating its liabilities and overstating its profits by failing to disclose the possibility that it would be required to compensate customers affected by the illegal defeat devices. Defendants argued, and would have continued to argue, that, as a matter of law, VWAG did not have a duty to predict the uncertain risks concerning its potential liabilities relating to the emissions violations. Thus, there was a real risk that Defendants could have convinced a jury that VWAG's alleged misstatements in its financial statements concerning the Company's liabilities were inactionable.

76. Finally, Defendants argued, and would have continued to argue, that many of their alleged false and misleading statements, including those in marketing materials and in the emissions-compliance stickers affixed to the subject vehicles, were not material or directed at investors in the ADRs. Defendants argued that these statements therefore could not form the basis of Plaintiffs' claims under the fraud-on-the-market theory, under which the reliance element of §

10(b) claims with respect to a defendant's public statements to investors may be satisfied by reliance on the integrity of the prices of actively traded securities.

2. The Risks of Proving Scienter

77. Even if Plaintiffs were able to establish a material misrepresentation, they faced significant hurdles in proving scienter, or intent to defraud. Proving scienter in this case would have been particularly difficult for a number of reasons.

78. First, Plaintiffs faced a significant hurdle in establishing that VW's senior management, including the Individual Defendants, had direct knowledge of the emissions violations. Throughout the litigation, Defendants have strenuously denied that VW's senior management were aware of the defeat devices until shortly before the end of the Class Period. In addition, VWAG's guilty plea in the criminal case relating to the emissions scandal addressed only one of the alleged misrepresentations at issue in this case, and it did not establish that knowledge of the defeat devices reached senior executives whose scienter is attributable to VWAG. Thus, Plaintiffs faced a significant risk in proving that VWAG and the Individual Defendants acted with an intent to mislead investors about the emissions scheme.

79. Moreover, Plaintiffs' ability to obtain evidence necessary to establish Defendants' scienter was severely constrained by the absence of any discovery procedures under German law similar to those available in the United States. Thus, obtaining testimony in support of Plaintiffs' scienter allegations, as well as other aspects of the case, would have been either impossible (if German-resident witnesses were unwilling to testify voluntarily, as was likely because many were under risk of personal legal jeopardy) or procedurally onerous and expensive (due to German legal requirements and the need for travel to Germany or other locations in Europe and for translation and other services).

80. Finally, the difficulty of proving the Individual Defendants' participation in the fraud is underscored by the fact that despite Plaintiffs' discovery efforts in the case and investigations by multiple prosecutors, regulators, and other private parties (in both the United States and Europe), little clear evidence directly linking the Individual Defendants to the fraud has

been uncovered to date. As noted above, the Court, in its opinion on the Motion for Partial Summary Judgment, expressed a clear standard regarding the type of evidence Plaintiffs would need to establish corporate scienter. As articulated by the Court, Plaintiffs could establish scienter only by demonstrating that one of the Individual Defendants, or another VW employee, who made a false and misleading statement had knowledge or acted recklessly with respect to the emissions fraud. This ruling significantly narrowed Plaintiffs' ability to prove scienter through a more generalized showing of knowledge or recklessness at the corporate level. In light of the standard articulated by the Court, the absence of evidence showing a direct link between the Individual Defendants and the fraud posed a significant obstacle to Plaintiffs' obtaining a favorable outcome in the litigation.

3. The Risks of Establishing Loss Causation and Damages

81. Even assuming that Plaintiffs overcame each of the above-described risks and successfully established falsity, materiality, and scienter, they faced serious risks in proving loss causation and damages. Indeed, a major consideration driving the calculation of a reasonable settlement amount was that Defendants would likely advance substantial challenges to each of the alleged corrective disclosures. Had the Court accepted any of these arguments in whole or in part after the Parties presented those arguments through financial experts' analyses at class certification, summary judgment, or trial, this would have eliminated or, at a minimum, drastically limited Settlement Class Members' recovery.

82. Probably the greatest risk in proving loss causation and damages would be that Plaintiffs would have alleged losses caused by eight separate disclosures related to Volkswagen's emissions-cheating scandal that caused price declines in the VWAG ADRs on the following trading days, as summarized in the table below:

		Residual Per ADR Decline[5]	
Trading Day	**Disclosure**	**Ordinary ADRs**	**Preferred ADRs**
9/18/2015	EPA and CARB disclose Volkswagen's use of defeat devices	$0.27	n/a
9/21/2015	US Department of Justice, US House of Representatives, and German government initiate investigations into Volkswagen's defeat devices	$4.99	$5.57
9/22/2015	Volkswagen reveals that 11 million vehicles worldwide contain defeat devices and takes $7.3 billion charge	$3.01	$4.17
9/25/2015	Volkswagen suspends eight senior engineers; EPA expands investigation	$1.80	$1.88
10/2/2015	France and Italy begin investigations of Volkswagen	$1.06	$1.16
10/15/2015	Volkswagen recalls 8.5 million vehicles in Europe	$1.46	$1.39
11/3/2015	EPA issues notice of violation concerning 3.0-litre vehicles	$0.48	$0.10
1/5/2016	Department of Justice files complaint against VWAG	$0.47	$0.21

83. Defendants would have argued that the alleged fraud was fully disclosed no later than September 22, 2015, if not earlier; that all of the subsequent disclosures were simply immaterial additional details about the previously disclosed emissions problem, additional government investigations, or unrelated news about Volkswagen; and that all of the stock-price declines after September 22, 2015 (if not earlier) are therefore unrecoverable under *In re Omnicom*

[5] Based on Plaintiffs' financial expert's analysis of likely maximum provable damages, as reflected in the proposed Plan of Allocation.

Group, Inc. Securities Litigation, 597 F.3d 501 (2d Cir. 2010). If accepted by the Court on summary judgment or by a jury at trial, this argument would have drastically reduced the Class's recoverable damages. Indeed, if the initial disclosures by EPA and CARB on September 18, 2015 were found to have fully revealed the fraud, the vast majority of Plaintiffs' asserted damages would have been eliminated. Plaintiffs would have argued that each of the later disclosures revealed material new information to the market concerning either the details or the severity of the fraud and caused recoverable damages, but there was a significant risk that Plaintiffs' argument would not prevail with respect to some or all of the later corrective disclosures.

84. Defendants would also have presented other arguments at summary judgment or trial that would have presented serious risks of substantially reducing any recoverable damages. Among other things, Defendants would have challenged Plaintiffs' damages analysis on the ground that the analysis did not disaggregate ADR price declines caused by news concerning the alleged fraud from declines caused by other news about Volkswagen on the relevant days. While Plaintiffs would have argued that the residual declines on the relevant days were caused entirely by news about the emissions scandal, there would have been a substantial risk that the Court or a jury would have accepted Defendants' position, reducing any recoverable damages.

85. Finally, loss causation and damages would have been the subjects of complex analyses by competing experts for Plaintiffs and Defendants with the burden of proof on Plaintiffs, and there would have been a substantial risk that the Court or a jury would find Defendants' expert's criticisms of Plaintiffs' expert's analyses persuasive.

C. The Risks of Certifying the Class and Maintaining Class Certification

86. At the time the Settlement was reached, Plaintiffs had prepared their motion for class certification (due on July 27, 2018, just nine days after the settlement in principle was reached) but had not yet filed the motion. While Plaintiffs fully believe this Action is appropriate for class treatment, if the litigation had continued, Defendants undoubtedly would have raised various challenges to certification of the Class. In particular, even though Plaintiffs successfully argued in opposition to Defendants' first round of motions to dismiss that their and other Class members'

purchases of unlisted, over-the-counter VWAG ADRs were domestic transactions in the United States to which § 10(b) applies under *Morrison*, Defendants would have argued that some transactions in the ADRs may have occurred outside the United States and that determining where Class members' purchases occurred would require individualized proof. Thus, Defendants would have argued that individual questions as to the applicability of § 10(b) to those transactions under *Morrison* precluded class certification. Defendants would also have argued that the markets for VWAG Ordinary and Preferred ADRs were too small to be efficient and that the Class-wide presumption of reliance under the fraud-on-the-market presumption was therefore unavailable, making reliance also an individual question. If either of these arguments had prevailed, individual issues would have predominated, precluding certification of the Class. Even assuming Plaintiffs successfully obtained certification, there was a risk of an interlocutory Rule 23(f) appeal or decertification at a later stage in the proceedings based on further evidence on summary judgment or at trial.

D. The Risks of a Second-Phase Trial on Individual Class Members' Reliance

87. Complex securities-class-action trials are almost always bifurcated into two phases: a first phase adjudicating class-wide issues of liability, class-wide reliance, and damages per share, followed by a second phase, in which Defendants may attempt to rebut the presumption of reliance on their statements with respect to individual Class Members. *See, e.g.*, *Vivendi*, 765 F. Supp. 2d at 584-85 & n.63 (collecting cases); *Jaffe v. Household Int'l, Inc.*, 756 F. Supp. 2d 928, 930 (N.D. Ill. 2010); *In re JDS Uniphase Sec. Litig.*, No. C-02-1486 (Dkt. No. 1504) (N.D. Cal. Sept. 25, 2007); *In re WorldCom Inc. Sec. Litig.*, 2005 WL 408137, at *2 (S.D.N.Y. Feb. 22, 2005). Thus, even if Plaintiffs prevailed in the first phase of trial in this Action, the Settlement Class would still face significant risks and certain delay with respect to second-phase proceedings. As part of these proceedings, Defendants are typically entitled to take discovery with respect to individual Settlement Class Members' decisions to transact in VWAG ADRs—a process which, in itself, is time-consuming and burdensome. *See, e.g.*, *Jaffe*, 756 F. Supp. 2d at 930 (Phase II reserved for "defendant's rebuttal of the presumption of reliance as to particular individuals as well as the

calculation of damages as to each plaintiff"). Defendants may then attempt to reduce the judgment by arguing that some individual Settlement Class Members failed to rely on their false statements.

88. The plaintiff class's experience in *Vivendi* highlights the risks inherent in post-liability phase proceedings. In January 2010, a jury returned a verdict for the plaintiff class, finding that Vivendi had acted recklessly in making 57 false or misleading statements that omitted the company's liquidity risk. *See* 765 F. Supp. 2d at 520-21, 524. In subsequent proceedings, five years after the jury verdict, Defendants successfully challenged reliance on the part of several large institutional investors. For example, the *Vivendi* defendants reduced just one class member's $53 million recovery to zero through post-trial proceedings focused on reliance. *See* 123 F. Supp. 3d 424, 438 (S.D.N.Y. 2015).

E. The Risk of Appeal

89. Even if Plaintiffs prevailed at summary judgment and at trial, Defendants would likely have appealed the judgment, leading to many additional months, if not years, of further litigation. On appeal, Defendants would have renewed their host of arguments as to why Plaintiffs failed to establish liability, loss causation, and damages, thereby exposing Plaintiffs to the risk of having any favorable judgment reversed or reduced below the Settlement Amount.

90. The risk that even a successful trial verdict could be overturned on a post-trial motion or appeal is real in securities-fraud class actions. *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc*., 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation); *In re Oracle*, 2009 WL 1709050 (granting summary judgment to defendants after eight years of litigation), *aff'd*, 627 F.3d 376 (9th Cir. 2010); *Robbins v. Koger Props., Inc*., 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict after 19-day trial and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co*., 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *In re Apple Comp. Sec. Litig*., No. C-84-20148, 1991 U.S. Dist. LEXIS 15608 (N.D. Cal. Sept. 6, 1991) (vacating $100 million jury verdict on post-trial motions).

* * *

Based on all the factors summarized above, Plaintiffs and Lead Counsel respectfully submit that it was in the best interest of the Settlement Class to accept the immediate and substantial benefit conferred by the $48 million Settlement, instead of incurring the significant risk that the Settlement Class would recover a lesser amount, or nothing at all, after several additional years of arduous litigation. Indeed, the Parties were deeply divided on several key factual issues central to the litigation, and there was no guarantee that Plaintiffs' positions on these issues would prevail at either class certification, summary judgment, or trial. If Defendants had succeeded on any of these substantial defenses, Plaintiffs and the Settlement Class would have recovered nothing at all or, at best, would likely have recovered far less than the Settlement Amount.

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE IN LIGHT OF THE POTENTIAL RECOVERY IN THE ACTION

91. As discussed above, Plaintiffs' damages expert has estimated that the likely maximum total damages that could be established in the Action would be approximately $147 million.[6] However, proving the damages reflected in this estimate assumes that Plaintiffs would have prevailed on all their merits arguments about falsity, materiality, and scienter, and that all or most aspects of the case would be sustained and proven at trial. Even so, this estimate would be subject to substantial risk at trial, as it would be subject to a "battle of the experts." As noted above, at trial, the damages estimate could have been substantially reduced based on arguments

[6] As noted in Plaintiffs' Preliminary Approval Motion, the per-ADR inflation amounts used to determine the $147 million likely maximum recoverable aggregate damages amount are the same as those used in the proposed Plan of Allocation (discussed in Section VII below). Plaintiffs' damages expert estimated that the maximum possible recoverable damages to the Settlement Class would be approximately $280 million, based on more favorable assumptions regarding the number of damaged ADRs, assuming that Plaintiffs prevailed on all liability, damages, and loss-causation arguments, that the maximum amount of artificial inflation in the ADRs was impounded as of the first day of the Class Period, and giving no effect to arguments concerning the nature of the alleged corrective disclosures (i.e., whether they revealed previously undisclosed or misrepresented facts), the effect of other information unrelated to the alleged fraud causing declines in the ADRs' prices on the corrective-disclosure dates, and the lack of statistical significance of price movements after certain alleged corrective disclosures.

about which alleged corrective disclosures, if any, caused recoverable damages and whether the artificial inflation, if any, of VWAG's ADR prices was constant throughout the Class Period, among other things.

92. However, assuming that the estimated likely maximum damages were proven at trial, based on this estimate, the $48 million Settlement represents approximately 33% of likely maximum recoverable damages (before reductions for any award of attorneys' fees or reimbursement of Litigation Expenses). In light of the substantial risks of establishing liability and damages presented here, this recovery represents an excellent outcome for members of the Settlement Class.

93. For all these reasons, Plaintiffs and Lead Counsel respectfully submit that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of the Settlement Class to accept the immediate and substantial benefit conferred by the Settlement, instead of incurring the significant risk that the Settlement Class might recover a lesser amount, or nothing at all, after additional protracted and arduous litigation.

VI. PLAINTIFFS' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE

94. The Court's Preliminary Approval Order directed that the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and Proof of Claim and Release Form ("Claim Form") be disseminated to the Settlement Class. The Preliminary Approval Order also set an April 18, 2019 deadline for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application or to request exclusion from the Settlement Class and set a final approval hearing date of May 10, 2019.

95. In accordance with the Preliminary Approval Order, Lead Counsel instructed Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the Court-approved Claims Administrator, to disseminate copies of the Notice and Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things, a description of the Action, the Settlement, the proposed Plan

of Allocation, and Settlement Class Members' rights to participate in the Settlement, to object to the Settlement, the Plan of Allocation, or the Fee and Expense Application, or to exclude themselves from the Settlement Class. The Notice also informs Settlement Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund (net of Court-approved Litigation Expenses), for reimbursement of Plaintiffs' Counsel's Litigation Expenses in an amount not to exceed $500,000, and for reimbursement of reasonable costs and expenses incurred by Plaintiffs in an amount not to exceed $50,000 in total. To disseminate the Notice, Epiq obtained information from VWAG and from banks, brokers, and other nominees regarding the names and addresses of potential Settlement Class Members. *See* Declaration of Alexander Villanova Regarding (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Villanova Decl."), attached as Exhibit 3, at ¶¶ 3-8.

96. On December 19, 2018, Epiq disseminated 2,260 copies of the Notice and Claim Form (together, the "Notice Packet") to potential Settlement Class Members and nominees by first-class mail. *See* Villanova Decl. ¶ 5. As of April 3, 2019, Epiq had disseminated 217,587 Notice Packets. *Id.* ¶ 8. Epiq has also re-mailed 503 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the U.S. Postal Service, including Notice Packets that were returned as undeliverable and for which Epiq was able to obtain an updated address through the U.S. Postal Service National Change of Address ("NCOA") database. As of April 3, 2019, a total of 2,083 Notice Packets remain undeliverable. *Id.* ¶ 8.

97. On December 31, 2018, in accordance with the Preliminary Approval Order, Epiq caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted over the PR Newswire. *See id*. ¶ 9.

98. Lead Counsel also caused Epiq to establish a dedicated settlement website, www.VolkswagenADRLitigation.com, to provide potential Settlement Class Members with information concerning the Settlement and access to downloadable copies of the Notice and Claim

Form, as well as copies of the Stipulation, Preliminary Approval Order, and Complaint. *See id.* ¶ 14. Copies of the Notice and Claim Form are also available on Lead Counsel's website, www.blbglaw.com.

99. As noted above, the deadline for Settlement Class Members to file objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application or to request exclusion from the Settlement Class is April 18, 2019. To date, nine requests for exclusion have been received (*see* Villanova Decl. ¶ 15), and no objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application have been filed on the Court's docket. Plaintiffs will file reply papers in support of final approval of the Settlement on May 3, 2019, after the deadline for submitting requests for exclusion and objections has passed, and will address all requests for exclusion and any objections that may be submitted.

VII. PROPOSED ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

100. In accordance with the Preliminary Approval Order, and as provided in the Notice, all Settlement Class Members who want to participate in the distribution of the Net Settlement Fund (i.e., the Settlement Fund less (i) any Taxes, (ii) any Notice and Administration Costs, (iii) any Litigation Expenses awarded by the Court, (iv) any attorneys' fees awarded by the Court, and (v) any other costs or fees approved by the Court) must submit valid Claim Forms with all required information postmarked no later than April 18, 2019. As provided in the Notice, the Net Settlement Fund will be distributed among Settlement Class Members according to the plan of allocation approved by the Court.

101. Plaintiffs' damages expert developed the proposed plan of allocation (the "Plan of Allocation") in consultation with Lead Counsel. Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who suffered losses as a result of the conduct alleged in the Amended Complaint.

102. The Plan of Allocation is included the mailed Notice. *See* Notice, attached as Exhibit A to the Villanova Decl., at pp. 10-14. As described in the Notice, calculations under the

Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after trial or estimates of the amounts that will be paid to Authorized Claimants under the Settlement. Instead, the calculations under the Plan are only a method to weigh the claims of Settlement Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund.

103. In developing the Plan of Allocation, Plaintiffs' damages expert calculated the estimated amount of alleged artificial inflation in the per ADR closing prices of VWAG Ordinary and Preferred ADRs that was allegedly proximately caused by Defendants' alleged false and misleading statements and omissions. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Plaintiffs' damages expert considered (i) price changes in VWAG Ordinary ADRs and VWAG Preferred ADRs due to allegedly materially false and misleading public announcements and other representations and omissions, adjusting for price changes that were attributable to market, industry, or currency forces; (ii) price changes in VWAG Ordinary ADRs and VWAG Preferred ADRs in reaction to public announcements and other statements and events regarding Volkswagen in which the alleged misrepresentations and omissions were alleged to have been revealed to the market, adjusting for price changes that were attributable to market, industry, or currency forces; (iii) the allegations in the Complaint; and (iv) the evidence developed in support of those allegations, as advised by Lead Counsel. *See* Notice ¶ 54.

104. Under the Plan of Allocation, a "Recognized Loss Amount" or "Recognized Gain Amount" will be calculated for each purchase or acquisition of VWAG Ordinary ADRs and VWAG Preferred ADRs during the Class Period that is listed in the Claim Form and for which adequate documentation is provided. The calculation of Recognized Loss and Recognized Gain Amounts will depend upon several factors, including (a) when the VWAG ADRs were purchased or otherwise acquired, and at what price; and (b) whether the VWAG ADRs were sold or held through the end of the Class Period or the 90-day look-back period under the PSLRA, and if the ADRs were sold, when and for what amounts. *Id.* ¶¶ 56-58.

105. Claimants who purchased and sold all their VWAG ADRs before the first corrective disclosure, or who purchased and sold all their VWAG ADRs between the various dates on which artificial inflation was allegedly removed from the prices of the VWAG ADRs following corrective disclosures (that is, they did not hold the securities over a date where artificial inflation was allegedly removed from the price of the security), will have no Recognized Loss Amount under the Plan of Allocation with respect to those transactions, because the level of artificial inflation is the same between the corrective disclosures, and any loss suffered on those sales would not be the result of the alleged misstatements in the Action. *Id.* ¶¶ 55, 57-58.

106. Also, as explained in the Preliminary Approval Motion, because the Court dismissed Plaintiffs' claims based on VWAG's financial statements before May 2014, the Recognized Loss Amounts for ADRs purchased from November 19, 2010 through April 30, 2014 will be reduced by half. *Id.* ¶¶ 56, 59. This adjustment reflects Lead Counsel's assessment that proving Defendants' liability for the period before May 2014 would be much more difficult than for the post-April 2014 portion of the Class Period. The Court dismissed Plaintiffs' claims based on VWAG's financial statements before May 2014 largely on the basis of scienter, and similar arguments would apply to all of Plaintiffs' claims during that period. Specifically, proving Defendants' scienter would be more difficult for the earlier period due to an absence of evidence that prior to statements made in May 2014, top management were told about the defeat devices and warned about potential fines for using them. Moreover, since claims related to VWAG's financial statements after May 2014 were not dismissed, Plaintiffs had additional avenues of recovery in the post-April 2014 portion of the Class Period. Thus, discounting the weaker claims for the earlier period is fair and reasonable and is appropriate under Ninth Circuit law. *See, e.g.*, *In re HP Sec. Litig.*, No. 3:12-CV-05980-CRB (Breyer, J.), ECF Nos. 268, 269, 280 (approving plan of allocation that discounted claims that had been dismissed by the Court to 15%); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *5-6 (N.D. Cal. Nov. 26, 2007) (approving allocating 5% of settlement fund to dismissed claims and 95% to sustained claims, and noting that "Courts endorse distributing settlement proceeds according to the relative strengths and

weaknesses of the various claims"); *In re Am. Apparel, Inc. Shareholder Litig.*, 2014 WL 10212865, at *19 (C.D. Cal. July 28, 2014) (approving discounting dismissed claims by 10%).

107. Under the Plan of Allocation, claimants' Recognized Loss Amounts will be netted against their Recognized Gain Amounts, if any, to determine the claimants' "Recognized Claims," and the Net Settlement Fund will be allocated pro rata to Authorized Claimants based on the relative size of their Recognized Claims. *Id.* ¶¶ 65, 69.

108. In addition, as explained in the Preliminary Approval Motion, settlement funds originally designated for the Settlement Class's recovery will not revert to any Defendants. Following all cost-effective rounds of distributions of settlement funds to Settlement Class Members, if it is determined that further distribution of funds remaining in the Net Settlement Fund is not cost effective, the remaining balance will be contributed to the Investor Protection Trust as a *cy pres* award. Notably, however, in contrast to some other types of class-action settlements, here 100% of the Net Settlement Fund will initially be distributed to Authorized Claimants and, if any funds remain after that initial distribution, because of uncashed or returned checks or other reasons, further distributions to Authorized Claimants will be conducted as long as they are cost effective. Specifically, payment will be made to charity only when the residual amount left for distribution to Settlement Class Members is so small that a further distribution would not be cost effective (for example, where the costs of conducting the additional distribution would largely subsume the funds available). The Investor Protection Trust, a 501(c)(3) nonprofit organization devoted to investor education, is related to the subject matter of the lawsuit and the Settlement Class and is an appropriate *cy pres* recipient. Plaintiffs and Plaintiffs' Counsel have no relationship with the Investor Protection Trust, and this Court has approved it as a *cy pres* recipient in other similar actions, including *In re Geron Corp. Securities Litigation*, No. 3:14-CV-01224-CRB (N.D. Cal.), and *In re HP Securities Litigation*, No. 3:12-CV-05980-CRB (N.D. Cal.).

109. In sum, the Plan of Allocation was designed to fairly and rationally allocate the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered on transactions in VWAG ADRs that were attributable to the conduct alleged in the

Amended Complaint similarly to what would happen if Plaintiffs prevailed at trial. All Recognized Claims are paid pro rata, with a 50% discount applied to purchases before May 2014 because of the weakness of the claims during that portion of the Class Period. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

110. Lead Counsel will report the percentage of persons to whom Claim Forms were sent who submit claims by the April 18, 2019 deadline in their reply papers in support of final approval of the Settlement.

111. As noted above, as of April 3, 2019, 217,587 copies of the Notice, which contains the Plan of Allocation and advises Settlement Class Members of their right to object to the proposed Plan of Allocation, have been sent to potential Settlement Class Members. S*ee* Villanova Decl. ¶ 8. To date, no objections to the proposed Plan of Allocation have been filed on the Court's docket.

VIII. THE FEE AND LITIGATION-EXPENSE APPLICATION

112. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel is applying to the Court on behalf of Plaintiffs' Counsel for an award of attorneys' fees in the amount of 25% of the Settlement Fund, including any interest earned, net of Litigation Expenses (the "Fee Application"). Lead Counsel also requests (i) reimbursement for expenses that Lead Counsel incurred in prosecuting the Action from the Settlement Fund in the amount of $296,879.86; and reimbursement to Lead Plaintiff ASHERS and named Plaintiff Miami in the amounts of $4,940.49 and $2,387.50, respectively, for costs and expenses that they incurred directly related to their representation of the Settlement Class in accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4) (collectively, the "Litigation-Expense Application").

113. The legal authorities supporting the requested fee and expenses are discussed in Lead Counsel's Fee Memorandum. The primary factual bases for the requested fee and expenses are summarized below.

A. The Fee Application

114. For the efforts of Plaintiffs' Counsel on behalf of the Settlement Class, Lead Counsel is applying for a fee award to be paid from the Settlement Fund on a percentage basis. As discussed in the accompanying Fee Memorandum, the percentage method is the appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the Settlement Class's interest in achieving the maximum recovery in the shortest amount of time required under the circumstances and has been recognized as appropriate by the U.S. Supreme Court and the Ninth Circuit Court of Appeals for cases of this nature.

115. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel respectfully submits that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a 25% fee award is consistent with the benchmark for attorneys' fees in the Ninth Circuit for common-fund cases such as this, and given the facts and circumstances of this case, is well within the range of percentages awarded in securities class actions in this Circuit and elsewhere in comparable settlements.

1. Plaintiffs Support the Fee Application

116. Lead Plaintiff ASHERS and named Plaintiff Miami Police are both institutional investors that closely supervised, monitored, and actively participated in the prosecution and settlement of the Action. *See* Smith Decl. ¶¶ 6-8; Kerr Decl. ¶¶ 5-7. ASHERS and Miami Police were able to directly observe the high quality of work performed by Lead Counsel throughout this litigation. *See id*. ASHERS and Miami Police both believe that the requested fee is fair and reasonable in light of the work counsel performed and the risks of the litigation. *See* Smith Decl. ¶ 8; Kerr Decl. ¶ 7. Plaintiffs' endorsement of the requested fee demonstrates its reasonableness and should be given weight in the Court's consideration of the fee award.

2. The Work and Experience of Counsel

117. As defined above, Plaintiffs' Counsel are the Court-appointed Lead Counsel BLB&G and Klausner, Kaufman, Jensen & Levinson ("KKJ&L"), counsel for named Plaintiff Miami Police.

118. Attached as Exhibit 4 are Declarations from both of the Plaintiffs' Counsel firms in support of an award of attorneys' fees and litigation expenses. The first page of Exhibit 4 contains a summary chart of the hours expended and lodestar amounts for each firm, as well as a summary of BLB&G's Litigation Expenses.[7] Included in the supporting Declarations are schedules summarizing the hours and lodestar of both firms from the inception of the case through March 29, 2019; a summary of Litigation Expenses from inception of the case through March 29, 2019, by category (for BLB&G only); and a firm resume which includes biographies of the attorneys involved in the Action. Consistent with the Northern District of California Procedural Guidance for Class Action Settlements, Lead Counsel's Declaration includes a detailed exhibit showing the hours worked by each of the professionals who worked on the matter, broken down by seven different substantive categories of work: (i) Initial Investigation and Lead Plaintiff Appointment, (ii) Preparation of Complaints and Factual Investigation, (iii) Motions to Dismiss, (iv) Motion for Partial Summary Judgment, (v) Discovery and Related Motions, (vi) Class Certification, and (vii) Settlement. In addition, Lead Counsel's declaration attaches an exhibit with summary descriptions of the principal tasks performed by each attorney and the principal support staff involved in this Action.

119. As noted in Plaintiffs' Counsel's declarations, no time expended in preparing the application for fees and expenses has been included. Lead Counsel has and will continue to invest substantial time and effort in this case after the March 29, 2019 cut-off imposed for their lodestar submissions on this application.

[7] KKJ&L is not seeking reimbursement of Litigation Expenses.

120. As shown in Exhibit 4, Plaintiffs' Counsel collectively expended a total of 14,115.50 hours in the investigation and prosecution of the Action from its inception through March 29, 2019, for a total lodestar of $7,514,066.25 at current hourly rates. If the Court awards Plaintiffs' Counsel's Litigation Expenses, the requested fee of 25% of the Settlement Fund, net of expenses, represents $11,923,948.04 (plus interest accrued at the same rate as the Settlement Fund), and therefore represents a multiplier of approximately 1.59 of Plaintiffs Counsel's lodestar. As discussed in further detail in the Fee Memorandum, the requested multiplier cross-check is within the range of multipliers typically cited in comparable securities class actions and in other class actions involving significant contingency-fee risk in this Circuit and elsewhere.

121. As detailed above, throughout this case, Lead Counsel devoted substantial time to the prosecution of the Action. I maintained control of and monitored the work performed by other lawyers at BLB&G on this case. Specifically, most of the major tasks in the case—drafting sections of each pleading, discovery motion, or discovery request or response, negotiating particular discovery issues with Defendants or third parties—were handled primarily by me with the assistance of one of the other lawyers on the team. I personally handled oral arguments, client communications, strategy meetings, and the settlement process. More junior attorneys and paralegals worked on matters appropriate to their skill and experience level. Throughout the litigation, Plaintiffs' Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation.

122. As demonstrated by the firm resume included as Exhibit 5 to Exhibit 4A to this declaration, BLB&G is among the most experienced and skilled law firms in the securities-litigation field, with a long and successful track record representing investors in cases of this kind, and is consistently ranked among the top plaintiffs' firms in the country. Further, BLB&G has taken complex cases like this to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. I believe that this willingness and ability to take cases to trial added valuable leverage during the settlement negotiations.

123. BLB&G's litigation efforts in this case included (i) drafting two detailed complaints asserting violations of the Exchange Act against Defendants; (ii) drafting Plaintiffs' opposition to Defendants' two rounds of motions to dismiss; (iii) preparing for and conducting oral argument on Defendants' motions to dismiss; (iv) moving for partial summary judgment on the issues of falsity and scienter with respect to several of VWAG's alleged false statements; (v) engaging in extensive discovery drafting and negotiations and analysis of the over 4 million pages of documents produced by Defendants and third parties in discovery; (vi) working extensively with experts to present strong counterarguments to Defendants' positions on loss causation and damages; (vii) preparing a motion for class certification; and (viii) leading Plaintiffs' settlement negotiations with Defendants.

3. The Standing and Caliber of Defendants' Counsel

124. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants Volkswagen and Diess were represented by Sullivan & Cromwell LLP, one of the country's most prestigious and experienced defense firms, which vigorously represented its clients. Defendants Horn and Winterkorn were represented by similarly prestigious and experienced defense firms, Schertler & Onorato, LLP and Joseph Hage Aaronson LLC, respectively. In the face of this experienced, formidable, and well-financed opposition from some of the nation's top defense firms, Lead Counsel was nonetheless able to persuade Defendants to settle the case on terms that are highly favorable to the Settlement Class.

4. The Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Securities Cases

125. This prosecution was undertaken by Lead Counsel entirely on a contingent basis. The risks assumed by Lead Counsel in prosecuting these claims to a successful conclusion are described above. Those risks are also relevant to an award of attorneys' fees.

126. From the outset of its retention, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the

substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action and that funds were available to compensate staff and to cover the considerable litigation costs that a case like this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Lead Counsel received no compensation during the course of the Action and have incurred over $296,000 in Litigation Expenses in prosecuting the Action for the benefit of the Settlement Class.

127. Lead Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent efforts, success in contingent-fee litigation like this is never assured. For example, at the beginning of this case no other case on behalf of investors in unlisted ADRs (or other over-the-counter securities issued by a foreign company) had been sustained over objections based on the Supreme Court's decision in *Morrison*. While Plaintiffs and Lead Counsel believed they had winning arguments regarding the applicability of the Exchange Act to their ADR-based claims, Defendants had colorable arguments that had been successful in other cases, and there was a substantial risk that the case could be dismissed on these grounds.

128. Lead Counsel knows from experience that the commencement and prosecution of a class action do not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and legal arguments that are needed to sustain a complaint or win at class certification, summary judgment, and trial, or on appeal, or to cause sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

129. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private

investors, particularly institutional investors, take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

130. Lead Counsel's extensive and persistent efforts in the face of substantial risks and uncertainties have resulted in a significant recovery for the benefit of the Settlement Class. In these circumstances and in consideration of the hard work and the excellent result achieved, I believe that the requested fee is reasonable and should be approved.

5. The Reaction of the Settlement Class to the Fee Application

131. As stated above, as of April 3, 2019, 217,587 Notice Packets had been mailed to potential Settlement Class Members advising them that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund, net of Litigation Expenses. *See* Villanova Decl. ¶ 8. In addition, the Court-approved Summary Notice was published in *Investor's Business Daily* and transmitted over the PR Newswire. *Id.* ¶ 9. To date, no objection to the attorneys' fees stated in the Notice has been filed on the Court's docket. Should any objections be submitted, they will be addressed in Lead Counsel's reply papers to be filed on May 3, 2019, after the deadline for submitting objections has passed.

132. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted it without any compensation or guarantee of success. Based on the favorable result obtained, the quality of the work performed, the risks of the Action, and the fully contingent nature of the representation, Lead Counsel respectfully submits that a fee award of 25% of the Settlement Fund, net of expenses, resulting in a lodestar multiplier of approximately 1.59 is fair and reasonable, and is supported by the fee awards that courts have granted in other comparable cases.

B. The Litigation-Expense Application

133. Lead Counsel also seeks payment from the Settlement Fund of $296,879.86 in Litigation Expenses that were reasonably incurred by Lead Counsel in commencing, litigating, and settling the claims asserted in the Action.

134. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses, and, even in the event of a recovery, would not recover any of their out-of-pocket expenditures until the Action was successfully resolved. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, a subsequent award of expenses would not compensate them for the lost use of the funds advanced by them to prosecute the Action, and any attorneys' fee percentage awarded to Plaintiffs' Counsel would be net of any awarded expenses. Accordingly, Plaintiffs' Counsel were motivated to and did take appropriate steps to avoid incurring unnecessary expenses and to minimize costs without compromising the vigorous and efficient prosecution of the case.

135. As shown in Exhibit 5 to this declaration, Lead Counsel has incurred a total of $296,879.86 in Litigation Expenses in prosecuting the Action. The expenses are summarized in Exhibit 5, which identifies each category of expense, e.g., expert fees, on-line research, and photocopying, and the amount incurred for each category. These expense items are incurred separately by Lead Counsel, and these charges are not duplicated in Lead Counsel's hourly rates.

136. Of the total amount of expenses, $146,348.25, or approximately 49%, was incurred for the retention of experts and consultants. As noted above, Lead Counsel consulted with experts in the fields of loss causation and damages during its investigation and the preparation of the Complaint, and consulted further with one of those experts during the settlement negotiations with Defendants and the development of the proposed Plan of Allocation. Lead Counsel also retained an accounting expert, who provided consulting services regarding VWAG's financial statements and allegedly improper accounting for contingent liabilities, and incurred charges for a translation services consultant.

137. Another significant expenditure in this Action was for online legal and factual research, which was necessary to prepare the First Consolidated Complaint and Amended Complaint, research the law pertaining to the claims asserted in the Action, oppose Defendants' motions to dismiss, prepare Plaintiffs' Motion for Partial Summary Judgment, and litigate discovery disputes. The charges for on-line research amounted to $64,385.67, or approximately 22% of the total amount of expenses.

138. Another large component of the Litigation Expenses for which reimbursement is sought consists of discovery/document management costs, which amount to $52,551.43, or approximately 18% of the total expenses.

139. The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, costs of out-of-town travel, service of process expenses, copying costs, telephone charges, and postage and delivery expenses.

140. All of the Litigation Expenses incurred by Lead Counsel were reasonable and necessary to the successful litigation of the Action and have been approved by Plaintiffs. *See* Smith Decl. ¶ 9; Kerr Decl. ¶ 8.

141. Additionally, Lead Plaintiff ASHERS and named Plaintiff Miami Police seek reimbursement of their reasonable costs and expenses incurred directly in their representation of the Settlement Class, in the amount of $4,940.49 and $2,387.50, respectively. *See* Smith Decl. ¶ 14; Kerr Decl. ¶ 13. As stated in the accompanying Declarations submitted by ASHERS and Miami Police, each Plaintiff took an active role in the litigation and has been fully committed to pursuing the Class's claims since it became involved in the litigation. *See* Smith Decl. ¶ 6; Kerr Decl. ¶ 5. The Declarations submitted by Plaintiffs state the total number of hours spent by each of their employees on the Action, broken down by the following phases of the litigation: (i) Investigation and Initiation of the Litigation; (ii) Review of Pleadings; (iii) Discovery; and (iv) Settlement. *See* Smith Decl. ¶ 13; Kerr Decl. ¶ 12. The requested reimbursement amounts were

calculated by multiplying the total number of hours that Plaintiffs' employees committed to these activities by a reasonable hourly rate for each employee.

142. The Notice informed potential Settlement Class Members that (i) Lead Counsel would seek reimbursement of Litigation Expenses incurred by Plaintiffs' Counsel in an amount not to exceed $500,000; and (ii) Plaintiffs would seek reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class in an aggregate amount not to exceed $50,000. The total amounts requested, $296,879.86 for Lead Counsel and $7,327.99 for Plaintiffs, are significantly below the amounts that Settlement Class Members were advised could be sought.

143. To date, no objection has been raised as to the maximum expense amounts stated in the Notice. If any objections are submitted, they will be addressed by Lead Counsel in its reply papers.

144. The expenses incurred by Plaintiffs' Counsel and Plaintiffs were reasonable and necessary to represent the Settlement Class and achieve the Settlement. Accordingly, Lead Counsel respectfully submits that the Litigation Expenses should be paid in full from the Settlement Fund.

145. Attached to this declaration are true and correct copies of the following documents previously cited in this declaration:

Exhibit 1: Declaration of Robyn Smith, Executive Secretary of the Arkansas State Highways Employees' Retirement System, in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

Exhibit 2: Declaration of Chairman Daniel Kerr of the Miami Police Relief and Pension Fund in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

Exhibit 3: Declaration of Alexander Villanova Regarding (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date.

Exhibit 4: Summary of Plaintiffs' Counsel's Lodestar and Expenses.

Exhibit 4A: Declaration of James A. Harrod in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses Filed on Behalf of Bernstein Litowitz Berger & Grossmann LLP.

Exhibit 4B: Declaration of Robert D. Klausner in Support of Lead Counsel's Motion for an Award of Attorneys' Fees Filed on Behalf of Klausner, Kaufman, Jensen & Levinson.

Exhibit 5: Breakdown of Lead Counsel's Expenses by Category.

Exhibit 6: Cornerstone Research, *Securities Class Action Settlements 2018 Review and Analysis* (2019).

Exhibit 7: Cornerstone Research, *Securities Class Action Filings 2018 Year In Review* (2019)

Exhibit 8: NERA, Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* (2019).

146. Also attached to this declaration are true and correct copies of the following documents cited in the Fee Memorandum:

Exhibit 9: *Hatamian, et al. v. Advanced Micro Devices, Inc., et al.*, No. 4:14-cv-00226-YGR (N.D. Cal. March 2, 2018), ECF No. 364.

Exhibit 10: *In re Brocade Sec. Litig.*, No. 3:05-cv-02042-CRB (N.D. Cal. Jan. 26, 2009), ECF No. 496-1.

Exhibit 11: *In re 3Com Corp. Sec. Litig.*, No. C-97-21083-EAI (N.D. Cal. March 9, 2001), ECF No. 180.

Exhibit 12: *Hefler v. Wells Fargo & Co., et al.*, No. 16-cv-05479 (N.D. Cal. Dec. 18, 2018), ECF No. 252.

Exhibit 13: *In re HP Sec. Litig.*, 3:12-cv-05980-CRB (N.D. Cal. Nov. 16, 2015) (Breyer, J.), ECF No. 279.

Exhibit 14: *In re Geron Corp. Sec. Litig.*, No. 3:14-cv-01224-CRB (N.D. Cal. July 21, 2017) (Breyer, J.), ECF No. 135.

IX. CONCLUSION

147. For all the reasons discussed above, Plaintiffs and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Lead Counsel further submits that the requested fee in the amount of 25% of the Settlement Fund,

net of expenses, should be approved as fair and reasonable, and the requests for Lead Counsel's Litigation Expenses in the amount of $296,879.86 and Plaintiffs' costs and expenses in the aggregate amount of $7,327.99 should also be approved.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief, this 5th day of April, 2019.

/s/ James A. Harrod
James A. Harrod

#1275799

Exhibit 1

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
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Attorneys for Lead Plaintiff ASHERS and Plaintiff Miami Police and Lead Counsel in the Securities Actions

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

_____/

This Document Relates To: Securities Actions

City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

_____/

MDL No. 2672 CRB (JSC)

CLASS ACTION

DECLARATION OF ROBYN SMITH, EXECUTIVE SECRETARY OF ARKANSAS STATE HIGHWAYS EMPLOYEES' RETIREMENT SYSTEM, IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Robyn Smith, hereby declare under penalty of perjury as follows:

1. I am the Executive Secretary of Arkansas State Highway Employees' Retirement System ("ASHERS") and am a duly authorized representative of ASHERS.[1]

2. ASHERS is a public pension fund established for the payment of retirement and disability benefits for employees of the Arkansas Department of Transportation.

3. ASHERS serves as the Court-appointed Lead Plaintiff in this securities class action (the "Action"). I submit this declaration on behalf of ASHERS in support of (a) Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. I have personal knowledge of the facts set forth in this Declaration and I could and would testify competently to them if asked to do so.

I. ASHERS' Oversight of the Action

4. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995. As the Executive Secretary of ASHERS, I have overseen ASHERS' service as lead plaintiff in this litigation.

5. By Order dated January 5, 2016, the Court appointed ASHERS as "Lead Plaintiff" for the Action and approved ASHERS' selection of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") as "Lead Counsel" for the Action.

6. Since my appointment as Executive Secretary, on July 1, 2016, I have had regular communications on behalf of ASHERS with attorneys from BLB&G. Prior to my appointment as Executive Secretary, my predecessor as Executive Secretary of ASHERS, Larry Dickerson, served as and supervised the retention of counsel and initiation of this litigation. ASHERS, through my and Mr. Dickerson's, active and continuous involvement, as well as the involvement

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 27, 2018 (ECF No. 5267-1) (the "Stipulation").

of others as detailed below, closely supervised, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. ASHERS received periodic status reports from BLB&G on case developments and participated in regular discussions with attorneys from BLB&G concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I and Mr. Dickerson,: (a) regularly communicated with BLB&G by email, telephone calls, and through in-person meetings regarding the posture and progress of the case; (b) reviewed all significant pleadings and briefs filed in the Action; (c) assisted in searching for and producing documents and information requested by Defendants in the course of discovery; (d) consulted with BLB&G concerning the settlement negotiations as they progressed; and (f) evaluated, approved and recommended approval of the proposed Settlement for $48,000,000 in cash.

II. ASHERS Strongly Endorses Approval of the Settlement

7. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, ASHERS believes that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class. ASHERS believes that the Settlement represents an excellent recovery for the Settlement Class, particularly considering the substantial risks of continuing to prosecute the claims in this case. Therefore, ASHERS strongly endorses approval of the Settlement by the Court.

III. ASHERS Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

8. Although the ultimate determination of Lead Counsel's request for attorneys' fees and expenses rests with the Court, ASHERS believes that Lead Counsel's request for an award of attorneys' fees in the amount of 25% of the Settlement Fund (net of expenses) is reasonable in light of the result achieved in the Action, the risks undertaken, and the quality of the work performed by Plaintiffs' Counsel on behalf of the Settlement Class. ASHERS has evaluated Lead Counsel's fee request by considering the substantial recovery obtained for the Settlement Class in this Action, the risks of the Action, and its observations of the high-quality work

performed by Plaintiffs' Counsel throughout the litigation, and has authorized this fee request to the Court for its ultimate determination. ASHERS also understands that a 25% fee award is the "benchmark" for percentage attorneys' fees in common fund cases in the Ninth Circuit.

9. ASHERS further believes that Lead Counsel's Litigation Expenses are reasonable and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the Settlement Class to obtain the best result at the most efficient cost, ASHERS fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

10. ASHERS understands that reimbursement of a lead plaintiff's reasonable costs and expenses is authorized under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(4). For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, ASHERS seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Settlement Class in the Action.

11. My primary responsibility at ASHERS involves overseeing ASHERS' operations, which includes monitoring litigation matters involving the fund, such as ASHERS' activities in the securities class actions where (as here) it has been appointed lead plaintiff. Mr. Dickerson served in this capacity prior to my appointment in July 2016. In addition to me and Mr. Dickerson, the following employees of ASHERS, or the Arkansas Department of Transportation, also participated in the prosecution of this Action: Kera Crowder, Retirement Officer; and Bryan Stewart, Division Head – Computer Services.

12. ASHERS employees do not log or otherwise create records to track the time spent on employment-related tasks. As such, in preparing ASHERS' request for reimbursement of its time spent on this litigation, the employees principally involved in the litigation reviewed a detailed timeline, prepared by our legal counsel from their communications with ASHERS, time records, and calendar entries, reflecting our involvement and the time we spent on the prosecution of the case. Where applicable we also cross-referenced that timeline with our own internal email, calendars, and other records, to compile the estimate of hours spent on tasks

related to the Action for which ASHERS would seek reimbursement. As such, ASHERS' time reflects only those hours that we could tie back to specific tasks (*e.g.*, reviewing pleadings, correspondence, meetings, or telephone calls with Counsel) performed in the Action.

13. The time for which ASHERS seeks reimbursement corresponds to the following phases of litigation in the Action:

Task	Robyn Smith Hours	Larry Dickerson Hours	Kera Crowder Hours	Bryan Stewart Hours
Investigation and Initiation of the Litigation		8.25		
Review of Pleadings	20.75	8.50		
Discovery	30.25	4.25	7.75	2.00
Settlement	15.25			
TOTAL	**66.25**	**21.00**	**7.75**	**2.00**

14. The time that ASHERS devoted to the representation of the Settlement Class in this Action was time that we otherwise would have expected to spend on other work for ASHERS and, thus, represented a cost to ASHERS. Accordingly, ASHERS seeks reimbursement of $4,940.49 for the time of the following ASHERS personnel, as follows:

Personnel	Hours	Rate[2]	Total
Robyn Smith	66.25	$51.76	$3,429.10
Larry Dickerson	21.00	$54.76	$1,149.96
Kera Crowder	7.75	$31.16	$241.49
Bryan Stewart	2.00	$59.97	$119.94
TOTAL	**97.00**		**$4,940.49**

IV. Conclusion

15. In conclusion, ASHERS was closely involved throughout the prosecution and settlement of the claims in this Action, strongly endorses the Settlement as fair, reasonable and

[2] The hourly rates used for purposes of this request are based on the annual compensation of the respective personnel who worked on this Action.

adequate, and believes that it represents a significant recovery for the Settlement Class. ASHERS respectfully requests that the Court approve Plaintiffs' motion for final approval of the proposed Settlement and approval of the Plan of Allocation and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, including ASHERS' request for reimbursement of $4,940.49 for its reasonable costs and expenses incurred in prosecuting the Action on behalf of the Settlement Class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of ASHERS.

Executed this 28th day of March, 2019.

Robyn M. Smith
Executive Secretary of Arkansas State
Highway Employees' Retirement System

#1272359

Exhibit 2

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
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Attorneys for Lead Plaintiff ASHERS and Plaintiff Miami Police and Lead Counsel in the Securities Actions

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

_____/

This Document Relates To: Securities Actions

City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

_____/

MDL No. 2672 CRB (JSC)

CLASS ACTION

DECLARATION OF CHAIRMAN DANIEL KERR OF MIAMI POLICE RELIEF AND PENSION FUND, IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

Judge: Hon. Charles R. Breyer
Courtroom: 6
Date: May 10, 2019
Time: 10:00 a.m.

I, DANIEL KERR, hereby declare under penalty of perjury as follows:

1. I am currently the Chairman of the Board of Trustees of the Miami Police Relief & Pension Fund ("Miami Police") and am a duly authorized representative of Miami Police. I have been a Trustee of Miami Police at all times relevant to this litigation. I am also an active duty police officer for the City of Miami.[1]

2. Miami Police is a defined contribution retirement plan providing retirement benefits to active and retired Miami police officers.

3. Miami Police serves as a named plaintiff in this securities class action (the "Action"). I submit this declaration on behalf of Miami Police in support of (a) Plaintiffs' motion for final approval of the proposed Settlement and approval of the proposed Plan of Allocation; and (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. I have personal knowledge of the facts set forth in this Declaration and I could and would testify competently to them if asked to do so.

I. Miami Police's Oversight of the Action

4. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995. As the Chairman of Miami Police, I have overseen Miami Police's service as a plaintiff in this litigation.

5. Since assuming the position of Chairman of Miami Police in May of 2017, I had regular communications on behalf of Miami Police with attorneys from Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Klausner, Kaufman, Jensen & Levinson ("KKJ&L").

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[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 27, 2018 (ECF No. 5267-1) (the "Stipulation").

Prior to my appointment as Chairman, my predecessor as Chairman, Richard Nazur, supervised the initiation of this litigation. Miami Police, through my active and Mr. Nazur's continuous involvement, as well as the involvement of others as detailed below, carefully monitored, and was actively involved in all material aspects of the prosecution and resolution of the Action. Miami Police received periodic status reports from BLB&G and KKJ&L on case developments and participated in regular discussions with attorneys from BLB&G and KKJ&L concerning the prosecution of the Action, the strengths of and risks to the claims, and potential settlement. In particular, throughout the course of this Action, I and Mr. Nazur, and certain employees of Miami Police: (a) regularly communicated with BLB&G and KKJ&L by email, telephone calls, and through in-person meetings regarding the posture and progress of the case; (b) reviewed the significant pleadings and briefs filed in the Action after we became involved as a named plaintiff on behalf of investors in Volkswagen Preference Share ADRs; (c) assisted in searching for and producing documents and information requested by Defendants in the course of discovery; (d) consulted with BLB&G and KKJ&L concerning the settlement negotiations as they progressed; and (f) evaluated, approved and recommended approval of the proposed Settlement for $48,000,000 in cash.

II. Miami Police Strongly Endorses Approval of the Settlement

6. Based on its involvement throughout the prosecution and resolution of the claims asserted in the Action, Miami Police believes that the proposed Settlement is fair, reasonable, and adequate to the Settlement Class. Miami Police believes that the Settlement represents an excellent recovery for the Settlement Class, particularly considering the substantial risks of continuing to prosecute the claims in this case. Therefore, Miami Police strongly endorses approval of the Settlement by the Court.

III. Miami Police Supports Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses

7. Although the ultimate determination of Lead Counsel's request for attorneys' fees and expenses rests with the Court, Miami Police believes that Lead Counsel's request for an award of attorneys' fees in the amount of 25% of the Settlement Fund (net of expenses) is reasonable in light of the result achieved in the Action, the risks undertaken, and the quality of the work performed by Plaintiffs' Counsel on behalf of the Settlement Class. Miami Police has evaluated Lead Counsel's fee request by considering the substantial recovery obtained for the Settlement Class in this Action, the risks of the Action, and its observations of the high-quality work performed by Plaintiffs' Counsel throughout the litigation, and has authorized this fee request to the Court for its ultimate determination. Miami Police also understands that a 25% fee award is the "benchmark" for percentage attorneys' fees in common fund cases in the Ninth Circuit.

8. Miami Police further believes that Lead Counsel's Litigation Expenses are reasonable and represent costs and expenses necessary for the prosecution and resolution of the claims in the Action. Based on the foregoing, and consistent with its obligation to the Settlement Class to obtain the best result at the most efficient cost, Miami Police fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

9. Miami Police understands that reimbursement of a representative plaintiff's reasonable costs and expenses is authorized under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(4). For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, Miami Police seeks reimbursement for the costs and expenses that it incurred directly relating to its representation of the Settlement Class in the Action.

10. My primary responsibility at Miami Police involves overseeing Miami Police's operations, which includes monitoring litigation matters involving the fund, such as Miami Police's activities in the securities class actions where (as here) it has served as a named plaintiff The following employees of Miami Police also participated in the prosecution of this Action: Richard Nazur, former Chairman, and Sarah Wong, Fund Administrator.

11. Miami Police employees do not log or otherwise create records to track the time spent on employment-related tasks. As such, in preparing Miami Police's request for reimbursement of its time spent on this litigation, the employees principally involved in the litigation reviewed a detailed timeline, prepared by our legal counsel from their communications with Miami Police, time records, and calendar entries, reflecting our involvement and the time we spent on the prosecution of the case. Where applicable we also cross-referenced that timeline with our own internal email, calendars, and other records, to compile the estimate of hours spent on tasks related to the Action for which Miami Police would seek reimbursement. As such, Miami Police's time reflects only those hours that we could tie back to specific tasks (*e.g.*, reviewing pleadings, correspondence, meetings, or telephone calls with Counsel) performed in the Action.

12. The time for which Miami Police seeks reimbursement corresponds to the following phases of litigation in the Action:

Task	Richard Nazur Hours	Daniel Kerr Hours	Sarah Wong Hours
Investigation and Initiation of the Litigation	6.25		
Review of Pleadings	12.75	3.50	
Discovery	3.50	9.0	10.25
Settlement		2.50	
TOTAL	**22.50**	**15.00**	**10.25**

13. The time that Miami Police devoted to the representation of the Settlement Class in this Action was time that we otherwise would have expected to spend on other work for Miami Police and, thus, represented a cost to Miami Police. Accordingly, Miami Police seeks reimbursement of $2,387.50 for the time of the following Miami Police personnel, as follows:

Personnel	Hours	Rate[2]	Total
Richard Nazur	22.50	$50	$1,125.00
Daniel Kerr	15.00	$50	$750.00
Sarah Wong	10.25	$50	$512.50
TOTAL	**47.75**		**$2,387.50**

IV. Conclusion

14. In conclusion, Miami Police was closely involved throughout the prosecution and settlement of the claims in this Action, strongly endorses the Settlement as fair, reasonable, and adequate, and believes that it represents a significant recovery for the Settlement Class. Miami Police respectfully requests that the Court approve Plaintiffs' motion for final approval of the proposed Settlement and approval of the Plan of Allocation and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, including Miami Police's request for reimbursement of $2,387.50 for its reasonable costs and expenses incurred in prosecuting the Action on behalf of the Settlement Class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I have authority to execute this Declaration on behalf of Miami Police.

[2] The hourly rates used for purposes of this request are based on the annual compensation of the respective personnel who worked on this Action.

Executed this 3rd day of April, 2019.

Daniel Kerr
Chairman of Miami Police Relief and
Pension Fund

#1273931

Exhibit 3

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
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Attorneys for Lead Plaintiff ASHERS and Plaintiff Miami Police and Lead Counsel in the Securities Actions

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

_____/

This Document Relates To: Securities Actions

City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

_____/

MDL No. 2672 CRB (JSC)

CLASS ACTION

DECLARATION OF ALEXANDER VILLANOVA REGARDING (A) MAILING OF THE NOTICE AND CLAIM FORM; (B) PUBLICATION OF THE SUMMARY NOTICE; AND (C) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE

Judge:	Hon. Charles R. Breyer
Courtroom:	6
Date:	May 10, 2019
Time:	10:00 a.m.

I, Alexander Villanova, hereby declare under penalty of perjury as follows:

1. I am a Senior Project Manager employed by Epiq Class Action & Claims Solutions, Inc. ("Epiq"). Pursuant to the Court's November 28, 2018 Order Granting Motion for Preliminary Approval of Settlement (ECF No. 5593) (the "Preliminary Approval Order"), Epiq was authorized to act as the Claims Administrator in connection with the Settlement reached in the above-captioned action (the "Action").[1] The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

DISSEMINATION OF THE NOTICE PACKET

2. Pursuant to the Preliminary Approval Order, Epiq mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and the Proof of Claim and Release Form (the "Claim Form") (collectively, the Notice and Claim Form are referred to as the "Notice Packet"), to potential Settlement Class Members. A copy of the Notice Packet is attached hereto as Exhibit A.

3. On December 3, 2018, Epiq received files sent by Volkswagen's counsel, Sullivan & Cromwell LLP, containing 925 unique names and addresses of potential Settlement Class Members. Epiq formatted the Notice Packet, and caused it to be printed, personalized with the name and address of each potential Settlement Class Member, posted for first-class mail, postage prepaid, and mailed to these 925 potential Settlement Class Members on December 19, 2018.

4. As in most class actions of this nature, the large majority of potential Settlement Class Members are beneficial purchasers whose securities are held in "street name" – *i.e.*, the securities are purchased by brokerage firms, banks, institutions, and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. Epiq maintains and updates an internal list of the largest and most common banks, brokers, and other nominees. At the time of

[1] Unless otherwise defined in this declaration, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement, dated August 27, 2018 (the "Settlement Stipulation"), and previously filed with the Court. *See* ECF No. 5267-1.

the initial mailing, Epiq's internal broker list contained 1,335 mailing records. On December 19, 2018, Epiq caused Notice Packets to be mailed to the 1,335 mailing records contained in its internal broker list.

5. In total, 2,260 copies of the Notice Packet were mailed to potential Settlement Class Members and nominees by first-class mail on December 19, 2018.

6. The Notice directed that any persons or entities that purchased or otherwise acquired VWAG ADRs during the Class Period for the beneficial interest of a person or organization other than themselves to either: (a) provide to Epiq the names and addresses of such beneficial owners no later than seven (7) calendar days after such nominees' receipt of the Notice; or (b) request additional copies of the Notice Packet for such beneficial owners from Epiq no later than seven (7) calendar days after receipt of the Notice, and send a copy of the Notice Packet to such beneficial owners no later than seven (7) calendar days after such nominees' receipt of the additional copies of the Notice Packet.

7. Through April 3, 2019, Epiq mailed an additional 99,872 Notice Packets to potential members of the Settlement Class whose names and addresses were received from individuals, entities, or nominees requesting that Notice Packets be mailed to such persons or entities, and mailed another 115,455 Notice Packets to nominees who requested Notice Packets to forward to their customers. Each of the requests was responded to in a timely manner, and Epiq will continue to timely respond to any additional requests received.

8. As of April 3, 2019, an aggregate of 217,587 Notice Packets have been disseminated to potential Settlement Class Members and nominees by first-class mail. In addition, Epiq has re-mailed 503 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the U.S. Postal Service, including Notice Packets that were returned as undeliverable and for which Epiq was able to obtain an updated address through the U.S. Postal Service National Change of Address ("NCOA") database. As of April 3, 2019, a total of 2,083 Notice Packets remain undeliverable.

PUBLICATION OF THE SUMMARY NOTICE

9. Pursuant to the Preliminary Approval Order, Epiq caused the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice") to be published once in *Investor's Business Daily* and to be transmitted over *PR Newswire* on December 31, 2018. Attached as Exhibit B is a Confirmation of Publication attesting to the publication of the Summary Notice in *Investor's Business Daily* and a screen shot attesting to the transmittal of the Summary Notice over *PR Newswire*.

CALL CENTER SERVICES

10. Epiq reserved a toll-free phone number for this Action, 1-888-738-3759, which was set forth in the Notice, Claim Form, Summary Notice, and on the Settlement website.

11. The toll-free number connects callers with an Interactive Voice Recording ("IVR"). The IVR provides callers with pre-recorded information, including a summary of the Action and the option to request a copy of the Notice Packet. The toll-free telephone line with pre-recorded information is available 24 hours a day, 7 days a week.

12. Epiq made the IVR available on December 19, 2018, the same date Epiq began mailing the Notice Packets.

13. In addition, Monday through Friday from 6:00 a.m. to 6:00 p.m. Pacific Time (excluding official holidays), callers can speak to a live operator regarding the status of the Action and the Settlement and/or obtain answers to questions they may have about communications they receive from Epiq. During other hours, callers may leave a message for an agent to call them back.

SETTLEMENT WEBSITE

14. Epiq established and is maintaining a website dedicated to this Settlement (www.VolkswagenADRLitigation.com) to provide additional information to Settlement Class Members. Users of the website can download copies of the Notice, Claim Form, Settlement Stipulation, Preliminary Approval Order, and Complaint. The web address for the Settlement website was set forth in the Notice, Claim Form, and Summary Notice. The Settlement website was operational beginning on December 19, 2018, and is accessible 24 hours a day, 7 days a week.

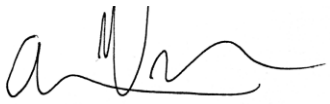
Epiq will continue operating, maintaining and, as appropriate, updating the website until the conclusion of this administration.

REQUESTS FOR EXCLUSION RECEIVED TO DATE

15. The Notice informed potential members of the Settlement Class that requests for exclusion from the Settlement Class are to be mailed or otherwise delivered to Volkswagen ADR Litigation, EXCLUSIONS, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 4390, Portland, OR 97208-4390, such that they are received by Epiq no later than April 18, 2019. The Notice also set forth the information that must be included in each request for exclusion. Epiq has been monitoring all mail delivered to that Post Office Box. Through April 3, 2019, Epiq has received nine (9) requests for exclusion. Epiq will submit a supplemental declaration after the April 18, 2019 deadline for requesting exclusion that will address all requests for exclusion received.

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

Executed on April 3, 2019, at Beaverton, Oregon.



Alexander Villanova

Exhibit A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

CLASS ACTION

This Document Relates To: Securities Actions
City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

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

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

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights may be affected by the above-captioned securities class action (the "Action") pending in the United States District Court for the Northern District of California (the "Court"), if you purchased or otherwise acquired Volkswagen Aktiengesellschaft ("VWAG") Ordinary American Depositary Receipts (CUSIP: 928662303) ("VWAG Ordinary ADRs") and/or VWAG Preferred American Depositary Receipts (CUSIP: 928662402) ("VWAG Preferred ADRs") (collectively, "VWAG ADRs") from November 19, 2010 through January 4, 2016, inclusive (the "Class Period"), and were allegedly damaged thereby.[1]

NOTICE OF SETTLEMENT: Please also be advised that the Court-appointed Lead Plaintiff, Arkansas State Highway Employees' Retirement System ("ASHERS" or "Lead Plaintiff"), and named plaintiff Miami Police Relief and Pension Fund ("Miami Police," and together with ASHERS, "Plaintiffs"), on behalf of themselves and the Settlement Class (as defined in ¶ 26 below), have reached a proposed settlement of the Action for $48,000,000 in cash that, if approved, will resolve all claims in the Action (the "Settlement").

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

If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact any of the Defendants in the Action or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (*see* ¶ 91 below).

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors in VWAG ADRs alleging, among other things, that Defendants VWAG, Volkswagen Group of America, Inc. ("VWGoA"), Volkswagen Group of America, Inc. d/b/a Volkswagen of America, Inc. ("VWoA"), Audi of America, Inc. ("AoA"), and three of their officers and directors (the "Individual Defendants")[2] violated the federal securities laws by making false and misleading statements regarding Volkswagen's business. A more detailed description of the Action is set forth in ¶¶ 11-25 below. If the Court approves the proposed Settlement, the Action will be dismissed and members of the Settlement Class (as defined in ¶ 26 below) will settle and release all Released Plaintiffs' Claims (as defined in ¶ 37 below) against Defendants and the other Defendants' Releasees (as defined in ¶ 38 below).

[1] All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated August 27, 2018 (the "Stipulation"), which is available at www.VolkswagenADRLitigation.com.

[2] The "Individual Defendants" are Martin Winterkorn ("Winterkorn"), VWAG's former CEO, Michael Horn ("Horn"), the former CEO of VWGoA, and Herbert Diess ("Diess"), a member of VWAG's Management Board. VWAG, VWGoA, VWoA, AoA, and the Individual Defendants are collectively referred to as the "Defendants." The corporate Defendants in the Action, VWAG, VWGoA, VWoA, and AoA, are collectively referred to as "Volkswagen" or "VW."

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Plaintiffs, on behalf of themselves and the Settlement Class, have agreed to settle the Action in exchange for a settlement payment of $48,000,000 in cash (the "Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (*i.e.*, the Settlement Amount plus any and all interest earned thereon (the "Settlement Fund") less (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (vi) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (the "Plan of Allocation") is set forth in ¶¶ 53-72 below.

3. **Estimate of Average Amount of Recovery Per VWAG Ordinary ADR and VWAG Preferred ADR:** Plaintiffs' damages expert estimates that the conduct alleged in the Action affected approximately 34,300,000 VWAG Ordinary ADRs and approximately 8,300,000 VWAG Preferred ADRs purchased during the Class Period. Assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses, and costs as described herein) will be approximately $1.10 per eligible VWAG Ordinary ADR and approximately $1.24 per eligible VWAG Preferred ADR. **Settlement Class Members should note, however, that the foregoing average recoveries per eligible VWAG Ordinary ADR and eligible VWAG Preferred ADR are only estimates and assume all Settlement Class Members have the same amount of losses under the Plan of Allocation.** Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and the price at which they purchased/acquired VWAG ADRs, whether they sold their VWAG ADRs, and the total number and value of valid Claims submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* ¶¶ 53-72 below) or such other plan of allocation as may be ordered by the Court.

4. **The Parties Disagree on the Average Amount of Damages Per VWAG Ordinary ADR and VWAG Preferred ADR; Plaintiffs' Estimate of Aggregate Damages to the Settlement Class:** The Parties do not agree on the average amount of damages per VWAG Ordinary ADR and VWAG Preferred ADR that would be recoverable if Plaintiffs were to prevail in the Action. Among other things, Defendants do not agree with, and expressly dispute, the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their alleged conduct. Nevertheless, based on the amounts of per-ADR inflation reflected in the Plan of Allocation, Plaintiffs' best estimate is that, if they were able to prevail in the Action, they would be able to recover a maximum of approximately $115,900,000 for all eligible VWAG Ordinary ADRs and a maximum of approximately $31,500,000 for all eligible VWAG Preferred ADRs, on behalf of the Settlement Class. Accordingly, the aggregate damages corresponding to the inflation amounts in the Plan of Allocation are approximately $147,400,000, and the Settlement reflects a recovery of approximately 33% for the Settlement Class on that basis.

These estimates are based on publicly available information concerning trading in VWAG ADRs and Plaintiffs' damages expert's calculations of the estimated amount of alleged artificial inflation in the per-security closing price of VWAG ADRs during the Class Period. Defendants do not agree with and dispute these estimates and dispute that the Settlement Class would be entitled to any recovery. Indeed, Plaintiffs faced significant risks in proving loss causation and damages. These risks include that: there may not have been any recoverable damages in reaction to the initial disclosure of Volkswagen's use of "defeat devices" on September 18, 2015; and all of the subsequent disclosure events that allegedly caused declines in the prices of the VWAG ADRs did not reveal any previously unknown information about Defendants' alleged misstatements – they only reflected the materialization of previously known risks – and might not have resulted in any damages.

5. **Attorneys' Fees and Expenses Sought:** Plaintiffs' Counsel, who have been prosecuting the Action on a wholly contingent basis, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for: (i) an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of the Settlement Fund (net of Court-approved Litigation Expenses); (ii) reimbursement of Litigation Expenses incurred by Plaintiffs' Counsel in connection with the institution, prosecution, and resolution of the claims against Defendants, in an amount not to exceed $500,000; and (iii) reimbursement of reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class in an amount not to exceed $50,000 in total. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. If the Court approves Lead Counsel's fee and expense application, the estimated average cost per eligible VWAG Ordinary ADR will be approximately $0.28 and the estimated average cost per eligible VWAG Preferred ADR will be approximately $0.32. **Please note that these amounts are only estimates.**

6. **Identification of Attorneys' Representatives:** Plaintiffs and the Settlement Class are represented by James A. Harrod, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, NY 10020, 1-800-380-8496, settlements@blbglaw.com. Further information regarding the Action, the Settlement, and this Notice may be obtained by contacting Lead Counsel or the Court-appointed Claims Administrator at: Volkswagen ADR Litigation, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 4390, Portland, OR 97208-4390, 1-888-738-3759, info@VolkswagenADRLitigation.com, www.VolkswagenADRLitigation.com.

7. **Reasons for the Settlement:** Plaintiffs' principal reason for entering into the Settlement is the substantial immediate cash benefit for the Settlement Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after contested motions, a trial of the Action, and the likely appeals that would follow a trial. This process could be expected to last several years. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
SUBMIT A CLAIM FORM *POSTMARKED* NO LATER THAN APRIL 18, 2019.	This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (as defined in ¶ 37 below) that you have against Defendants and the other Defendants' Releasees (as defined in ¶ 38 below), so it is in your interest to submit a Claim Form.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS *RECEIVED* NO LATER THAN APRIL 18, 2019.	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Defendants' Releasees concerning the Released Plaintiffs' Claims.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS *FILED OR POSTMARKED* NO LATER THAN APRIL 18, 2019.	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
GO TO A HEARING ON MAY 10, 2019 AT 10:00 A.M., AND MAIL OR FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS *FILED OR POSTMARKED* NO LATER THAN APRIL 26, 2019.	Filing a written objection and notice of intention to appear by April 26, 2019 allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
DO NOTHING.	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

WHAT THIS NOTICE CONTAINS

WHY DID I GET THIS NOTICE?

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

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to do so. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Lead Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Settlement Hearing"). *See* ¶¶ 79-80 below for details about the Settlement Hearing, including the date and location of the hearing.

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

WHAT IS THIS CASE ABOUT?

11. The Action involves allegations that, during the period from November 19, 2010 through January 4, 2016, inclusive, Defendants made misrepresentations and omissions about, among other things, a key element of Volkswagen's business: its vehicles' compliance with emissions regulations in the United States and other countries. In particular, Plaintiffs allege that Defendants violated the federal securities laws by failing to disclose that Volkswagen sold approximately 585,000 diesel vehicles in the United States and millions of diesel vehicles in other countries that were equipped with illegal "defeat devices." VWAG has admitted that the defeat devices caused the vehicles to emit nitrogen oxide ("NOx"), a regulated pollutant, at levels that complied with U.S. emissions regulations when the vehicles were being tested for regulatory compliance, but caused the vehicles to emit NOx at much higher levels that violated U.S. emissions regulations when the vehicles were being driven in normal road conditions.

12. In September 2015, a class action complaint, styled *City of St. Clair Shores Police and Fire Ret. Sys. v. Volkswagen AG, et al.*, Case No. 15-CV-1228-LMB-TCB, was filed in the United States District Court for the Eastern District of Virginia alleging violations of the federal securities laws on behalf of investors in VWAG ADRs against VWAG, VWGoA, VWoA, AoA, the Individual Defendants, and certain other current or former VWGoA employees. Several related securities class action complaints on behalf of investors in VWAG ADRs were filed in the United States District Courts for the Eastern District of Virginia, the District of New Jersey, the Eastern District of Michigan, and the Eastern District of Tennessee in September 2015–November 2015.

13. In December 2015, the United States Judicial Panel on Multidistrict Litigation ordered that the VWAG ADR class actions be transferred to the United States District Court for the Northern District of California (the "Court").

14. In January 2016, the Court consolidated the VWAG ADR class actions, appointed ASHERS as Lead Plaintiff for the Action, and approved ASHERS' selection of Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel for the Action.

15. In May 2016, Plaintiffs filed a Consolidated Securities Class Action Complaint (the "First Consolidated Complaint"). The First Consolidated Complaint asserted securities fraud claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Securities and Exchange Commission Rule 10b-5 against Defendants VWAG, VWGoA, VWoA, AoA, Winterkorn, and Diess, as well as claims under Section 20(a) of the Exchange Act against Defendants Winterkorn, Diess, Horn, and another former VWGoA employee. The First Consolidated Complaint alleged that, during the Class Period, Defendants made repeated misrepresentations and omissions about Volkswagen's vehicles' compliance with emissions regulations in the United States and other countries. In particular, the First Consolidated Complaint alleged that Defendants violated the federal securities laws by failing to disclose that Volkswagen sold approximately 585,000 diesel vehicles in the United States and millions of diesel vehicles in other countries that were equipped with illegal "defeat devices," and by representing to the public that VW diesel vehicles complied with U.S. emissions regulations and were "environmentally friendly." The First Consolidated Complaint also alleged that VWAG's financial statements failed to properly record contingent liabilities related to the emissions-cheating scheme. The First Consolidated Complaint further alleged that the prices of VWAG ADRs were artificially inflated during the Class Period as a result of those misrepresentations and omissions, and that the prices fell sharply when the truth began to be revealed in September 2015.

16. In August 2016, Defendants filed motions to dismiss the First Consolidated Complaint. In October 2016, Plaintiffs filed their omnibus opposition to Defendants' motions to dismiss, and in November 2016, Defendants filed their replies in further support of their motions to dismiss. In December 2016, the Court heard oral argument on Defendants' motions to dismiss the First Consolidated Complaint.

17. In January 2017, the Court entered an Order granting in part and denying in part Defendants' motions to dismiss the First Consolidated Complaint. The Court dismissed, without prejudice, the claims with respect to VWAG's financial statements, the claims under Section 20(a) of the Exchange Act against Defendants Diess and Horn, and the claims against the other former VWGoA employee. In all other respects, the Court denied Defendants' motions to dismiss.

18. In February 2017, Plaintiffs filed a First Amended Consolidated Securities Class Action Complaint (the "Amended Complaint" or "Complaint"). The Amended Complaint asserts claims under Section 10(b) of the Exchange Act and Rule 10b-5 against Defendants VWAG, VWGoA, VWoA, AoA, Winterkorn and Diess, and under Section 20(a) of the Exchange Act against Defendants VWAG, Winterkorn, Diess, and Horn. The Amended Complaint generally identifies the same allegedly false and misleading statements as in the First Consolidated Complaint, specifically concerning Volkswagen's vehicles' compliance with U.S. emissions regulations in the United States and other countries, that the diesel vehicles' were "environmentally friendly," and VWAG's allegedly misstated financial statements due to the emissions-cheating scheme. The Complaint's allegations provided additional details

and information based on VWAG's admissions that the defeat devices caused the affected U.S. vehicles to emit NOx, a regulated pollutant, at levels that complied with U.S. emissions regulations when the vehicles were being tested for regulatory compliance, but caused such vehicles to emit NOx at much higher levels that violated U.S. emissions regulations when the vehicles were being driven in normal road conditions, as well as additional details concerning the Individual Defendants' alleged knowledge of or reckless disregard for the impact of the emissions-cheating scheme on Volkswagen and its financial statements.

19. In March 2017, Defendants filed motions to dismiss the Amended Complaint. In May 2017, Plaintiffs filed their omnibus opposition to Defendants' motions to dismiss, and in June 2017, Defendants filed their replies in further support of their motions to dismiss. Later in June 2017, the Court heard oral arguments on Defendants' motions to dismiss the Amended Complaint.

20. In late June 2017, the Court entered an Order granting in part and denying in part Defendants' motions to dismiss the Amended Complaint. The Court dismissed, with prejudice, the claims with respect to VWAG's financial statements issued before May 2014, the claims against Defendant Diess with respect to VWAG's third quarter 2015 financial statements, and the claims against Diess under Section 20(a) of the Exchange Act. In all other respects, the Court denied Defendants' motions to dismiss.

21. In March 2017, Plaintiffs filed a motion for partial summary judgment, arguing that VWAG's guilty plea in the U.S. District Court for the Eastern District of Michigan, where it pleaded guilty to three felonies related to its diesel emissions-cheating scheme, established as a matter of law that certain of the alleged false statements at issue in the Action were knowingly false. After motion practice, where Defendants first obtained an order staying further briefing and proceedings related to Plaintiffs' summary judgment motion while their motions to dismiss the Amended Complaint were pending, Defendants filed their brief opposing the summary judgment motion in August 2017. Plaintiffs filed their reply in support of the motion in September 2017. In December 2017, the Court issued an Order granting Plaintiffs' motion for partial summary judgment with respect to one of the statements and denying the motion with respect to the other statements.

22. Discovery in the Action commenced in August 2017. The Parties served initial disclosures under Fed. R. Civ. P. 26(a)(1), served and responded to interrogatories, served document requests, and engaged in extensive correspondence and numerous meet and confers over search terms and custodians for their respective document searches and productions. While most discovery disputes were resolved by agreement of the Parties, a number of disputes were presented to the Court, including Plaintiffs' request for access to the documents produced by Defendants in the related multidistrict litigation ("MDL") cases, which the Court denied; Plaintiffs' motions to compel the Volkswagen Defendants to produce certain documents concerning European Union emissions standards and the "acoustic function" technology, which the Court granted; Plaintiffs' motion to compel Defendants to produce the list of document custodians from the MDL cases and documents from custodians in addition to those agreed by Defendants, which the Court granted in part and denied in part; and Defendants' motion to compel Plaintiffs to search document custodians in addition to those agreed by Plaintiffs, which the Court denied. Plaintiffs also filed an unopposed motion to depose two former VWGoA employees who are in federal prison, which the Court granted. In connection with discovery, approximately 50 custodians were negotiated by the Parties and more than 4 million pages of documents were produced by Defendants, including documents from approximately 50 custodians negotiated by the Parties. Review of the documents produced in discovery was underway at the time the Settlement was reached.

23. Through the exchange of information concerning both damages and the merits of the case, counsel for Plaintiffs and Defendants engaged in a series of arm's-length negotiations pursuant to which the Parties reached an agreement in principle to settle and release all claims against Defendants in the Action in return for a cash payment of $48,000,000 to be paid by VWAG on behalf of all Defendants for the benefit of the Settlement Class, subject to the execution of a formal stipulation and agreement of settlement and related papers.

24. On August 27, 2018, the Parties entered into a Stipulation and Agreement of Settlement (the "Stipulation"), which sets forth the terms and conditions of the Settlement. The Stipulation can be viewed at www.VolkswagenADRLitigation.com.

25. On November 28, 2018, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

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

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

> all persons and entities in the U.S. or elsewhere who purchased or otherwise acquired VWAG Ordinary American Depositary Receipts (CUSIP: 928662303) and/or VWAG Preferred American Depositary Receipts (CUSIP: 928662402) from November 19, 2010 through January 4, 2016, inclusive (the "Class Period"), and who were allegedly damaged thereby.

Excluded from the Settlement Class are: (i) Defendants; (ii) any person who was an Officer or director of VWAG, VWGoA, VWoA, or AoA during the Class Period; (iii) the Immediate Family Members of all individual persons excluded in (i) or (ii); (iv) the parents, subsidiaries, and affiliates of VWAG, VWGoA, VWoA, or AoA; (v) any entity in which any person or entity excluded in (i), (ii), (iii) or (iv) has, or had during the Class Period, a controlling interest; and (vi) the legal representatives, heirs, affiliates, successors, or assigns of any such excluded person or entity. Also excluded from the Settlement Class are any persons or entities who exclude themselves by submitting a request for exclusion in accordance with the requirements set forth in this Notice. *See* "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?" on page 15 below. For the avoidance of doubt, VWAG ordinary and preferred shares are not eligible Settlement Class securities, and purchases or other acquisitions of those securities do not establish membership in the Settlement Class.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN *POSTMARKED* NO LATER THAN APRIL 18, 2019.

WHAT ARE PLAINTIFFS' REASONS FOR THE SETTLEMENT?

27. Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit, as indicated by the Court's grant of partial summary judgment for Plaintiffs and by Lead Counsel's review and analysis of both publicly available information and VW documents produced in discovery. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. To develop a complete evidentiary record, Plaintiffs would have to seek testimony from current and former VWAG employees located in Germany, where civil plaintiffs' right to obtain pretrial discovery is significantly more limited than in the United States. To prevail at trial, Plaintiffs would be required to prove not only that Defendants' statements about VW vehicles' compliance with emissions regulations were false, but also that Defendants knew that their statements were false when made or were reckless in making the statements, and that the revelation of the truth about Defendants' false and misleading statements caused declines in the prices of VWAG ADRs. In addition, Plaintiffs would have to establish the amount of Class-wide damages.

28. Defendants would have had substantial arguments to make concerning each of these issues. For example, Defendants would have argued that many of the alleged misstatements they made were immaterial because they vaguely referred to VW's "environmental friendliness" without referring to compliance with emissions regulations. Defendants also would have argued that Plaintiffs could not prove intent to defraud, or "scienter," because VW's senior management, including the Individual Defendants, did not know about the emissions-related misconduct. In addition, Defendants would have argued that the declines in VWAG's ADR prices were not caused by revelations that VW vehicles contained defeat devices, and that, even if some portion of the declines was caused by these revelations, any resulting damages to Plaintiffs and the Settlement Class were small. Had any of these arguments been accepted in whole or in part, they could have eliminated or, at a minimum, drastically limited any potential recovery.

29. Further, in order to obtain any recovery for the Class, Plaintiffs would have to prevail at several stages, including class certification, summary judgment, and trial, and even if they prevailed at those stages, would then have to prevail on the appeals that were likely to follow. Thus, there were significant risks attendant to the continued prosecution of the Action, and there was no guarantee that further litigation would have resulted in a higher recovery, or any recovery at all.

30. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Settlement Class, Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class. Plaintiffs and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely $48,000,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller recovery or no recovery after summary judgment, trial, and appeals, possibly years in the future.

31. Defendants have denied all claims asserted against them in the Action, including any claim that damages were suffered by any members of the Settlement Class, and have also denied having engaged in any wrongdoing or violation of law of any kind whatsoever, except as stated in VWAG's plea agreement in the separate criminal case described in ¶ 21 above. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

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

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

33. As a Settlement Class Member, you are represented by Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?" on page 15 below.

34. If you are a Settlement Class Member and do not wish to remain a Settlement Class Member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?" on page 15 below.

35. If you are a Settlement Class Member and you wish to object to the Settlement, the Plan of Allocation, or Lead Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, and if you do not exclude yourself from the Settlement Class, you may present your objections by following the instructions in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?" on page 15 below.

36. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and on behalf of any other person or entity legally entitled to bring Released Plaintiffs' Claims (as defined in ¶ 37 below) on behalf of the respective Settlement Class Member in such capacity only, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against Defendants and the Defendants' Releasees (as defined in ¶ 38 below), and shall forever be barred and enjoined from commencing, instituting, maintaining, prosecuting, or continuing to prosecute any or all of the Released Plaintiffs' Claims against any of the Defendants or the Defendants' Releasees. This Release shall not apply to any Excluded Plaintiffs' Claims.

37. "Released Plaintiffs' Claims" means any and all claims, debts, demands, rights, and causes of action of every nature and description (including, but not limited to, any claims for damages, interest, attorney's fees, expert, or consulting fees, and any other costs, expenses, or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or un-matured, whether class or individual in nature, that Plaintiffs or any other member of the Settlement Class: (i) asserted in the Complaint, or (ii) could have asserted in any forum that concern, arise out of, relate to, involve, or are based upon any of the allegations, circumstances, events, transactions, facts, matters, representations, or omissions involved, set forth, or

referred to in the Complaint and that relate to the purchase, acquisition, or ownership of VWAG ADRs during the Class Period. Released Plaintiffs' Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims of any person or entity who submits a request for exclusion that is accepted by the Court ("Excluded Plaintiffs' Claims").

38. "Defendants' Releasees" means Defendants, together with their past, present, or future affiliates, divisions, joint ventures, assigns, assignees, direct or indirect parents or subsidiaries, controlling shareholders, successors, predecessors, and entities in which a Defendant has a controlling interest, and each of their past, present, or future officers, directors, agents, employees, partners, attorneys, controlling shareholders, advisors, investment advisors, auditors, accountants, insurers (including reinsurers and co-insurers), and Immediate Family Members, and the legal representatives, heirs, successors in interest, or assigns of any of the foregoing.

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

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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

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

41. "Released Defendants' Claims" means any and all claims, debts, demands, rights, and causes of action of every nature and description (including, but not limited to, any claims for damages, interest, attorney's fees, expert, or consulting fees, and any other costs, expenses, or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or un-matured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendants. Released Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; or (ii) any claims against any person or entity who submits a request for exclusion from the Settlement Class that is accepted by the Court ("Excluded Defendants' Claims").

42. "Plaintiffs' Releasees" means Plaintiffs, all other plaintiffs in the Action, all other Settlement Class Members, and their respective attorneys, together with their past, present, or future affiliates, divisions, joint ventures, assigns, assignees, direct or indirect parents or subsidiaries, controlling shareholders, successors, predecessors, and entities in which a Settlement Class Member has a controlling interest, and each of their past, present, or future officers, directors, agents, employees, partners, attorneys, controlling shareholders, trusts, trustees, advisors, investment advisors, auditors, accountants, insurers (including reinsurers and co-insurers), and Immediate Family Members, and the legal representatives, heirs, successors in interest, or assigns of any of the foregoing.

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

43. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation ***postmarked*** **no later than April 18, 2019**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, www.VolkswagenADRLitigation.com, or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-888-738-3759 or by emailing the Claims Administrator at info@VolkswagenADRLitigation.com. Please retain all records of your ownership of and transactions in VWAG ADRs, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT BE? WHAT IS THE PROPOSED PLAN OF ALLOCATION?

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

45. Pursuant to the Settlement, Defendants have agreed to pay or cause to be paid $48,000,000 in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." If the Settlement is approved by the Court and the Effective Date occurs, the "Net Settlement Fund" (that is, the Settlement Fund less (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to Settlement Class Members who submit valid Claims, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

46. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

47. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf is entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the plan of allocation.

48. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

49. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form ***postmarked*** **on or before April 18, 2019** shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs' Claims (as defined in ¶ 37 above) against Defendants and the other Defendants' Releasees (as defined in ¶ 38 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs' Claims against any of the Defendants or the other Defendants' Releasees, whether or not such Settlement Class Member submits a Claim.

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

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

52. Only Settlement Class Members or persons authorized to submit Claims on their behalf will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities who are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claims.

PROPOSED PLAN OF ALLOCATION

53. The Plan of Allocation is not a formal damage analysis. Rather, the objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing. The calculations made under the Plan of Allocation are not intended to

be estimates of, or indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations under the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants under the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

54. In developing the Plan of Allocation, Plaintiffs' damages expert calculated the estimated amounts of alleged artificial inflation in the per-ADR closing prices of VWAG Ordinary ADRs and VWAG Preferred ADRs, which allegedly were proximately caused by Defendants' alleged materially false and misleading statements and omissions. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Plaintiffs' damages expert considered (i) price changes in VWAG Ordinary ADRs and VWAG Preferred ADRs due to certain allegedly materially false and misleading public announcements and other representations and omissions, adjusting for price changes that were attributable to market, industry, or currency forces; (ii) price changes in VWAG Ordinary ADRs and VWAG Preferred ADRs in reaction to certain public announcements and other statements and events regarding Volkswagen in which the alleged misrepresentations and omissions were alleged to have been revealed to the market, adjusting for price changes that were attributable to market, industry, or currency forces; (iii) the allegations in the Complaint; and (iv) the evidence developed in support of those allegations, as advised by Lead Counsel. The estimated alleged artificial inflation in VWAG Ordinary ADRs is shown in Table A, and the estimated alleged artificial inflation in VWAG Preferred ADRs is shown in Table B, both attached at the end of this Notice.

55. In order to have recoverable damages, the alleged misrepresentations or omissions must be the cause of the decline in the price of the VWAG Ordinary ADRs and/or the VWAG Preferred ADRs. In this case, Plaintiffs allege that Defendants made false statements and omitted material facts during the period from November 19, 2010 through and including the close of trading on January 4, 2016, which had the effect of artificially inflating the prices of VWAG Ordinary ADRs and VWAG Preferred ADRs. Alleged corrective disclosures removed alleged artificial inflation from the prices of VWAG Ordinary ADRs and VWAG Preferred ADRs on September 18, 2015 (VWAG Ordinary ADRs only), September 21, 2015, September 22, 2015, September 25, 2015, October 2, 2015, October 15, 2015, November 2, 2015, and January 5, 2016.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

56. Based on the formulas in ¶¶ 57 and 58 below, a "Recognized Loss Amount" or "Recognized Gain Amount" will be calculated for each purchase or acquisition of VWAG Ordinary ADRs or VWAG Preferred ADRs during the Class Period that is listed in the Proof of Claim Form and for which adequate documentation is provided.[3] As further explained in ¶ 59 below, for VWAG ADRs purchased or otherwise acquired during the period from November 19, 2010 through and including the close of trading on April 30, 2014, the Recognized Loss Amounts and Recognized Gain Amounts calculated under ¶¶ 57 and 58 will be reduced by 50 percent (or one-half).

57. For each VWAG Ordinary ADR purchased or otherwise acquired during the period from November 19, 2010 through and including the close of trading on January 4, 2016, and

(a) Sold during the period from November 19, 2010 through and including the close of trading on January 4, 2016, a "Recognized Amount" will be calculated, which will be ***the lesser of***: (i) the amount of alleged artificial inflation per VWAG Ordinary ADR on the date of purchase/acquisition as stated in Table A attached to the end of this Notice ***minus*** the amount of alleged artificial inflation per VWAG Ordinary ADR on the date of the sale as stated in Table A; or (ii) the purchase/acquisition price (excluding all fees, taxes, and commissions) ***minus*** the sale price (excluding all fees, taxes, and commissions). If the Recognized Amount calculated under the preceding sentence is a positive number, that amount will be the "Recognized Loss Amount" for such VWAG Ordinary ADRs; if the Recognized Amount calculated under the preceding sentence is a negative number or zero, that amount will the "Recognized Gain Amount" for such VWAG Ordinary ADRs.[4]

(b) Sold during the period from January 5, 2016 through and including the close of trading on April 1, 2016, a Recognized Loss Amount will be calculated, which will be ***the least of***: (i) the amount of alleged artificial inflation per VWAG Ordinary ADR on the date of purchase/acquisition as stated in Table A; (ii) the purchase/acquisition price (excluding all fees, taxes, and commissions) ***minus*** the sale price (excluding all fees, taxes, and commissions); or (iii) the purchase/acquisition price

[3] Any transactions in VWAG Ordinary ADRs or VWAG Preferred ADRs executed outside regular trading hours for the U.S. financial markets will be deemed to have occurred during the next regular trading session.

[4] For purposes of determining the "lesser" of two negative values under ¶ 57(a), the value closest to zero will be deemed to be the "lesser" value. In addition, "Recognized Gain Amounts" calculated under ¶ 57(a) will be expressed as positive values for purposes of determining a Claimant's Recognized Claim under the Plan of Allocation.

(excluding all fees, taxes, and commissions) ***minus*** the average closing price for VWAG Ordinary ADRs between January 5, 2016 and the date of sale as stated in Table C attached to the end of this Notice. If the Recognized Loss Amount calculated under the preceding sentence is a negative number or zero, that amount will be zero.

(c) Held as of the close of trading on April 1, 2016, a Recognized Loss Amount will be calculated, which will be ***the lesser of***: (i) the amount of alleged artificial inflation per VWAG Ordinary ADR on the date of purchase/acquisition as stated in Table A; or (ii) the purchase/acquisition price (excluding all fees, taxes, and commissions) ***minus*** $27.48.[5] If the Recognized Loss Amount calculated under the preceding sentence is a negative number or zero, that amount will be zero.

58. For each VWAG Preferred ADR purchased or otherwise acquired during the period from November 19, 2010 through and including the close of trading on January 4, 2016, and

(a) Sold during the period from November 19, 2010 through and including the close of trading on January 4, 2016, a "Recognized Amount" will be calculated, which will be ***the lesser of***: (i) the amount of alleged artificial inflation per VWAG Preferred ADR on the date of purchase/acquisition as stated in Table B attached to the end of this Notice ***minus*** the amount of alleged artificial inflation per VWAG Preferred ADR on the date of the sale as stated in Table B; or (ii) the purchase/acquisition price (excluding all fees, taxes, and commissions) ***minus*** the sale price (excluding all fees, taxes, and commissions). If the Recognized Amount calculated under the preceding sentence is a positive number, that amount will be the "Recognized Loss Amount" for such VWAG Preferred ADRs; if the Recognized Amount calculated under the preceding sentence is a negative number or zero, that amount will the "Recognized Gain Amount" for such VWAG Preferred ADRs.[6]

(b) Sold during the period from January 5, 2016 through and including the close of trading on April 1, 2016, a Recognized Loss Amount will be calculated, which will be ***the least of***: (i) the amount of alleged artificial inflation per VWAG Preferred ADR on the date of purchase/acquisition as stated in Table B; (ii) the purchase/acquisition price (excluding all fees, taxes, and commissions) ***minus*** the sale price (excluding all fees, taxes, and commissions); or (iii) the purchase/acquisition price (excluding all fees, taxes, and commissions) ***minus*** the average closing price for VWAG Preferred ADRs between January 5, 2016 and the date of sale as stated in Table D attached to the end of this Notice. If the Recognized Loss Amount calculated under the preceding sentence is a negative number or zero, that amount will be zero.

(c) Held as of the close of trading on April 1, 2016, a Recognized Loss Amount will be calculated, which will be ***the lesser of***: (i) the amount of alleged artificial inflation per VWAG Preferred ADR on the date of purchase/acquisition as stated in Table B; or (ii) the purchase/acquisition price (excluding all fees, taxes, and commissions) ***minus*** $24.25.[7] If the Recognized Loss Amount calculated under the preceding sentence is a negative number or zero, that amount will be zero.

59. In this case, Plaintiffs initially alleged that Defendants issued false statements and omitted material facts from November 19, 2010 through January 4, 2016, inclusive (the alleged Class Period) that artificially inflated the prices of VWAG Ordinary ADRs and VWAG Preferred ADRs. The Court, in its June 28, 2017 Order Granting In Part and Denying In Part Defendants' Motions to Dismiss the First Amended Consolidated Securities Class Action Complaint (ECF No. 3392), however, permanently dismissed Plaintiffs' allegations concerning Defendants' alleged failure to record a provision or disclose a contingent liability in VWAG's financial statements for the period before May 2014, on the basis that Plaintiffs' scienter allegations concerning the period prior to May 2014 were inadequate. This dismissal removed a category of allegedly false statements and a theory of liability for the portion of the Class Period prior to May 2014 and reflected a more generalized risk to Plaintiffs' ability to prove scienter for the portion of

[5] Pursuant to Section 21D(e)(1) of the Exchange Act, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of VWAG ADRs during the "90-day look-back period," January 5, 2016 through and including the close of trading on April 1, 2016. The mean (average) closing price for VWAG Ordinary ADRs during this 90-day look-back period was $27.48.

[6] For purposes of determining the "lesser" of two negative values under ¶ 58(a), the value closest to zero will be deemed to be the "lesser" value. In addition, "Recognized Gain Amounts" calculated under ¶ 58(a) will be expressed as positive values for purposes of determining a Claimant's Recognized Claim under the Plan of Allocation.

[7] As explained in footnote 5 above, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of the security during the 90-day look-back period, January 5, 2016 through and including the close of trading on April 1, 2016. The mean (average) closing price for VWAG Preferred ADRs during this 90-day look-back period was $24.25.

the Class Period prior to May 2014 on all of their remaining claims. To account for the significant risks on the portion of the claims relating to purchases or acquisitions prior to May 2014, for VWAG ADRs purchased or otherwise acquired during the period from November 19, 2010 through and including the close of trading on April 30, 2014, the Recognized Loss Amounts and Recognized Gain Amounts calculated under ¶¶ 57 and 58 above will be reduced by 50 percent (or one-half).

ADDITIONAL PROVISIONS

60. **FIFO Matching:** If a Settlement Class Member made more than one purchase/acquisition or sale of VWAG Ordinary ADRs and/or VWAG Preferred ADRs during the Class Period, all purchases/acquisitions and sales will be matched on a First In, First Out ("FIFO") basis for each respective security. Class Period sales will be matched first against any holdings of that security at the beginning of the Class Period, and then against purchases/acquisitions of that security in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

61. **"Purchase/Sale" Dates:** Purchases or acquisitions and sales of VWAG ADRs will be deemed to have occurred on the "contract" or "trade" date, as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance, or operation of law of VWAG ADRs during the Class Period will not be deemed a purchase or acquisition of VWAG ADRs for the calculation of an Authorized Claimant's Recognized Loss or Gain Amount, nor will the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of any VWAG ADRs unless: (i) the donor or decedent purchased or otherwise acquired the VWAG ADRs during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to the VWAG ADRs; and (iii) it is specifically provided in the instrument of gift or assignment that the receipt or grant be deemed an assignment of all claims relating to the purchase/acquisition of the VWAG ADRs.

62. **Short Sales:** The date of covering a "short sale" is deemed to be the date of purchase or acquisition of the VWAG ADRs. The date of a "short sale" is deemed to be the date of sale of the VWAG ADRs. Under the Plan of Allocation, however, the Recognized Loss or Gain Amount on "short sales" is zero and the purchases covering "short sales" is zero.

63. In the event that a Claimant has an opening short position in VWAG ADRs, the earliest purchases or acquisitions of like VWAG ADRs during the Class Period will be matched against such opening short position in the respective security, and not be entitled to a recovery, until that short position is fully covered.

64. **Option Contracts:** Option contracts are not securities eligible to participate in the Settlement. With respect to VWAG ADRs purchased or sold through the exercise of an option, the purchase/sale date of the VWAG ADR is the exercise date of the option, and the purchase/sale price of the VWAG ADR is the exercise price of the option.

65. **Calculation of Claimant's "Recognized Claim":** A Claimant's "Recognized Claim" under the Plan of Allocation will be the sum of the Claimant's Recognized Loss Amounts *minus* the sum of the Claimant's Recognized Gain Amounts, unless that calculation results in a negative number (or zero), in which case the Claimant's Recognized Claim under the Plan of Allocation will be zero.

66. **Market Gains and Losses:** The Claims Administrator will determine if the Claimant had a "Market Gain" or a "Market Loss" with respect to his, her, or its overall transactions in VWAG ADRs during the Class Period.

67. For purposes of determining whether a Claimant had a "Market Gain" with respect to his, her, or its overall transactions in VWAG ADRs during the Class Period or suffered a "Market Loss," the Claims Administrator will determine the difference between (i) the Claimant's Total Purchase Amount[8] and (ii) the sum of the Claimant's Total Sales Proceeds[9] and the Claimant's Holding Value.[10] If the Claimant's Total Purchase Amount minus the sum of the Claimant's Total Sales Proceeds and Holding Value is a positive number, that number will be the Claimant's "Market Loss"; if the number is a negative number or zero, that number will be the Claimant's "Market Gain."

[8] The "Total Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes, and commissions) for all VWAG Ordinary ADRs and/or VWAG Preferred ADRs purchased/acquired during the Class Period.

[9] The Claims Administrator shall match any sales of VWAG Ordinary ADRs and/or VWAG Preferred ADRs during the Class Period first against the Claimant's opening position in the like security (the proceeds of those sales will not be considered for purposes of calculating Market Gains or Market Losses). The total amount received (excluding all fees, taxes, and commissions) for sales of the remaining VWAG ADRs sold during the Class Period is the "Total Sales Proceeds."

[10] The Claims Administrator will ascribe a "Holding Value" of (i) $28.34 to each VWAG Ordinary ADR purchased/acquired during the Class Period that was still held as of the close of trading on January 4, 2016 and (ii) $26.16 to each VWAG Preferred ADR purchased/acquired during the Class Period that was still held as of the close of trading on January 4, 2016.

68. To the extent a Claimant had an overall Market Gain with respect to his, her, or its overall transactions in VWAG ADRs during the Class Period, the value of the Claimant's Recognized Claim will be zero, and the Claimant will in any event be bound by the Settlement. To the extent that a Claimant suffered an overall Market Loss with respect to his, her, or its overall transactions in VWAG ADRs during the Class Period, but that Market Loss was less than the total Recognized Claim calculated above, then the Claimant's Recognized Claim will be limited to the amount of the Market Loss, and the Claimant will in any event be bound by the Settlement.

69. **Calculation of "Distribution Amount":** The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a "Distribution Amount" will be calculated for each Authorized Claimant, which will be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. If an Authorized Claimant's Distribution Amount calculates to less than $10.00, it will not be included in the calculation and no distribution will be made to the Authorized Claimant.

70. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund nine months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator will conduct a second distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for the second distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least $10.00 from the second distribution. Additional distributions to Authorized Claimants who have cashed their prior checks and who would receive at least $10.00 on the additional distributions may occur if Lead Counsel, in consultation with the Claims Administrator, determines that additional distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for the additional distributions, would be cost-effective. When Lead Counsel, in consultation with the Claims Administrator, determines that the further distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to the Investor Protection Trust, a nonprofit organization devoted to investor education.

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

72. The Plan of Allocation presented in this Notice is the plan that is being proposed to the Court for its approval by Plaintiffs after consultation with their damages expert. The Court may approve this Plan of Allocation as proposed, or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the Settlement website, www.VolkswagenADRLitigation.com.

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

73. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Settlement Class, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of the Settlement Fund (net of Court-approved Litigation Expenses). At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses incurred by Plaintiffs' Counsel in an amount not to exceed $500,000, and for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class in an aggregate amount not to exceed $50,000.

74. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

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

75. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails a written Request for Exclusion from the Settlement Class, addressed to Volkswagen ADR Litigation, EXCLUSIONS, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 4390, Portland, OR 97208-4390. The exclusion request must be ***received*** **no later than April 18, 2019**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities the name and telephone number of the appropriate contact person; (ii) state that such person or entity "requests exclusion from the Settlement Class in *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation – Securities Actions*, MDL No. 2672 CRB (JSC)"; (iii) state (a) the number of VWAG Ordinary ADRs and/or VWAG Preferred ADRs that the person or entity requesting exclusion owned as of the opening of trading on November 19, 2010, and (b) the number of VWAG Ordinary ADRs and/or VWAG Preferred ADRs that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period (*i.e.*, from November 19, 2010 through January 4, 2016, inclusive), as well as the dates, number of VWAG ADRs, and prices of each such purchase/acquisition and/or sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

76. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants or the other Defendants' Releasees. Excluding yourself from the Settlement Class is the only option that allows you to be part of any other current or future lawsuit against any of the Defendants or any of the other Defendants' Releasees concerning the Released Plaintiffs' Claims. Please note, however, if you decide to exclude yourself from the Settlement Class, you may be time-barred from asserting the claims covered by the Action by a statute of repose.

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

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

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

79. **Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Settlement Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.** Please note: The date and time of the Settlement Hearing may change without further written notice to the Settlement Class. You should monitor the Court's docket and the Settlement website, www.VolkswagenADRLitigation.com, before making plans to attend the Settlement Hearing. You may also confirm the date and time of the Settlement Hearing by contacting Lead Counsel.

80. The Settlement Hearing will be held on May 10, 2019, at 10:00 a.m., before the Honorable Charles R. Breyer at the United States District Court for the Northern District of California, Courtroom 6 of the Phillip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

81. You can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the proposed Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

82. You may object to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses in writing. As described further below, you may also appear at the Settlement Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. Any Settlement Class Member who does not request

exclusion may object. Your objection and supporting papers must clearly identify the case name and action number, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation – Securities Actions*, MDL No. 2672 CRB (JSC). You must file any written objection, together with copies of all other papers and briefs supporting the objection, by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, at the address set forth below, or by filing them in person at any location of the United States District Court for the Northern District of California. Any objections must be ***filed or postmarked*** **on or before April 18, 2019**.

United States District Court
Northern District of California
Class Action Clerk
Phillip Burton Federal Building & U.S. Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

83. Any objection (i) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (ii) must state whether the objector is represented by counsel and, if so, the name, address, and telephone number of the objector's counsel; (iii) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (iv) must include documents sufficient to prove membership in the Settlement Class, consisting of documents showing the number of VWAG Ordinary ADRs and/or VWAG Preferred ADRs that the objector (a) owned as of the opening of trading on November 19, 2010, and (b) purchased/acquired and/or sold during the Class Period (*i.e.*, from November 19, 2010 through January 4, 2016, inclusive), as well as the dates, number of VWAG ADRs, and prices for each such purchase/acquisition and sale. Documentation establishing membership in the Settlement Class must consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement.

84. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

85. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file a written objection in accordance with the procedures described above, unless the Court orders otherwise.

86. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you timely file a written objection as described above, you must also mail a notice of appearance to the Class Action Clerk, United States District Court for the Northern District of California, at the address set forth in ¶ 82 above, or file it in person at any location of the United States District Court for the Northern District of California. Any notice of appearance must be ***filed or postmarked*** **on or before April 26, 2019**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

87. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must mail a notice of appearance to the Class Action Clerk, United States District Court for the Northern District of California, at the address set forth in ¶ 82 above, or file it in person at any location of the United States District Court for the Northern District of California. Any notice of appearance by an attorney must be ***filed or postmarked*** **on or before April 26, 2019**.

88. The Settlement Hearing may be adjourned by the Court without further written notice to the Settlement Class. If you plan to attend the Settlement Hearing, you should confirm the date and time with Lead Counsel.

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

WHAT IF I BOUGHT VWAG ADRs ON SOMEONE ELSE'S BEHALF?

90. If you purchased or otherwise acquired VWAG Ordinary ADRs (CUSIP: 928662303) and/or VWAG Preferred ADRs (CUSIP: 928662402) from November 19, 2010 through January 4, 2016, inclusive, for the beneficial interest of persons or organizations other than yourself, you must either (i) within seven calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (ii) within seven calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator. If you choose the second option, the Claims Administrator will send a copy of the Notice Packet to the beneficial owners. Upon full compliance with these directions, nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Claim Form may also be obtained from the website maintained by the Claims Administrator, www.VolkswagenADRLitigation.com, by calling the Claims Administrator toll-free at 1-888-738-3759, or by emailing the Claims Administrator at info@VolkswagenADRLitigation.com.

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

91. This Notice summarizes the proposed Settlement. For more detailed information about the terms and conditions of the Settlement, and other matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be reviewed by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court, United States District Court for the Northern District of California, Phillip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, www.VolkswagenADRLitigation.com.

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

Volkswagen ADR Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 4390
Portland, OR 97208-4390
1-888-738-3759
info@VolkswagenADRLitigation.com
www.VolkswagenADRLitigation.com

and/or

James A. Harrod, Esq.
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
1-800-380-8496
settlements@blbglaw.com

PLEASE DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS, OR THEIR COUNSEL REGARDING THIS NOTICE, THE SETTLEMENT, OR THE CLAIMS PROCESS.

Dated: December 19, 2018

By Order of the Court
United States District Court
Northern District of California

TABLE A

Estimated VWAG Ordinary ADR Alleged Artificial Inflation from November 19, 2010 to January 4, 2016

Transaction Date	Inflation Per Ordinary ADR
November 19, 2010 – January 2, 2011	$1.22
January 3, 2011 – January 2, 2012	$2.85
January 3, 2012 – January 1, 2013	$4.97
January 2, 2013 – January 1, 2014	$7.72
January 2, 2014 – January 1, 2015	$10.81
January 2, 2015 – September 17, 2015	$13.54
September 18, 2015 – September 20, 2015	$13.27
September 21, 2015	$8.28
September 22, 2015 – September 24, 2015	$5.27
September 25, 2015 – October 1, 2015	$3.47
October 2, 2015 – October 14, 2015	$2.41
October 15, 2015 – November 1, 2015	$0.95
November 2, 2015 – January 4, 2016	$0.47

TABLE B

Estimated VWAG Preferred ADR Alleged Artificial Inflation from November 19, 2010 to January 4, 2016

Transaction Date	Inflation Per Preferred ADR
November 19, 2010 – January 2, 2011	$1.30
January 3, 2011 – January 2, 2012	$3.05
January 3, 2012 – January 1, 2013	$5.32
January 2, 2013 – January 1, 2014	$8.26
January 2, 2014 – January 1, 2015	$11.56
January 2, 2015 – September 20, 2015	$14.48
September 21, 2015	$8.91
September 22, 2015 – September 24, 2015	$4.74
September 25, 2015 – October 1, 2015	$2.86
October 2, 2015 – October 14, 2015	$1.70
October 15, 2015 – November 1, 2015	$0.31
November 2, 2015 – January 4, 2016	$0.21

TABLE C

VWAG Ordinary ADR Closing Prices and Average Closing Prices
January 5, 2016 – April 1, 2016

Date	Closing Price	Average Closing Price Between January 5, 2016 and Date Shown	Date	Closing Price	Average Closing Price Between January 5, 2016 and Date Shown
1/5/2016	$28.34	$28.34	2/19/2016	$26.11	$26.62
1/6/2016	$28.14	$28.24	2/22/2016	$26.99	$26.63
1/7/2016	$26.85	$27.78	2/23/2016	$26.61	$26.63
1/8/2016	$27.31	$27.66	2/24/2016	$26.09	$26.61
1/11/2016	$27.85	$27.70	2/25/2016	$25.91	$26.59
1/12/2016	$27.88	$27.73	2/26/2016	$26.51	$26.59
1/13/2016	$27.93	$27.76	2/29/2016	$27.42	$26.61
1/14/2016	$27.80	$27.76	3/1/2016	$28.41	$26.66
1/15/2016	$26.43	$27.61	3/2/2016	$29.15	$26.72
1/19/2016	$26.49	$27.50	3/3/2016	$29.71	$26.79
1/20/2016	$25.86	$27.35	3/4/2016	$30.23	$26.88
1/21/2016	$26.90	$27.31	3/7/2016	$29.40	$26.94
1/22/2016	$27.20	$27.31	3/8/2016	$27.99	$26.96
1/25/2016	$26.51	$27.25	3/9/2016	$28.67	$27.00
1/26/2016	$27.21	$27.25	3/10/2016	$28.16	$27.02
1/27/2016	$27.11	$27.24	3/11/2016	$29.17	$27.07
1/28/2016	$26.84	$27.21	3/14/2016	$28.57	$27.10
1/29/2016	$26.42	$27.17	3/15/2016	$28.46	$27.13
2/1/2016	$26.21	$27.12	3/16/2016	$29.34	$27.17
2/2/2016	$25.59	$27.04	3/17/2016	$29.36	$27.21
2/3/2016	$25.77	$26.98	3/18/2016	$29.08	$27.25
2/4/2016	$25.94	$26.93	3/21/2016	$29.00	$27.28
2/5/2016	$26.42	$26.91	3/22/2016	$29.80	$27.33
2/8/2016	$25.34	$26.85	3/23/2016	$28.95	$27.36
2/9/2016	$24.90	$26.77	3/24/2016	$28.45	$27.38
2/10/2016	$24.94	$26.70	3/28/2016	$28.40	$27.40
2/11/2016	$25.14	$26.64	3/29/2016	$28.49	$27.42
2/12/2016	$25.00	$26.58	3/30/2016	$29.05	$27.44
2/16/2016	$26.37	$26.57	3/31/2016	$28.98	$27.47
2/17/2016	$27.41	$26.60	4/1/2016	$28.25	$27.48
2/18/2016	$27.63	$26.64			

TABLE D

VWAG Preferred ADR Closing Prices and Average Closing Prices
January 5, 2016 – April 1, 2016

Date	Closing Price	Average Closing Price Between January 5, 2016 and Date Shown	Date	Closing Price	Average Closing Price Between January 5, 2016 and Date Shown
1/5/2016	$26.16	$26.16	2/19/2016	$22.68	$23.68
1/6/2016	$25.59	$25.87	2/22/2016	$23.52	$23.67
1/7/2016	$24.79	$25.51	2/23/2016	$22.90	$23.65
1/8/2016	$24.90	$25.36	2/24/2016	$22.06	$23.60
1/11/2016	$25.82	$25.45	2/25/2016	$22.04	$23.56
1/12/2016	$26.08	$25.56	2/26/2016	$22.62	$23.53
1/13/2016	$25.90	$25.61	2/29/2016	$23.16	$23.52
1/14/2016	$25.51	$25.59	3/1/2016	$24.60	$23.55
1/15/2016	$24.25	$25.44	3/2/2016	$25.20	$23.59
1/19/2016	$23.98	$25.30	3/3/2016	$25.56	$23.64
1/20/2016	$22.99	$25.09	3/4/2016	$26.45	$23.71
1/21/2016	$24.00	$25.00	3/7/2016	$25.81	$23.76
1/22/2016	$24.52	$24.96	3/8/2016	$24.05	$23.76
1/25/2016	$23.82	$24.88	3/9/2016	$24.87	$23.79
1/26/2016	$24.45	$24.85	3/10/2016	$24.50	$23.80
1/27/2016	$24.01	$24.80	3/11/2016	$25.35	$23.84
1/28/2016	$23.85	$24.74	3/14/2016	$25.17	$23.86
1/29/2016	$23.27	$24.66	3/15/2016	$25.15	$23.89
2/1/2016	$23.10	$24.58	3/16/2016	$25.64	$23.93
2/2/2016	$22.40	$24.47	3/17/2016	$25.98	$23.97
2/3/2016	$22.76	$24.39	3/18/2016	$25.99	$24.00
2/4/2016	$22.60	$24.31	3/21/2016	$26.13	$24.04
2/5/2016	$22.84	$24.24	3/22/2016	$26.30	$24.09
2/8/2016	$21.90	$24.14	3/23/2016	$25.94	$24.12
2/9/2016	$21.61	$24.04	3/24/2016	$25.73	$24.15
2/10/2016	$21.91	$23.96	3/28/2016	$25.64	$24.17
2/11/2016	$21.51	$23.87	3/29/2016	$25.70	$24.20
2/12/2016	$21.46	$23.78	3/30/2016	$25.57	$24.22
2/16/2016	$22.45	$23.74	3/31/2016	$25.41	$24.24
2/17/2016	$23.23	$23.72	4/1/2016	$24.59	$24.25
2/18/2016	$23.33	$23.71			

Volkswagen ADR Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 4390
Portland, OR 97208-4390

Toll-Free Number: 1-888-738-3759
Email: info@VolkswagenADRLitigation.com
Website: www.VolkswagenADRLitigation.com

PROOF OF CLAIM AND RELEASE FORM

To be eligible to receive a share of the Net Settlement Fund in connection with the proposed Settlement, you must complete and sign this Proof of Claim and Release Form ("Claim Form") and mail it by first-class mail to the above address, **postmarked no later than April 18, 2019**.

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

Do not mail or deliver your Claim Form to the Court, the parties to this action, or their counsel.

SUBMIT YOUR CLAIM FORM ONLY TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS SET FORTH ABOVE.

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PART I – GENERAL INSTRUCTIONS

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

2. This Claim Form is directed to all persons and entities in the U.S. or elsewhere who purchased or otherwise acquired Volkswagen Aktiengesellschaft ("VWAG") Ordinary American Depositary Receipts (CUSIP: 928662303) and/or VWAG Preferred American Depositary Receipts (CUSIP: 928662402) (collectively, "VWAG ADRs") from November 19, 2010 through January 4, 2016, inclusive (the "Class Period"), and who were allegedly damaged thereby (the "Settlement Class"). Certain persons and entities are excluded from the Settlement Class by definition as set forth in Paragraph 26 of the Notice. Also, for the avoidance of doubt, VWAG ordinary and preferred shares are not eligible Settlement Class securities, and information regarding those securities should not be included in this Claim Form.

3. By submitting this Claim Form, you will be making a request to share in the proceeds of the Settlement described in the Notice. IF YOU ARE NOT A SETTLEMENT CLASS MEMBER (*see* the definition of the Settlement Class in Paragraph 26 of the Notice, which sets forth who is included in and who is excluded from the Settlement Class), OR IF YOU, OR SOMEONE ACTING ON YOUR BEHALF, SUBMITTED A REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS, DO NOT SUBMIT A CLAIM FORM. **YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT.** THUS, IF YOU ARE EXCLUDED FROM THE SETTLEMENT CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.

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

5. Use the Schedules of Transactions in Parts III and IV of this Claim Form to supply all required details of your transaction(s) (including free transfers and deliveries) in and holdings of the applicable VWAG ADRs. On these schedules, please provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of the applicable VWAG ADRs, whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

6. **Please note:** Only VWAG ADRs purchased or otherwise acquired during the Class Period (*i.e.*, from November 19, 2010 through January 4, 2016, inclusive), are eligible under the Settlement. However, under the "90-day look-back period" (described in the Plan of Allocation set forth in the Notice), your sales of VWAG ADRs during the period from January 5, 2016 through and including the close of trading on April 1, 2016 will be used for purposes of calculating Recognized Loss Amounts under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase information during the 90-day look-back period must also be provided. **Failure to report all transaction and holding information during the requested time period may result in the rejection of your claim.**

7. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of the applicable VWAG ADRs set forth in the Schedules of Transactions in Parts III and IV of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in VWAG ADRs. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. **Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

8. All joint beneficial owners each must sign this Claim Form and their names must appear as "Claimants" in Part II of this Claim Form. The complete name(s) of the beneficial owner(s) must be entered. If you purchased or otherwise acquired VWAG ADRs during the Class Period and held the securities in your name, you are the beneficial owner as well as the record owner. If you purchased or otherwise acquired VWAG ADRs during the Class Period and the securities were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these securities, but the third party is the record owner. The beneficial owner, not the record owner, must sign this Claim Form.

9. **One Claim should be submitted for each separate legal entity.** Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

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

(a) expressly state the capacity in which they are acting;

(b) identify the name, account number, last four digits of the Social Security Number (or taxpayer identification number), address, and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the VWAG ADRs; and

(c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

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

(a) own(ed) the VWAG ADRs you have listed in the Claim Form; or

(b) are expressly authorized to act on behalf of the owner thereof.

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

13. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.

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

15. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, Epiq Class Action & Claims Solutions, Inc., at the above address, by email at info@VolkswagenADRLitigation.com, or by toll-free phone at 1-888-738-3759, or you can visit the Settlement website, www.VolkswagenADRLitigation.com, where copies of the Claim Form and Notice are available for downloading.

16. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the ***mandatory*** electronic filing requirements and file layout, you may visit the Settlement website at www.VolkswagenADRLitigation.com or you may email the Claims Administrator's electronic filing department at info@VolkswagenADRLitigation.com. **Any file not in accordance with the required electronic filing format will be subject to rejection.** Only one claim should be submitted for each separate legal entity (*see* Paragraph 9 above) and the ***complete*** name of the beneficial owner of the securities must be entered where called for (*see* Paragraph 8 above). No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the Claims Administrator's electronic filing department at info@VolkswagenADRLitigation.com to inquire about your file and confirm it was received.**

IMPORTANT: PLEASE NOTE

YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-888-738-3759.

PART II – CLAIMANT IDENTIFICATION

Please complete this PART II in its entirety. The Claims Administrator will use this information for all communications regarding this Claim Form. If this information changes, you MUST notify the Claims Administrator in writing at the address above.

Beneficial Owner's First Name | MI | Beneficial Owner's Last Name

Co-Beneficial Owner's First Name | MI | Co-Beneficial Owner's Last Name

Entity Name (if Beneficial Owner is not an individual)

Representative or Custodian Name (if different from Beneficial Owner(s) listed above)

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City | State | ZIP Code

Country

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (home) – –

Telephone Number (work) – –

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

Account Number (where securities were traded)[1]:

Claimant Account Type (check appropriate box):

- ☐ Individual (includes joint owner accounts)
- ☐ Pension Plan
- ☐ Trust
- ☐ Corporation
- ☐ Estate
- ☐ IRA/401K
- ☐ Other _____ (please specify)

[1] If the account number is unknown, you may leave blank. If filing for more than one account for the same legal entity you may write "multiple." Please see Paragraph 9 of the General Instructions above for more information on when to file separate Claim Forms for multiple accounts.

PART III – SCHEDULE OF TRANSACTIONS IN VOLKSWAGEN AKTIENGESELLSCHAFT ORDINARY AMERICAN DEPOSITARY RECEIPTS (CUSIP: 928662303)

Complete this Part III if and only if you purchased or otherwise acquired Volkswagen Aktiengesellschaft Ordinary American Depositary Receipts (CUSIP: 928662303) ("VWAG Ordinary ADRs") during the period from November 19, 2010 through January 4, 2016, inclusive. Please be sure to include proper documentation with your Claim Form as described in detail in Part I – General Instructions, Paragraph 7, above. Do not include information regarding securities other than VWAG Ordinary ADRs.

1. HOLDINGS AS OF NOVEMBER 19, 2010 – State the total number of VWAG Ordinary ADRs held as of the opening of trading on November 19, 2010. (Must be documented.) If none, write "zero" or "0."

2. PURCHASES/ACQUISITIONS FROM NOVEMBER 19, 2010 THROUGH JANUARY 4, 2016 – Separately list each and every purchase/acquisition (including free receipts) of VWAG Ordinary ADRs from after the opening of trading on November 19, 2010 through and including the close of trading on January 4, 2016. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (MMDDYY)	Number of ADRs Purchased/Acquired	Purchase/ Acquisition Price Per ADR	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)

3. PURCHASES/ACQUISITIONS FROM JANUARY 5, 2016 THROUGH APRIL 1, 2016 – State the total number of VWAG Ordinary ADRs purchased/acquired (including free receipts) from after the opening of trading on January 5, 2016 through and including the close of trading on April 1, 2016. (Must be documented.) If none, write "zero" or "0."[2]

4. SALES FROM NOVEMBER 19, 2010 THROUGH APRIL 1, 2016 – Separately list each and every sale/disposition (including free deliveries) of VWAG Ordinary ADRs from after the opening of trading on November 19, 2010 through and including the close of trading on April 1, 2016. (Must be documented.)

IF NONE, CHECK HERE ☐

Date of Sale (List Chronologically) (MMDDYY)	Number of ADRs Sold	Sale Price Per ADR	Total Sale Price (excluding taxes, commissions, and fees)

5. HOLDINGS AS OF APRIL 1, 2016 – State the total number of VWAG Ordinary ADRs held as of the close of trading on April 1, 2016. (Must be documented.) If none, write "zero" or "0."

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX: ☐

[2] **Please note:** Information requested with respect to your purchases/acquisitions of VWAG Ordinary ADRs from after the opening of trading on January 5, 2016 through and including the close of trading on April 1, 2016 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts under the Plan of Allocation.

PART IV – SCHEDULE OF TRANSACTIONS IN VOLKSWAGEN AKTIENGESELLSCHAFT PREFERRED AMERICAN DEPOSITARY RECEIPTS (CUSIP: 928662402)

Complete this Part IV if and only if you purchased or otherwise acquired Volkswagen Aktiengesellschaft Preferred American Depositary Receipts (CUSIP: 928662402) ("VWAG Preferred ADRs") during the period from November 19, 2010 through January 4, 2016, inclusive. Please be sure to include proper documentation with your Claim Form as described in detail in Part I – General Instructions, Paragraph 7, above. Do not include information regarding securities other than VWAG Preferred ADRs.

1. HOLDINGS AS OF NOVEMBER 19, 2010 – State the total number of VWAG Preferred ADRs held as of the opening of trading on November 19, 2010. (Must be documented.) If none, write "zero" or "0."

2. PURCHASES/ACQUISITIONS FROM NOVEMBER 19, 2010 THROUGH JANUARY 4, 2016 – Separately list each and every purchase/acquisition (including free receipts) of VWAG Preferred ADRs from after the opening of trading on November 19, 2010 through and including the close of trading on January 4, 2016. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (MMDDYY)	Number of ADRs Purchased/Acquired	Purchase/ Acquisition Price Per ADR	Total Purchase/Acquisition Price (excluding taxes, commissions, and fees)

3. PURCHASES/ACQUISITIONS FROM JANUARY 5, 2016 THROUGH APRIL 1, 2016 – State the total number of VWAG Preferred ADRs purchased/acquired (including free receipts) from after the opening of trading on January 5, 2016 through and including the close of trading on April 1, 2016. (Must be documented.) If none, write "zero" or "0."[3]

4. SALES FROM NOVEMBER 19, 2010 THROUGH APRIL 1, 2016 – Separately list each and every sale/disposition (including free deliveries) of VWAG Preferred ADRs from after the opening of trading on November 19, 2010 through and including the close of trading on April 1, 2016. (Must be documented.)

IF NONE, CHECK HERE ☐

Date of Sale (List Chronologically) (MMDDYY)	Number of ADRs Sold	Sale Price Per ADR	Total Sale Price (excluding taxes, commissions, and fees)

5. HOLDINGS AS OF APRIL 1, 2016 – State the total number of VWAG Preferred ADRs held as of the close of trading on April 1, 2016. (Must be documented.) If none, write "zero" or "0."

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULE ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX: ☐

[3] **Please note:** Information requested with respect to your purchases/acquisitions of VWAG Preferred ADRs from after the opening of trading on January 5, 2016 through and including the close of trading on April 1, 2016 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts under the Plan of Allocation.

PART V – RELEASE OF CLAIMS AND SIGNATURE

YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 8 OF THIS CLAIM FORM.

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

CERTIFICATION

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

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;

2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;

3. that the claimant has **not** submitted a request for exclusion from the Settlement Class;

4. that I (we) own(ed) the VWAG ADRs identified in the Claim Form and have not assigned the claim against Defendants or any of the Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;

5. that the claimant(s) has (have) not submitted any other claim covering the same purchases/acquisitions of VWAG ADRs and knows (know) of no other person having done so on the claimant's (claimants') behalf;

6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;

7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;

8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, agree(s) to the determination by the Court of the validity or amount of this Claim and waives any right of appeal or review with respect to such determination;

9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he/she/it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he/she/it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he/she/it is subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

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

Signature of claimant

Date ☐☐ – ☐☐ – ☐☐
MM DD YY

Print claimant name here

Signature of joint claimant, if any

Date ☐☐ – ☐☐ – ☐☐
MM DD YY

Print joint claimant name here

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

Signature of person signing on behalf of claimant

Date ☐☐ – ☐☐ – ☐☐
MM DD YY

Print name of person signing on behalf of claimant here

Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – *see* Paragraph 10 on page 3 of this Claim Form.)

REMINDER CHECKLIST:

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.

2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.

3. Do not highlight any portion of the Claim Form or any supporting documents.

4. Keep copies of the completed Claim Form and documentation for your own records.

5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll-free at 1-888-738-3759.**

6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.

7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at info@VolkswagenADRLitigation.com, or by toll-free phone at 1-888-738-3759, or you may visit www.VolkswagenADRLitigation.com. DO NOT call Defendants or their counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, **POSTMARKED NO LATER THAN APRIL 18, 2019**, ADDRESSED AS FOLLOWS:

Volkswagen ADR Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 4390
Portland, OR 97208-4390

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before April 18, 2019 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

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

Exhibit B

CONFIRMATION OF PUBLICATION

IN THE MATTER OF: ***Volkswagen ADR Litigation***

I, Kathleen Komraus, hereby certify that

(a) I am the Media & Design Manager at Epiq Class Action & Claims Solutions, a noticing administrator, and;

(b) The Notice of which the annexed is a copy was published in the following publications on the following dates:

12.31.18 – Investor's Business Daily
12.31.18 – PR Newswire

x Kathleen Komraus
(Signature)

Media + Design Manager
(Title)

Exchange Traded Funds

For Friday, December 28, 2018. Ranked by Relative Strength

'18% Chg	R S	Acc Dis	52-wk High	Fund	Symbol	Div Yld	Close Price	Chg	Vol% Chg
U.S. Stock/Broad Index									
11.4	96	A	49.9	ProS Short Russ 2000	RWM	0.8	47.09	-0.15	63
-2.4	93	B+	37.2	ProS Short QQQ	PSQ	0.9	34.71	0.04	28
4.8	93	B+	33.6	ProS Short S&P 500	SH	1.0	31.64	0.07	67
3.8	92	B	66.0	ProS Short Dow 30	DOG	0.8	62.04	0.21	104
-3.1	76	D	50.6	InvescoS&P500 Lw Votility	SPLV	2.2	46.26	-0.04	80
-7.1	76	D+	94.2	IS Core HiDiv	HDV	3.7	83.72	-0.11	64
-1.6	76	D-	57.7	IS MSCI USA Min Volty	USMV	2.1	51.94	-0.09	81
-6.0	71	D+	100.1	SPDR S&P Dividend	SDY	2.7	88.79	-0.04	287
-6.4	70	C-	32.2	FrstTr Value Line Div	FVD	2.5	28.90	0.01	180
-10.4	69	D-	43.3	Inv S&P 500 Hi Div	SPHD	4.4	38.02	-0.07	103
-10.0	68	D-	31.1	FrstTr Mstar Div Ldrs	FDL	4.0	27.09	-0.01	118
-5.0	68	C+	112.6	VG Div Appr	VIG	2.1	96.97	-0.05	170
-9.0	66	D-	54.6	Schwab Divd Eqty	SCHD	3.1	46.58	-0.11	58
-6.8	65	E	269.3	SPDR Dow Jones	DIA	2.3	230.48	-0.78	25
-10.0	63	D	102.5	IS DJ Select Divdnd	DVY	3.6	88.70	-0.10	143
-6.9	63	D-	131.3	IS S&P 100 Index	OEF	2.1	110.48	-0.15	57
-9.7	63	D	90.9	VG Hi Dividend Yld	VYM	3.4	77.32	-0.05	154
-8.8	63	D+	113.5	VG Value	VTV	2.8	96.99	-0.10	144
-2.4	62	C-	178.6	IS S&P 500 Grwth	IVW	1.3	149.17	-0.27	92
-11.6	60	D-	18.6	Inv HiYld EqDiv Achv	PEY	4.3	15.75	0.02	96
-7.3	60	D-	70.5	Schwab US Large Cap	SCHX	2.0	59.13	-0.17	71
-3.5	60	C-	82.7	Schwab US LC Growth	SCHG	1.0	68.25	-0.30	90
-7.2	60	C-	135.4	VG Large-Cap	VV	2.1	113.81	-0.06	176
-7.1	60	D-	270.7	VG S&P 500	VOO	2.1	227.76	-0.29	65
-1.8	59	D-	187.5	Inv QQQ	QQQ	0.9	152.97	-0.08	12
-3.8	59	D+	157.3	IS Russell 1000 Grwth	IWF	1.3	129.55	-0.35	74
-7.6	59	B-	164.1	IS Russell 1000 Idx	IWB	2.1	137.31	-0.22	75
-7.3	59	C-	296.7	IS S&P 500 Index	IVV	2.1	249.33	-0.73	69
-7.2	59	D-	293.9	SPDR S&P 500	SPY	2.1	247.75	-0.32	14
-7.9	57	D-	71.4	Schwab US Broad Mkt	SCHB	2.0	59.40	-0.17	63
-5.4	57	D-	162.4	VG Growth	VUG	1.3	133.05	-0.14	107
-11.5	56	D+	131.6	IS Russell 1000 Val	IWD	2.7	110.08	-0.08	107
-8.0	56	D-	174.7	IS Russell 3000 Idx	IWV	2.0	145.58	-0.05	112
-12.1	56	D-	121.1	IS S&P 500 Value	IVE	2.8	100.37	-0.08	165
-7.9	56	D-	151.8	VG Total Stock Mkt	VTI	2.1	126.43	-0.16	130
-12.2	54	D-	63.5	Inv BuyBack Achievrs	PKW	1.3	51.79	-0.07	-70
-7.3	54	B-	144.0	VG Mid-Cap Growth	VOT	0.8	118.38	-0.36	90
-10.3	53	D+	108.9	Inv S&P 500 Eql Wght	RSP	2.0	90.67	-0.23	65
-6.8	53	C+	137.7	IS Russll MdCp Grwth	IWP	1.0	112.41	-0.26	53
-7.0	51	E	60.2	Inv DWA Momentum	PDP	0.2	48.00	-0.14	63
-15.0	51	D	23.5	Inv Zacks Multi-Asset	CVY	4.5	19.06	0.00	49
-11.5	50	D-	56.2	IS Russell MdCp Indx	IWR	2.0	46.05	-0.06	231
-11.6	50	D	167.2	VG Mid-Cap	VO	1.8	136.78	-0.37	170
-8.6	49	D-	31.8	FrstTr DorWri Focus 5	FV	0.2	25.20	0.28	-7
-11.7	48	D	63.3	FrstTr LC Core Alph	FEX	1.3	51.72	0.05	319
-10.9	48	D-	58.8	Schwab US Mid Cap	SCHM	1.6	47.45	-0.06	145
-15.1	47	D-	93.0	IS Russell MdCp Val	IWS	2.5	75.69	-0.12	87
-15.4	45	E	118.0	VG Mid-Cap Value	VOE	2.8	94.44	-0.25	154
-11.5	45	E	166.0	VG Small-Cap	VB	1.7	130.75	0.14	219
-13.4	44	E	205.5	IS S&P MdCp 400	IJH	1.7	164.31	-0.14	87
-13.3	44	E	374.1	SPDR S&P MC 400	MDY	1.4	299.36	-0.42	47
-11.6	44	C	125.4	VG Extd Market	VXF	1.7	98.82	0.14	265
-19.9	42	D-	11.9	Alerian MLP	AMLP	9.4	8.64	-0.03	127
-14.7	42	E	143.5	VG Small-Cap Value	VBR	2.4	113.22	0.16	169
-10.3	41	E	90.6	IS S&P SmCp 600	IJR	1.6	68.90	0.32	117
-21.3	40	D-	22.6	GX SuperDividend	SDIV	9.1	17.13	-0.07	70
-19.2	40	E	13.5	Inv Listed Priv Eq	PSP	10.3	10.06	0.05	193
-13.7	40	E	78.3	Schwab US Small Cap	SCHA	1.6	60.22	0.19	142
-11.0	39	E	220.8	IS Russell 2000 Grwth	IWO	0.8	166.19	0.38	-8
-12.9	39	E	173.4	IS Russell 2000 Idx	IWM	1.4	132.86	0.38	22
-14.9	39	E	137.8	IS Russell 2000 Val	IWN	2.0	106.97	0.53	67
-17.6	29	E	38.8	Innovator IBD 50	FFTY	..	27.34	0.00	5
Leveraged									
27.0	99	A+	18.7	DX SC Bear 3X Shrs	TZA	0.6	15.58	-0.18	19
25.2	99	A+	48.5	ProS UltP Shrt R 2000	SRTY	0.7	40.51	-0.46	-43
19.9	98	A-	23.6	ProS UltSht Russ 2000	TWM	0.7	20.93	-0.16	23
5.9	97	A	38.5	DX Bear 3X Shrs	SPXS	0.5	31.73	0.21	34
5.2	97	A	57.9	ProS UltPro Sht SP500	SPXU	1.4	47.83	0.22	-13
-20.4	96	B+	23.3	ProS UltPro Shrt QQQ	SQQQ	1.4	17.13	0.05	27
6.5	96	A-	49.5	ProS UltSht S&P 500	SDS	1.2	43.71	0.13	-3
1.8	95	A	24.2	ProS UltP Shrt Dow 30	SDOW	1.2	19.85	0.16	35
-9.9	95	A-	56.8	ProS UltSht QQQ	QID	1.2	48.27	0.09	-11
4.3	94	A	41.2	ProS UltSht Dow 30	DXD	1.0	36.26	0.28	19
-16.3	40	D-	51.2	ProS Ultra Dow 30	DDM	1.3	36.89	-0.32	141
-16.7	31	E	130.0	ProS Ultra S&P 500	SSO	0.8	91.15	-0.45	27
-9.8	28	D-	102.5	ProS Ultra QQQ	QLD	0.1	66.15	-0.08	21
-26.9	23	E	116.8	ProS UltPro Dow30	UDOW	0.7	68.94	-0.71	74
-27.5	19	E	59.0	ProS UltPro S&P 500	UPRO	0.6	33.87	-0.16	62
-27.8	18	E	56.0	DX LC Bull 3X Shrs	SPXL	1.0	32.01	-0.19	92
-27.3	17	E	89.2	ProS Ultra Russ 2000	UWM	0.4	51.35	0.40	-12
-21.7	15	E	73.4	ProS UltPro QQQ	TQQQ	..	36.22	-0.15	70
-41.4	9	E	97.1	DX SC Bull 3X Shrs	TNA	0.4	41.20	0.48	42
Sector/Industry									
0.7	87	B-	144.7	IS US Utilities	IDU	2.8	133.78	0.19	-28
0.3	87	D+	57.2	Util Sel Sec SDPR	XLU	3.3	52.83	0.13	-9
0.7	87	B-	127.1	VG Utilities	VPU	3.2	117.45	0.16	-21
2.5	86	B	29.1	FirstTrustUtilitiesAlphaDEX	FXU	2.4	26.66	-0.02	-3
-11.4	83	B+	24.9	VV Gold Miners	GDX	0.5	20.60	-0.37	-1
3.1	79	E	96.1	SPDR Health Care	XLV	1.6	85.25	0.10	13
-16.6	78	A-	22.5	Sprott Gold Miners	SGDM	0.5	17.28	-0.12	-35
-13.7	78	B	36.1	VV Jr Gold Mine	GDXJ	0.4	29.44	-0.30	-46
-5.8	77	C+	106.1	IS Cohen&Steers	ICF	3.2	95.41	0.28	81
2.3	77	D+	204.8	IS US Healthcare	IYH	1.2	178.27	-1.30	15
2.7	77	C-	181.9	VG Health Care	VHT	1.4	158.25	0.21	30
-7.4	73	D	24.4	FrstTr S&P REIT Indx	FRI	3.2	21.56	0.06	3
-7.8	73	D-	83.6	IS DJ US Real Est	IYR	3.5	74.71	0.23	43
-11.1	73	E	59.0	SPDR Consmr Stpls	XLP	3.0	50.57	0.00	-1
-7.8	71	C-	43.5	Schwab US REIT	SCHH	3.6	38.37	0.06	115
-8.5	70	C-	98.1	SPDR DJ Wil REIT	RWR	4.2	85.77	0.11	168
5.9	69	D-	40.7	PureFnds ISE CybSec	HACK	0.1	33.51	0.04	16
-10.6	68	D-	45.8	IS FTSE Nareit Mort	REM	9.9	40.40	0.20	143
-9.6	68	D-	49.5	SPDR DJ Glbl Real Est	RWO	3.9	44.19	0.15	264
-10.4	68	D	84.5	VG REIT	VNQ	4.7	74.37	0.24	63
-13.7	63	C-	25.0	FirstTr NAm EngyInf	EMLP	4.8	21.19	0.08	194
-6.4	63	D	38.9	FrstTr Nasdq TechDiv	TDIV	3.0	32.96	0.01	24
1.1	63	D-	64.8	FrstTr Tech Alphdx	FXL	0.2	51.91	0.08	-42
-4.1	63	E	74.3	Inv Dyn Phara	PJP	1.1	61.52	0.11	-43
-12.7	63	D	42.5	SPDR DJ Wil Intl RE	RWX	5.3	35.34	0.08	19
0.3	63	D-	204.4	VG Info Tech	VGT	1.3	165.17	-0.34	33
-11.4	62	E	30.2	IS DJ US Telecom	IYZ	3.2	26.05	0.16	102
-0.7	62	E	118.1	SPDR Cnsmr Discrtnry	XLY	1.4	97.96	0.01	-5
5.3	60	E	147.7	FrstTr DJ Internet	FDN	..	115.69	-0.15	-11
-2.8	60	D	85.3	FrstTr Health Cre Alph	FXH	..	67.82	-0.03	-43
-13.5	60	D-	65.2	VG Glbl X-US Real Est	VNQI	4.6	52.36	0.31	59
-13.8	57	D-	51.6	FrstTr ConsmrSpl Alph	FXG	2.3	41.95	-0.06	66
-11.6	56	E	126.5	IS DJ US Finl Indx	IYF	1.9	105.53	0.07	30
-2.4	56	D+	197.0	IS DJ US Tech Indx	IYW	0.9	158.82	-0.37	-35
-4.0	56	E	76.3	SPDR Technology	XLK	1.6	61.40	-0.14	-4
-12.5	54	E	35.5	Flx Glb Upstr NatRes	GUNR	3.3	29.13	-0.05	73
-13.1	51	C-	45.6	FrstTr CnsmrDisc Alph	FXD	1.1	36.59	0.01	46
-8.2	50	D+	198.8	IS Phlx Sox Smcdct	SOXX	1.4	155.82	1.11	-66
-17.2	50	E	64.2	SPDR Materials	XLB	2.2	50.10	-0.27	-21
-14.3	48	E	33.0	FrstTr Financial Alpha	FXO	2.6	26.84	0.03	197
-2.5	48	D-	159.8	FrstTr NYSEArc Biotch	FBT	..	121.44	-0.13	18
-9.8	48	E	53.0	SPDR S&P Retail	XRT	1.5	40.76	0.21	-37
-15.5	47	E	30.3	SPDR Financial	XLF	2.1	23.59	-0.01	-3
-16.1	47	E	75.5	VG Financials	VFH	2.3	58.79	0.06	21
-14.5	45	E	209.4	IS DJ Transprtn Idx	IYT	1.4	163.80	-0.92	70
-15.7	44	E	81.0	SPDR Industrial	XLI	2.2	63.77	-0.17	-14
-11.2	42	E	123.0	IS Nasdaq Biotech	IBB	0.3	94.84	-0.32	26
-19.4	42	D-	26.5	UBS Etrc Alrn MLP Infr	MLPI	8.2	19.49	-0.06	315
-11.2	41	E	114.5	VV Semicndctr	SMH	1.9	86.85	0.59	-19
-20.1	40	D-	30.7	JPMorgan Alerian ETN	AMJ	8.5	21.95	-0.06	175
-26.1	37	D-	27.1	Inv Solar	TAN	2.4	18.57	0.04	65
-17.7	35	D-	39.5	IS S&P Glb Energy	IXC	3.5	29.26	-0.04	6
-26.9	35	D	47.2	SPDR S&P Homeblders	XHB	1.2	32.37	-0.04	-31
-27.6	34	E	25.9	IS MSCI Europe Fncl	EUFN	6.5	16.88	0.20	26
-31.4	31	D-	46.6	IS DJ US Home Const	ITB	0.6	29.99	0.02	-52
-21.7	31	E	52.0	SPDR KBW Bank	KBE	2.2	37.06	0.25	10
-21.0	30	E	79.4	SPDR Energy	XLE	3.6	57.05	-0.44	-12
-20.9	30	E	66.0	SPDR KBW Regnl Bnk	KRE	2.3	46.53	0.40	-12
-21.9	28	E	43.8	IS DJ US Energy Idx	IYE	3.2	30.98	-0.32	65
-23.9	28	E	38.3	IS S&P NAm Nat Res	IGE	2.7	26.98	-0.23	101
-17.4	28	E	101.5	SPDR S&P Biotech	XBI	0.3	70.09	0.51	-3
-22.5	27	E	22.2	Fidelity MSCI Enrgy	FENY	3.2	15.54	-0.14	51
-28.0	27	E	39.6	SPDR S&P Metal&Mng	XME	2.2	26.19	-0.20	8
-22.5	27	E	109.8	VG Energy	VDE	3.4	76.69	-0.75	180
-26.3	21	E	18.2	FrstTr Energy Alphdx	FXN	1.4	11.41	-0.15	185
-35.7	16	E	24.7	FrstTr ISE Rev NatGas	FCG	1.4	14.65	-0.23	-24
-29.1	16	D-	45.5	SPDR S&P O&G Expl	XOP	1.0	26.37	-0.38	-11
-45.8	10	E	29.9	HT Oil Service	OIH	2.1	14.12	0.12	8
-47.6	9	E	19.3	SPDR S&P O&G Equip	XES	1.1	8.98	0.17	-15
Leveraged									
45.8	99	A+	82.5	DX Energy Bear 3X	ERY	0.4	65.57	1.72	-32
36.7	98	A+	58.5	ProS UltSht Oil & Gas	DUG	0.3	50.60	0.97	-21
19.1	97	A	17.0	DX Finl Bear 3X	FAZ	0.5	13.92	-0.02	22
8.6	97	A	27.6	ProS UltSht Nsdq Biot	BIS	0.3	23.94	0.12	-40
-18.6	95	A-	17.4	DX Semicon Bear 3X	SOXS	0.7	13.43	-0.28	3
5.8	92	B	37.3	ProS UltSht Real Est	SRS	0.5	30.93	-0.16	110
5.9	64	D-	95.1	DX JrGldMnrs Br 3X	JDST	0.5	54.33	1.08	-14
-48.6	54	B	38.0	DX Gld Mnr Bull 2X	NUGT	0.6	16.28	-0.95	-5
4.2	48	D-	48.8	DX GldMnrs Bear 3X	DUST	0.3	24.69	1.30	-23
-51.9	36	B-	20.5	DX JrGldMnrs Bul 3X	JNUG	1.1	8.55	-0.21	-39
-27.4	17	E	70.8	ProS Ult Ndsq Biotech	BIB	..	40.69	-0.13	-6
-36.1	16	E	82.8	DX Finl Bull 3X	FAS	1.5	43.67	-0.06	62
-41.6	11	E	47.4	ProS Ultra Oil & Gas	DIG	2.3	23.12	-0.45	117
-57.2	5	E	44.3	DX Energy Bull 3X	ERX	3.1	14.94	-0.41	50
-80.0	2	E	32.0	DX NatGas Bull 3X	GASL	..	5.09	-0.28	60
Global									
13.1	93	B	21.8	ProS Short MSCI Emrg	EUM	0.8	20.31	-0.16	-52
-5.9	90	C+	47.9	IS MSCI Brazil	EWZ	2.9	38.08	0.33	5
-4.7	86	C	39.3	IS India 50	INDY	0.5	35.38	0.30	-33
-12.7	86	C	30.6	IS MSCI Indonesia	EIDO	2.0	24.83	0.15	-22
-7.5	84	B-	38.2	IS MSCI India	INDA	0.9	33.36	0.39	-12
-16.9	83	B	40.2	IS MSCI Philippines	EPHE	0.4	32.25	0.38	-19
-8.4	79	B	27.9	Inv India	PIN	1.0	24.19	0.26	-28
-10.7	79	C-	29.5	WT India Earn	EPI	1.0	24.85	0.33	0
-4.0	74	C	88.2	IS MSCI ACWI MinVol	ACWV	2.3	80.92	0.17	138
-15.1	73	C	30.2	IS MSCI Poland	EPOL	1.4	23.00	0.00	-2
-10.2	73	B	39.5	IS S&P Latin Am 40	ILF	3.1	30.70	0.29	-18
-8.1	71	D+	65.5	IS MSCI EM Min Vol	EEMV	2.5	55.84	0.23	64
-13.3	71	C	39.8	VV Emrg Mkt Bnd	EMLC	6.5	32.92	0.12	-25
-11.0	68	D	26.9	IS MSCI Hong Kong	EWH	2.9	22.62	0.11	24
-11.3	66	D	25.3	Inv FTSE RAFI EM	PXH	3.3	19.81	0.16	26
-8.8	66	D	76.5	IS MSCI EAFE Min Vol	EFAV	3.3	66.59	0.35	71
-11.8	65	E	37.8	IS MSCI Switzerland	EWL	2.6	31.37	0.49	14
-11.4	63	B	50.3	WT Emg Mk Hi Yld	DEM	4.5	40.20	0.27	69
-9.4	62	D-	36.6	IS MSCI Malaysia	EWM	3.8	29.88	0.23	5
-11.6	60	E	29.8	Dxt MSCI Eurp Hedg	DBEU	3.5	25.13	0.15	-19
-14.6	60	D+	17.4	Inv Intl Div Achvr	PID	3.8	14.13	0.10	93
-10.7	60	D	103.7	IS MSCI Thailand In	THD	2.6	82.62	0.87	-3
-15.3	60	D-	42.9	SPDR S&P Intl Div	DWX	5.0	34.89	0.23	97
-12.2	57	E	33.0	Dxt MSCI EAFE Hedg	DBEF	3.2	27.90	0.06	154
-15.4	57	D+	54.0	IS Ftse China 25	FXI	2.7	39.07	-0.02	-40
-7.8	57	C	39.2	IS MSCI Russia Cap	ERUS	4.7	30.92	0.33	-6
-15.5	57	C	31.1	Schwab Emerg Mkt	SCHE	2.6	23.60	0.18	137
-16.9	57	C	51.0	VG MSCI Em Mkt	VWO	2.9	38.17	0.27	25
-11.9	57	E	67.6	WT Europe Hdg Eq	HEDJ	3.1	56.13	0.19	12
-14.7	56	E	50.3	IS MSCI Pac Ex-Japn	EPP	5.0	40.79	0.31	196
-14.8	56	E	28.4	IS MSCI Singapore	EWS	4.2	22.10	0.07	-23
-17.0	54	D-	62.7	IS Core MSCI EM	IEMG	2.8	47.25	0.35	25
-15.3	54	E	35.9	IS DJ Intl Selct Divnd	IDV	5.9	28.63	0.30	245
-11.4	54	D-	77.5	IS MSCI ACWI	ACWI	2.2	63.85	0.11	128
-16.5	54	C+	83.5	IS MSCI Asia Ex Jpn	AAXJ	2.1	63.71	0.40	-15
-12.4	54	D+	79.7	VG Total World Stock	VT	2.5	65.08	0.07	154
-12.2	54	D-	33.0	WT Intl Hedg Div	IHDG	0.7	27.81	0.15	69
-16.7	53	D-	52.1	IS MSCI Emrg Mkts	EEM	2.2	39.24	0.37	-29
-15.5	52	D-	32.8	WT Europe Hdg SC	EUSC	2.6	26.28	0.13	46
-16.1	51	D	53.7	IS MSCI ACWI Ex US	ACWX	2.6	41.89	0.19	96
-11.6	51	D	24.3	VV Russia	RSX	5.1	18.75	0.25	13
-17.9	51	D+	34.0	WT Germany Hdg	DXGE	4.0	26.44	0.21	299
-18.4	50	D	36.4	IS MSCI Spain	EWP	3.7	26.75	0.07	17
-18.4	48	D-	29.8	Dxt MSCI Germny Hdg	DBGR	2.8	23.21	0.21	40
-18.6	48	D-	32.9	Dxt MSCI SKorea Hdg	DBKO	..	25.56	-0.01	-100
-18.4	48	B-	31.3	FrstTr Emrg Mkt Alph	FEM	3.5	22.76	0.09	66
-20.8	48	C-	56.5	IS MSCI Chile Index	ECH	2.4	41.33	-0.25	28
-18.3	48	D-	59.6	IS MSCI EAFE Value	EFV	4.6	45.13	0.44	140
-16.8	48	E	58.9	VG Fts Wrd X-US	VEU	3.2	45.55	0.25	117
-17.1	48	D	61.2	VG Total Intl Stk	VXUS	3.2	47.11	0.26	173
-16.9	48	E	20.5	VV Vietnam	VNM	0.8	14.85	-0.05	27
-16.9	47	E	24.2	IS MSCI Australia	EWA	6.1	19.25	0.14	54
-16.5	47	E	75.3	IS MSCI Eafe Idx	EFA	3.4	58.69	0.31	44
-17.9	47	D	36.7	IS MSCI Sweden	EWD	5.2	27.82	0.23	-19
-12.4	47	E	39.4	IS MSCI Taiwan	EWT	3.1	31.71	0.33	31
-17.5	47	E	50.8	IS S&P Europe 350	IEV	3.4	39.01	0.33	37
-16.7	46	E	27.4	Innovator IBD ETF Ldrs	LDRS	0.4	21.29	0.09	69
-17.1	45	C+	46.6	Dxt MSCI Japan Hedg	DBJP	3.8	36.57	-0.20	-43
-17.1	45	E	70.8	IS Core MSCI EAFE	IEFA	3.5	54.81	0.34	86
-27.8	45	C-	76.5	IS MSCI So Africa	EZA	3.8	50.56	0.54	-6
-17.0	45	E	36.4	Schwab Intl Equity	SCHF	3.0	28.28	0.17	110
-18.6	45	D-	44.2	SPDR Euro Stoxx 50	FEZ	3.4	33.13	0.15	-16
-17.5	45	D-	47.9	VG MSCI Eafe	VEA	3.3	37.02	0.24	96
-18.2	45	E	63.6	VG MSCI Europn	VGK	4.0	48.40	0.46	60
-16.5	45	C-	78.0	VG MSCI Pacifc	VPL	3.0	60.84	0.30	13
-15.7	44	D	33.7	IS MSCI France	EWQ	2.9	26.32	0.10	-15
-15.3	44	D-	64.7	IS MSCI Japan	EWJ	1.7	50.78	0.06	29
-17.7	44	D	34.1	IS MSCI Netherlands	EWN	2.4	26.12	0.01	-23
-18.0	44	E	38.0	IS MSCI Untd Kingdm	EWU	5.0	29.38	0.38	49
-27.3	42	D+	29.9	EGShrs EM Consmr	ECON	1.0	20.45	0.16	252
-19.5	42	E	47.1	IS MSCI Emu Indx	EZU	3.5	34.90	0.13	3
-19.5	41	E	30.6	IS MSCI Canada	EWC	2.6	23.85	0.14	38
-21.0	41	D	79.1	IS MSCI South Korea	EWY	1.3	59.17	0.49	-17
-21.7	40	D-	24.2	FrstTr DorWr Intl Foc 5	IFV	1.8	17.43	0.20	87
-20.7	40	E	76.7	IS MCSI China	MCHI	1.6	52.78	0.13	-15
-21.2	40	D-	62.8	WT Jpn Hedged	DXJ	2.9	46.76	-0.20	15
-20.8	39	D	34.5	IS MSCI Italy	EWI	4.7	24.12	-0.12	-56
-16.5	39	D+	54.6	IS MSCI Mexico	EWW	2.3	41.14	0.10	-58
-20.1	37	E	69.2	IS MSCI Eafe Sml Cp	SCZ	2.8	51.55	0.44	67
-23.6	37	D-	35.9	IS MSCI Germany	EWG	3.3	25.23	0.20	34
-22.9	35	D-	23.0	IS MSCI Belgium	EWK	2.8	16.21	-0.01	-51
-43.2	35	C+	46.7	IS MSCI Turkey Inve	TUR	4.0	24.70	-0.23	-19
-29.1	34	B	34.9	Dxt CSI 300	ASHR	1.2	22.01	0.18	-33
-25.0	33	E	75.6	WT Euro SC Div	DFE	5.0	52.91	0.57	-9
-33.9	25	C	11.6	GX FTSE Greece 20	GREK	3.1	6.79	-0.21	-31
Leveraged									
30.5	97	B+	73.3	DX Emg Mkt Bear 3X	EDZ	0.6	59.11	-1.41	-68
12.3	96	B	79.4	DX FTSE China Bear 3X	YANG	0.5	66.58	0.05	-81
-11.5	93	B	24.5	DX Russia Bear 3X	RUSS	0.6	20.36	-0.78	-44
-38.4	89	C+	65.3	DX Brazil Bull 3X	BRZU	1.0	24.82	0.57	-18
-49.5	15	C-	168.7	DX Emg Mkt Bull 3X	EDC	0.8	63.55	1.51	32
-48.8	15	C-	53.9	DX FTSE China Bul 3X	YINN	1.0	17.41	-0.07	-28
-41.1	15	C-	73.4	DX Russia Bull 3X	RUSL	4.0	29.72	0.95	0
Bond/Income									
-1.7	87	A-	105.6	IS Brcly 7-10 Yr Trs	IEF	2.2	103.81	0.56	0
-2.0	86	A	106.6	IS Brcly MBS Fixed	MBB	2.6	104.44	0.27	-29
-1.3	86	A-	25.1	IS Core US Trsy	GOVT	1.9	24.75	0.09	41
-1.6	86	B+	110.8	IS S&P Natl Muni	MUB	2.5	108.94	0.08	26
0.4	86	B-	48.1	SPDR Nuv Brcly ST Bn	SHM	1.2	48.08	0.04	58
-1.9	86	B+	49.0	SPDR NV Brcly Muni	TFI	2.2	48.06	0.04	-44
-0.8	86	A+	79.1	VG Short-Term Bond	BSV	2.0	78.48	0.14	49
-1.3	86	B+	48.3	VV Intmd Muni	ITM	2.3	47.53	0.15	14
-0.3	85	E	83.9	IS Brcly 1-3 Yr Trsy	SHY	1.7	83.59	0.12	62
-4.6	85	B	127.1	IS Brcly 20+ Yr Trsy	TLT	2.6	121.05	1.01	7
-0.8	85	B+	122.2	IS Brcly 3-7 Yr Trsy	IEI	1.9	121.20	0.43	-28
-0.2	84	E	60.1	FrstTr Enh Shrt Matur	FTSM	2.1	59.85	0.02	101
-1.2	83	B+	52.3	IS Brcly 1-3 Yr Cr	IGSB	2.5	51.63	0.11	58
-2.8	83	B-	109.4	IS Brcly Agg Bd Fd	AGG	2.7	106.22	0.39	21
0.1	83	E	110.5	IS Brcly Shrt Trsy	SHV	1.6	110.32	0.02	96
-0.6	83	C+	101.7	Pimco Enhn ShrtMat	MINT	2.2	100.96	-0.20	29
-3.2	83	B	106.3	Pimco TotlRtn Active	BOND	3.4	102.56	0.01	83
-3.0	83	A-	52.0	Schwab US Aggr Bnd	SCHZ	3.0	50.48	0.14	42
0.1	83	E	91.6	SPDR Brcly 1-3MoTbill	BIL	1.7	91.45	0.01	-20
-1.1	83	B-	30.5	SPDR Brcly St Crd Bnd	SPSB	2.4	30.10	0.02	30
-3.3	83	B	83.8	VG Intrmed-Term Bd	BIV	2.9	81.07	0.37	3
-2.0	83	B+	52.5	VG Mrtg Backed Sec	VMBS	2.7	51.39	0.14	-21
-1.9	83	A-	79.3	VG St Corp Bond	VCSH	2.6	77.83	0.11	74
-3.1	83	D	81.6	VG Total Bond Mkt	BND	2.8	79.01	0.19	26
-0.4	83	B-	55.3	VG Totl Intl Bond	BNDX	3.0	54.16	0.04	97
-3.0	82	D	48.7	SPDR DL Totl Rtn Tact	TOTL	3.4	47.17	0.20	30
-0.9	81	C-	51.1	IS Fltng Rate Bond	FLOT	2.4	50.35	0.00	13
2.8	81	D+	24.4	ProS Short 20+ Yr Trs	TBF	0.8	22.48	-0.19	0
-3.2	81	C-	29.7	SPDR Brcly Intl Treas	BWX	1.1	27.53	0.07	111
-2.0	81	C+	49.2	VG Shrt Trm Infl-Protc	VTIP	2.4	47.86	0.05	32
-2.0	81	A-	63.1	VV Hi Yield Muni	HYD	4.4	61.13	0.04	3
-5.5	80	D-	87.5	VG Intmd Corp Bond	VCIT	3.6	82.60	0.30	-13
-4.2	79	C	54.7	IS Brcly Intmd CrpBnd	IGIB	3.4	52.33	0.23	-32
-4.1	79	D-	114.2	IS Brcly TIPS	TIP	2.7	109.43	0.32	48
-7.4	77	D-	121.6	IS Iboxx $ Invgrdcp	LQD	3.7	112.51	0.53	-54
-10.8	75	B-	29.8	Inv Emrg Mkt Sovgn	PCY	4.9	26.34	0.03	22
-6.9	75	C+	19.1	Inv High Yld Corp	PHB	4.4	17.65	-0.01	-24
-5.3	74	E	23.3	Inv Senior Loan	BKLN	4.5	21.81	0.00	-3
-5.5	74	E	101.5	Pimco 0-5Yr HiYld Crp	HYS	5.0	94.96	-0.16	-37
-5.7	74	E	27.8	SPDR Brcly St HY Bnd	SJNK	5.7	25.99	0.03	-5
-4.9	73	E	31.3	IQ Hdg MultStrat Trckr	QAI	..	28.94	0.13	176
-7.1	73	E	88.0	IS Iboxx Hi Yd C Bd	HYG	5.5	81.04	0.12	17
-10.8	73	E	116.9	IS JPM USD Emg Mkts	EMB	5.7	103.55	0.07	-22
-11.3	73	B-	95.9	VG LngTrm Corp Bond	VCLT	4.6	84.89	0.58	203
-8.9	71	E	18.9	Inv Financial Prfd	PGF	5.8	17.20	0.16	118
-8.7	71	E	37.0	SPDR Brcly HiYld Bnd	JNK	5.9	33.54	0.05	-14
-9.6	66	E	12.3	GX SuperDiv Preferd	SPFF	7.6	10.99	0.03	140
-10.2	66	E	14.9	Inv Preferred	PGX	6.1	13.34	0.16	139
-11.0	63	E	38.2	IS S&P US Pfd Stk	PFF	6.4	33.90	0.33	111
-11.8	63	D-	19.4	MultAsset Div Income	MDIV	6.9	16.76	0.06	43
-7.8	57	D-	55.0	SPDR Brcly Conv Sec	CWB	6.2	46.64	-0.17	-8
Leveraged									
-13.4	86	C	22.2	DX 20+ Treas Bull 3X	TMF	1.5	19.14	0.49	25
4.7	80	D-	41.7	ProS UltSht 20+ Yr	TBT	1.0	35.37	-0.58	-12
4.8	73	C-	23.7	DX 20+ Treas Bear 3X	TMV	0.6	18.48	-0.47	-42
-18.9	45	D-	16.9	UBS Etrc 2X MortREIT	MORL	24.4	13.10	0.30	116
Commodity/Currency									
74.9	99	A+	56.5	IP VIX S ETN	VXX	..	48.82	0.05	-5
73.4	99	A+	46.8	ProS VIX ST Futures	VIXY	..	40.15	0.03	-18
28.7	96	A-	23.4	IP VIX M ETN	VXZ	..	22.53	0.04	-44
17.5	95	A+	39.9	United States NatGas	UNG	..	27.40	-1.46	-51
6.1	90	D+	26.1	Inv DB US$ Bullish	UUP	1.1	25.50	-0.07	16
-1.9	89	B	13.1	IS Gold Trust	IAU	..	12.27	0.06	-11
-2.1	89	B-	129.5	SPDR Gold Trust	GLD	..	121.06	0.49	-26
-9.8	79	A-	16.6	IS Silver Trust	SLV	..	14.42	0.12	43
-5.4	77	B-	120.7	Currencyshrs Euro	FXE	..	109.37	0.01	-42
-9.5	75	C-	19.7	Inv DB Agriculture	DBA	1.1	16.97	0.07	-34
-12.4	61	D-	28.9	IS Curr Hdg MSCI EM	HEEM	2.5	23.21	-0.18	17
-12.3	57	E	25.8	IP DJ-UBS Cmmd ETN	DJP	..	21.40	-0.14	76
-9.6	54	D	6.0	Elmnts Rogr Intl Cmd	RJI	..	4.88	-0.02	-23
-20.6	54	C+	19.9	Inv DB Base Metals	DBB	1.6	15.41	-0.18	-74
-12.9	54	D-	30.9	IS Curr Hdg MSCI EAFE	HEFA	4.5	25.87	-0.21	195
-13.2	54	E	31.6	IS CurrHdg MSCI EMU	HEZU	3.4	25.88	-0.02	812
-17.4	49	D	30.4	IS CurrHdg MSCI Germ	HEWG	3.1	23.70	0.20	116
-15.1	48	D-	35.3	IS Curr Hdg MSCI Japn	HEWJ	1.6	28.32	-0.25	-55
-13.0	39	D-	18.6	Inv DB Commdty Idx	DBC	1.2	14.45	-0.12	-38
-14.2	35	E	18.8	IS S&P GSCI Cmd ETN	GSG	..	13.97	-0.10	61
-17.2	22	E	24.4	US Brent Oil	BNO	..	14.99	-0.18	-40
-18.0	20	D-	14.2	Inv DB Oil	DBO	1.6	8.32	-0.11	-61
-20.6	18	E	16.2	United States Oil LP	USO	..	9.53	-0.09	-38
-91.9	15	E	557.9	ProS Short VIX ST Fut	SVXY	..	41.54	-0.01	11
Leveraged									
69.7	99	A+	150.9	ProS Ult VIX ShrtTrm	UVXY	..	86.64	0.11	-12
23.1	99	A+	33.2	ProS UltSht Crude Oil	SCO	..	30.23	0.54	-31
38.6	99	A+	154.7	VS 2X VIX ShrtTrm ETN	TVIX	..	76.80	0.24	-2
14.7	93	C+	25.0	ProS UltSht Euro	EUO	..	24.31	0.01	-41
-3.6	90	B+	73.7	ProS Ult Bloom Natgs	BOIL	..	31.34	-3.04	-21
8.4	81	D-	6.8	DB Gold DS ETN	DZZ	..	5.81	-0.03	-50
-23.0	71	B+	36.5	ProS Ultra Silver	AGQ	..	26.08	0.39	-18
-37.5	54	A-	129.0	VS 3X Long Silver ETN	USLV	..	72.59	1.82	-28
-20.5	51	E	260.2	VS 3X Lng NatGas ETN	UGAZ	..	57.82	-10.82	208
-45.0	5	E	39.4	ProS Ultra Crude Oil	UCO	..	12.89	-0.31	0
-83.2	1	E	742.0	VS 3X Invr NatGas ETN	DGAZ	..	92.32	11.02	-16

IBD'S ETF Market Strategy

OVERVIEW

IBD's **Market Pulse** feature has a long history of recognizing shifts in market direction early on to help investors maximize gains in uptrends and protect their portfolios in downtrends. Now we've developed a simple method for trading market index ETFs based on the market direction posted daily in the **Market Pulse**.

Market Direction
Market in correction
% Invested: 0%

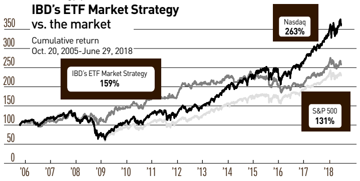
HOW IT WORKS

Invest in a market index ETF (QQQ was used in the study) immediately after a new uptrend is announced in **Market Pulse** and employ these simple allocation rules:

Market direction	% invested
Confirmed uptrend	100%
Uptrend under pressure	50%
Market in correction	0%
⚠ Optional stop loss: Nasdaq falls 2.6% below closing value of uptrend's first day	0%

HOW IT PERFORMS

The true value of the strategy is that it lets you lower your risk by sitting out market corrections, including major bear markets. Since 2005, IBD's ETF Market Strategy produced an estimated cumulative return of:



For complete details on IBD's ETF Market Strategy, go to:
Investors.com/ETFStrategy

1-Week Winners & Losers

TOP 10

ETF	Symbol	RS Rtg	1-wk % chg
SPDR S&P Biotech	XBI	28	6.6
FrstTr DJ Internet	FDN	60	6.0
Innovator IBD 50	FFTY	29	5.9
FrstTr DorWri Focus 5	FV	49	5.7
SPDR S&P Retail	XRT	48	5.6
FrstTr Tech Alphdx	FXL	63	5.3
IS Silver Trust	SLV	79	5.0
FrstTr NYSEArc Biotch	FBT	48	4.8
IS Russell 2000 Grwth	IWO	39	4.7
SPDR S&P O&G Equip	XES	9	4.7

BOTTOM 10

ETF	Symbol	RS Rtg	1-wk % chg
United States NatGas	UNG	95	-9.4
ProS Short QQQ	PSQ	93	-4.4
ProS Short Russ 2000	RWM	96	-3.9
GX FTSE Greece 20	GREK	25	-3.3
ProS Short Dow 30	DOG	92	-3.3
ProS Short S&P 500	SH	93	-3.3
Inv DB Base Metals	DBB	54	-2.7
ProS Short MSCI Emrg	EUM	93	-2.5
Inv DB Oil	DBO	20	-2.1
ProS Short VIX ST Fut	SVXY	15	-2.1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

CLASS ACTION

This Document Relates To: Securities Actions
City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

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

TO: All persons and entities in the U.S. or elsewhere who purchased or otherwise acquired Volkswagen Aktiengesellschaft ("VWAG") Ordinary American Depositary Receipts (CUSIP: 928662303) and/or VWAG Preferred American Depositary Receipts (CUSIP: 928662402) from November 19, 2010 through January 4, 2016, inclusive (the "Class Period"), and who were allegedly damaged thereby (the "Settlement Class"):

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

YOU ARE HEREBY NOTIFIED, in accordance with Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of California, that the above-captioned securities litigation (the "Action") has been conditionally certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as stated in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that Plaintiffs in the Action have reached a proposed settlement of the Action for $48,000,000 in cash (the "Settlement"), which, if approved, will resolve all claims in the Action.

A hearing will be held on May 10, 2019 at 10:00 a.m., before the Honorable Charles R. Breyer at the United States District Court for the Northern District of California, Courtroom 6 of the Phillip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated August 27, 2018 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved.

If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund. If you have not yet received the Notice and the Proof of Claim and Release Form (the "Claim Form"), you may obtain copies of these documents by contacting the Claims Administrator at: Volkswagen ADR Litigation, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 4390, Portland, OR 97208-4390, 1-888-738-3759, info@VolkswagenADRLitigation.com. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.VolkswagenADRLitigation.com.

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form ***postmarked*** **no later than April 18, 2019**. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement, but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is ***received*** **no later than April 18, 2019**, in accordance with the instructions in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action, and you will not be eligible to share in the proceeds of the Settlement.

Any objection to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses must be mailed to or filed with the Court such that it is ***filed or postmarked*** **no later than April 18, 2019**, in accordance with the instructions in the Notice.

Please do not contact the Court, the Clerk's office, Defendants, or Defendants' counsel regarding this notice. All questions about this notice, the proposed Settlement, your eligibility to participate in the Settlement, or the claims process, should be directed to the Claims Administrator or Lead Counsel.

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

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c/o Epiq Class Action & Claims Solutions, Inc.
P.O. Box 4390
Portland, OR 97208-4390
1-888-738-3759
info@VolkswagenADRLitigation.com
www.VolkswagenADRLitigation.com

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

James A. Harrod, Esq.
Bernstein Litowitz Berger & Grossmann LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
1-800-380-8496
settlements@blbglaw.com

By Order of the Court

Bernstein Litowitz Berger & Grossmann LLP Announces Proposed Settlement of Volkswagen ADR Litigation

NEWS PROVIDED BY
Bernstein Litowitz Berger & Grossmann LLP →
Dec 31, 2019, 07:59 ET

SAN FRANCISCO, Dec. 31, 2018 /PRNewswire/ --

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION _____/	MDL No. 2672 CRB (JSC) **CLASS ACTION**
This Document Relates To: Securities Actions *City of St. Clair Shores*, 15-1228 (E.D. Va.) *Travalio*, 15-7157 (D.N.J.) *George Leon Family Trust*, 15-7283 (D.N.J.) *Charter Twp. of Clinton*, 15-13999 (E.D. Mich.) *Wolfenbarger*, 15-326 (E.D. Tenn.) _____/	

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c/o Epiq Class Action & Claims Solutions, Inc.
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info@VolkswagenADRLitigation.com

www.VolkswagenADRLitigation.com

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

James A. Harrod, Esq.
Bernstein Litowitz Berger & Grossmann LLP
1251 Avenue of the Americas, 44th Floor
New York, NY 10020
1-800-380-8496
settlements@blbglaw.com

By Order of the Court

SOURCE Bernstein Litowitz Berger & Grossmann LLP

Related Links

https://www.volkswagenadrlitigation.com

Exhibit 4

EXHIBIT 4

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

SUMMARY OF PLAINTIFFS' COUNSEL'S LODESTAR AND EXPENSES

TAB	FIRM	HOURS	LODESTAR	EXPENSES
A	Bernstein Litowitz Berger & Grossmann LLP	14,073.00	$7,488,811.25	$296,879.86
B	Klausner Kaufman Jensen & Levinson	42.50	$25,255.00	----
	TOTAL:	**14,115.50**	**$7,514,066.25**	**$296,879.86**

#1284066

Exhibit 4A

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
JAMES A. HARROD
JAI CHANDRASEKHAR
ADAM D. HOLLANDER
KATE W. AUFSES
jim.harrod@blbglaw.com
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adam.hollander@blbglaw.com
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1251 Avenue of the Americas
New York, NY 10020
Tel: (212) 554-1400
Fax: (212) 554-1444

Attorneys for Lead Plaintiff ASHERS and Plaintiff Miami Police and Lead Counsel in the Securities Actions

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

_____/

This Document Relates To: Securities Actions

City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

_____/

MDL No. 2672 CRB (JSC)

CLASS ACTION

DECLARATION OF JAMES A. HARROD IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

Judge:	Hon. Charles R. Breyer
Courtroom:	6
Date:	May 10, 2019
Time:	10:00 a.m.

I, JAMES A. HARROD, declare as follows:

1. I am a Member of the law firm of Bernstein Litowitz Berger & Grossmann LLP, Court-appointed Lead Counsel in the above-captioned action (the "Action").[1] I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees for services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in the Action. I have personal knowledge of the facts stated in this declaration and, if called upon, could and would testify to these facts.

Introduction

2. My firm, as Lead Counsel of record in the Action, was involved in all aspects of the litigation of the Action and its settlement as described in the Declaration of James A. Harrod in Support of (I) Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The information in this declaration and its exhibits regarding the time spent on the Action by my firm's attorneys and other professional staff is based on daily time records regularly prepared and maintained by the firm. The information in this declaration and its exhibits regarding expenses is based on my firm's records, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, billing statements, and other source materials and are an accurate record of the expenses incurred. I am the partner who oversaw or conducted the day-to-day activities in the litigation, and I reviewed these time and expense records to prepare this Declaration.

4. The purpose of this review was to confirm both the accuracy of the time entries and expenses and the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the

[1] Unless otherwise defined in this declaration, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement, dated August 27, 2018, and previously filed with the Court. *See* ECF No. 5267-1.

exercise of counsel's judgment. In addition, all time expended in preparing this application for fees and expenses has been excluded. Further, all time incurred by any timekeeper who spent fewer than ten hours working on the Action has been excluded.

5. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which reimbursement is sought as stated in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are all of a type that would normally be billed to a fee-paying client in the private legal marketplace.

6. The hourly rates for the attorneys and professional support staff in my firm included in the exhibits to this declaration are the usual and customary rates set by the firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by courts, including courts in this Circuit, in other contingent-fee securities-class-action litigation or shareholder litigation. My firm's rates are set based on periodic analysis of rates that are charged by firms performing comparable work and have been approved by courts. Different timekeepers within the same employment category (e.g., partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (e.g., years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms. For personnel who are no longer employed by my firm, the "current rate" used for the lodestar calculation is based upon the rate for that person in his or her final year of employment with my firm.

7. None of the timekeepers listed in the exhibits to this declaration and included in my firm's lodestar for the Action are (or were) "contract attorneys" or "contract paralegals." All of the timekeepers listed are (or were) either partners of the firm or employees of the firm who are (or were) entitled to medical and other benefits. With the exception of Niki Mendoza (formerly Senior Counsel at the firm based in our San Diego, California office), all of the attorneys and employees of the firm listed in the attached schedule work (or worked) at BLB&G's offices at 1251 Avenue of the Americas and are (or were) either partners or W-2 employees of the firm, which means that

the firm pays FICA and Medicare taxes on their behalf, along with state and federal unemployment taxes. These attorneys and employees also have (or had) access to the firm's 401(k) program, are (or were) eligible to receive year-end bonuses, and are (or were) fully supervised by the firm's partners and senior counsel and have (or had) access to secretarial and paralegal support. BLB&G also assigns a firm email address to each attorney or other employee it employs.

Hours and Lodestar Information

8. Attached as Exhibit 1 to this declaration is a summary lodestar chart (the "Summary Lodestar Chart"), which lists (1) the name of each timekeeper in my firm who devoted more than ten hours to the Action, categorized by title or position (e.g., partner, associate, staff attorney, paralegal); (2) the total number of hours each person worked on the Action from its inception through and including March 29, 2019; (3) each person's current (or last) hourly rate; and (4) each person's lodestar based on the applicable hourly rate.

9. As reflected in Exhibit 1, the total number of hours expended on this Action by my firm through March 29, 2019, is 14,073.00. The total lodestar for my firm for that period is $7,488,811.25, consisting of $6,698,333.75 for attorneys' time and $790,477.50 for professional support staff's time.

10. Attached as Exhibit 2 are summary descriptions of the principal tasks in which each attorney and the key support staff from my firm were involved in this Action.

11. Attached as Exhibit 3 (the "Summary of Categories by Timekeeper") is a chart that reflects the hours spent by each timekeeper on each of the following seven task categories:

(1) **Initial Investigation and Lead-Plaintiff Appointment:** includes time spent on Lead Counsel's wide-ranging investigation into the claims asserted in the Action, including consulting with experts and reviewing the voluminous public record, communicating with clients, and researching and drafting motion papers for appointment of ASHERS as Lead Plaintiff;

(2) **Preparation of Complaints and Factual Investigation:** includes time incurred by Lead Counsel in researching and drafting the First Consolidated Complaint and Amended Complaint;

(3) **Motions to Dismiss:** includes time incurred by Lead Counsel in researching and drafting opposition briefs responding to Defendants' motions to dismiss the First Consolidated Complaint and motions to dismiss the Amended Complaint and preparing for and presenting oral argument in opposition to these motions;

(4) **Motion for Partial Summary Judgment:** includes time incurred by Lead Counsel on researching and briefing Plaintiffs' motion for partial summary judgment regarding the issues of falsity and scienter with respect to several of VWAG's alleged false statements;

(5) **Discovery and Related Motions:** includes time incurred by Lead Counsel on the extensive fact discovery conducted in the Action, including drafting and serving discovery requests on Defendants and document subpoenas upon several dozen nonparties, reviewing Plaintiffs' documents and responding to document requests served by Defendants, serving and responding to interrogatories, litigating numerous discovery disputes, and reviewing and analyzing documents produced by Defendants and nonparties;

(6) **Class Certification:** includes time incurred by Lead Counsel in preparing a motion for class certification, including legal research, reviewing and analyzing Plaintiffs' and Defendants' documents, and working with an expert on a draft expert report.

(7) **Settlement:** includes time incurred by Lead Counsel in extensive arm's-length settlement negotiations with Defendants, drafting and negotiating the Settlement Stipulation and related Settlement documentation, researching, drafting and filing Plaintiffs' motions for preliminary and final approval of the proposed Settlement, and handling other Settlement-related tasks.

Expense Information

12. My firm's lodestar figures are based upon the firm's hourly rates, which do not include expense items. Expense items are recorded separately, and these amounts are not duplicated in my firm's hourly rates.

13. As detailed in Exhibit 4, my firm seeks an award of $296,879.86 for expenses incurred in the prosecution of the Action from its inception through March 29, 2019.

14. The expenses reflected in Exhibit 4 are the actual incurred expenses or reflect "caps" based on the application of the following criteria:

(1) **Out-of-Town Travel:** airfare is capped at coach rates; hotel charges per night are capped at $350 for "high cost" cities and $250 for "low cost" cities (the relevant cities and how they are categorized are reflected on Exhibit B); and meals are capped at $20 per person for breakfast, $25 per person for lunch, and $50 per person for dinner.

(2) **Out-of-Office Meals:** capped at $25 per person for lunch and $50 per person for dinner.

(3) **In-Office Working Meals:** capped at $20 per person for lunch and $30 per person for dinner.

(4) **Internal Copying/Printing:** charged at $0.10 per page.

(5) **On-Line Research:** charges reflected are for out-of-pocket payments to vendors for research done in this litigation. On-line research is charged to each case based on

actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

Firm Biography

15. With respect to the standing of my firm, attached to this declaration as Exhibit 5 is a brief biography of my firm and attorneys in my firm who were involved in the Action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief, this 5th day of April, 2019.

/s/ James A. Harrod
James A. Harrod

#1278859

EXHIBIT 1

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Summary Lodestar Chart
Inception through March 29, 2019

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Max W. Berger	120.25	$1,300.00	$ 156,325.00
James A. Harrod	1,833.50	900.00	1,650,150.00
Gerald Silk	64.50	1,050.00	67,725.00
Senior Counsel			
Jai Chandrasekhar	950.75	775.00	736,831.25
Adam Hollander	1,224.75	775.00	949,181.25
Niki Mendoza	18.50	700.00	12,950.00
Of Counsel			
Kurt Hunciker	340.25	775.00	263,693.75
Associates			
Kate Aufses	424.25	450.00	190,912.50
John Mills	263.25	700.00	184,275.00
Ross Shikowitz	984.25	600.00	590,550.00
Catherine van Kampen	20.00	700.00	14,000.00
Summer Associate			
Grace Gadow	250.75	300.00	75,225.00
Staff Attorneys			
Girolamo Brunetto	22.50	350.00	7,875.00
Jasper Hayes-Klein	145.25	375.00	54,468.75
Jared Hoffman	441.00	375.00	165,375.00
Steffanie Keim	917.00	340.00	311,780.00
Jed Koslow	882.50	375.00	330,937.50
John Moore	299.25	350.00	104,737.50
Chesley Parker	1,089.75	350.00	381,412.50
Kirstin Peterson	66.75	395.00	26,366.25
Christina Suarez (Papp)	1,129.50	375.00	423,562.50
Litigation Support			
Babatunde Pedro	110.50	295.00	32,597.50
Andrea R. Webster	38.25	330.00	12,622.50

NAME	HOURS	HOURLY RATE	LODESTAR
Jessica M. Wilson	12.25	295.00	3,613.75
Managing Clerk			
Errol Hall	47.00	310.00	14,570.00
Paralegals			
Yvette Badillo	235.50	300.00	70,650.00
Martin Braxton	180.25	245.00	44,161.25
Ruben Montilla	549.00	255.00	139,995.00
Norbert Sygdziak	1,279.25	335.00	428,548.75
Gary Weston	51.75	375.00	19,406.25
Financial Analysts			
Matthew McGlade	38.25	350.00	13,387.50
Adam Weinschel	13.00	500.00	6,500.00
Intern			
Sara Winkler	29.50	150.00	4,425.00
TOTALS	**14,073.00**		**$7,488,811.25**

EXHIBIT 2

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Summary Descriptions of Work Performed

PARTNERS

Max W. Berger (120.25 hours): Mr. Berger, Managing Partner and Founder of BLB&G, was actively involved in developing litigation strategy and was directly engaged with counsel for Volkswagen in the settlement process.

James A. Harrod (1,833.50 hours): I was the Partner at BLB&G primarily responsible for supervising both the day-to-day management and overall strategy of the litigation, and oversaw all aspects of case management and prosecution following the appointment of BLB&G as Lead Counsel. I was involved in drafting the Consolidated Securities Class Action Complaint (the "First Consolidated Complaint") as well as all the briefing in opposition to Defendants' motions to dismiss the First Consolidated Complaint. I also participated in the decision to amend the First Consolidated Complaint, oversaw the amendment process, and reviewed Plaintiffs' First Amended Consolidated Securities Class Action Complaint (the "Amended Complaint" or "Complaint"). I was involved in drafting Plaintiffs' opposition to Defendants' motions to dismiss the Complaint. I also prepared for and presented oral argument in opposition to both rounds of Defendants' motions to dismiss. I supervised the drafting of Plaintiffs' motion for partial summary judgment and related procedural motions. I was involved in supervising and managing both offensive and defensive discovery efforts, in drafting Plaintiffs' various discovery motions, presenting argument to Magistrate Judge Corley on those motions, and supervising Plaintiffs' analysis and review of documents produced in the litigation. I was the person principally responsible for engaging with clients regarding their responses to discovery served by Defendants, including coordinating the collection and production of their documents. I was responsible for strategy related to case management, and I consulted with experts during the litigation, including concerning class certification. I was responsible for communicating with Plaintiffs regarding the overall strategy and conduct of the case, including providing periodic updates and responding to comments and questions from the Plaintiffs concerning all aspects of the litigation. I participated in the settlement negotiations, including preparing written materials in support of Plaintiffs' settlement positions and in response to similar materials provided by Defendants. I supervised preparation of the formal settlement documents, including Plaintiffs' Motion for Preliminary Approval. I will argue Plaintiffs' final-approval motion at the upcoming hearing.

Gerald Silk (64.50 hours): Mr. Silk is a BLB&G Partner and the leader of the firm's New Matters department. Mr. Silk was principally involved in the motion for appointment of ASHERS as Lead Plaintiff and BLB&G as Lead Counsel. Mr. Silk also actively participated in major strategic and tactical decisions throughout the litigation, in particular the settlement negotiations with Defendants.

SENIOR COUNSEL

Jai Chandrasekhar (950.75 hours): Mr. Chandrasekhar, Senior Counsel at BLB&G, was significantly involved in all aspects of the case following the appointment of BLB&G as Lead Counsel, including the investigation of the claims asserted and drafting of the First Consolidated Complaint and researching and drafting the opposition to Defendants' first round of motions to dismiss. Mr. Chandrasekhar was also involved in preparing the Amended Complaint, as well as the briefing in opposition to Defendants' second round of motions to dismiss. Mr. Chandrasekhar participated in the research and drafting of briefing in support of Plaintiffs' motion for partial summary judgment. Mr. Chandrasekhar was also involved in discovery efforts, which included, among other things, drafting discovery requests to Defendants, participating in meet-and-confers, and drafting letter motions to Magistrate Judge Corley. Mr. Chandrasekhar also worked on researching and drafting the motion for class certification. Mr. Chandrasekhar also performed work on the Settlement, including reviewing the Settlement Notice and proposed plan of allocation as well as the briefing in support of the motion for preliminary approval.

Adam Hollander (1,224.75 hours): Mr. Hollander, Senior Counsel at BLB&G, was significantly involved in all aspects of the case following the appointment of BLB&G as Lead Counsel, including the investigation of the claims asserted and drafting of the First Consolidated Complaint and researching and drafting the opposition to Defendants' first round of motions to dismiss. Mr. Hollander also was involved in preparing the Amended Complaint as well as the briefing in opposition to Defendants' second round of motions to dismiss. Mr. Hollander participated in the research and drafting of briefing in support of Plaintiffs' motion for partial summary judgment and related procedural motions. Mr. Hollander was also involved in supervising and managing both offensive and defensive discovery efforts, which included, among other things, being involved in drafting Plaintiffs' various discovery motions and extensive related communications with defense counsel, leading team meetings to discuss key documents identified, supervising the document review and analysis of the documents produced by Defendants, drafting discovery requests to Defendants and to third parties, coordinating initial client document collection efforts, and managing discovery from numerous third parties, including meeting and conferring with those third parties concerning their responses to subpoenas *duces tecum*. Mr. Hollander also performed work in connection with preliminary approval of the Settlement, including reviewing the Settlement Notice and proposed plan of allocation.

Niki Mendoza (18.50 hours): Ms. Mendoza, a former Senior Counsel at BLB&G, was actively involved early in the litigation following the appointment of BLB&G as Lead Counsel and before her departure from the Firm in May 2017. Ms. Mendoza primarily assisted with the filing of the First Consolidated Complaint.

OF COUNSEL

Kurt Hunciker (340.25 hours): Mr. Hunciker, who is Of Counsel to the Firm, was involved in the investigation of the claims asserted and drafting of the First Consolidated Complaint and researching and drafting the opposition to Defendants' first round of motions to dismiss. Mr. Hunciker also was involved in preparing the Amended Complaint.

ASSOCIATES

Kate Aufses (424.25 hours): Ms. Aufses, an Associate at BLB&G, joined the case team during the discovery phase. Ms. Aufses was principally responsible for drafting document requests and subpoenas to third parties for the production of documents. Ms. Aufses also drafted and responded to interrogatories and worked closely with staff attorneys to prepare for meetings to discuss key documents identified. Ms. Aufses also worked on researching and drafting the various discovery motions and the motion for class certification. Ms. Aufses also supervised the review of documents, and worked closely with Ms. Gadow in drafting the brief in support of Plaintiffs' Motion for Preliminary Approval.

John Mills (263.25 hours) and **Catherine van Kampen** (20.00 hours): Mr. Mills and Ms. van Kampen are Associates in the Firm's Settlement Department. Mr. Mills's and Ms. van Kampen's primary role at the Firm is to manage and implement class-action settlements. Mr. Mills had responsibility for drafting, editing, and coordinating the settlement documentation. Mr. Mills was also responsible for coordinating with the claims administrator regarding dissemination of notice to the Settlement Class. Ms. van Kampen's work principally involved establishing an escrow account for the Settlement Fund, as well as reviewing and selecting a claims administrator to administer the Settlement.

Ross Shikowitz (984.25 hours): Mr. Shikowitz was an Associate in the Firm's New Matters department and was also assigned to assist in the litigation of this case following BLB&G's appointment as Lead Counsel. Mr. Shikowitz assisted Mr. Silk with the preparation of the motion to appoint ASHERS as Lead Plaintiff and BLB&G as Lead Counsel. Mr. Shikowitz was also involved in the investigation of the claims asserted and drafting of the First Consolidated Complaint and researching and drafting the opposition to Defendants' first round of motions to dismiss. Mr. Shikowitz also was involved in preparing the Amended Complaint, as well as the briefing in opposition to Defendants' second round of motions to dismiss. Mr. Shikowitz participated in the research and drafting of briefing in support of Plaintiffs' motion for partial summary judgment. Mr. Shikowitz was also involved in discovery efforts, which included, among other things, drafting discovery requests to Defendants.

SUMMER ASSOCIATE

Grace Gadow (250.75 hours): Ms. Gadow was a Summer Associate at BLB&G. Ms. Gadow was primarily involved in discovery efforts, including working closely with Ms. Aufses in reviewing client documents and the calendar entries of Defendant Winterkorn. Under the supervision of Mr. Chandrasekhar and Ms. Aufses, Ms. Gadow also assisted with drafting the brief in support of the motion for preliminary approval.

STAFF ATTORNEYS

Girolamo Brunetto (22.50 hours): Mr. Brunetto worked closely with Mr. Mills and Ms. van Kampen on various tasks related to the Settlement. Mr. Brunetto performed research for the brief in support of the motion for preliminary approval. Mr. Brunetto also reviewed the Settlement documentation and responded to potential Class members who contacted the Firm with questions about the Settlement.

Jasper Hayes-Klein (former staff attorney) (145.25 hours): Mr. Hayes-Klein was a member of the document-review team. Mr. Hayes-Klein analyzed key discovery findings and translated German language documents.

Jared Hoffman (441.00 hours): Mr. Hoffman was a member of the document-review team. Mr. Hoffman participated in the review of documents produced by third-parties for relevance and escalation. In particular, Mr. Hoffman reviewed and analyzed third-party documents from West Virginia University CAFFE, OTC Markets, Securities America Advisors, CastleArk Management, Wells Fargo, FINRA, International Council on Clean Transportation (ICCT) and FPP, and drafted memoranda summarizing the contents of those productions for the case team. Mr. Hoffman also reviewed and synthesized trading information for Volkswagen ADRs during the Class Period.

Steffanie Keim (former staff attorney) (917.00 hours): Ms. Keim is a native-German speaker and translated German-language documents during the investigation of the claims asserted, as well as during discovery. Ms. Keim reviewed German-language media during the initial phases of the litigation and assisted in the translation and formulation of ESI search terms used for Volkswagen's production of documents. After formal discovery began, Ms. Keim joined the document review team and reviewed documents produced by Defendants and third parties for relevance and escalation, with a focus on German-language documents that required translation.

Jed Koslow (882.50 hours): Mr. Koslow was a member of the document-review team. Mr. Koslow participated in the review of documents produced by Defendants and third-parties for relevance and escalation. Specifically, Mr. Koslow primarily reviewed and analyzed the custodial documents of James Liang, an engineer for Volkswagen, and identified and assembled hot documents for presentation to the case team.

John Moore (299.25 hours): Mr. Moore was a member of the document-review team. Mr. Moore participated in the review of Defendants' productions for relevance and escalation. In particular, Mr. Moore reviewed and analyzed documents relating to emissions reports to the Environmental Protection Agency, including documents submitted by Volkswagen, as well as documents from West Virginia University, the ICCT and California Air Resources Board. Mr. Moore developed an index of the relevant documents that he identified and escalated them to Ms. Aufses.

Chesley Parker (1,089.75 hours): Ms. Parker was a member of the document-review team. Ms. Parker participated in the review of documents produced by Defendants and third-parties for relevance and escalation. Ms. Parker reviewed and analyzed document productions from third-parties to identify ADR purchasers that were domiciled in the U.S. Ms. Parker also reviewed Defendants' document productions and coded those documents for relevant issues. Ms. Parker specifically focused on reviewing the custodial documents of Oliver Schmidt, including by performing targeted searches based on specific search terms to identify documents of interest. Additionally, Ms. Parker organized and compiled the hot documents that were identified weekly into a chart and drafted memoranda summarizing the documents that she reviewed and distributed them to members of the case team.

Kirstin Peterson (former staff attorney) (66.75 hours): Ms. Peterson was a member of the document-review team. Ms. Peterson analyzed key discovery findings and translated German-language documents.

Christina Suarez (Papp) (1,129.50 hours): Ms. Suarez (Papp) was a member of the document-review team. Ms. Suarez (Papp) participated in the review of documents produced by Defendants and third-parties for relevance and escalation. Ms. Suarez (Papp) also reviewed and analyzed client documents in anticipation of their production to Defendants. Ms. Suarez (Papp) reviewed and analyzed documents produced by Defendants and third-parties and prepared memoranda related to those documents. Ms. Suarez (Papp) drafted a glossary of terms as well as coding sheets and issue tags for document review and created and reviewed targeted searches within Defendants' document productions. Ms. Suarez (Papp) also summarized and logged hot documents from Defendants' productions, with a specific focus on a review of the custodial documents of Oliver Schmidt and Stuart Johnson, including a review of testimony from the related criminal case against Oliver Schmidt. Ms. Suarez (Papp) also contributed to drafting a memorandum summarizing the review team's analysis of documents produced by third-parties.

FINANCIAL ANALYSTS

Adam Weinschel (13.00 hours) and **Matthew McGlade** (38.25 hours): Mr. Weinschel, Director of Investor Services at BLB&G, and Mr. McGlade, Financial Analyst at BLB&G, conducted research into and analysis of losses suffered by investors.

INTERN

Sara Winkler (29.50 hours): Ms. Winkler, a former Intern at BLB&G, was primarily involved in discovery efforts, including monitoring the news and related case dockets to keep the team apprised of relevant developments as news related to the fraud was unfolding.

SUPPORT STAFF – Case Managers, Paralegals, Electronic Discovery Professionals, and Filing Support

Gary Weston (51.75 hours): Mr. Weston is the Paralegal Supervisor at the Firm. Mr. Weston supervised the work of the paralegals on the case (identified below) in preparing various documents for submission to the Court, monitoring the news and related case dockets to keep the case team apprised of relevant developments as news related to the alleged fraud was unfolding, and maintaining physical and electronic case materials (including discovery materials). In addition, Mr. Weston was the lead paralegal on this case, and in that capacity, he directly performed the tasks listed above, as well as provided support and assistance to the attorneys as needed by gathering documents and information requested by the attorneys.

Yvette Badillo (235.50 hours), **Martin Braxton** (180.25 hours), **Ruben Montilla** (549.00 hours), and **Norbert Sygdziak** (1,279.25 hours): Ms. Badillo, Mr. Braxton, Mr. Montilla, and Mr. Sygdziak are all current or former members of the Firm's Paralegal Department. Mr. Sygdziak is a Case Manager; Ms. Badillo is a current paralegal; and Mr. Braxton and Mr. Montilla are former paralegals. Under the supervision of Mr. Weston, all of these individuals performed paralegal work in this case, including preparing documents for submission to the Court, monitoring the news and related case dockets to keep the case team apprised of relevant developments as news related to the fraud was unfolding, and maintaining physical and electronic case materials (including discovery materials). After the appointment of BLB&G as Lead Counsel, Mr. Weston, Ms. Badillo, Mr. Braxton, Mr. Montilla, and Mr. Sygdziak were the paralegals principally responsible for this case at the Firm.

Babatunde Pedro (110.50 hours), **Andrea R. Webster** (38.25 hours), and **Jessica M. Wilson** (12.25 hours): Mr. Pedro, Ms. Webster, and Ms. Wilson were formerly members of BLB&G's Electronic Discovery Support Department. They assisted in the logistics involved in the discovery here, including by processing and loading for review the document productions made by Defendants and running various reports, as needed, reflecting the progress of that review.

Errol Hall (47.00 hours): Mr. Hall was formerly BLB&G's Managing Clerk. In that capacity, Mr. Hall was principally responsible for electronically filing documents with the Court, as well as supervising these filings for conformity with local rules, procedures, and electronic-filing requirements.

EXHIBIT 3

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Category Chart by Timekeeper
Inception through March 29, 2019

Category Codes:
1. Initial Investigation and Lead Plaintiff Appointment
2. Preparation of Complaints and Factual Investigation
3. Motions to Dismiss
4. Motion for Partial Summary Judgment
5. Discovery and Related Motions
6. Class Certification
7. Settlement

TIMEKEEPER	1	2	3	4	5	6	7	TOTAL HOURS	HOURLY RATE	LODESTAR
Max W. Berger - Partner		31.25	9.25	8.25	3.75		67.75	120.25	$1,300.00	$156,325.00
James A. Harrod - Partner	16.50	385.50	407.00	115.75	653.00	9.00	246.75	1,833.50	$900.00	$1,650,150.00
Gerald Silk - Partner	28.00	26.50			3.00		7.00	64.50	$1,050.00	$67,725.00
Jai Chandrasekhar - Senior Counsel		207.75	245.00	147.75	262.00	14.50	73.75	950.75	$775.00	$736,831.25
Adam Hollander - Senior Counsel		403.00	279.00	132.50	378.25	12.25	19.75	1,224.75	$775.00	$949,181.25
Niki Mendoza - Senior Counsel		12.50	0.50		5.50			18.50	$700.00	$12,950.00
Kurt Hunciker - Of Counsel		249.25	90.50		0.50			340.25	$775.00	$263,693.75
Kate Aufses - Associate				5.00	386.75	21.50	11.00	424.25	$450.00	$190,912.50
John Mills - Associate							263.25	263.25	$700.00	$184,275.00
Ross Shikowitz - Associate	148.00	360.50	156.00	62.00	227.75		30.00	984.25	$600.00	$590,550.00
Catherine van Kampen - Associate							20.00	20.00	$700.00	$14,000.00
Grace Gadow - Summer Associate					193.00		57.75	250.75	$300.00	$75,225.00
Girolamo Brunetto - Staff Attorney							22.50	22.50	$350.00	$7,875.00
Jasper Hayes-Klein - Staff Attorney					145.25			145.25	$375.00	$54,468.75
Jared Hoffman - Staff Attorney					441.00			441.00	$375.00	$165,375.00
Steffanie Keim - Staff Attorney		542.00			375.00			917.00	$340.00	$311,780.00
Jed Koslow - Staff Attorney					882.50			882.50	$375.00	$330,937.50
John Moore - Staff Attorney					299.25			299.25	$350.00	$104,737.50
Chesley Parker - Staff Attorney					1,089.75			1,089.75	$350.00	$381,412.50
Kirstin Peterson - Staff Attorney					66.75			66.75	$395.00	$26,366.25
Christina Suarez (Papp) - Staff Attorney					1,129.50			1,129.50	$375.00	$423,562.50
Adam Weinschel - Dir. of Investor Svcs	9.00				1.00		3.00	13.00	$500.00	$6,500.00
Matthew McGlade - Financial Analyst	12.00	26.25						38.25	$350.00	$13,387.50
Gary Weston - Paralegal Supervisor		38.50	0.50	1.75	11.00			51.75	$375.00	$19,406.25
Norbert Sygdziak - Case Manager		434.75	133.25	47.50	642.00	1.50	20.25	1,279.25	$335.00	$428,548.75
Yvette Badillo - Paralegal		123.25			112.25			235.50	$300.00	$70,650.00
Martin Braxton - Paralegal		172.50		7.75				180.25	$245.00	$44,161.25
Ruben Montilla - Paralegal		216.75	23.00	33.00	276.25			549.00	$255.00	$139,995.00
Babatunde Pedro - Litigation Support					110.50			110.50	$295.00	$32,597.50
Andrea R. Webster - Litigation Support					38.25			38.25	$330.00	$12,622.50
Jessica M. Wilson - Litigation Support					12.25			12.25	$295.00	$3,613.75
Errol Hall - Managing Clerk		10.00	7.00	5.50	19.00		5.50	47.00	$310.00	$14,570.00
Sara Winkler - Intern					29.50			29.50	$150.00	$4,425.00
GRAND TOTAL	**213.50**	**3,240.25**	**1,351.00**	**566.75**	**7,794.50**	**58.75**	**848.25**	**14,073.00**		**$7,488,811.25**
% OF TOTAL HOURS	**1.52%**	**23.02%**	**9.60%**	**4.03%**	**55.39%**	**0.42%**	**6.03%**			
LODESTAR	**$141,750.00**	**$1,798,105.00**	**$1,001,373.75**	**$400,131.25**	**$3,462,066.25**	**$39,008.75**	**$646,376.25**			**$7,488,811.25**
% OF TOTAL LODESTAR	**1.89%**	**24.01%**	**13.37%**	**5.34%**	**46.23%**	**0.52%**	**8.63%**			

EXHIBIT 4

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Expense Report
Inception through March 29, 2019

CATEGORY	AMOUNT
Paid Expenses:	
Court Fees	$920.00
Service of Process	$11,484.22
On-Line Legal Research	$53,797.32
On-Line Factual Research	$10,588.35
Investigators	$898.22
Telephone	$305.73
Postage & Express Mail	$437.15
Hand Delivery	$242.50
Local Transportation	$5,286.82
Copying/Printing	$707.00
Out of Town Travel*	$8,519.71
Working Meals	$4,052.86
Court Reporting & Transcripts	$740.30
Experts	$69,388.25
Discovery/Document Management	$229.55
Total Paid:	**$167,597.98**
Outstanding Expenses:	
Experts	$76,960.00
Discovery/Document Management	$52,321.88
Total Outstanding:	**$129,281.88**
TOTAL EXPENSES:	**$296,879.86**

*Out of Town Travel includes lodging for a BLB&G attorney in the following "high cost" city capped at $350 per night: San Francisco, California, and the following "low cost" city capped at $250 per night: Little Rock, Arkansas.

EXHIBIT 5

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Firm Resume

BLB&G

Trusted Advocacy. Proven Results.

Bernstein Litowitz Berger & Grossmann LLP

Attorneys at Law

Firm Resume

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www.blbglaw.com

TABLE OF CONTENTS

Since our founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has obtained many of the largest monetary recoveries in history – over $32 billion on behalf of investors. Unique among our peers, the firm has obtained the largest settlements ever agreed to by public companies related to securities fraud, including four of the ten largest in history. Working with our clients, we have also used the litigation process to achieve precedent-setting reforms which have increased market transparency, held wrongdoers accountable and improved corporate business practices in groundbreaking ways.

FIRM OVERVIEW

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

We are the nation's leading firm in representing institutional investors in securities fraud class action litigation. The firm's institutional client base includes the New York State Common Retirement Fund; the California Public Employees' Retirement System (CalPERS); the Ontario Teachers' Pension Plan Board (the largest public pension funds in North America); the Los Angeles County Employees Retirement Association (LACERA); the Chicago Municipal, Police and Labor Retirement Systems; the Teacher Retirement System of Texas; the Arkansas Teacher Retirement System; Forsta AP-fonden ("AP1"); Fjarde AP-fonden ("AP4"); the Florida State Board of Administration; the Public Employees' Retirement System of Mississippi; the New York State Teachers' Retirement System; the Ohio Public Employees Retirement System; the State Teachers Retirement System of Ohio; the Oregon Public Employees Retirement System; the Virginia Retirement System; the Louisiana School, State, Teachers and Municipal Police Retirement Systems; the Public School Teachers' Pension and Retirement Fund of Chicago; the New Jersey Division of Investment of the Department of the Treasury; TIAA-CREF and other private institutions; as well as numerous other public and Taft-Hartley pension entities.

MORE TOP SECURITIES RECOVERIES

Since its founding in 1983, Bernstein Litowitz Berger & Grossmann LLP has litigated some of the most complex cases in history and has obtained over $32 billion on behalf of investors. Unique among its peers, the firm has negotiated the largest settlements ever agreed to by public companies related to securities fraud, and obtained many of the largest securities recoveries in history (including 6 of the top 12):

- *In re WorldCom, Inc. Securities Litigation* – $6.19 billion recovery
- *In re Cendant Corporation Securities Litigation* – $3.3 billion recovery
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation* – $2.43 billion recovery

- *In re Nortel Networks Corporation Securities Litigation* ("Nortel II") – $1.07 billion recovery
- *In re Merck & Co., Inc. Securities Litigation* – $1.06 billion recovery
- *In re McKesson HBOC, Inc. Securities Litigation* – $1.05 billion recovery*

*Source: ISS Securities Class Action Services

For over a decade, ISS Securities Class Action Services has compiled and published data on securities litigation recoveries and the law firms prosecuting the cases. BLB&G has been at or near the top of their rankings every year – often with the highest total recoveries, the highest settlement average, or both.

BLB&G also eclipses all competitors on ISS SCAS's "Top 100 Settlements of All Time" report, having recovered nearly 40% of all the settlement dollars represented in the report (over $25 billion), and having prosecuted over a third of all the cases on the list (35 of 100).

Giving Shareholders a Voice and Changing Business Practices for the Better

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

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

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

Advocacy for Victims of Corporate Wrongdoing

While BLB&G is widely recognized as one of the leading law firms worldwide advising institutional investors on issues related to corporate governance, shareholder rights, and securities litigation, we have also prosecuted some of the most significant employment discrimination, civil rights and consumer protection cases on record. Equally important, the firm has advanced novel and socially beneficial principles by developing important new law in the areas in which we litigate.

The firm served as co-lead counsel on behalf of Texaco's African-American employees in *Roberts v. Texaco Inc*., which resulted in a recovery of $176 million, the largest settlement ever in a race discrimination case. The creation of a Task Force to oversee Texaco's human resources activities for five years was unprecedented and served as a model for public companies going forward.

In the consumer field, the firm has gained a nationwide reputation for vigorously protecting the rights of individuals and for achieving exceptional settlements. In several instances, the firm has obtained recoveries for consumer classes that represented the entirety of the class's losses – an extraordinary result in consumer class cases.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

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

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

The attorneys in the securities fraud litigation practice group have extensive experience in the laws that regulate the securities markets and in the disclosure requirements of corporations that issue publicly traded securities. Many of the attorneys in this practice group also have accounting backgrounds. The group has access to state-of-the-art, online financial wire services and databases, which enable it to instantaneously investigate any potential securities fraud action involving a public company's debt and equity securities.

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

The Corporate Governance and Shareholders' Rights Practice Group prosecutes derivative actions, claims for breach of fiduciary duty, and proxy violations on behalf of individual and institutional investors in state and federal courts throughout the country. The group has obtained unprecedented victories on behalf of shareholders seeking to improve corporate governance and protect the shareholder franchise, prosecuting actions challenging numerous highly publicized corporate transactions which violated fair process and fair price, and the applicability of the business judgment rule. We have also addressed issues of corporate waste, shareholder voting rights claims, workplace harassment, and executive compensation. As a result of the firm's high-profile and widely recognized capabilities, the corporate governance practice group is increasingly in demand by institutional investors who are exercising a more assertive voice with corporate boards regarding corporate governance issues and the board's accountability to shareholders.

The firm is actively involved in litigating numerous cases in this area of law, an area that has become increasingly important in light of efforts by various market participants to buy companies from their public shareholders "on the cheap."

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

The Employment Discrimination and Civil Rights Practice Group prosecutes class and multi-plaintiff actions, and other high-impact litigation against employers and other societal institutions that violate federal or state employment, anti-discrimination, and civil rights laws. The practice group represents diverse clients on a wide range of issues including Title VII actions: race, gender, sexual orientation and age discrimination suits; sexual harassment, and "glass ceiling" cases in which otherwise qualified employees are passed over for promotions to managerial or executive positions.

Bernstein Litowitz Berger & Grossmann LLP is committed to effecting positive social change in the workplace and in society. The practice group has the necessary financial and human resources to ensure that the class action approach to discrimination and civil rights issues is successful. This litigation method serves to empower employees and other civil rights victims, who are usually

discouraged from pursuing litigation because of personal financial limitations, and offers the potential for effecting the greatest positive change for the greatest number of people affected by discriminatory practice in the workplace.

General Commercial Litigation and Alternative Dispute Resolution

The General Commercial Litigation practice group provides contingency fee representation in complex business litigation and has obtained substantial recoveries on behalf of investors, corporations, bankruptcy trustees, creditor committees and other business entities. We have faced down powerful and well-funded law firms and defendants – and consistently prevailed. However, not every dispute is best resolved through the courts. In such cases, BLB&G Alternative Dispute practitioners offer clients an accomplished team and a creative venue in which to resolve conflicts outside of the litigation process. BLB&G has extensive experience – and a marked record of successes – in ADR practice. For example, in the wake of the credit crisis, we successfully represented numerous former executives of a major financial institution in arbitrations relating to claims for compensation. Our attorneys have led complex business-to-business arbitrations and mediations domestically and abroad representing clients before all the major arbitration tribunals, including the American Arbitration Association (AAA), FINRA, JAMS, International Chamber of Commerce (ICC) and the London Court of International Arbitration.

Distressed Debt and Bankruptcy Creditor Negotiation

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

Consumer Advocacy

The Consumer Advocacy Practice Group at Bernstein Litowitz Berger & Grossmann LLP prosecutes cases across the entire spectrum of consumer rights, consumer fraud, and consumer protection issues. The firm represents victimized consumers in state and federal courts nationwide in individual and class action lawsuits that seek to provide consumers and purchasers of defective products with a means to recover their damages. The attorneys in this group are well versed in the vast array of laws and regulations that govern consumer interests and are aggressive, effective, court-tested litigators. The Consumer Practice Advocacy Group has recovered hundreds of millions of dollars for millions of consumers throughout the country. Most notably, in a number of cases, the firm has obtained recoveries for the class that were the entirety of the potential damages suffered by the consumer. For example, in actions against MCI and Empire Blue Cross, the firm recovered all of the damages suffered by the class. The group achieved its successes by advancing innovative claims and theories of liabilities, such as obtaining decisions in Pennsylvania and Illinois appellate courts that adopted a new theory of consumer damages in mass marketing cases. Bernstein Litowitz Berger & Grossmann LLP is, thus, able to lead the way in protecting the rights of consumers.

THE COURTS SPEAK

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

IN RE WORLDCOM, INC. SECURITIES LITIGATION

THE HONORABLE DENISE COTE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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

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

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

IN RE CLARENT CORPORATION SECURITIES LITIGATION

THE HONORABLE CHARLES R. BREYER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

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

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

LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION

VICE CHANCELLOR J. TRAVIS LASTER OF THE DELAWARE COURT OF CHANCERY

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

MCCALL V. SCOTT (COLUMBIA/HCA DERIVATIVE LITIGATION)

THE HONORABLE THOMAS A. HIGGINS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

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

RECENT ACTIONS & SIGNIFICANT RECOVERIES

Bernstein Litowitz Berger & Grossmann LLP is counsel in many diverse nationwide class and individual actions and has obtained many of the largest and most significant recoveries in history. Some examples from our practice groups include:

SECURITIES CLASS ACTIONS

CASE: ***IN RE WORLDCOM, INC. SECURITIES LITIGATION***

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

HIGHLIGHTS: $6.19 billion securities fraud class action recovery – the second largest in history; unprecedented recoveries from Director Defendants.

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

CASE: ***IN RE CENDANT CORPORATION SECURITIES LITIGATION***

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

HIGHLIGHTS: $3.3 billion securities fraud class action recovery – the third largest in history; significant corporate governance reforms obtained.

CASE SUMMARY: The firm was Co-Lead Counsel in this class action against Cendant Corporation, its officers and directors and Ernst & Young (E&Y), its auditors, for their role in disseminating materially false and misleading financial statements concerning the company's revenues, earnings and expenses for its 1997 fiscal year. As a result of company-wide accounting irregularities, Cendant restated its financial results for its 1995, 1996 and 1997 fiscal years and all fiscal quarters therein. Cendant agreed to settle the action for $2.8 billion to adopt some of the most extensive corporate governance changes in history. E&Y settled for $335 million. These settlements remain the largest sums ever recovered from a public company and a public accounting firm through securities class action litigation. BLB&G represented Lead Plaintiffs **CalPERS –** the **California Public Employees' Retirement System**, the **New York State Common Retirement Fund** and the **New York City Pension Funds**, the three largest public pension funds in America, in this action.

CASE: ***IN RE BANK OF AMERICA CORP. SECURITIES, DERIVATIVE, AND EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION***

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

HIGHLIGHTS: $2.425 billion in cash; significant corporate governance reforms to resolve all claims. This recovery is by far the largest shareholder recovery related to the subprime meltdown and credit crisis; the single largest securities class action settlement ever resolving a Section 14(a) claim – the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation; the largest ever funded by a single corporate defendant for violations of the federal securities laws; the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; and one of the 10 largest securities class action recoveries in history.

DESCRIPTION: The firm represented Co-Lead Plaintiffs the **State Teachers Retirement System of Ohio**, the **Ohio Public Employees Retirement System**, and the **Teacher Retirement System of Texas** in this securities class action filed on behalf of shareholders of Bank of America Corporation ("BAC") arising from BAC's 2009 acquisition of Merrill Lynch & Co., Inc. The action alleges that BAC, Merrill Lynch, and certain of the companies' current and former officers and directors violated the federal securities laws by making a series of materially false statements and omissions in connection with the acquisition. These violations included the alleged failure to disclose information regarding billions of dollars of losses which Merrill had suffered before the BAC shareholder vote on the proposed acquisition, as well as an undisclosed agreement allowing Merrill to pay billions in bonuses before the acquisition closed despite these losses. Not privy to these material facts, BAC shareholders voted to approve the acquisition.

CASE: ***IN RE NORTEL NETWORKS CORPORATION SECURITIES LITIGATION ("NORTEL II")***

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

HIGHLIGHTS: Over $1.07 billion in cash and common stock recovered for the class.

DESCRIPTION: This securities fraud class action charged Nortel Networks Corporation and certain of its officers and directors with violations of the Securities Exchange Act of 1934, alleging that the Defendants knowingly or recklessly made false and misleading statements with respect to Nortel's financial results during the relevant period. BLB&G clients the **Ontario Teachers' Pension Plan Board** and the **Treasury of the State of New Jersey and its Division of Investment** were appointed as Co-Lead Plaintiffs for the Class in one of two related actions (Nortel II), and BLB&G was appointed Lead Counsel for the Class. In a historic settlement, Nortel agreed to pay $2.4 billion in cash and Nortel common stock (all figures in US dollars) to resolve both matters. Nortel later announced that its insurers had agreed to pay $228.5 million toward the settlement, bringing the total amount of the global settlement to approximately $2.7 billion, and the total amount of the Nortel II settlement to over $1.07 billion.

CASE: ***IN RE MERCK & CO., INC. SECURITIES LITIGATION***

COURT: **United States District Court, District of New Jersey**

HIGHLIGHTS: $1.06 billion recovery for the class.

DESCRIPTION: This case arises out of misrepresentations and omissions concerning life-threatening risks posed by the "blockbuster" Cox-2 painkiller Vioxx, which Merck withdrew from the market in 2004. In January 2016, BLB&G achieved a $1.062 billion settlement on the eve of trial after more than 12 years of hard-fought litigation that included a successful decision at the United States Supreme Court. This settlement is the second largest recovery ever obtained in the Third Circuit, one of the top 11 securities recoveries of all time, and the largest securities recovery ever achieved against a pharmaceutical company. BLB&G represented Lead Plaintiff the **Public Employees' Retirement System of Mississippi.**

CASE: ***IN RE MCKESSON HBOC, INC. SECURITIES LITIGATION***

COURT: **United States District Court for the Northern District of California**

HIGHLIGHTS: $1.05 billion recovery for the class.

DESCRIPTION: This securities fraud litigation was filed on behalf of purchasers of HBOC, McKesson and McKesson HBOC securities, alleging that Defendants misled the investing public concerning HBOC's and McKesson HBOC's financial results. On behalf of Lead Plaintiff the **New York State Common Retirement Fund**, BLB&G obtained a $960 million settlement from the company; $72.5 million in cash from Arthur Andersen; and, on the eve of trial, a $10 million settlement from Bear Stearns & Co. Inc., with total recoveries reaching more than $1 billion.

CASE: ***IN RE LEHMAN BROTHERS EQUITY/DEBT SECURITIES LITIGATION***

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

HIGHLIGHTS: $735 million in total recoveries.

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

After four years of intense litigation, Lead Plaintiffs achieved a total of $735 million in recoveries consisting of: a $426 million settlement with underwriters of Lehman securities offerings; a $90 million settlement with former Lehman directors and officers; a $99 million settlement that resolves claims against Ernst & Young, Lehman's former auditor (considered one of the top 10 auditor settlements ever achieved); and a $120 million settlement that resolves claims against UBS Financial Services, Inc. This recovery is truly remarkable not only because of the difficulty in recovering assets when the issuer defendant is bankrupt, but also because no financial results were restated, and that the auditors never disavowed the statements.

CASE: ***HEALTHSOUTH CORPORATION BONDHOLDER LITIGATION***

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

HIGHLIGHTS: $804.5 million in total recoveries.

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

CASE: ***IN RE CITIGROUP, INC. BOND ACTION LITIGATION***

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

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

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

CASE: ***IN RE WASHINGTON PUBLIC POWER SUPPLY SYSTEM LITIGATION***

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

HIGHLIGHTS: Over $750 million – the largest securities fraud settlement ever achieved at the time.

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

CASE: ***IN RE SCHERING-PLOUGH CORPORATION/ENHANCE SECURITIES LITIGATION; IN RE MERCK & CO., INC. VYTORIN/ZETIA SECURITIES LITIGATION***

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

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

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

CASE: ***IN RE LUCENT TECHNOLOGIES, INC. SECURITIES LITIGATION***

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

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

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

CASE: ***IN RE WACHOVIA PREFERRED SECURITIES AND BOND/NOTES LITIGATION***

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

HIGHLIGHTS: $627 million recovery – among the 20 largest securities class action recoveries in history; third largest recovery obtained in an action arising from the subprime mortgage crisis.

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

CASE: ***OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM V. FREDDIE MAC***

COURT: **United States District Court for the Southern District of Ohio**

HIGHLIGHTS: $410 million settlement.

DESCRIPTION: This securities fraud class action was filed on behalf of the **Ohio Public Employees Retirement System** and the **State Teachers Retirement System of Ohio** alleging that Federal Home Loan Mortgage Corporation ("Freddie Mac") and certain of its current and former officers issued false and misleading statements in connection with the company's previously reported financial results. Specifically, the Complaint alleged that the Defendants misrepresented the company's operations and financial results by having engaged in numerous improper transactions and accounting machinations that violated fundamental GAAP precepts in order to artificially smooth the company's earnings and to hide earnings volatility. In connection with these improprieties, Freddie Mac restated more than $5 billion in earnings. A settlement of $410 million was reached in the case just as deposition discovery had begun and document review was complete.

CASE: ***IN RE REFCO, INC. SECURITIES LITIGATION***

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

HIGHLIGHTS: Over $407 million in total recoveries.

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

CORPORATE GOVERNANCE AND SHAREHOLDERS' RIGHTS

CASE: ***CITY OF MONROE EMPLOYEES' RETIREMENT SYSTEM, DERIVATIVELY ON BEHALF OF TWENTY-FIRST CENTURY FOX, INC. V. RUPERT MURDOCH, ET AL.***

COURT: **Delaware Court of Chancery**

HIGHLIGHTS: Landmark derivative litigation establishes unprecedented, independent Board-level council to ensure employees are protected from workplace harassment while recouping $90 million for the company's coffers.

DESCRIPTION: Before the birth of the #metoo movement, BLB&G led the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveil a landmark settlement with two key components: 1) the first ever Board-level watchdog of its kind – the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC) – majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries – $90 million – ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries. The firm represented 21st Century Fox shareholder the **City of Monroe (Michigan) Employees' Retirement System.**

CASE: ***IN RE ALLERGAN, INC. PROXY VIOLATION SECURITIES LITIGATION***

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

HIGHLIGHTS: Litigation recovered over $250 million for investors in challenging unprecedented insider trading scheme by billionaire hedge fund manager Bill Ackman.

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

CASE: ***UNITEDHEALTH GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **United States District Court for the District of Minnesota**

HIGHLIGHTS: Litigation recovered over $920 million in ill-gotten compensation directly from former officers for their roles in illegally backdating stock options, while the company agreed to far-reaching reforms aimed at curbing future executive compensation abuses.

DESCRIPTION: This shareholder derivative action filed against certain current and former executive officers and members of the Board of Directors of UnitedHealth Group, Inc. alleged that the Defendants obtained, approved and/or acquiesced in the issuance of stock options to senior executives that were unlawfully backdated to provide the recipients with windfall compensation at the direct expense of UnitedHealth and its shareholders. The firm recovered over $920 million in ill-gotten compensation directly from the former officer Defendants – the largest derivative recovery in history. As feature coverage in *The New York Times* indicated, "investors everywhere should applaud [the UnitedHealth settlement]…. [T]he recovery sets a standard of behavior for other companies and boards when performance pay is later shown to have been based on ephemeral earnings." The Plaintiffs in this action were the **St. Paul Teachers' Retirement Fund Association**, the **Public Employees' Retirement System of Mississippi**, the **Jacksonville Police & Fire Pension Fund**, the **Louisiana Sheriffs' Pension & Relief Fund**, the **Louisiana Municipal Police Employees' Retirement System** and **Fire & Police Pension Association of Colorado**.

CASE: ***CAREMARK MERGER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Landmark Court ruling orders Caremark's board to disclose previously withheld information, enjoins shareholder vote on CVS merger offer, and grants statutory appraisal rights to Caremark shareholders. The litigation ultimately forced CVS to raise offer by $7.50 per share, equal to more than $3.3 billion in additional consideration to Caremark shareholders.

DESCRIPTION: Commenced on behalf of the **Louisiana Municipal Police Employees' Retirement System** and other shareholders of Caremark RX, Inc. ("Caremark"), this shareholder class action accused the company's directors of violating their fiduciary duties by approving and endorsing a proposed merger with CVS Corporation ("CVS"), all the while refusing to fairly consider an alternative transaction proposed by another bidder. In a landmark decision, the Court ordered the Defendants to disclose material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark's shareholders—forcing CVS to increase the consideration offered to shareholders by $7.50 per share in cash (over $3 billion in total).

CASE: ***IN RE PFIZER INC. SHAREHOLDER DERIVATIVE LITIGATION***

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

HIGHLIGHTS: Landmark settlement in which Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board that will be supported by a dedicated $75 million fund.

DESCRIPTION: In the wake of Pfizer's agreement to pay $2.3 billion as part of a settlement with the U.S. Department of Justice to resolve civil and criminal charges relating to the illegal marketing of at least 13 of the company's most important drugs (the largest such fine ever imposed), this shareholder derivative action was filed against Pfizer's senior management and Board alleging they breached their fiduciary duties to Pfizer by, among other things, allowing unlawful promotion of drugs to continue after receiving numerous "red flags" that Pfizer's improper drug marketing was systemic and widespread. The suit was brought by Court-appointed Lead Plaintiffs **Louisiana Sheriffs' Pension and Relief Fund** and **Skandia Life Insurance Company, Ltd.** In an unprecedented settlement reached by the parties, the Defendants agreed to create a new Regulatory and Compliance Committee of the Pfizer Board of Directors (the "Regulatory Committee") to

oversee and monitor Pfizer's compliance and drug marketing practices and to review the compensation policies for Pfizer's drug sales related employees.

CASE: ***MILLER ET A. V. IAC/INTERACTIVECORP ET AL.***

COURT: **Delaware Court of Chancery**

HIGHLIGHTS: Litigation shuts down efforts by controlling shareholders to obtain "dynastic control" of the company through improper stock class issuances, setting valuable precedent and sending strong message to boards and management in all sectors that such moves will not go unchallenged.

DESCRIPTION: BLB&G obtained this landmark victory for shareholder rights against IAC/InterActiveCorp and its controlling shareholder and chairman, Barry Diller. For decades, activist corporate founders and controllers seek ways to entrench their position atop the corporate hierarchy by granting themselves and other insiders "supervoting rights." Diller lays out a proposal to introduce a new class of non-voting stock to entrench "dynastic control" of IAC within the Diller family. BLB&G litigation on behalf of IAC shareholders ends in capitulation with the Defendants effectively conceding the case by abandoning the proposal. This becomes critical corporate governance precedent, given trend of public companies to introduce "low" and "no-vote" share classes, which diminish shareholder rights, insulate management from accountability, and can distort managerial incentives by providing controllers voting power out of line with their actual economic interests in public companies.

CASE: ***IN RE DELPHI FINANCIAL GROUP SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Dominant shareholder is blocked from collecting a payoff at the expense of minority investors.

DESCRIPTION: As the Delphi Financial Group prepared to be acquired by Tokio Marine Holdings Inc., the conduct of Delphi's founder and controlling shareholder drew the scrutiny of BLB&G and its institutional investor clients for improperly using the transaction to expropriate at least $55 million at the expense of the public shareholders. BLB&G aggressively litigated this action and obtained a settlement of $49 million for Delphi's public shareholders. The settlement fund is equal to about 90% of recoverable Class damages – a virtually unprecedented recovery.

CASE: ***QUALCOMM BOOKS & RECORDS LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Novel use of "books and records" litigation enhances disclosure of political spending and transparency.

DESCRIPTION: The U.S. Supreme Court's controversial 2010 opinion in *Citizens United v. FEC* made it easier for corporate directors and executives to secretly use company funds – shareholder assets – to support personally favored political candidates or causes. BLB&G prosecuted the first-ever "books and records" litigation to obtain disclosure of corporate political spending at our client's portfolio company – technology giant Qualcomm Inc. – in response to Qualcomm's refusal to share the information. As a result of the lawsuit, Qualcomm adopted a policy that provides its shareholders with comprehensive disclosures regarding the company's political activities and places Qualcomm as a standard-bearer for other companies.

CASE: ***IN RE NEWS CORP. SHAREHOLDER DERIVATIVE LITIGATION***

COURT: **Delaware Court of Chancery – Kent County**

HIGHLIGHTS: An unprecedented settlement in which News Corp. recoups $139 million and enacts significant corporate governance reforms that combat self-dealing in the boardroom.

DESCRIPTION: Following News Corp.'s 2011 acquisition of a company owned by News Corp. Chairman and CEO Rupert Murdoch's daughter, and the phone-hacking scandal within its British newspaper division, we filed a derivative litigation on behalf of the company because of institutional shareholder concern with the conduct of News Corp.'s management. We ultimately obtained an unprecedented settlement in which News Corp. recouped $139 million for the company coffers, and agreed to enact corporate governance enhancements to strengthen its compliance structure, the independence and functioning of its board, and the compensation and clawback policies for management.

CASE: ***IN RE ACS SHAREHOLDER LITIGATION (XEROX)***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: BLB&G challenged an attempt by ACS CEO to extract a premium on his stock not shared with the company's public shareholders in a sale of ACS to Xerox. On the eve of trial, BLB&G obtained a $69 million recovery, with a substantial portion of the settlement personally funded by the CEO.

DESCRIPTION: Filed on behalf of the **New Orleans Employees' Retirement System** and similarly situated shareholders of Affiliated Computer Service, Inc., this action alleged that members of the Board of Directors of ACS breached their fiduciary duties by approving a merger with Xerox Corporation which would allow Darwin Deason, ACS's founder and Chairman and largest stockholder, to extract hundreds of millions of dollars of value that rightfully belongs to ACS's public shareholders for himself. Per the agreement, Deason's consideration amounted to over a 50% premium when compared to the consideration paid to ACS's public stockholders. The ACS Board further breached its fiduciary duties by agreeing to certain deal protections in the merger agreement that essentially locked up the transaction between ACS and Xerox. After seeking a preliminary injunction to enjoin the deal and engaging in intense discovery and litigation in preparation for a looming trial date, Plaintiffs reached a global settlement with Defendants for $69 million. In the settlement, Deason agreed to pay $12.8 million, while ACS agreed to pay the remaining $56.1 million.

CASE: ***IN RE DOLLAR GENERAL CORPORATION SHAREHOLDER LITIGATION***

COURT: **Sixth Circuit Court for Davidson County, Tennessee; Twentieth Judicial District, Nashville**

HIGHLIGHTS: Holding Board accountable for accepting below-value "going private" offer.

DESCRIPTION: A Nashville, Tennessee corporation that operates retail stores selling discounted household goods, in early March 2007, Dollar General announced that its Board of Directors had approved the acquisition of the company by the private equity firm Kohlberg Kravis Roberts & Co. ("KKR"). BLB&G, as Co-Lead Counsel for the **City of Miami General Employees' & Sanitation Employees' Retirement Trust**, filed a class action complaint alleging that the "going private" offer was approved as a result of breaches of fiduciary duty by the board and that the price offered by KKR did not reflect the fair value of Dollar General's publicly-held shares. On the eve of the summary judgment hearing, KKR agreed to pay a $40 million settlement in favor of the shareholders, with a potential for $17 million more for the Class.

CASE: ***LANDRY'S RESTAURANTS, INC. SHAREHOLDER LITIGATION***

COURT: **Delaware Court of Chancery – New Castle County**

HIGHLIGHTS: Protecting shareholders from predatory CEO's multiple attempts to take control of Landry's Restaurants through improper means. Our litigation forced the CEO to increase his buyout offer by four times the price offered and obtained an additional $14.5 million cash payment for the class.

DESCRIPTION: In this derivative and shareholder class action, shareholders alleged that Tilman J. Fertitta – chairman, CEO and largest shareholder of Landry's Restaurants, Inc. – and its Board of Directors stripped public shareholders of their controlling interest in the company for no premium and severely devalued remaining public shares in breach of their fiduciary duties. BLB&G's prosecution of the action on behalf of Plaintiff **Louisiana Municipal Police Employees' Retirement System** resulted in recoveries that included the creation of a settlement fund composed

of $14.5 million in cash, as well as significant corporate governance reforms and an increase in consideration to shareholders of the purchase price valued at $65 million.

EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS

CASE: ***ROBERTS V. TEXACO, INC.***

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

HIGHLIGHTS: BLB&G recovered $170 million on behalf of Texaco's African-American employees and engineered the creation of an independent "Equality and Tolerance Task Force" at the company.

DESCRIPTION: Six highly qualified African-American employees filed a class action complaint against Texaco Inc. alleging that the company failed to promote African-American employees to upper level jobs and failed to compensate them fairly in relation to Caucasian employees in similar positions. BLB&G's prosecution of the action revealed that African-Americans were significantly under-represented in high level management jobs and that Caucasian employees were promoted more frequently and at far higher rates for comparable positions within the company. The case settled for over $170 million, and Texaco agreed to a Task Force to monitor its diversity programs for five years – a settlement described as the most significant race discrimination settlement in history.

CASE: ***ECOA - GMAC/NMAC/FORD/TOYOTA/CHRYSLER - CONSUMER FINANCE DISCRIMINATION LITIGATION***

COURT: **Multiple jurisdictions**

HIGHLIGHTS: Landmark litigation in which financing arms of major auto manufacturers are compelled to cease discriminatory "kick-back" arrangements with dealers, leading to historic changes to auto financing practices nationwide.

DESCRIPTION: The cases involve allegations that the lending practices of General Motors Acceptance Corporation, Nissan Motor Acceptance Corporation, Ford Motor Credit, Toyota Motor Credit and DaimlerChrysler Financial cause African-American and Hispanic car buyers to pay millions of dollars more for car loans than similarly situated white buyers. At issue is a discriminatory kickback system under which minorities typically pay about 50% more in dealer mark-up which is shared by auto dealers with the Defendants.

NMAC: The United States District Court for the Middle District of Tennessee granted final approval of the settlement of the class action against Nissan Motor Acceptance Corporation ("NMAC") in which NMAC agreed to offer pre-approved loans to hundreds of thousands of current and potential African-American and Hispanic NMAC customers, and limit how much it raises the interest charged to car buyers above the company's minimum acceptable rate.

GMAC: The United States District Court for the Middle District of Tennessee granted final approval of a settlement of the litigation against General Motors Acceptance Corporation ("GMAC") in which GMAC agreed to take the historic step of imposing a 2.5% markup cap on loans with terms up to 60 months, and a cap of 2% on extended term loans. GMAC also agreed to institute a substantial credit pre-approval program designed to provide special financing rates to minority car buyers with special rate financing.

DAIMLERCHRYSLER: The United States District Court for the District of New Jersey granted final approval of the settlement in which DaimlerChrysler agreed to implement substantial changes to the company's practices, including limiting the maximum amount of mark-up dealers may charge customers to between 1.25% and 2.5% depending upon the length of the customer's loan. In addition, the company agreed to send out pre-approved credit offers of no-markup loans to African-American and Hispanic consumers, and contribute $1.8 million to provide consumer education and assistance programs on credit financing.

FORD MOTOR CREDIT: The United States District Court for the Southern District of New York granted final approval of a settlement in which Ford Credit agreed to make contract disclosures

informing consumers that the customer's Annual Percentage Rate ("APR") may be negotiated and that sellers may assign their contracts and retain rights to receive a portion of the finance charge.

CLIENTS AND FEES

We are firm believers in the contingency fee as a socially useful, productive and satisfying basis of compensation for legal services, particularly in litigation. Wherever appropriate, even with our corporate clients, we will encourage retention where our fee is contingent on the outcome of the litigation. This way, it is not the number of hours worked that will determine our fee, but rather the result achieved for our client.

Our clients include many large and well known financial and lending institutions and pension funds, as well as privately-held companies that are attracted to our firm because of our reputation, expertise and fee structure. Most of the firm's clients are referred by other clients, law firms and lawyers, bankers, investors and accountants. A considerable number of clients have been referred to the firm by former adversaries. We have always maintained a high level of independence and discretion in the cases we decide to prosecute. As a result, the level of personal satisfaction and commitment to our work is high.

IN THE PUBLIC INTEREST

Bernstein Litowitz Berger & Grossmann LLP is guided by two principles: excellence in legal work and a belief that the law should serve a socially useful and dynamic purpose. Attorneys at the firm are active in academic, community and *pro bono* activities, as well as participating as speakers and contributors to professional organizations. In addition, the firm endows a public interest law fellowship and sponsors an academic scholarship at Columbia Law School.

BERNSTEIN LITOWITZ BERGER & GROSSMANN PUBLIC INTEREST LAW FELLOWS

COLUMBIA LAW SCHOOL – BLB&G is committed to fighting discrimination and effecting positive social change. In support of this commitment, the firm donated funds to Columbia Law School to create the Bernstein Litowitz Berger & Grossmann Public Interest Law Fellowship. This newly endowed fund at Columbia Law School will provide Fellows with 100% of the funding needed to make payments on their law school tuition loans so long as such graduates remain in the public interest law field. The BLB&G Fellows are able to begin their careers free of any school debt if they make a long-term commitment to public interest law.

FIRM SPONSORSHIP OF HER JUSTICE

NEW YORK, NY – BLB&G is a sponsor of Her Justice, a non-profit organization in New York City dedicated to providing *pro bono* legal representation to indigent women, principally battered women, in connection with the myriad legal problems they face. The organization trains and supports the efforts of New York lawyers who provide *pro bono* counsel to these women. Several members and associates of the firm volunteer their time to help women who need divorces from abusive spouses, or representation on issues such as child support, custody and visitation. To read more about Her Justice, visit the organization's website at www.herjustice.org.

THE PAUL M. BERNSTEIN MEMORIAL SCHOLARSHIP

COLUMBIA LAW SCHOOL – Paul M. Bernstein was the founding senior partner of the firm. Mr. Bernstein led a distinguished career as a lawyer and teacher and was deeply committed to the professional and personal development of young lawyers. The Paul M. Bernstein Memorial Scholarship Fund is a gift of the firm and the family and friends of Paul M. Bernstein, and is awarded annually to one or more second-year students selected for their academic excellence in their first year, professional responsibility, financial need and contributions to the community.

FIRM SPONSORSHIP OF CITY YEAR NEW YORK

NEW YORK, NY – BLB&G is also an active supporter of City Year New York, a division of AmeriCorps. The program was founded in 1988 as a means of encouraging young people to devote time to public service and unites a diverse group of volunteers for a demanding year of full-time community service, leadership development and civic engagement. Through their service, corps members experience a rite of passage that can inspire a lifetime of citizenship and build a stronger democracy.

MAX W. BERGER PRE-LAW PROGRAM

BARUCH COLLEGE – In order to encourage outstanding minority undergraduates to pursue a meaningful career in the legal profession, the Max W. Berger Pre-Law Program was established at Baruch College. Providing workshops, seminars, counseling and mentoring to Baruch students, the program facilitates and guides them through the law school research and application process, as well as placing them in appropriate internships and other pre-law working environments.

NEW YORK SAYS THANK YOU FOUNDATION

NEW YORK, NY – Founded in response to the outpouring of love shown to New York City by volunteers from all over the country in the wake of the 9/11 attacks, The New York Says Thank You Foundation sends volunteers from New York City to help rebuild communities around the country affected by disasters. BLB&G is a corporate sponsor of NYSTY and its goals are a heartfelt reflection of the firm's focus on community and activism.

OUR ATTORNEYS

MEMBERS

MAX W. BERGER, the firm's senior founding partner, supervises BLB&G's litigation practice and prosecutes class and individual actions on behalf of the firm's clients.

He has litigated many of the firm's most high-profile and significant cases, and has negotiated seven of the largest securities fraud settlements in history, each in excess of a billion dollars: *Cendant* ($3.3 billion); *Citigroup–WorldCom* ($2.575 billion); *Bank of America/Merrill Lynch* ($2.4 billion); *JPMorgan Chase–WorldCom* ($2 billion); *Nortel* ($1.07 billion); *Merck* ($1.06 billion); and *McKesson* ($1.05 billion). In addition, he has prosecuted seminal cases establishing precedents which have increased market integrity and transparency; held corporate wrongdoers accountable; and improved corporate business practices in groundbreaking ways.

Most recently, before the #metoo movement came alive, on behalf of an institutional investor client, he handled the prosecution of an unprecedented shareholder derivative litigation against Fox News parent 21st Century Fox, Inc. arising from the systemic sexual and workplace harassment at the embattled network. After nearly 18 months of litigation, discovery and negotiation related to the shocking misconduct and the Board's extensive alleged governance failures, the parties unveiled a landmark settlement with two key components: 1) the first-ever Board-level watchdog of its kind – the "Fox News Workplace Professionalism and Inclusion Council" of experts (WPIC) – majority independent of the Murdochs, the Company and Board; and 2) one of the largest financial recoveries – $90 million – ever obtained in a pure corporate board oversight dispute. The WPIC is expected to serve as a model for public companies in all industries.

Mr. Berger's work has garnered him extensive media attention, and he has been the subject of feature articles in a variety of major media publications. Unique among his peers, *The New York Times* highlighted his remarkable track record in an October 2012 profile entitled "Investors' Billion-Dollar Fraud Fighter," which also discussed his role in the *Bank of America/Merrill Lynch Merger* litigation. In 2011, Mr. Berger was twice profiled by *The American Lawyer* for his role in negotiating a $627 million recovery on behalf of investors in the *In re Wachovia Corp. Securities Litigation*, and a $516 million recovery in *In re Lehman Brothers Equity/Debt Securities Litigation*. Previously, Mr. Berger's role in the WorldCom case generated extensive media coverage including feature articles in *BusinessWeek* and *The American Lawyer*. For his outstanding efforts on behalf of WorldCom investors, *The National Law Journal* profiled Mr. Berger (one of only eleven attorneys selected nationwide) in its annual 2005 "Winning Attorneys" section. He was subsequently featured in a 2006 *New York Times* article, "A Class-Action Shuffle," which assessed the evolving landscape of the securities litigation arena.

One of the "100 Most Influential Lawyers in America"

Widely recognized as the "Dean" of the US plaintiff securities bar for his remarkable career and his professional excellence, Mr. Berger has a distinguished and unparalleled list of honors to his name.

He was selected one of the "100 Most Influential Lawyers in America" by The National Law Journal for being "front and center" in holding Wall Street banks accountable and obtaining over $5 billion in cases arising from the subprime meltdown, and for his work as a "master negotiator" in obtaining numerous multi-billion dollar recoveries for investors.

Described as a "standard-bearer" for the profession in a career spanning over 40 years, he was the recipient of *Chambers USA*'s award for Outstanding Contribution to the Legal Profession. In presenting this prestigious honor, *Chambers* recognized Mr. Berger's "numerous headline-grabbing successes," as well as his unique stature among colleagues – "warmly lauded by his peers, who are nevertheless loath to find him on the other side of the table."

Benchmark Litigation recently inducted him into its exclusive "Hall of Fame" in recognition of his career achievements and impact on the field of securities litigation.

Upon its tenth anniversary, *Lawdragon* named Mr. Berger a "Lawdragon Legend" for his accomplishments.

Law360 published a special feature discussing his life and career as a "Titan of the Plaintiffs Bar," named him one of only six litigators selected nationally as a "Legal MVP," and selected him as one of "10 Legal Superstars" nationally for his work in securities litigation.

Since their various inceptions, Mr. Berger has been recognized as a litigation "star" and leading lawyer in his field by *Chambers USA* and the *Legal 500 US Guide*, as well as being named one of the "500 Leading Lawyers in America" and "100 Securities Litigators You Need to Know" by *Lawdragon* magazine. Further, *The Best Lawyers in America*® guide has named Mr. Berger a leading lawyer in his field.

Mr. Berger has lectured extensively for many professional organizations, and is the author and co-author of numerous articles on developments in the securities laws and their implications for public policy. He was chosen, along with several of his BLB&G partners, to author the first chapter – "Plaintiffs' Perspective" – of Lexis/Nexis's seminal industry guide *Litigating Securities Class Actions*. An esteemed voice on all sides of the legal and financial markets, in 2008 the SEC and Treasury called on Mr. Berger to provide guidance on regulatory changes being considered as the accounting profession was experiencing tectonic shifts shortly before the financial crisis.

Mr. Berger also serves the academic community in numerous capacities. A long-time member of the Board of Trustees of Baruch College, he is now the President of the Baruch College Fund. A member of the Dean's Council to Columbia Law School, he has taught Profession of Law, an ethics course at Columbia Law School, and serves on the Advisory Board of Columbia Law School's Center on Corporate Governance. In May 2006, he was presented with the Distinguished Alumnus Award for his contributions to Baruch College, and in February 2011, Mr. Berger received Columbia Law School's most prestigious and highest honor, "The Medal for Excellence." This award is presented annually to Columbia Law School alumni who exemplify the qualities of character, intellect, and social and professional responsibility that the Law School seeks to instill in its students. As a recipient of this award, Mr. Berger was profiled in the Fall 2011 issue of *Columbia Law School Magazine*.

Mr. Berger is currently a member of the New York State, New York City and American Bar Associations, and is a member of the Federal Bar Council. He is also a member of the American Law Institute and an Advisor to its Restatement Third: Economic Torts project. In addition, Mr. Berger is a member of the Board of Trustees of The Supreme Court Historical Society.

Mr. Berger lectures extensively for many professional organizations. In 1997, Mr. Berger was honored for his outstanding contribution to the public interest by Trial Lawyers for Public Justice, where he was a "Trial Lawyer of the Year" Finalist for his work in *Roberts, et al. v. Texaco*, the celebrated race discrimination case, on behalf of Texaco's African-American employees.

Among numerous charitable and volunteer works, Mr. Berger is an active supporter of City Year New York, a division of AmeriCorps, dedicated to encouraging young people to devote time to public service. In July 2005, he was named City Year New York's "Idealist of the Year," for his long-time service and work in the community. He and his wife, Dale, have also established The Dale and Max Berger Public Interest Law Fellowship at Columbia Law School and the Max Berger Pre-Law Program at Baruch College.

EDUCATION: Baruch College-City University of New York, B.B.A., Accounting, 1968; President of the student body and recipient of numerous awards. Columbia Law School, J.D., 1971, Editor of the *Columbia Survey of Human Rights Law*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Court of Appeals for the Second Circuit; U.S. Supreme Court.

GERALD H. SILK'S practice focuses on representing institutional investors on matters involving federal and state securities laws, accountants' liability, and the fiduciary duties of corporate officials, as well as general commercial and corporate litigation. He also advises creditors on their rights with respect to pursuing affirmative claims against officers and directors, as well as professionals both inside and outside the bankruptcy context.

Mr. Silk is a member of the firm's Management Committee. He also oversees the firm's New Matter department in which he, along with a group of attorneys, financial analysts and investigators, counsels institutional clients on potential legal claims. In December 2014, Mr. Silk was recognized by *The National Law Journal* in its inaugural list of "Litigation Trailblazers & Pioneers" — one of 50 lawyers in the country who have changed the practice of litigation through the use of innovative legal strategies — in no small part for the critical role he has played in helping the firm's investor clients recover billions of dollars in litigation arising from the financial crisis, among other matters.

In addition, *Lawdragon* magazine, which has named Mr. Silk one of the "100 Securities Litigators You Need to Know," one of the "500 Leading Lawyers in America" and one of America's top 500 "rising stars" in the legal profession, also recently profiled him as part of its "Lawyer Limelight" special series, discussing subprime litigation, his passion for plaintiffs' work and the trends he expects to see in the market. Recognized as one of an elite group of notable practitioners by *Chambers USA*, he is also named as a "Litigation Star" by *Benchmark*, is recommended by the *Legal 500 USA* guide in the field of plaintiffs' securities litigation, and has been selected as a New York *Super Lawyer* every year since 2006.

In the wake of the financial crisis, he advised the firm's institutional investor clients on their rights with respect to claims involving transactions in residential mortgage-backed securities (RMBS) and collateralized debt obligations (CDOs). His work representing Cambridge Place Investment Management Inc. on claims under Massachusetts state law against numerous investment banks arising from the purchase of billions of dollars of RMBS was featured in a 2010 *New York Times* article by Gretchen Morgenson titled, "Mortgage Investors Turn to State Courts for Relief."

Mr. Silk also represented the New York State Teachers' Retirement System in a securities litigation against the General Motors Company arising from a series of misrepresentations concerning the quality, safety, and reliability of the Company's cars which resulted in a $300 million settlement. He was also a member of the litigation team responsible for the successful prosecution of *In re Cendant Corporation Securities Litigation* in the District of New Jersey, which was resolved for $3.2 billion. In addition, he is actively involved in the firm's prosecution of highly successful M&A litigation, representing shareholders in widely publicized lawsuits, including the litigation arising from the proposed acquisition of Caremark Rx, Inc. by CVS Corporation — which led to an increase of approximately $3.5 billion in the consideration offered to shareholders.

A graduate of the Wharton School of Business, University of Pennsylvania and Brooklyn Law School, in 1995-96, Mr. Silk served as a law clerk to the Hon. Steven M. Gold, U.S.M.J., in the United States District Court for the Eastern District of New York.

Mr. Silk lectures to institutional investors at conferences throughout the country, and has written or substantially contributed to several articles on developments in securities and corporate law, including "Improving Multi-Jurisdictional, Merger-Related Litigation," American Bar Association (February 2011); "The Compensation Game," *Lawdragon*, Fall 2006; "Institutional Investors as

Lead Plaintiffs: Is There A New And Changing Landscape?," 75 *St. John's Law Review* 31 (Winter 2001); "The Duty To Supervise, Poser, Broker-Dealer Law and Regulation," 3rd Ed. 2000, Chapter 15; "Derivative Litigation In New York after Marx v. Akers," *New York Business Law Journal*, Vol. 1, No. 1 (Fall 1997).

He has also been a commentator for the business media on television and in print. Among other outlets, he has appeared on NBC's *Today*, and CNBC's *Power Lunch, Morning Call*, and *Squawkbox* programs, as well as being featured in *The New York Times, Financial Times, Bloomberg*, *The National Law Journal*, and the *New York Law Journal*.

EDUCATION: Wharton School of the University of Pennsylvania, B.S., Economics, 1991. Brooklyn Law School, J.D., *cum laude*, 1995.

BAR ADMISSIONS: New York; U.S. District Courts for the Southern and Eastern Districts of New York.

JAMES A. HARROD's practice focuses on representing the firm's institutional investor clients in securities fraud-related matters. He has over seventeen years' experience prosecuting complex litigation in federal courts.

Over the course of his career, he has obtained over a billion dollars on behalf of investor classes. His high-profile cases include *In re Motorola Securities Litigation*, in which he was a key member of the team that represented the State of New Jersey's Division of Investment and obtained a $190 million recovery three days before trial. Recently, Mr. Harrod represented the class of investors in the securities litigation against General Motors arising from GM's recall of vehicles with defective ignition switches, and recovered $300 million for investors – the second largest securities class action recovery in the Sixth Circuit.

Mr. Harrod represented institutional investors in several cases concerning the issuance of residential mortgage-backed securities prior to the financial crisis. He worked on the team that recovered $500 million for investors in *In re Bear Stearns Mortgage Pass-Through Certificates Litigation*, which brought claims related to the issuance of mortgage pass-through certificates during 2006 and 2007. In a similar action, *Plumbers' & Pipefitters' Local #562 Supplemental Plan & Trust v. J.P. Morgan Acceptance Corp. I*, he recovered $280 million on behalf of a class of investors. Other mortgage-backed securities cases that Mr. Harrod worked on include *In re Lehman Bros. Mortgage-Backed Securities Litigation* ($40 million recovery), and *Tsereteli v. Residential Asset Securitization Trust 2006-A8 (*$10.9 million recovery).

Among his other notable recoveries are *The Department of the Treasury of the State of New Jersey and its Division of Investment v. Cliffs Natural Resources Inc.* (class recovery of $84 million); *Anwar, et al., v. Fairfield Greenwich Limited* (settlement valued at $80 million); *In re Service Corporation International* ($65 million recovery); *Danis v. USN Communications, Inc*. ($44.6 million recovery*); In re Tower Group International, Ltd. Securities Litigation* ($20.5 million recovery); *In re Navistar International Securities Litigation* ($13 million recovery); and *In re Sonus Networks, Inc. Securities Litigation-II* ($9.5 million recovery).

In connection with his representation of institutional investors, he is a frequent speaker to public pension fund organizations and trustees concerning fiduciary duties, emerging issues in securities litigation and the financial markets.

Mr. Harrod is recognized as a New York *Super Lawyer* for his securities litigation achievements.

EDUCATION: Skidmore College, B.A.; George Washington University Law School, J.D.

BAR ADMISSIONS: New York; U.S. Courts of Appeals for the Second, Third, Sixth and Seventh Circuits; U.S. District Courts for the Eastern and Southern Districts of New York.

Of Counsel

KURT HUNCIKER's practice is concentrated in complex business and securities litigation. Prior to joining BLB&G, Mr. Hunciker represented clients in a number of class actions and other actions brought under the federal securities laws and the Racketeer Influenced and Corrupt Organizations Act. He has also represented clients in actions brought under intellectual property laws, federal antitrust laws, and the common law governing business relationships.

Mr. Hunciker served as a member of the trial team for the *In re WorldCom, Inc. Securities Litigation* and, more recently, teams that prosecuted various litigations arising from the financial crisis, including *In re Citigroup, Inc. Bond Litigation*, *In re Wachovia Preferred Securities and Bond/Notes Litigation*, *In re MBIA Inc. Securities Litigation* and, *In re Ambac Financial Group, Inc. Securities Litigation.* Mr. Hunciker also was a member of the team that prosecuted the *In re Schering-Plough Corp./Enhance Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation.* He presently is a member of the team prosecuting the *In re Merck & Co., Inc. Securities Litigation*, which arises out of Merck's alleged failure to disclose adverse facts to investors regarding the risks of Vioxx.

EDUCATION: Stanford University, B.A.; Phi Beta Kappa. Harvard Law School, J.D., Founding Editor of the *Harvard Environmental Law Review*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for the Second, Fourth and Ninth Circuits.

SENIOR COUNSEL

JAI K. CHANDRASEKHAR prosecutes securities fraud litigation for the firm's institutional investor clients. He has been a member of the litigation teams on many of the firm's high-profile securities cases, including *In re JPMorgan Chase & Co. Securities Litigation*, in which a settlement of $150 million was achieved for the class; *In re MF Global Holdings Ltd. Securities Litigation*, in which settlements totaling $234.3 million were achieved for the class; *In re Refco, Inc. Securities Litigation*, in which settlements totaling $367.3 million were achieved for the class; and *In re Bristol Myers Squibb Co. Securities Litigation*, in which a settlement of $125 million was achieved for the class.

Mr. Chandrasekhar is currently counsel for the plaintiffs in *In re Facebook, Inc., IPO Securities and Derivative Litigation*, a securities class action arising from misrepresentations and omissions in the registration statement for Facebook's initial public offering ("IPO") of common stock. Plaintiffs allege that the registration statement did not accurately disclose the impact that increasing usage of Facebook on mobile devices was having on the company's revenue at the time of the IPO. He is also counsel for the plaintiffs in *In re Volkswagen AG Securities Litigation*, a securities fraud class action which recently resulted in a $48 million recovery on behalf of purchasers of Volkswagen AG American Depositary Receipts ("ADRs"). The action arose from Volkswagen's undisclosed use of illegal "defeat devices" in its diesel vehicles to cheat on nitrogen-oxide emissions tests and the company's false statements that its vehicles were "environmentally friendly" and complied with all applicable emissions regulations.

Before joining BLB&G, Mr. Chandrasekhar was a Staff Attorney with the Division of Enforcement of the United States Securities and Exchange Commission, where he investigated securities law violations and coordinated investigations involving multiple SEC offices and other government agencies. Before his tenure at the SEC, he was an associate at Sullivan & Cromwell LLP, where he represented corporate issuers and underwriters in public and private offerings of stocks, bonds, and complex securities and advised corporations on periodic reporting under the Securities Exchange Act of 1934, compliance with the Sarbanes-Oxley Act of 2002, and other corporate and securities matters.

Mr. Chandrasekhar is a member of the New York County Lawyers Association, where he serves on the Board of Directors, the Executive Committee, the Federal Courts Committee, and the Board of Directors of the New York County Lawyers Association Foundation. He is also a member of the New York City Bar Association, where he serves on the Professional Responsibility Committee, and the New York State Bar Association.

EDUCATION: Yale University, B.A., *summa cum laude*, 1987; Phi Beta Kappa. Yale Law School, J.D., 1997; Book Review Editor of the *Yale Law Journal*.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York; U.S. Courts of Appeals for Second, Third, Fifth, and Federal Circuits.

ADAM HOLLANDER prosecutes securities fraud, corporate governance, and shareholder rights litigation on behalf of the firm's clients.

Mr. Hollander has represented investors and corporations in state and federal trial and appellate courts throughout the country. He was an integral member of the teams that prosecuted, among other cases, *In re Salix Pharmaceuticals Ltd.*, recovering $210 million for investors; *San Antonio Fire & Police Pension Fund v. Dole Food Company, Inc.*, recovering $74 million for investors; and *Bach v. Amedisys, Inc.*, recovering $43.75 million for investors after a successful appeal to the U.S. Court of Appeals for the Fifth Circuit following a previous dismissal.

Currently, Mr. Hollander represents clients in a number of disputes relating to corporate misconduct and alleging harm to investors, including a securities-fraud class action against

Volkswagen which recently resulted in a $48 million recovery for Volkswagen investors arising out of the "Dieselgate" emissions-cheating scandal; a securities-fraud class action on behalf of investors in the now-bankrupt renewable energy company SunEdison, Inc.; a securities-fraud class action against Novo Nordisk concerning pricing of its insulin drugs; and a class action on behalf of Puerto Rico investors to whom UBS improperly recommended risky Puerto Rico securities.

Prior to joining BLB&G, Mr. Hollander clerked for the Honorable Barrington D. Parker, Jr. of the U.S. Court of Appeals for the Second Circuit, and for the Honorable Stefan R. Underhill of the U.S. District Court for the District of Connecticut. He has also been associated with two New York defense firms, where he gained significant experience representing clients in various civil, criminal, and regulatory matters, including white-collar and complex commercial litigation.

EDUCATION: Brown University, A.B., *magna cum laude*, 2001, Urban Studies. Yale Law School, J.D., 2006; Editor, *Yale Law and Policy Review*.

BAR ADMISSIONS: New York; Connecticut; U.S. District Courts for the Southern District of New York and the District of Connecticut; U.S. Court of Appeals for the Second Circuit.

NIKI L. MENDOZA (former Senior Counsel) helped obtain hundreds of millions of dollars in recoveries on behalf of defrauded investors. Some of Ms. Mendoza's more notable accomplishments included participating in a full jury trial and achieving a rare securities fraud verdict against the company's CEO in *In re Clarent Corporations Securities Litigation*. She also conducted extensive fact and expert discovery, full motion practice and completed substantial trial preparation in *In re Electronic Data Systems, Inc. Securities Litigation*, resulting in settlement just prior to trial for $137.5 million; one of the larger settlements in non-restatement cases since the passage of the PSLRA. Ms. Mendoza also advocated for employee rights, and previously sought to end racial steering through her prosecution of a race discrimination class action lawsuit filed against Bank of America. Ms. Mendoza handled many of the firm's settlement matters, including matters involving mortgage-backed securities.

Ms. Mendoza has been recognized for her experience and knowledge, and invited as a featured speaker, in the specialized area of class action settlements. She co-authored various articles which have been cited in federal court opinions (including "*Dura Pharm., Inc. v. Broudo*-The Least of All Evils," 1505 PLI/Corp. 272, 274 (Sept. 2005) and "Dura-Bull: Myths of Loss Causation," 1557 PLI/Corp. 339 (Sept. 2006). She was also a panel speaker at the Securities Litigation & Enforcement Institute 2007, Practicing Legal Institute (San Francisco, October 2007). In addition to her practice, Ms. Mendoza previously served as the Co-Chair of the San Diego County Bar Association's Children At Risk committee, a committee that works with schools and children's organizations and coordinates literacy and enrichment programs that rely on attorney volunteers.

Ms. Mendoza served as judicial law clerk to the Honorable Chief Judge Michael R. Hogan of the United States District Court for the District of Oregon for three years where she received the Distinguished Service Recognition. While serving as Managing Editor for the *Oregon Law Review*, Ms. Mendoza authored "*Rooney v. Kulungoski*, Limiting The Principle of Separation of Powers?"

Ms. Mendoza left the Firm in May 2017.

EDUCATION: University of Oregon, B.A. and J.D.; Order of the Coif; Managing Editor of the *Oregon Law Review*.

BAR ADMISSIONS: Hawaii (inactive); California; Oregon; U.S. District Courts for the Districts of Hawaii, and the Northern, Southern, Central and Eastern Districts of California; U.S. Courts of Appeals for the Second, Fifth, Ninth, Tenth and Eleventh Circuits.

ASSOCIATES

KATE AUFSES prosecutes securities fraud, corporate governance and shareholder rights litigation out of the firm's New York office. She is currently a member of the teams prosecuting securities class actions against Insulet Corporation and Volkswagen AG – which recently resulted in a recovery of $48 million for Volkswagen investors, among others.

Prior to joining the firm, Ms. Aufses was an associate at Hughes Hubbard & Reed, where she worked on complex commercial litigation. Prior to graduating law school, she also served as a judicial intern for the Honorable Jack B. Weinstein.

EDUCATION: Kenyon College, B.A., English, *magna cum laude*, 2008. University of Cambridge, MPhil, American Literature, 2009. University of Cambridge, MPhil, History of Art, 2010. University of Michigan Law School, J.D., 2015; Managing Symposium Editor, *Michigan Journal of Law Reform.*

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

JOHN J. MILLS' practice concentrates on Class Action Settlements and Settlement Administration. Mr. Mills also has experience representing large financial institutions in corporate finance transactions.

EDUCATION: Duke University, B.A., 1997. Brooklyn Law School, J.D., *cum laude*, 2000; Member of *The Brooklyn Journal of International Law;* Carswell Merit Scholar recipient.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

CATHERINE E. VAN KAMPEN's practice concentrates on class action settlement administration. She has extensive experience in complex litigation and litigation management, having overseen attorney teams in many of the firm's most high-profile cases. Fluent in Dutch, she has served as lead investigator and led discovery efforts in several actions involving international corporations and financial institutions headquartered in Belgium and the Netherlands.

Prior to joining BLB&G, Ms. van Kampen focused on complex litigation initiated by institutional investors and the Federal Government. She has worked on litigation and investigations related to regulatory enforcement actions, corporate governance and compliance matters as well as conducted extensive discovery in English and Dutch in cross-border litigation.

A committed humanitarian, Ms. van Kampen was honored as the 2018 Ambassador Medalist at the New Jersey Governor's Jefferson Awards for Outstanding Public Service for her international humanitarian and *pro bono* work with refugees. The Jefferson Awards, issued by the Jefferson Awards Foundation that was founded by Jacqueline Kennedy Onassis, are awarded by state governors and are considered America's highest honor for public service bestowed by the United States Senate. Ms. van Kampen was also honored in Princeton, New Jersey by her high school alma mater, Stuart Country Day School, in its 2018 Distinguished Alumnae Gallery for her humanitarian and *pro bono* efforts on behalf of women and children afflicted by war in Iraq and Syria.

Ms. van Kampen clerked for the Honorable Mary M. McVeigh in the Superior Court of New Jersey, where she was also trained as a court-certified mediator. While in law school, she was a legal intern at the Center for Social Justice's Immigration Law Clinic at Seton Hall University School of Law.

EDUCATION: Indiana University, B.A., Political Science, 1988. Seton Hall University School of Law, J.D., 1998.

BAR ADMISSION: New Jersey

LANGUAGES: Dutch, German

ROSS SHIKOWITZ (former associate) focused his practice on securities litigation and was a member of the firm's New Matter group, in which he, as part of a team attorneys, financial analysts, and investigators, counseled institutional clients on potential legal claims.

Mr. Shikowitz also served as a member of the litigation teams responsible for successfully prosecuting a number of the firm's significant cases involving wrongdoing related to the securitization and sale of residential mortgage-backed securities ("RMBS"), and recovered hundreds of millions of dollars on behalf of injured investors. He successfully represented Allstate Insurance Co., Metropolitan Life Insurance Company, Teachers Insurance and Annuity Association of America, Bayerische Landesbank, Dexia SA/NV, Sealink Funding Limited, and Landesbank Baden-Württemberg against various issuers of RMBS in both state and federal courts.

Mr. Shikowitz served as a member of the litigation team prosecuting the securities fraud class action against Volkswagen AG, which recently resulted in a $48 million recovery for Volkswagen investors and arose out of Volkswagen's illegal use of defeat devices in millions of purportedly clean diesel cars to cheat emissions standards worldwide. He also served as a member of the team litigating the securities class action concerning GT Advanced Technologies Inc., which alleged that defendants knew that the company's $578 million deal to supply Apple, Inc. with product was an onerous and massively one-sided agreement that allowed GT executives to sell millions worth of stock. The case concerning GT has resulted in $36.7 million in recoveries to date.

For his accomplishments, Mr. Shikowitz was consistently named by *Super Lawyers* as a New York "Rising Star" in the area of securities litigation.

While in law school, Mr. Shikowitz was a research assistant to Brooklyn Law School Professor of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation. He also served as a judicial intern to the Honorable Brian M. Cogan of the Eastern District of New York, and as a legal intern for the Major Narcotics Investigations Bureau of the Kings County District Attorney's Office.

EDUCATION: Skidmore College, B.A., Music, *cum laude*, 2003. Indiana University-Bloomington, M.M., Music, 2005. Brooklyn Law School, J.D., *magna cum laude*, 2010; Notes/Comments Editor, *Brooklyn Law Review*; Moot Court Honor Society; Order of Barristers Certificate; CALI Excellence for the Future Award in Products Liability, Professional Responsibility.

BAR ADMISSIONS: New York; U.S. District Courts for the Eastern and Southern Districts of New York.

STAFF ATTORNEYS

GIROLAMO BRUNETTO has worked on numerous matters at BLB&G, including *In re Altisource Portfolio Solutions, S.A., Securities Litigation*, *In re Genworth Financial Inc. Securities Litigation*, *In re Facebook, Inc., IPO Securities and Derivative Litigation* and *In re JPMorgan Chase & Co. Securities Litigation*. Mr. Brunetto also works on the settlement of class actions and other complex litigation and the administration of class action settlements.

Prior to joining the firm in 2014, Mr. Brunetto was a volunteer assistant attorney general in the Investor Protection Bureau at the New York State Office of the Attorney General.

EDUCATION: University of Florida, B.S.B.A. and B.A., *cum laude*, May 2007. New York Law School, J.D., *cum laude*, 2011.

BAR ADMISSIONS: New York.

JASPER HAYES-KLEIN (former staff attorney) is a German-fluent attorney who worked on *In re Volkswagen AG Securities Litigation* while at BLB&G.

Prior to joining the firm in 2018, Mr. Hayes-Klein worked as a German-language contract attorney on numerous projects.

EDUCATION: University of Illinois Urbana/Champaign, Bachelor of Arts & Sciences, Minor: German, Award of Academic Excellence in German Studies, 2001. Hofstra University School of Law, J.D., 2012.

BAR ADMISSIONS: New York.

JARED HOFFMAN has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation*, *Mudrick Capital Management, L.P. v. Globalstar, Inc.*, *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*, *Hefler et al. v. Wells Fargo & Company et al.*, *In re Volkswagen AG Securities Litigation*, *In re Allergan, Inc. Proxy Violation Securities Litigation*, *In re NII Holdings, Inc. Securities Litigation*, *In re Facebook, Inc., IPO Securities and Derivative Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *SMART Technologies, Inc. Shareholder Litigation* and *In re Citigroup Inc. Bond Litigation*.

Prior to joining the firm in 2011, Mr. Hoffman was an associate at Blank Rome LLP.

EDUCATION: Emory University, Goizueta Business School, B.B.A., 2002. New York University, School of Law, J.D., 2005.

BAR ADMISSIONS: New York.

STEFFANIE KEIM (former staff attorney) is a native German-fluent attorney who worked on several matters while at BLB&G, including In re SunEdison, Inc., Securities Litigation, In re Volkswagen AG Securities Litigation, 3-Sigma Value Financial Opportunities LP et al. v. Jones et al. ("CertusHoldings, Inc."), In re Allergan, Inc. Proxy Violation Securities Litigation and In re Altisource Portfolio Solutions, S.A., Securities Litigation.

Prior to joining the firm in 2016, Ms. Keim was a senior associate at Ernst & Linder LLC and corporate associate at Dewey & LeBoeuf LLP.

EDUCATION: Ruprecht-Karls-University of Heidelberg Law School, First Juristic Examination (J.D. equivalent), 1999. Fordham University School of Law, LL.M., *cum laude*, 2007.

BAR ADMISSIONS: New York, Germany.

JED KOSLOW has worked on numerous matters at BLB&G, including *In re SunEdison, Inc., Securities Litigation*, *In re Volkswagen AG Securities Litigation*, *In re NII Holdings, Inc. Securities Litigation*, *In re Bank of New York Mellon Corp. Forex Transactions Litigation*, *JPMorgan Mortgage Pass-Through Litigation*, *In re Wilmington Trust Securities Litigation*, *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)*, *Dexia Holdings, Inc. v. JP Morgan* and *In re Schering-Plough Corp./ENHANCE Securities Litigation* and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation*.

Prior to joining the firm in 2009, Mr. Koslow was Of Counsel at Lebowitz Law Office, LLC.

EDUCATION: Wesleyan University, B.A., 1999. Brooklyn Law School, J.D., 2006.

BAR ADMISSIONS: New York.

JOHN MOORE has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation*, *Mudrick Capital Management, L.P. v. Globalstar, Inc.*, *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*, *Hefler et al. v. Wells Fargo & Company et al.*, *In re Volkswagen AG Securities Litigation*, *California Public Employees' Retirement System v. IAC/InterActiveCorp, et al*, and *In re Salix Pharmaceuticals, Ltd. Securities Litigation*.

Prior to joining the firm in 2016, Mr. Moore was engaged in a general law practice, and also provided pro bono assistance to pro se litigants in consumer credit and bankruptcy actions.

EDUCATION: Colorado University, Bachelor of Music, 1986. Northeastern University School of Law, J.D., 2007.

BAR ADMISSIONS: New York.

CHRISTINA SUAREZ (PAPP) has worked on numerous matters at BLB&G, including *In re Akorn, Inc., Securities Litigation*, *St. Paul Teachers' Retirement Fund Association v. HeartWare International, Inc.*, *In re Volkswagen AG Securities Litigation*, *Arkansas Teacher Retirement System, et al. v. Insulet Corp., et al.*, *Town of Davie Police Pension Plan v. CommVault Systems, Inc., et al*, *Kohut v. KBR, Inc. et al.*, *In re NII Holdings, Inc. Securities Litigation* and *In re JPMorgan Chase & Co. Securities Litigation*.

Prior to joining the firm in 2014, Ms. Papp was a litigation associate at Schulte Roth & Zabel LLP.

EDUCATION: Barnard College, Columbia University, B.A., *magna cum laude*, 2002. George Washington University Law School, J.D., 2006.

BAR ADMISSIONS: New York.

CHESLEY PARKER has worked on numerous matters at BLB&G, including *In re Signet Jewelers Limited Securities Litigation*, *In re Volkswagen AG Securities Litigation*, *San Antonio Fire and Police Pension Fund et al v. Dole Food Company, Inc. et al*, and *In re Altisource Portfolio Solutions, S.A., Securities Litigation*.

Prior to joining the firm in 2016, Ms. Parker was a contract attorney at several New York firms.

EDUCATION: The College of the Holy Cross, B.A., 2002. St. John's University School of Law, J.D., 2003.

BAR ADMISSIONS: New York.

KIRSTIN PETERSON (former staff attorney) is a German-fluent attorney who worked on *In re Volkswagen AG Securities Litigation* and *In re Merck & Co., Inc. Securities Litigation (VIOXX-related)* while at BLB&G.

Prior to joining the firm in 2011, Ms. Peterson was an associate at Davis Polk & Wardell and Richards & O'Neil, LLP. Ms. Peterson also worked as a German-language contract attorney on numerous projects.

EDUCATION: Northwestern University, B.A., Comparative Literature with Concentration in German Literature, 1985; Phi Beta Kappa. Yale University, M.A., 1989. Northwestern University Medical School, M.D., 1990. Harvard Law School, J.D., *cum laude*, 1993.

BAR ADMISSIONS: New York.

Exhibit 4B

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
JAMES A. HARROD
JAI CHANDRASEKHAR
ADAM D. HOLLANDER
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Attorneys for Lead Plaintiff ASHERS and Plaintiff Miami Police and Lead Counsel in the Securities Actions

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

_____/

This Document Relates To: Securities Actions

City of St. Clair Shores, 15-1228 (E.D. Va.)
Travalio, 15-7157 (D.N.J.)
George Leon Family Trust, 15-7283 (D.N.J.)
Charter Twp. of Clinton, 15-13999 (E.D. Mich.)
Wolfenbarger, 15-326 (E.D. Tenn.)

_____/

MDL No. 2672 CRB (JSC)

CLASS ACTION

DECLARATION OF ROBERT D. KLAUSNER IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES FILED ON BEHALF OF KLAUSNER KAUFMAN JENSEN & LEVINSON

Judge:	Hon. Charles R. Breyer
Courtroom:	6
Date:	May 10, 2019
Time:	10:00 a.m.

I, ROBERT D. KLAUSNER, declare as follows:

1. I am a partner of the law firm of Klausner Kaufman Jensen & Levinson ("KKJ&L"), additional Plaintiffs' Counsel in the above-captioned action (the "Action").[1] I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees for services rendered in the Action. I have personal knowledge of the facts stated in this declaration and, if called upon, could and would testify to these facts.

2. My firm served as Plaintiffs' Counsel of record in the Action and represented named Plaintiff Miami Police Relief and Pension Fund ("Miami Police"). The tasks undertaken by my firm in the Action can be summarized as follows: provided regular updates to Miami Police regarding case developments, court filings, decisions, and litigation strategy; reviewed substantive pleadings throughout the litigation; reviewed discovery requests and assisted with the response to discovery requests by Miami Police; and consulted with Miami Police regarding the terms of the proposed Settlement.

3. Attached as Exhibit 1 to this declaration is a summary lodestar chart which lists (1) the name of each timekeeper in my firm who worked on this Action, categorized by position (partner or associate); (2) the total number of hours each person worked on the Action from its inception through and including March 29, 2019; (3) each person's current hourly rate;[2] and (4) each person's lodestar based on the applicable hourly rate. I am the partner who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed this time in connection with the preparation of this declaration.

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[1] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated August 27, 2018, and previously filed with the Court. *See* ECF No. 5267-1.

[2] The "current rate" for Paul Daragjati, who is no longer employed by my firm, is based upon his hourly rate in his final year of employment with the firm.

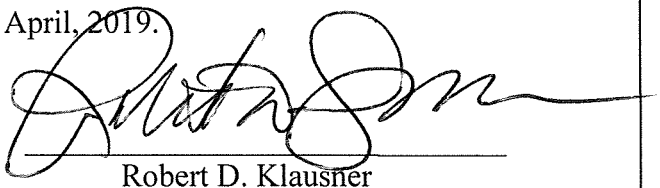
4. The schedule attached as Exhibit 1 was prepared from daily time records regularly prepared and maintained by my firm. No time expended on the application for fees has been included.

5. The hourly rates for the attorneys in my firm included in Exhibit 1 are the usual and customary rates set by the firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by courts, including courts in this Circuit, in other contingent-fee securities-class-action litigation or shareholder litigation.

6. As reflected in Exhibit 1, the total number of hours expended on this Action by my firm through and including March 29, 2019 is 42.50. The total lodestar for my firm for that period is $25,255.00, all of which is attorneys' time.

7. With respect to the standing of my firm, attached hereto as Exhibit 2 is a brief biography of my firm and attorneys in my firm who were involved in the Action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief, this 3rd day of April, 2019.



Robert D. Klausner

EXHIBIT 1

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

KLAUSNER KAUFMAN JENSEN & LEVINSON
Summary Lodestar Chart
Inception through March 29, 2019

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Robert D. Klausner	19.30	$650.00	$12,545.00
Stuart A. Kaufman	7.40	$650.00	$4,810.00
Associate			
Paul Daragjati	15.80	$500	$7,900.00
TOTALS	**42.50**		**$25,255.00**

EXHIBIT 2

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

KLAUSNER KAUFMAN JENSEN & LEVINSON
Firm Resume

Firm Overview

The law firm of **Klausner, Kaufman, Jensen & Levinson** specializes exclusively in the representation of retirement and benefit systems and related labor and employment relations matters. The firm is composed of 7 lawyers in South Florida and Robert E. Tarzca, Of Counsel (New Orleans). In addition we have four clerical/paraprofessional employees, an administrator, and a deputy administrator/conference director.

As a result of our substantial involvement on a national level in public employee retirement matters, we have developed a unique level of knowledge and experience. By concentrating our practice in the area of public employee retirement and related employment issues, we are able to keep a focus on changing trends in the law that more general practitioners would consider a luxury.

The law firm of Klausner, Kaufman, Jensen & Levinson, among the most highly regarded in the country in the area of pension issues, is frequently called upon as an educational and fiduciary consultant by state and local governments throughout the United States on some of the newest and most sophisticated issues involving public retirement systems. The examples of those areas are:

Plan Design

The firm provides services to dozens of public employee pension plans throughout the United States in the area of plan review, design, and legislative drafting. On both the state and local levels, statutes and ordinances are reviewed for the purposes of maintaining compliance with current and pending Internal Revenue Code Regulations affecting public plans, as well as compliance with provisions of the Americans With Disabilities Act, the Older Workers Protections Act, Veterans' re-employment laws, and the Pension Protection Act. When benefit changes occur we prepare all necessary legislative drafts and appear before the appropriate legislative body to answer questions concerning those drafts. We also offer creative solutions to plan design issues brought about by unexpected economic pressures and balancing those solutions against constitutional or statutory benefit guarantees.

Fiduciary Education

The primary duty of a pension fund lawyer is to ensure that the trustees do the right thing. It is our practice to design and present a variety of educational materials and programs which explain the general principles of fiduciary responsibility, as well as more specific principles regarding voting conflicts, compliance with open meeting laws, conflict of interest laws, etc. We regularly apprise the boards of trustees and administrators through newsletters, memoranda and updates on our website of changes in the law, both legislatively and judicially, which impact upon their duties. We also conduct training workshops to improve the trustees' skills in conducting disability and other benefit hearings.

As a result of our regular participation and educational programs on a monthly basis, all of the materials prepared as speaker materials for those programs are distributed without additional charge to our clients. Our firm provides its clients, as part of the fees charged for legal and consulting services, an annual pension conference in South Florida. This national event draws internationally-known legal and financial experts and has been attended by more than 3500 trustees and administrators from throughout the United States. Only clients of the firm are permitted to attend and fees paid include attendance at the conference.

Plan Policies, Rules, and Procedures

It has been our experience that boards of trustees find themselves in costly and unnecessary litigation because of inconsistency in the administration of the fund. Accordingly, we have worked with our trustee clients in developing policies, rules, and procedures for the administration of the trust fund. The development of these rules ensures uniformity of plan practices and guarantees the due process rights of persons appearing before the board. They also serve to help organize and highlight those situations in which the legislation creating the fund may be in need of revision. By utilizing rule making powers, the board of trustees can help give definition and more practical application to sometimes vague legislative language.

Legal Counseling

In the course of its duties, the board of trustees and administrators will be called upon from time to time to interpret various provisions of the ordinance or statute which governs its conduct. The plan will also be presented with various factual situations which do not lend themselves to easy interpretation. As a result, counsel to the plan is responsible for issuing legal opinions to assist the trustees and staff in performing their function in managing the trust. It is our practice to maintain an orderly system of the issuance of legal opinions so that they can form part of the overall body of law that guides the retirement plan. As changes in the law occur, it is our practice to update those legal opinions to ensure that the subjects which they cover are in conformance with the current state of the law.

Summary Plan Descriptions

Many state laws require that pension plans provide their members with a plain language explanation of their benefits and rights under the plan. Given the complexity of most pension laws, it is also good benefits administration practice. Part of the responsibilities of a fiduciary is to ensure that plan members understand their rights and the benefits which they have earned. We frequently draft plain language summary plan descriptions using a format which is easily updatable as plan provisions change. We are also advising plans on liability issues associated with electronic communication between funds and members as part of our continuing effort at efficient risk management.

Litigation

Despite the best efforts and intentions of the trustees and staff, there will be times when the plan finds itself as either a plaintiff or defendant in a legal action. We have successfully defended retirement plans in claims for benefits, actions regarding under-funding, constitutional questions, discrimination in plan design, and failure of plan fiduciaries to fulfill their responsibilities to the trust. The firm has substantial state and federal court trial experience, including the successful defense of a state retirement system in the Supreme Court of the United States. The firm also has a substantial role in monitoring securities litigation and regularly argues complex appellate matters on both the state and federal levels. We pride ourselves on the vigorous representation of our clients while maintaining close watch on the substantial costs that are often associated with litigation. We are often called upon to provide support in a variety of cases brought by others as expert witnesses or through appearance as an *amicus curiae* (Friend of the Court).

ROBERT D. KLAUSNER:

Born Jacksonville, Florida, December 20, 1952; admitted to Bar 1977, Florida, 1977; U.S. District Court, Southern District of Florida, 1978; U.S. Court of Appeals, Fifth Circuit, 1981; U.S. Court of Appeals, Eleventh Circuit, 1997; U.S. Court of Claims,1998; U.S. Court of Appeals, Eighth Circuit, 2000; U.S. Supreme Court, 2000; U.S. Court of Appeals, Sixth Circuit, 2004; U.S. District Court, Middle District of Florida, 2005; U.S. Court of Appeals, Second Circuit, 2011; U.S. District Court, Northern District of Texas, 2011; U.S. Court of Appeals, Fourth Circuit, 2013.

Education: University of Florida (B.A. with honors, 1974); University of Florida College of Law (J.D., 1977). Adjunct professor, Nova University Law School (1987 - 2005); adjunct professor, New York Institute of Technology, School of Labor Relations(1999-2003); instructor, Florida State University Center for Professional Development and Public Service (1980 - present); instructor, International Foundation of Employee Benefit Plans (1986 - present); instructor, National Conference on Public Employee Retirement Systems (1987 - present); instructor, Public Safety Officers Benefits Conference (1988 - present); instructor, Labor Relations Information Systems (1990 - present); instructor, National Education Association Benefit Conferences (1989 - present); instructor, Florida Division of Retirement Pension Trustees School (1980 - present);

Member: The Florida Bar; American Bar Association; Phi Beta Kappa; Phi Kappa Phi.

Publication: Co-Author, State and Local Government Employment Liability, West Publishing Co.

Author, State and Local Government Retirement Law: A Guide for Lawyers, Trustees, and Plan Administrators, West Publishing Co.

STUART A. KAUFMAN:

Born Queens, New York, March 21, 1965; admitted to Bar 1990; The New York Bar 1990; The Florida Bar 1993; United States District Court, Southern District of Florida 1993; United States Court of Appeals, Eleventh Circuit, 1998.

Education: State University of New York at Binghamton (B.A. 1986); University of Miami School of Law (J.D. 1989).

Member: The Association of the Bar of the City of New York; The Association of the Bar of the State of New York; The Florida Bar; American Bar Association.

Exhibit 5

EXHIBIT 5

Volkswagen ADR Securities Litigation, MDL No. 2672 CRB (JSC)

BREAKDOWN OF LEAD COUNSEL'S LITIGATION EXPENSES BY CATEGORY

CATEGORY	AMOUNT
Court Fees	$920.00
Service of Process	$11,484.22
On-Line Legal Research	$53,797.32
On-Line Factual Research	$10,588.35
Investigators	$898.22
Telephone	$305.73
Postage & Express Mail	$437.15
Hand Delivery	$242.50
Local Transportation	$5,286.82
Copying/Printing	$707.00
Out of Town Travel	$8,519.71
Working Meals	$4,052.86
Court Reporting & Transcripts	$740.30
Experts	$146,348.25
Discovery/Document Management	$52,551.43
TOTAL EXPENSES:	**$296,879.86**

#1284065

Exhibit 6

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2018 Review and Analysis

Table of Contents

Table of Figures and Appendices

Analyses in this report are based on 1,775 securities class actions filed after passage of the Private Securities Litigation Reform Act of 1995 (Reform Act) and settled from 1996 through year-end 2018. See page 16 for a detailed description of the research sample. For purposes of this report and related research, a settlement refers to a negotiated agreement between the parties to a securities class action that is publicly announced to potential class members by means of a settlement notice.

Highlights

Propelled by mega settlements of $100 million or higher, total settlement dollars rose to just above $5 billion in 2018. This was the third-highest total in the prior 10 years. An increase in midsized settlements between $10 million and $50 million also contributed to the increased total value of settlements.

- There were 78 securities class action settlements approved in 2018—only slightly fewer than the number of settlements approved in 2017. (page 1)
- Total settlement dollars increased substantially over the 2017 near-historic low to just over $5 billion, which was 50 percent higher than the average for the prior nine years. (page 3)
- There were five mega settlements (settlements equal to or greater than $100 million) in 2018. (page 4)
- Compared to the historically low levels in 2017, in 2018 the average settlement amount more than tripled to $64.9 million, while the median settlement amount (representing the typical case) more than doubled to $11.3 million. (page 1)
- For 2018 cases with Rule 10b-5 claims, when compared to 2017 results, average "simplified tiered damages" rose 45 percent to $687 million, while median "simplified tiered damages" rose 88 percent to $250 million. (page 5)
- The median settlement as a percentage of "simplified tiered damages" in 2018 was 6.0 percent—higher than the median of 5.1 percent over the prior nine years. (page 6)
- Compared to defendant firms involved in cases settled in 2017, defendant firms in 2018 settlements were roughly 50 percent larger, as measured by median total assets. (page 5)
- During 2014–2018, the median settlement for cases that settled before a ruling on a motion for class certification was $12.6 million, compared to $18.0 million for cases that settled after such a ruling. (page 13)
- Among 2018 settled cases, the average time to reach a ruling on a motion for class certification was 4.8 years. (page 13)

Figure 1: Settlement Statistics

(Dollars in millions)

	1996–2017	2017	2018
Number of Settlements	1,697	81	78
Total	$96,982.2	$1,511.1	$5,064.3
Minimum	$0.2	$0.5	$0.4
Median	$8.6	$5.1	$11.3
Average	$57.1	$18.7	$64.9
Maximum	$9,008.9	$215.1	$3,000.0

Note: Settlement dollars are adjusted for inflation; 2018 dollar equivalent figures are used. Figure 1 includes all post–Reform Act settlements. Settlements during 1996–2017 include 13 cases each exceeding $1 billion—adjusted for inflation, these settlements drive up the average settlement amount.

Author Commentary

2018 Findings

In this section we provide our perspective on the increase in the 2018 median settlement amount, both in dollars and as a percentage of our simplified proxy for plaintiff-style damages.

While there are important determinants of settlement amounts that we are unable to observe, such as case merits, we collect and analyze publicly available data in an effort to represent underlying constructs relevant to settlement determination. These determinants include the strength of the case, potential damages alleged by plaintiffs, resources available to fund the settlement from named defendants and/or their insurers, as well as other factors that may affect the settlement negotiation process.

Over the years, we have identified a number of factors that are associated with higher settlement amounts. The results in 2018 are unusual in that settlement amounts increased—even as a percentage of our simplified damages proxy—despite a decrease in certain factors typically associated with larger settlements.

For example, relative to both the previous year (2017) and the previous nine years (2009–2017), fewer cases settled in 2018 involved accounting allegations. Similarly, settlements also involved fewer public pension plan lead plaintiffs. These findings raise the question: what did cause the increase in settlement amounts in 2018?

One interesting finding in 2018 is that more than 14 percent of settled cases involved an accompanying criminal action—the highest proportion over the last 10 years. Cases associated with a criminal action generally settle for higher amounts.

However, the answer appears to relate primarily to the potential resources available to fund the settlement. Specifically, we study issuer defendant total assets as a proxy for both the resources available directly from the defendant, as well as potential Directors and Officers (D&O) insurance coverage. In 2018, defendant firms in settled cases were 50 percent larger than in 2017, and over 20 percent larger than over the prior five years. Similarly, both the proportions of settlements involving delisted firms, as well as bankrupt firms, were the lowest over the last decade. Taken together, this suggests that economic factors played an important role in the increase in settlement size in 2018.

What is striking in 2018 is the dramatic increase in average and median settlement amounts despite a drop in a number of factors typically associated with higher settlements.

Dr. Laura E. Simmons
Senior Advisor
Cornerstone Research

Recent Developments

Recent data on case filings can provide insights into potential settlement trends. Specifically, record levels of market capitalization losses reported for case filings in 2018 may suggest that large settlements will persist in upcoming years. See Cornerstone Research's *Securities Class Action Filings—2018 Year in Review*.[1]

In addition, the emergence of event-driven securities case filings over the last couple of years has been widely discussed. These cases have been described as driven by adverse events such as "an explosion, a crash, [or] a mass torts episode."[2] Some authors have associated such cases with more rapid filings and the entrance of certain plaintiff law firms lacking connections to institutional investors.[3] Accordingly, we have investigated the development of trends related to these suits for case settlements in 2018.

We observe that, overall, settlement amounts, our simplified damages proxy, and defendant assets are all lower for cases in which the law firms associated with event-driven litigation serve as lead counsel. In addition, consistent with expectations, cases in which they serve as lead counsel are less likely to involve institutional investors as lead plaintiffs.

Given that securities cases take, on average, just over three-and-a-half years to resolve, such cases may have a greater impact on future settlement trends, and we will continue to investigate effects related to event-driven litigation in subsequent reports.

—Laarni T. Bulan, Ellen M. Ryan, and Laura E. Simmons

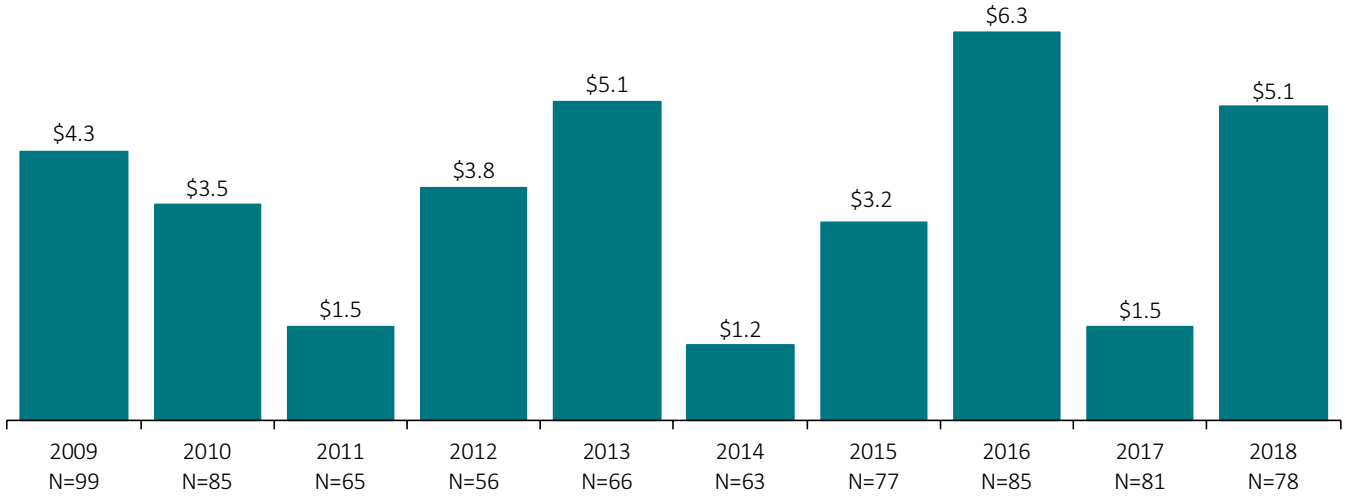
Total Settlement Dollars

- The total value of settlements approved by courts in 2018 was just over $5 billion—more than three times the total amount approved in 2017.
- The average settlement amount in 2018 was nearly $65 million, considerably higher than the $18.7 million average in 2017 and 44 percent higher than the average for the prior nine years.
- In addition, the 2018 median settlement of $11.3 million was more than double the 2017 median, indicating larger 2018 settlements overall.
- The larger settlement amounts in 2018 were accompanied by higher levels in our proxy for plaintiff-style damages. (See page 5 for a discussion of damages estimates.)

2018 total settlement dollars surpassed the prior nine-year average annual total by 50 percent.

Figure 2: Total Settlement Dollars
2009–2018

(Dollars in billions)



Note: Settlement dollars are adjusted for inflation; 2018 dollar equivalent figures are used. N refers to the number of observations.

Settlement Size

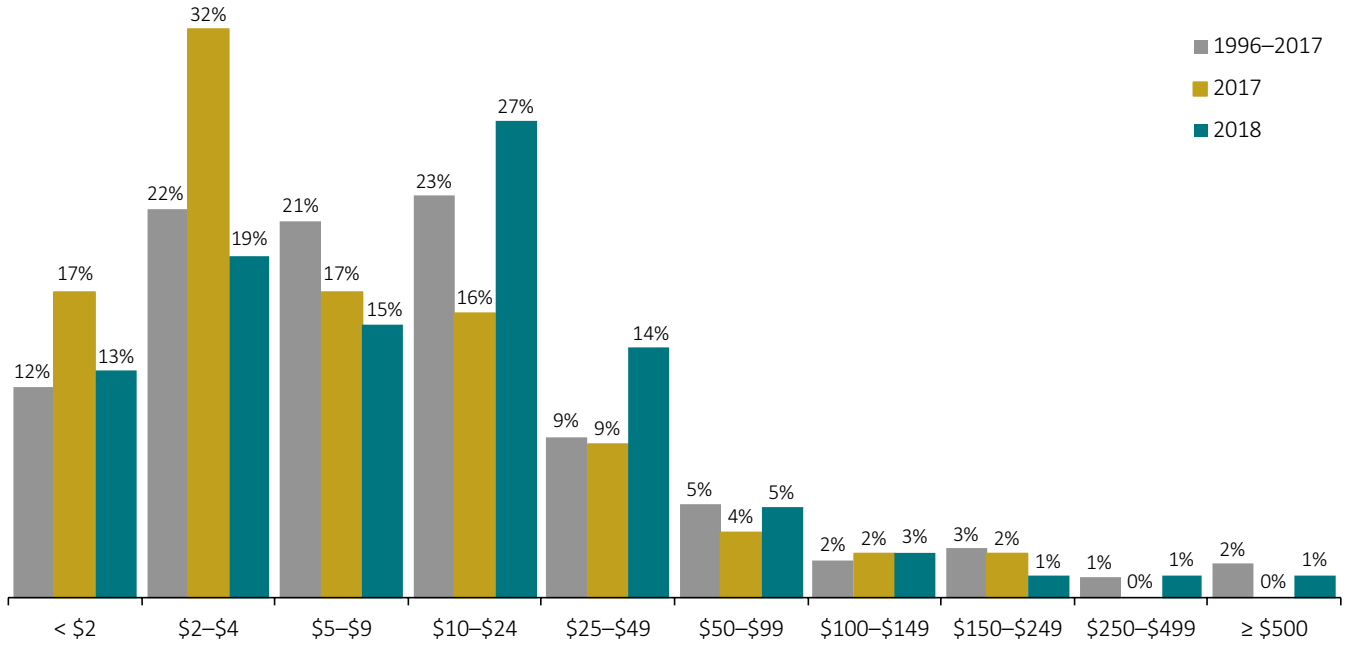
- There were five mega settlements in 2018, with settlements ranging from $110 million to $3 billion.

32 cases settled for between $10 million and $49 million in 2018, representing an approximate 60 percent increase over 2017.

- The median and average settlement amounts in 2018 were 31 percent and 14 percent higher than the median and average, respectively, for all prior post–Reform Act settlements.
- Contributing to the increase in median and average settlement amounts, the number of small settlements (amounts less than $5 million) declined by nearly 40 percent, from 40 cases in 2017 to 25 in 2018.

Figure 3: Distribution of Post–Reform Act Settlements
1996–2018

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2018 dollar equivalent figures are used. Percentages may not sum to 100 percent due to rounding.

Damages Estimates

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

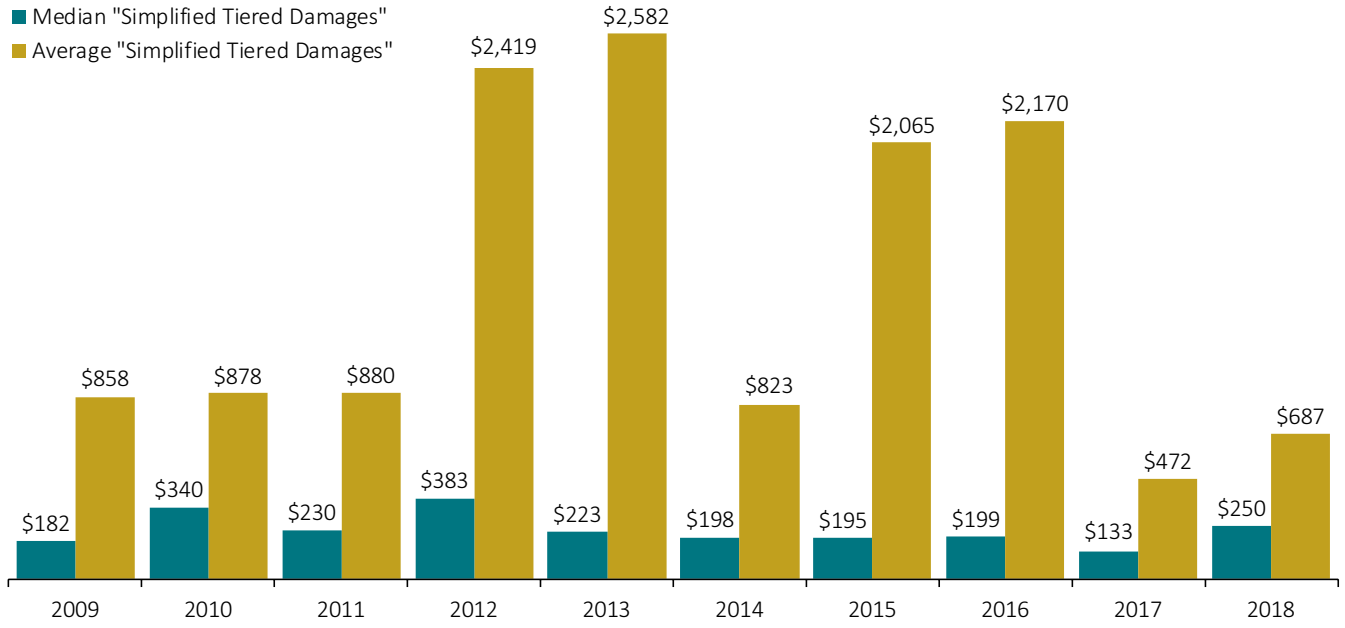
"Simplified tiered damages" uses simplifying assumptions to estimate per-share damages and trading behavior. It provides a measure of potential shareholder losses that allows for consistency across a large volume of cases, thus enabling the identification and analysis of potential trends.[4] Cornerstone Research's prediction model finds this measure to be the most important factor in predicting settlement amounts.[5] 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" increased 88 percent from 2017.

- "Simplified tiered damages" is correlated with stock market volatility at the time of a case filing. The rise in median and average "simplified tiered damages" in 2018 is consistent with increased stock market volatility in 2015 and 2016, when more than half of cases that settled in 2018 were filed.
- "Simplified tiered damages" is also generally correlated with the length of the class period. For cases settled in 2018, the median class period length was over 13 percent longer than the median in 2017.
- Higher "simplified tiered damages" are generally associated with larger issuer defendants (measured by total assets or market capitalization of the issuer). In 2018, the median issuer defendant total assets of $829 million was almost 50 percent larger than for cases settled in 2017.

Figure 4: Median and Average "Simplified Tiered Damages" 2009–2018

(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).

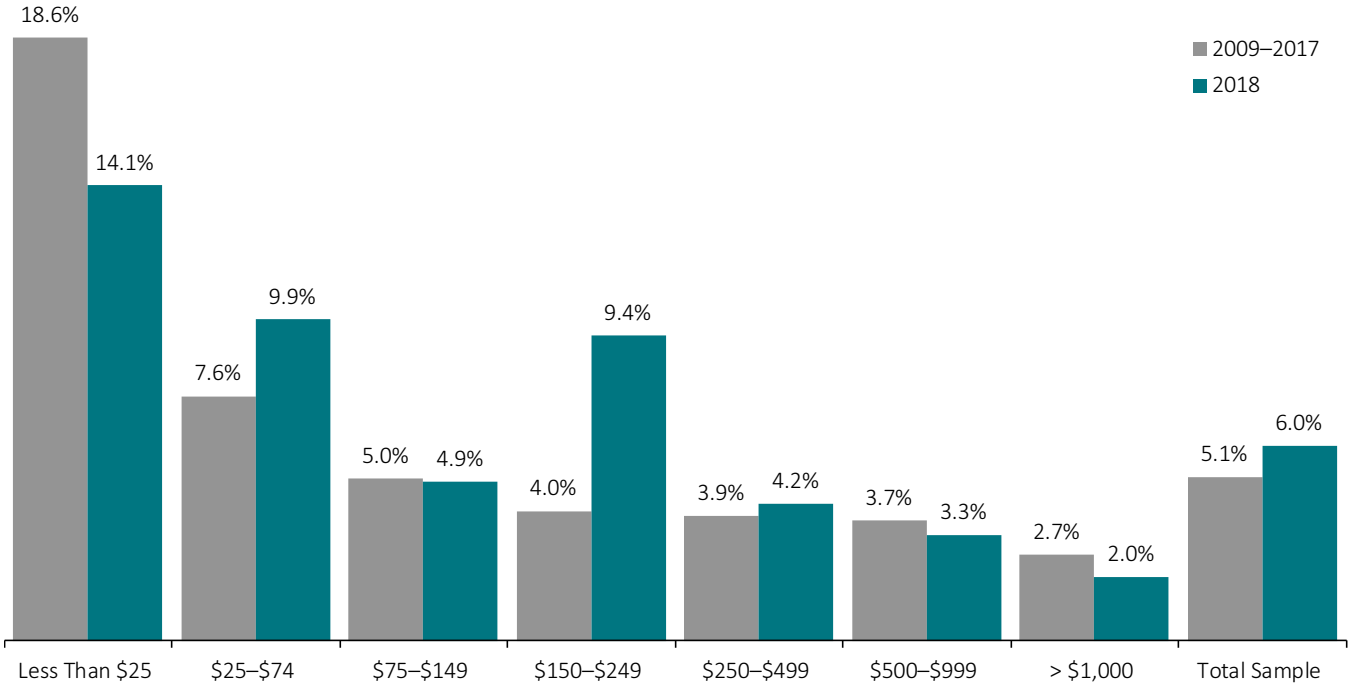
- Larger cases (cases with higher levels of the proxy for shareholder losses) typically settle for a smaller percentage of "simplified tiered damages."
- The median settlement as a percentage of "simplified tiered damages" increased to 6.0 percent in 2018, compared to a median of 5.1 percent for the prior nine years.
- For the smallest cases (measured by "simplified tiered damages"), the median settlement as a percentage of "simplified tiered damages" decreased by more than 50 percent, from 29 percent in 2017 to 14 percent in 2018.

The median settlement as a percentage of "simplified tiered damages" increased for the third consecutive year.

- As observed over the last decade, smaller cases typically settle more quickly. Cases with less than $25 million in "simplified tiered damages" settled within 2.9 years on average, compared to 4.5 years for cases with "simplified tiered damages" of greater than $500 million.

Figure 5: Median Settlements as a Percentage of "Simplified Tiered Damages" by Damages Ranges
2009–2018

(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.”[6] 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).
- In 2018, among settlements involving only ’33 Act claims, the median time to settlement was 2.3 years, compared to slightly more than three years for cases involving only Rule 10b-5 claims.
- Median settlement amounts are substantially higher for cases involving both ’33 Act claims and Rule 10b-5 allegations than for those with only Rule 10b-5 claims.

Eight cases involving only ’33 Act claims settled in 2018.

Figure 6: Settlements by Nature of Claims
2009–2018

(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	76	$5.2	$107.8	8.0%

	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)	127	$14.8	$339.6	5.8%
Rule 10b-5 Only	537	$8.2	$203.9	4.6%

Note: Settlement dollars and damages are adjusted for inflation; 2018 dollar equivalent figures are used. Damages are adjusted for inflation based on class period end dates.

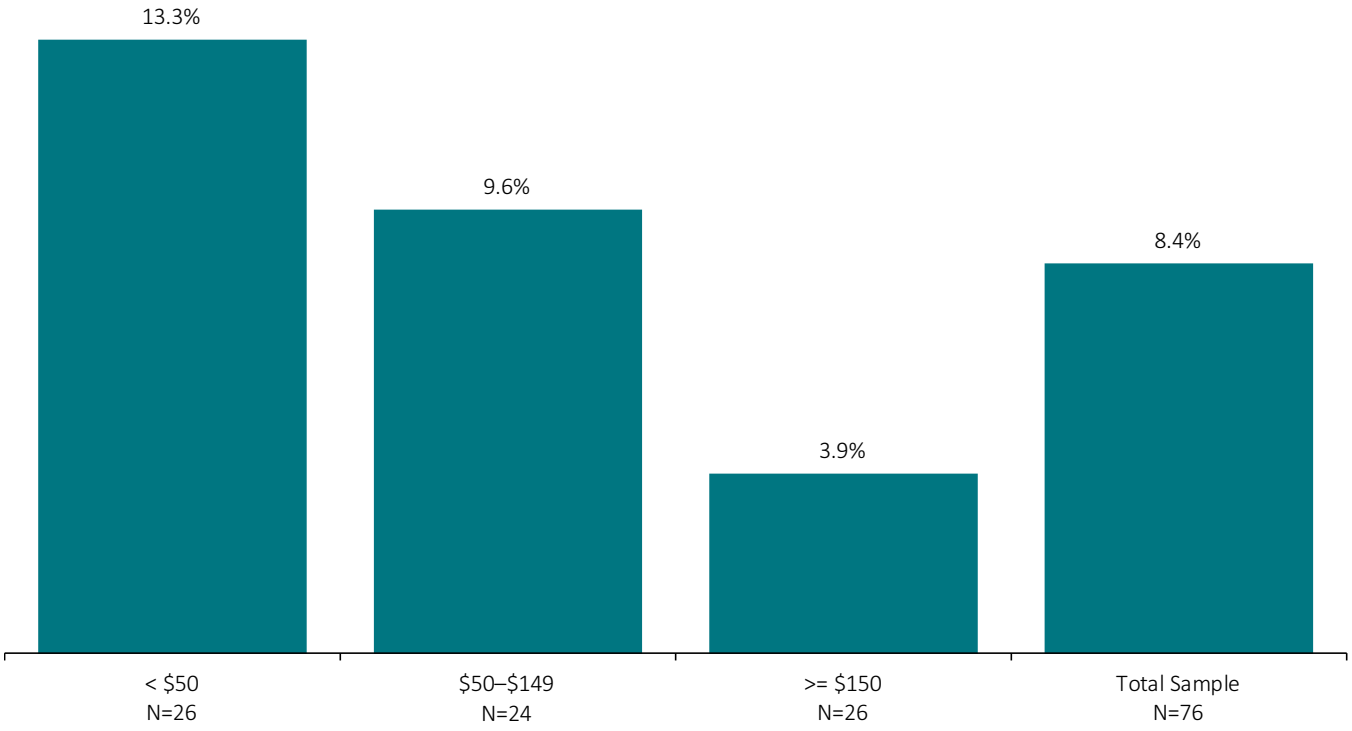
- Similar to cases with Rule 10b-5 claims, settlements as a percentage of "simplified statutory damages" for cases with only '33 Act claims are smaller for cases that have larger estimated damages.
- Since 2009, 85 percent of settled cases with only '33 Act claims had a named underwriter defendant.
- Over the period 2009–2018, the average settlement as a percentage of "simplified statutory damages" for cases with a named underwriter defendant was 13.2 percent, compared to 5.9 percent for cases without a named underwriter defendant.

50 percent of cases with only '33 Act claims settled in 2018 were heard in state courts.

- As discussed in *Securities Class Action Filings—2018 Year in Review*, stand-alone '33 Act claim case filings were 45 percent higher in 2018 than the average over the prior five years. These cases will likely reach resolution within the next two to three years and may contribute to an increase in the number of '33 Act claim settlements during those years.

Figure 7: Median Settlements as a Percentage of "Simplified Statutory Damages" by Damages Ranges
2009–2018

(Dollars in millions)



Note: N refers to the number of observations.

Analysis of Settlement Characteristics

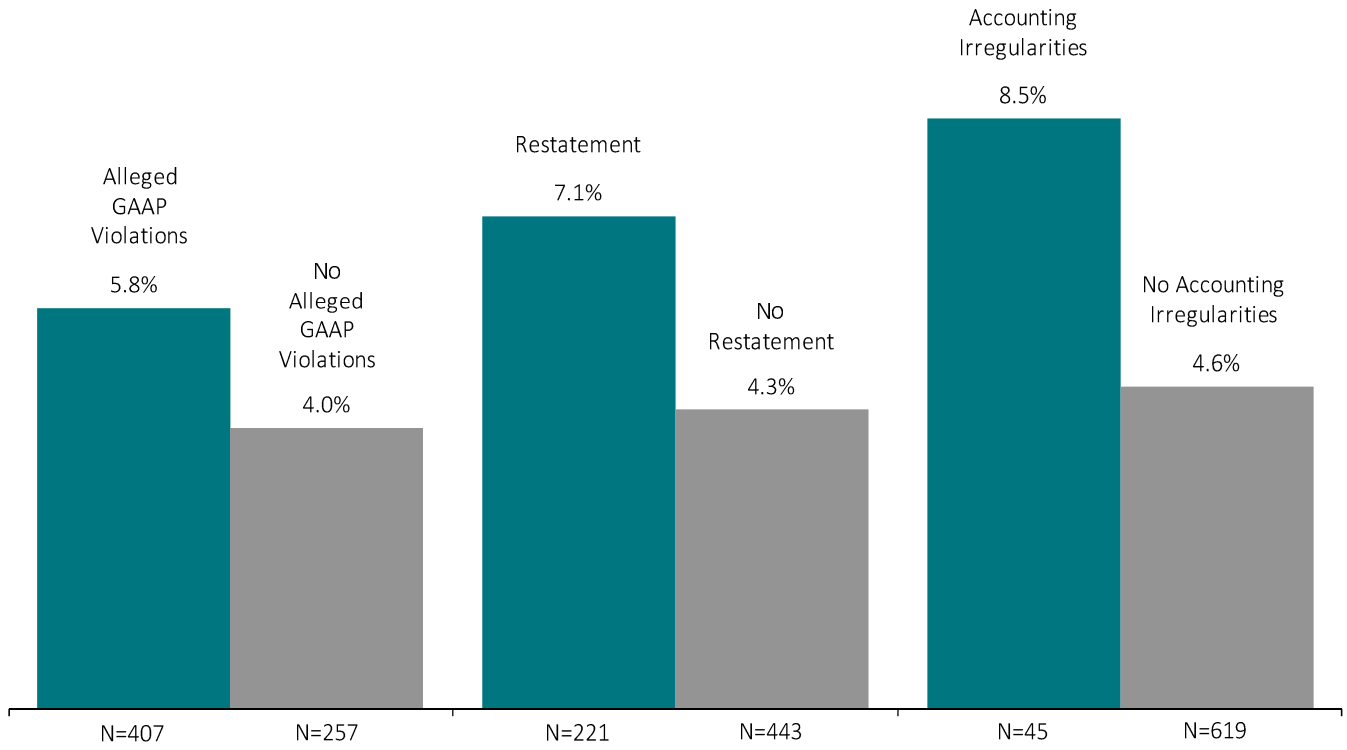
Accounting Allegations

This analysis examines three types of accounting issues among settled cases involving Rule 10b-5 claims: (1) alleged Generally Accepted Accounting Principles (GAAP) violations, (2) restatements, and (3) reported accounting irregularities.[7] For further details regarding settlements of accounting cases, see Cornerstone Research's annual report on *Accounting Class Action Filings and Settlements*.[8]

- The proportion of settled cases alleging GAAP violations in 2018 was 45 percent, continuing a four-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 2018, the median settlement as a percentage of "simplified tiered damages" was 11.3 percent for cases with restatements, but 5.1 percent for cases without restatements.
- Among cases settled in 2018 with accounting-related allegations, approximately 10 percent involved a named auditor codefendant, essentially unchanged from 2017 (10.2 percent). However, these proportions were significantly lower than the average of 21.9 percent over the prior eight years.
- Reported accounting irregularities among settled cases averaged less than 2 percent from 2015 to 2018, compared to almost 10 percent from 2009 to 2014.

The infrequency of reported accounting irregularities among settled cases continued for the fourth straight year.

Figure 8: Median Settlements as a Percentage of "Simplified Tiered Damages" and Accounting Allegations
2009–2018



Note: N refers to the number of observations.

Institutional Investors

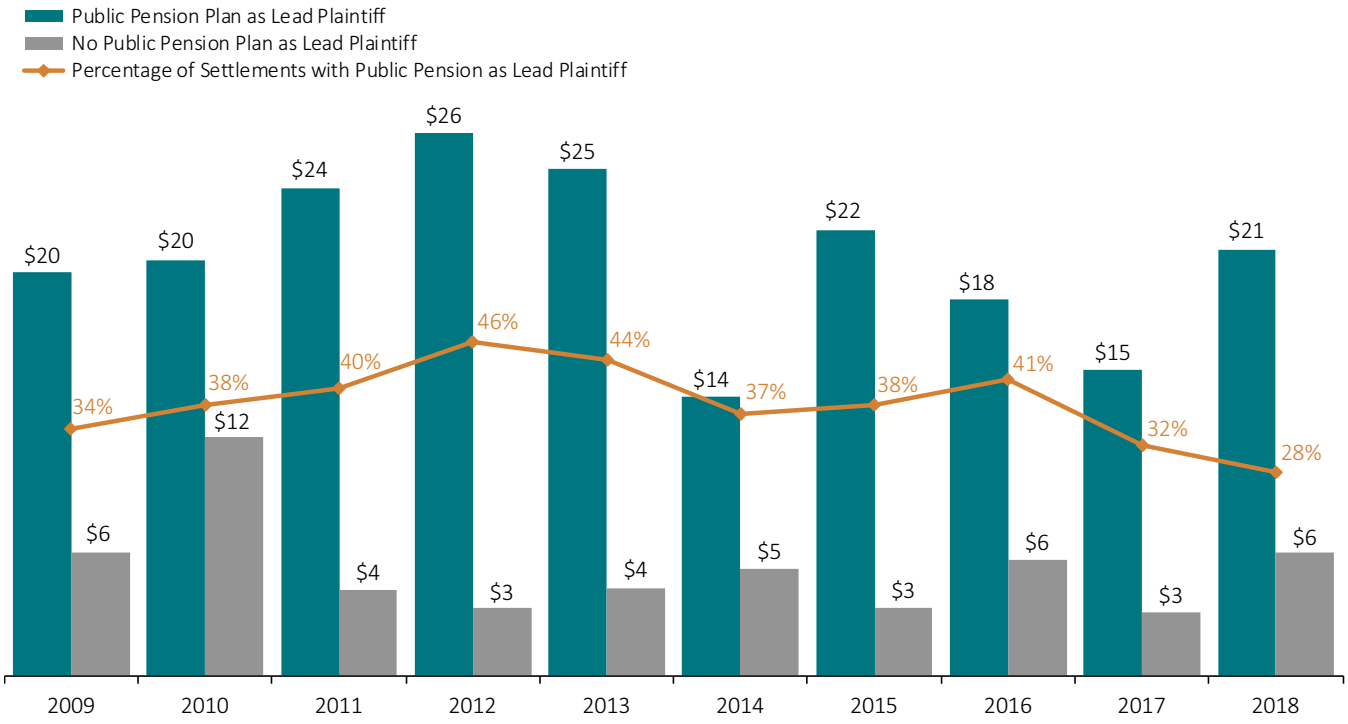
- Institutional investors, including public pension plans (a subset of institutional investors), tend to be involved in larger cases, that is, cases with higher "simplified tiered damages."
- Median "simplified tiered damages" for cases involving a public pension as a lead plaintiff in 2018 were $689 million compared to $213 million for cases without a public pension as a lead plaintiff.
- While public pensions historically have tended to be involved in cases with accounting-related allegations (i.e., alleged GAAP violations, restatements, and accounting irregularities), this was not true in 2018.

The proportion of 2018 settlements with a public pension plan as lead plaintiff was at its lowest level in the last decade.

- In 2018, median total assets for issuer defendants in cases involving an institutional investor as a lead plaintiff were $1.6 billion compared to $328 million for cases without institutional investor involvement.

Figure 9: Median Settlement Dollars and Public Pension Plans
2009–2018

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2018 dollar equivalent figures are used.

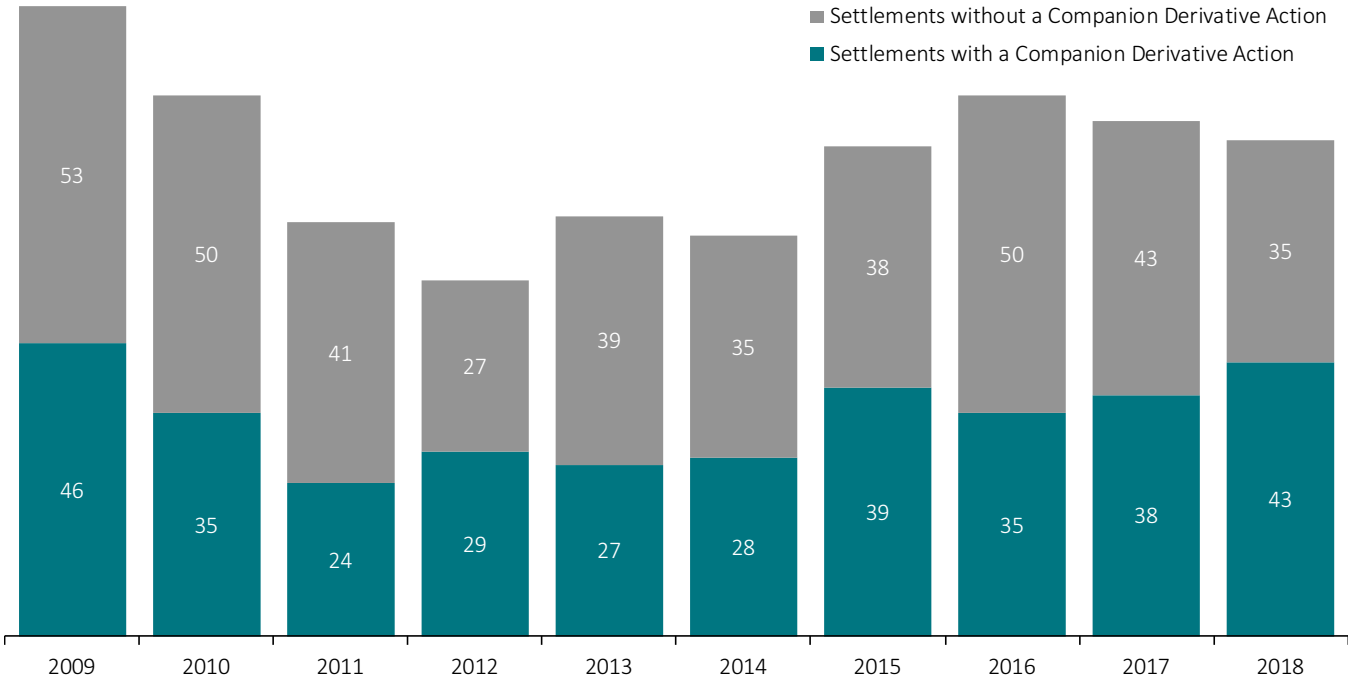
Derivative Actions

Derivative cases accompanying securities class actions are more frequently filed when corresponding securities class actions are relatively large or involve a financial restatement or public pension plan lead plaintiff.

The percentage of settled cases with a public pension plan lead plaintiff that also involved an accompanying derivative action reached 77 percent in 2018, its highest level in the last 10 years.

- The increase in the proportion of settled cases involving an accompanying derivative action is consistent with both the larger cases (measured by "simplified tiered damages") and the larger settlement amounts observed in 2018.
  - The median "simplified tiered damages" for cases with companion derivative actions was $480 million, compared to $47 million for cases without accompanying derivation actions.
  - The median settlement amount for cases with companion derivative actions was $18 million, compared to $5 million for cases without accompanying derivative actions.

Figure 10: Frequency of Derivative Actions
2009–2018



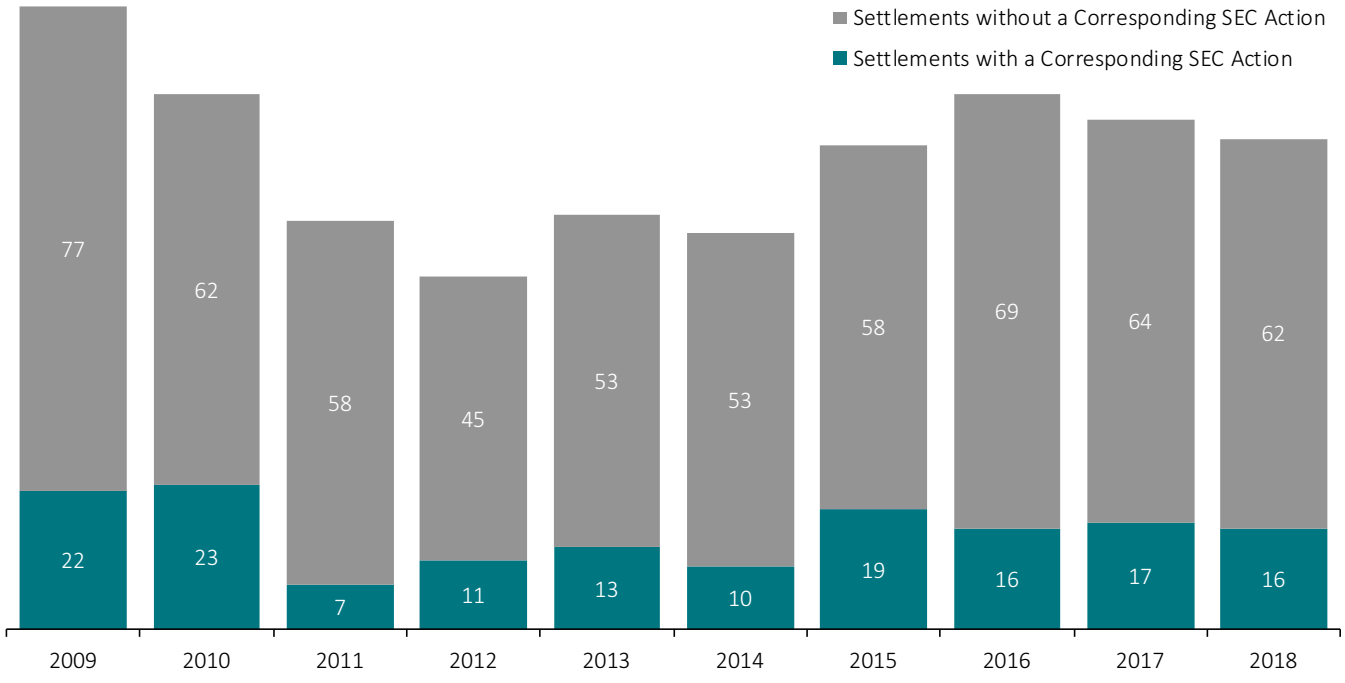
Corresponding SEC Actions

Cases with a corresponding Securities and Exchange Commission (SEC) action related to the allegations are typically associated with significantly higher settlement amounts and higher settlements as a percentage of "simplified tiered damages."[9]

- The number of settled securities class actions with corresponding SEC actions has remained relatively stable over the last four years.
- Cases with corresponding SEC actions tend to involve larger issuer defendants. For cases settled during 2009–2018, the median total assets of issuer defendant firms at the time of settlement were $946 million for cases with corresponding SEC actions, compared to $653 million for cases without a corresponding SEC action.
- Corresponding SEC actions are also frequently associated with distressed firms. For purposes of this research, a distressed firm has either declared bankruptcy or been delisted from a major U.S. exchange prior to settlement.

At 54 percent, 2018 had one of the highest rates of SEC actions among distressed firms in the past decade.

Figure 11: Frequency of SEC Actions
2009–2018



Case Stage at the Time of Settlement

In collaboration with Stanford Securities Litigation Analytics (SSLA),[10] we have analyzed settlements in relation to the stage in the litigation process at the time of settlement, expanding on the stages analyzed in our prior reports.

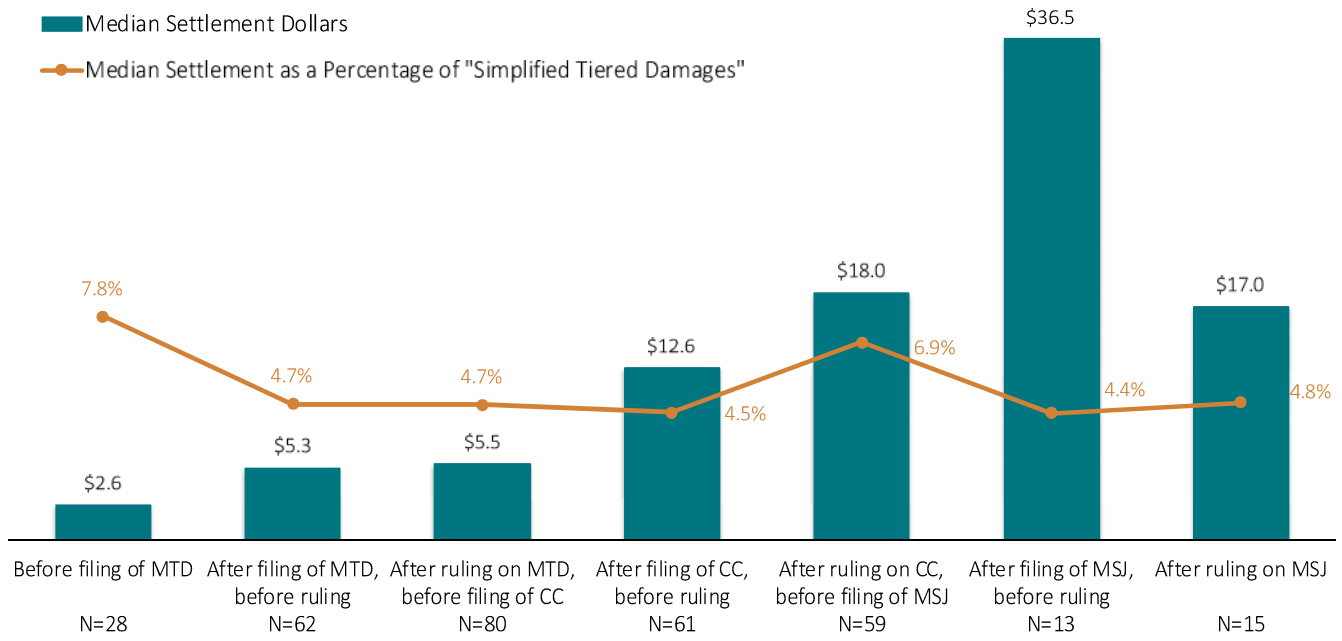
- In 2018, cases settled after a motion to dismiss was filed but prior to a ruling had a median settlement of $7.9 million, significantly lower than for cases settled at later stages.
- In addition, among 2018 settlements, median total assets at the time of settlement were almost 100 percent larger for cases settled after a ruling on a motion to dismiss than for cases settled at earlier stages.

The average time to reach a ruling on a motion for class certification among settlements in 2018 was 4.8 years.

- In the five-year period from 2014 to 2018, the median settlement for cases settled after a motion for class certification was filed but prior to a ruling was $12.6 million, compared to $18 million for cases settled after a ruling.
- Over the same period, the median "simplified tiered damages" for cases settled after a filing of a motion for summary judgment was over four times the median for cases settled prior to such a motion being filed. This contributed to higher settlement amounts but lower settlements as a percentage of "simplified tiered damages" for cases settled at this stage.

Figure 12: Median Settlement Dollars and Resolution Stage at Time of Settlement
2014–2018

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2018 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.

Time to Settlement and Case Complexity

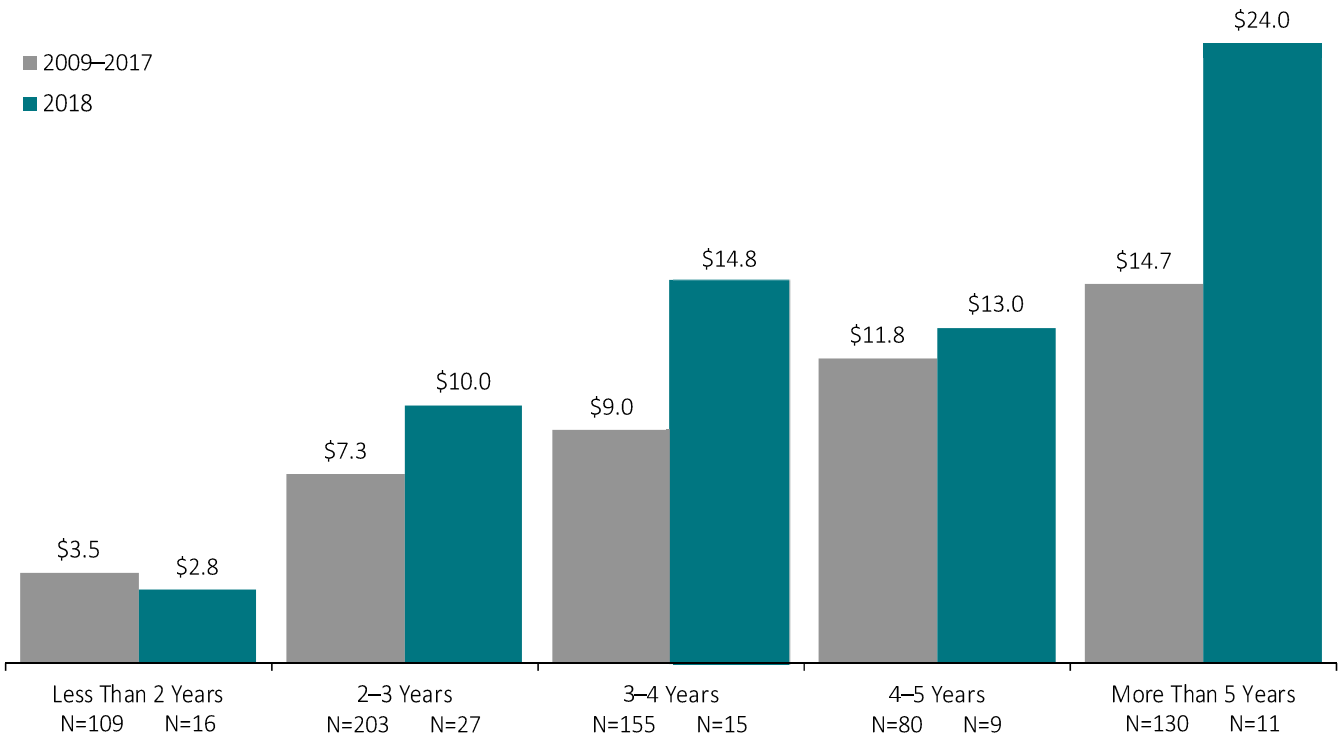
- In 2018, 21 percent of cases settled within two years of filing, 12 percent higher than the prior five-year average.
- Cases that settle quickly tend to be smaller (measured by "simplified tiered damages" or total assets of the issuer defendant). Rule 10b-5 cases settled in less than two years in 2018 had median "simplified tiered damages" of $67 million, compared to a median of $319 million for settlements that took more than two years to be resolved.

The average time from filing to settlement in 2018 was 3.3 years.

- While, on average, settled cases in 2018 reached resolution more quickly than in prior years, almost 15 percent of cases took more than five years to settle in 2018 and settled for substantially higher amounts. Over 80 percent of these cases had accompanying derivative actions, and median assets of the defendant firms were more than twice as large as in other cases.
- For the period 2013–2018, cases settled within two years of filing had higher attorney fees as a percentage of the settlement fund than cases that took longer to settle.[11]

Figure 13: Median Settlement by Duration from Filing Date to Settlement Hearing Date
2009–2018

(Dollars in millions)



Note: Settlement dollars are adjusted for inflation; 2018 dollar equivalent figures are used. N refers to the number of observations.

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 2018, 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 a restatement of financials related to the alleged class period was announced
- Whether there was a corresponding SEC action and/or criminal indictments/charges against the issuer, other defendants, or related parties
- 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 were 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 was named as a codefendant, or securities other than common stock were alleged to be damaged.

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

Almost 75 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 merger and acquisition (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 1,775 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2018. These settlements are identified based on a review of case activity collected by Securities Class Action Services LLC (SCAS).[12]
- The designated settlement year, for purposes of this report, corresponds to the year in which the hearing to approve the settlement was held.[13] Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.[14]

Data Sources

In addition to SCAS and SSLA, 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, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.

Endnotes

1 See *Securities Class Action Filings–2018 Year in Review*, Cornerstone Research (2019), https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2018-Year-in-Review.pdf

2 See John C. Coffee Jr., "Securities Litigation in 2017: 'It Was the Best of Times, It Was the Worst of Times,'" CLS Blue Sky Blog, March 19, 2018, http://clsbluesky.law.columbia.edu/2018/03/19/securities-litigation-in-2017-it-was-the-best-of-times-it-was-the-worst-of-times/.

3 See Kevin LaCroix, "Scrutinizing Event-Driven Securities Litigation," D&O Diary, March 27, 2018, https://www.dandodiary.com/2018/03/articles/securities-litigation/scrutinizing-event-driven-securities-litigation/; John C. Coffee Jr., "Securities Litigation in 2017: 'It Was the Best of Times, It Was the Worst of Times,'" CLS Blue Sky Blog, March 19, 2018, http://clsbluesky.law.columbia.edu/2018/03/19/securities-litigation-in-2017-it-was-the-best-of-times-it-was-the-worst-of-times/.

4 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 uses 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.

5 See Laarni T. Bulan et al., *Estimating Damages in Settlement Outcome Modeling*, Cornerstone Research (2017), https://www.cornerstone.com/Publications/Research/Estimating-Damages-in-Settlement-Outcome-Modeling.pdf.

6 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.

7 The three categories of accounting issues analyzed in this report are: (1) GAAP violations—cases with allegations involving Generally Accepted Accounting Principles (GAAP); (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.

8 See *Accounting Class Action Filings and Settlements*, Cornerstone Research (2018), https://www.cornerstone.com/Publications/Reports/2017-Accounting-Class-Action-Filings-and-Settlements.pdf. Update forthcoming in April 2019.

9 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.

10 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 (DOJ). 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/.

11 Data provided by SSLA.

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

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

14 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
2018	$64.9	$1.5	$3.6	$11.3	$24.8	$52.1
2017	$18.7	$1.5	$2.6	$5.1	$15.4	$35.3
2016	$73.8	$2.0	$4.4	$8.9	$34.5	$152.7
2015	$41.7	$1.4	$2.3	$6.9	$17.2	$99.6
2014	$19.3	$1.8	$3.0	$6.4	$14.0	$53.0
2013	$77.9	$2.0	$3.2	$7.0	$23.9	$88.9
2012	$67.0	$1.3	$2.9	$10.3	$38.8	$125.8
2011	$23.4	$2.1	$2.8	$6.4	$20.1	$46.6
2010	$41.1	$2.3	$4.9	$13.0	$28.8	$91.7
2009	$43.9	$2.8	$4.5	$9.4	$23.4	$77.7
1996–2018	$45.4	$1.7	$3.6	$8.6	$21.9	$75.1

Note: Settlement dollars are adjusted for inflation; 2018 dollar equivalent figures are used.

Appendix 2: Select Industry Sectors 2009–2018

(Dollars in millions)

Industry	Number of Settlements	Median Settlement	Median "Simplified Tiered Damages"	Median Settlement as a Percentage of "Simplified Tiered Damages"
Financial	111	$21.7	$452.8	4.8%
Technology	108	$9.2	$217.9	5.1%
Pharmaceuticals	91	$8.7	$251.5	3.9%
Telecommunications	41	$8.6	$220.3	4.5%
Retail	38	$6.6	$189.6	4.3%
Healthcare	20	$8.2	$136.0	6.4%

Note: Settlement dollars and "simplified tiered damages" are adjusted for inflation; 2018 dollar equivalent figures are used. "Simplified tiered damages" are calculated only for cases involving Rule 10b-5 claims.

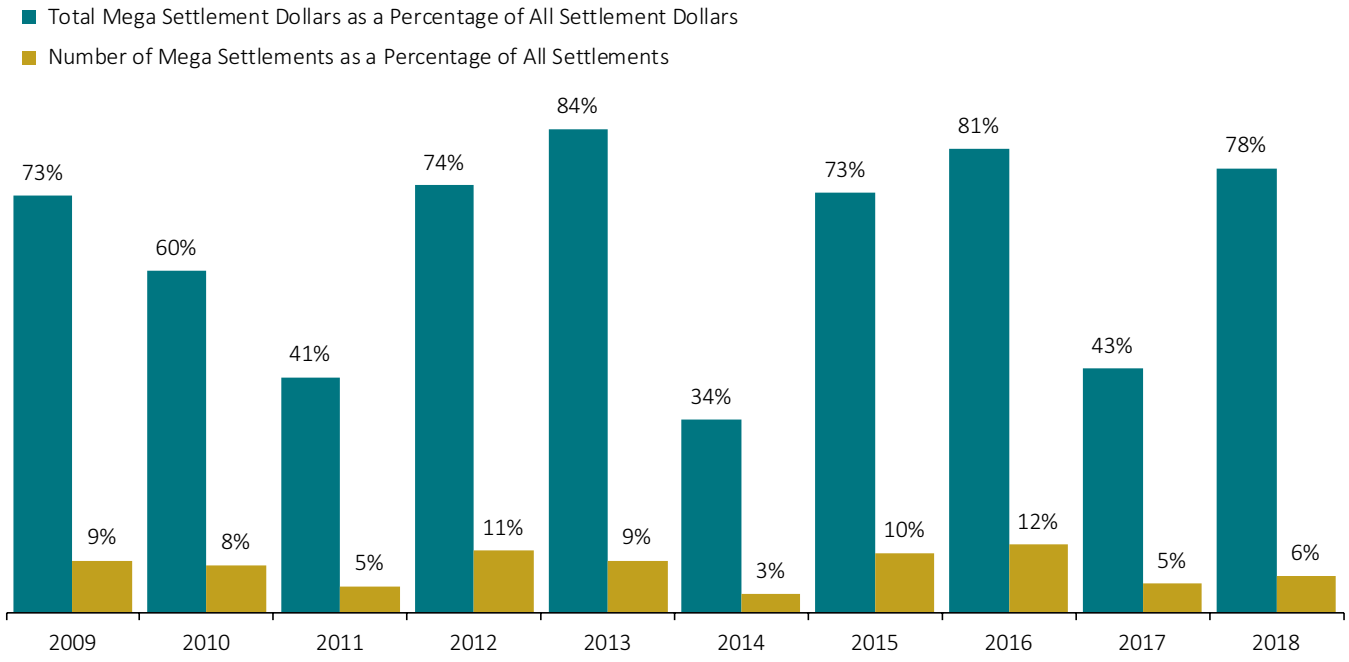
Appendix 3: Settlements by Federal Circuit Court
2009–2018

(Dollars in millions)

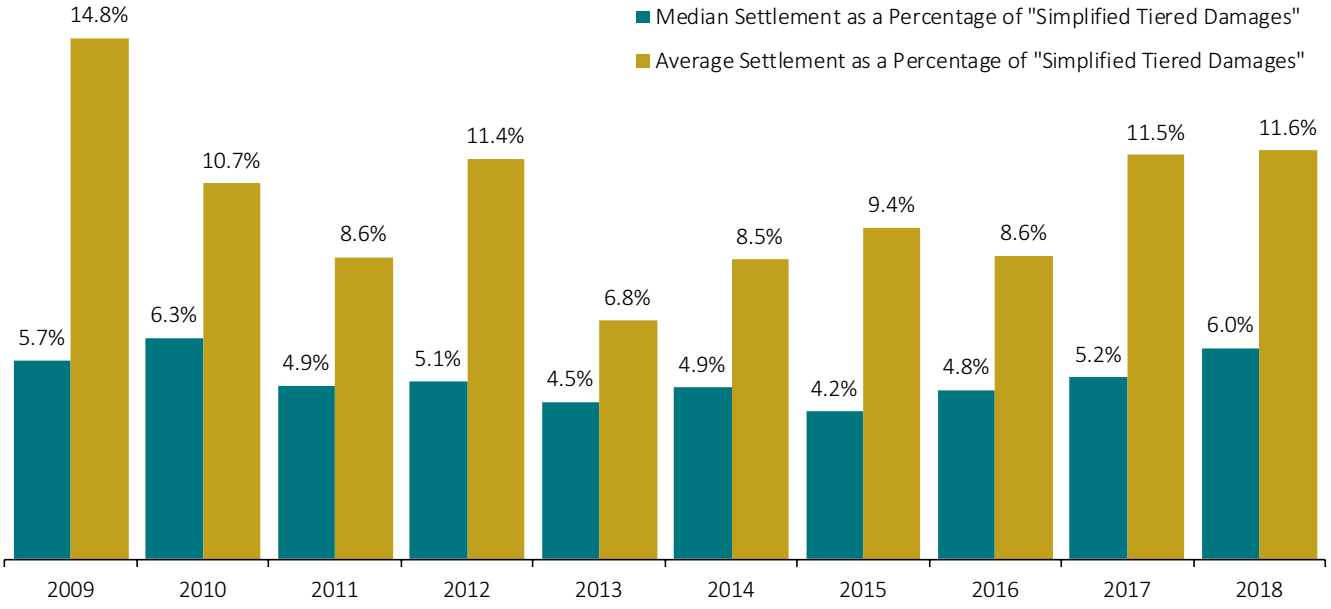
Circuit	Number of Settlements	Median Settlement	Median Settlement as a Percentage of "Simplified Tiered Damages"
First	24	$7.1	3.4%
Second	177	$11.4	4.7%
Third	61	$7.0	4.6%
Fourth	26	$12.5	3.2%
Fifth	35	$8.9	4.5%
Sixth	33	$13.0	7.4%
Seventh	37	$10.3	4.4%
Eighth	14	$11.7	5.9%
Ninth	196	$8.3	5.1%
Tenth	19	$8.8	4.8%
Eleventh	36	$7.2	5.7%
DC	4	$23.0	2.2%

Note: Settlement dollars are adjusted for inflation; 2018 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
2009–2018



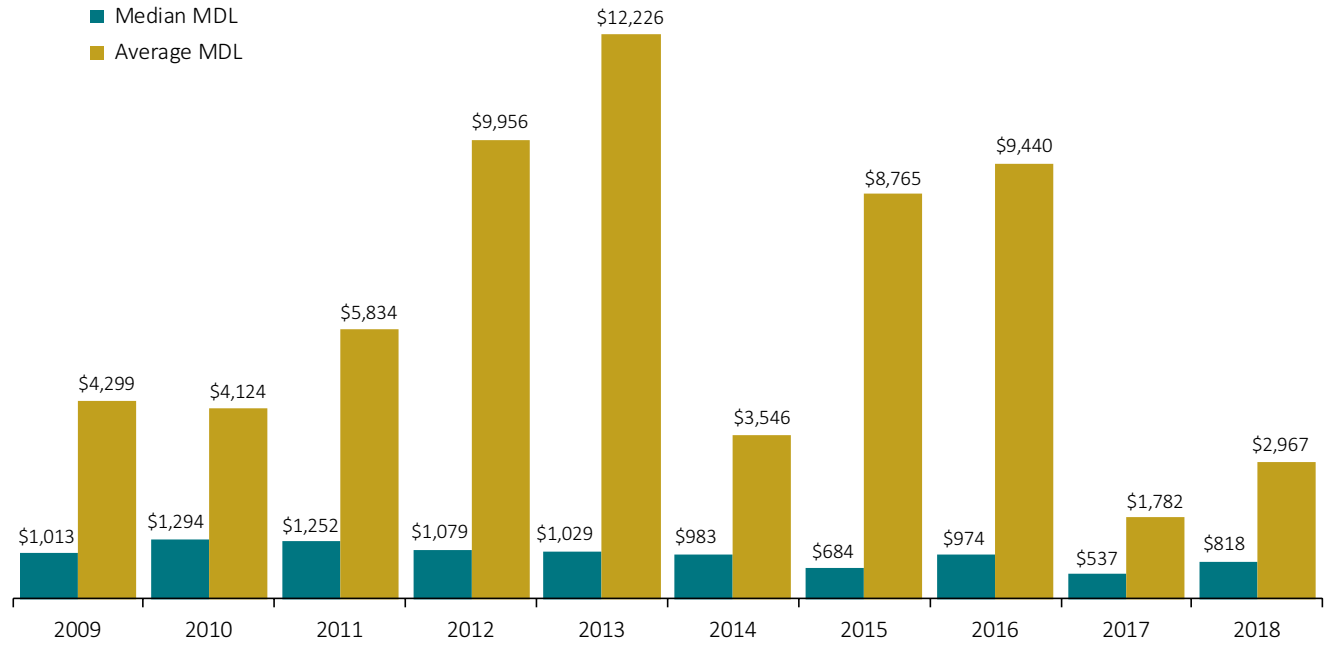
Appendix 5: Median and Average Settlements as a Percentage of "Simplified Tiered Damages" 2009–2018



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

Appendix 6: Median and Average Maximum Dollar Loss (MDL) 2009–2018

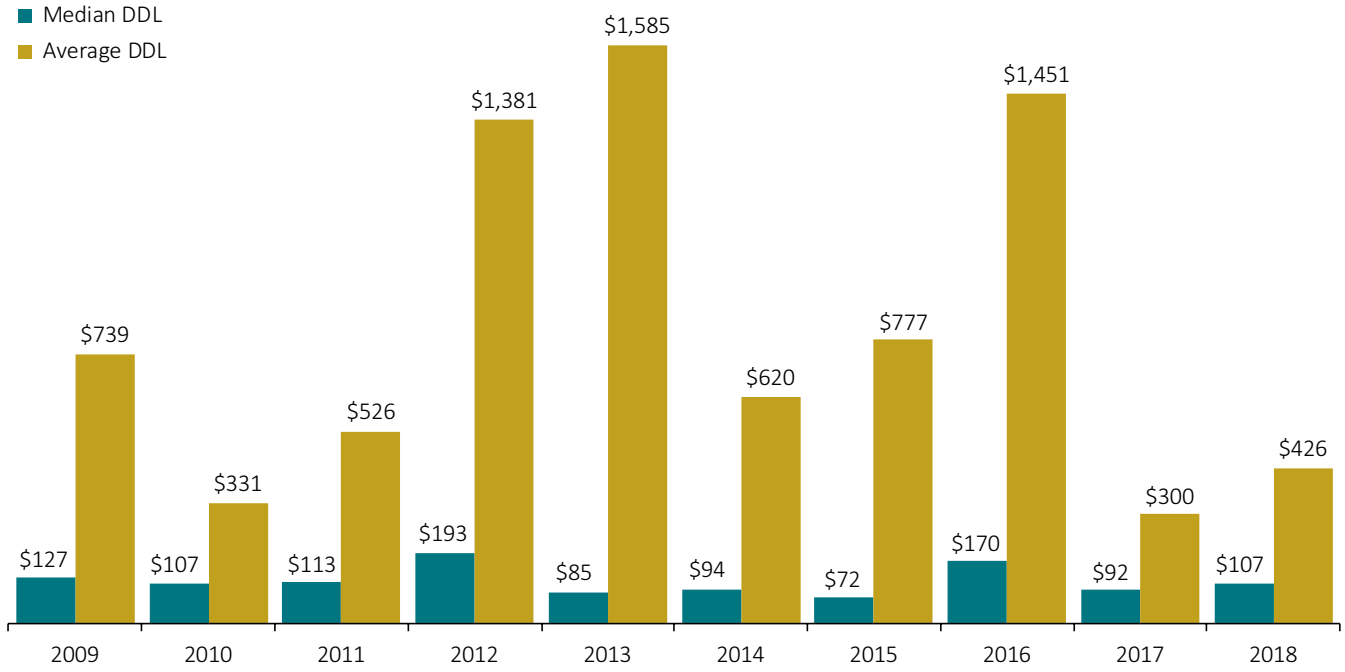
(Dollars in millions)



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)
2009–2018

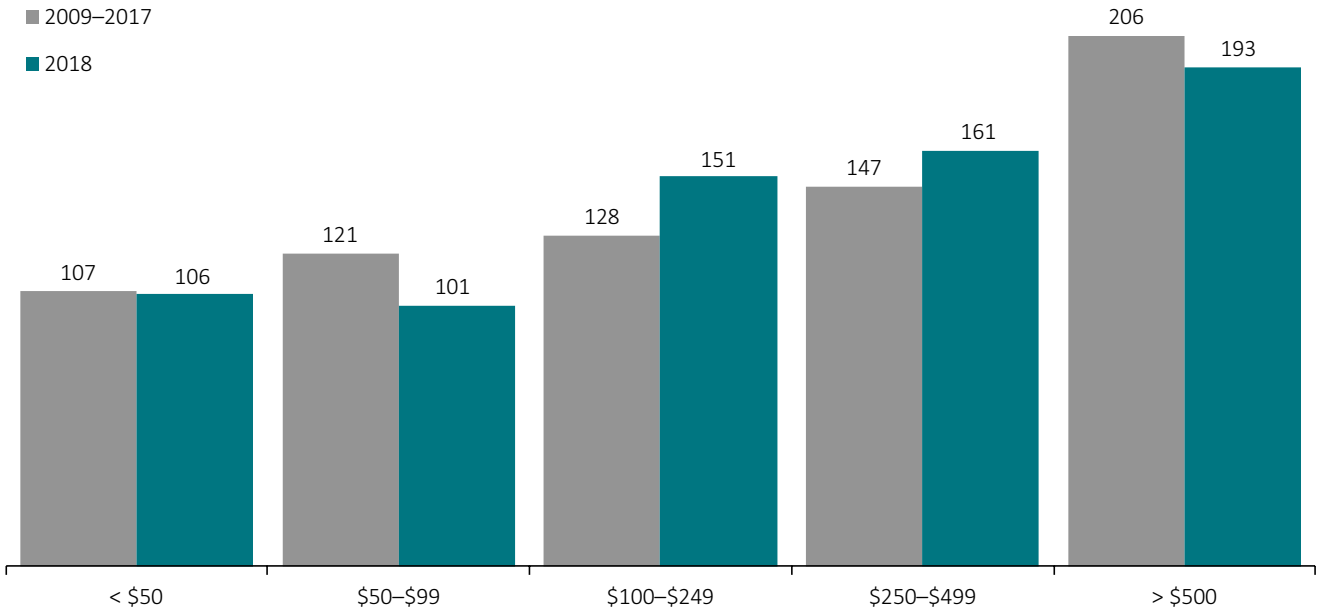
(Dollars in millions)



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
2009–2018

(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 damages and liability issues in securities litigation, as well as on accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in cases involving accounting analyses, securities case damages, research on securities lawsuits, and other issues involving empirical analyses.

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, with recent 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.

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Exhibit 7

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Filings

2018 Year in Review

Table of Contents

Table of Figures

Executive Summary

Securities class action activity remained at near record levels for both core and M&A filings. Driven by a large number of mega filings, market capitalization losses surpassed $1 trillion. Last year also saw more companies on U.S. exchanges facing a greater threat of securities litigation than in any previous year.

Number and Size of Filings

- Plaintiffs filed 403 **new federal class action securities cases** (filings) in 2018. This was 2 percent lower than 2017, but still nearly double the 1997–2017 average. "Core" filings—those excluding M&A filings—increased to the fifth-most on record. (pages 5–6)
- **Disclosure Dollar Loss (DDL)** increased by 152 percent to $330 billion, the highest on record. (page 7)
- **Maximum Dollar Loss (MDL)** also grew by more than 150 percent to $1,311 billion in 2018. (page 8)
- In 2018, 17 **mega filings** made up 64 percent of DDL and 27 mega filings made up 73 percent of MDL. Both of these percentages are above historical averages. Filings with a DDL of at least $5 billion or an MDL of at least $10 billion are considered mega filings. (pages 30–32)

Other Measures of Filing Intensity

- In 2018, the likelihood of litigation involving a core filing for **U.S. exchange-listed companies** was greater than in any previous year. This measure reached record levels because of both the heightened filing activity against public companies and an extended decline in the number of public companies over the last 15 years. (page 11)
- One in about 11 **S&P 500** companies (9.4 percent) was sued in 2018. Companies in the Health Care sector were the most frequent targets of new core filings. (pages 12–13)

Core filings in 2018 exceeded the previous year's level, even though total filings declined slightly.

Figure 1: Federal Class Action Filings Summary

(Dollars in Billions)

	Annual (1997–2017)			2017	2018
	Average	Maximum	Minimum		
Class Action Filings	203	412	120	412	403
Core Filings	*182*	*242*	*120*	*214*	*221*
Disclosure Dollar Loss (DDL)	$120	$240	$42	$131	$330
Maximum Dollar Loss (MDL)	$602	$2,046	$145	$521	$1,311

Key Trends

S&P 500 firms were twice as likely to be the subject of core filings than U.S. exchange-listed companies, even as companies on U.S. exchanges were more likely to be sued in 2018 than in any previous year. Although core filings against non-U.S. issuers dipped for the first time since 2013, their litigation rate exceeded the overall rate for all companies listed on U.S. exchanges.

U.S. Companies

- In 2018, 4.5 percent of **U.S. exchange-listed companies** were the subject of core filings. (page 11)
- Core filings against **S&P 500 firms** in 2018 occurred at a rate of 9.4 percent, the highest percentage since 2002. (page 12)

Non-U.S. Companies

- The number of core filings against **non-U.S. companies** decreased for the first time since 2013. (pages 27–28)
- However, the likelihood of a core filing against a non-U.S. company increased from 4.6 percent to 4.8 percent from 2017 to 2018. (page 29)

By Industry

- Core filings against companies in the **Technology** and **Communications** sectors combined increased to 50 in 2018, up 56 percent from 2017. (page 33)
- The **Consumer Non-Cyclical** sector again had the greatest number of filings, even after declining to 68 in 2018 from 85 in 2017. Within this sector, filings against biotechnology, pharmaceutical, and healthcare companies also decreased. (pages 33–34)

By Circuit

- There were 71 and 69 core filings in the **Second** and **Ninth Circuits**, respectively. Ninth Circuit core filings were at historically high levels. (page 35)
- The number of core filings decreased in the **Third Circuit** to 26 in 2018 from 35 in 2017. **Seventh Circuit** core filings increased to 13 from four. (page 35)

M&A Filings

- Federal filings of class actions involving M&A transactions with Section 14 claims but no Rule 10b-5, Section 11, or Section 12(2) claims decreased to 182 from 198. (page 5)
- The Second and Third Circuits accounted for nearly half of all M&A filings in 2018, as each circuit experienced the highest number since this report began separately recording them in 2009. (page 14)
- M&A filings had a much higher rate of dismissal (86 percent) than core federal filings (47 percent) from 2009 to 2017. (page 15)

Filings by Lead Plaintiff

- For 2018 filings, individuals were appointed lead plaintiff more often than institutional investors, a pattern that has persisted since 2013. (page 18)

Appointment of Plaintiff Lead Counsel

- The growth in core filings over the last six years has coincided with the activity of three plaintiff law firms that have increasingly been involved in securities class actions. (page 36)

New Developments

- U.S. Supreme Court decision in *Cyan Inc. v. Beaver County Employees Retirement Fund* (pages 4, 19–23)
- Initial coin offerings (ICOs): *SEC v. Blockvest LLC et al.* (page 38)
- Negligence standard in M&A filings: *Varjabedian v. Emulex Corp. et al.* (page 38)
- Administrative law judge appointments: U.S. Supreme Court decision in *Lucia v. Securities and Exchange Commission* (page 38)

Featured: Annual Rank of Filing Intensity

Filing activity continued unabated in 2018. On several dimensions, the last three years—particularly 2017 and 2018—have been more active than any previous year. The heightened levels of filings have occurred despite a lack of financial market turbulence that often accompanied substantial filing activity in prior years.

The total number of filings in 2018 was the second-highest on record after 2017. Filings against companies with large market capitalizations surged to near record highs. The combination of numerous filings and the frequency of filings involving larger companies led to higher amounts of market capitalization losses in dispute.

Figure 2: Annual Rank of Measurements of Federal Filing Intensity

	2016	2017	2018
Number of Total Filings	3rd	1st	2nd
Core Filings	10th	7th	5th
M&A Filings	3rd	1st	2nd
Size of Core Filings			
Disclosure Dollar Loss	12th	9th	1st
Maximum Dollar Loss	5th	12th	3rd
Percentage of U.S. Exchange-Listed Companies Sued			
Total Filings	3rd	2nd	1st
Core Filings	3rd	2nd	1st
Percentage of S&P 500 Companies Subject to Core Filings	5th	7th	2nd

Note: Rankings cover 1997 through 2018 with the exceptions of M&A filings, which have been tracked as a separate category since 2009, and analysis of the litigation likelihood of S&P 500 companies, which began in 2001. Core filings are those excluding M&A claims. See Appendix 1.

Featured: State Court 1933 Act Filings

Securities class action filings with Securities Act of 1933 (1933 Act) claims have increased in state courts. Many of these filings have parallel federal court proceedings. Beginning with this report, 1933 Act filings in state courts other than California are also presented.

- From 2010 through 2018, plaintiffs filed at least 108 1933 Act cases in state courts (state 1933 Act filings). (page 19)
- Although the number of state 1933 Act filings in 2018 increased substantially relative to 2017, the total MDL of state 1933 Act filings remained relatively flat. (page 20)
- The changes seen in 2018 compared to previous years coincided with the U.S. Supreme Court's ruling in March 2018 in *Cyan Inc. v. Beaver County Employees Retirement Fund.*
- About 43 percent of all state 1933 Act filings in 2018 had a parallel action in federal court. (pages 21–22)
- Among the 17 state 1933 Act filings in 2018 without a parallel action in federal court, 10 were in California state courts, five were in New York state courts, and two were in other state courts.

State filings involving 1933 Act claims increased sharply compared to 2017.

Figure 3: State Court 1933 Act Class Action Filings Summary

(Dollars in Billions)

	Average 2010–2017	2017	2018
State Court 1933 Act Class Action Filings			
Filings in State Courts Only	4	2	17
California	4	1	10
All Other States	0	1	7
Parallel Filings in State and Federal Courts	6	14	13
Total	10	16	30
Maximum Dollar Loss of State Court 1933 Act Filings			
MDL of Filings in State Courts Only	$7.7	$1.8	$5.9
California	$7.5	$0.1	$4.1
All Other States	$0.2	$1.7	$1.8
MDL of Filings in State and Federal Courts	$6.5	$22.6	$17.8
Total MDL	$14.2	$24.3	$23.7

Note:

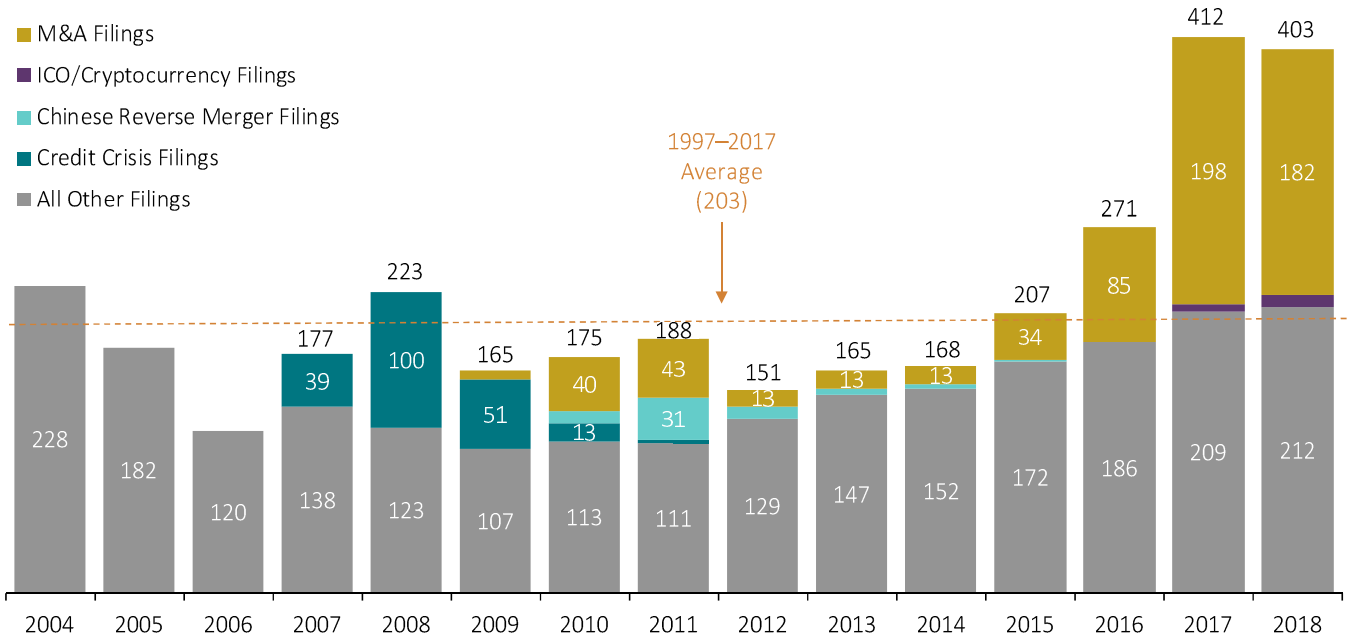
1. Filings in state courts may have parallel cases filed in federal courts. When parallel cases are filed in different years, the earlier filing is reflected in the figure above.
2. For 2018 filings, the Securities Class Action Clearinghouse began tracking 1933 Act filings in California state courts containing Section 11 or Section 12 claims; there were six filings in California state courts with only Section 12 claims in 2018. Filings in other state courts are currently only those with Section 11 claims.
3. Figures may not sum due to rounding.

Number of Federal Filings

- Plaintiffs filed 403 new federal securities class actions last year, making 2018 the second-largest year on record, trailing only 2017.
- The number of filings in 2018 was 99 percent higher than the 1997–2017 average.
- The 182 M&A filings in 2018 were the second-largest number since 2009 (when this report began separately identifying these filings).
- Core filings—those excluding M&A filings—were the highest since 2008, when filings surged due to the volatility in U.S. and global financial markets.
- The growth in core filings over the last six years has coincided with the activity of three plaintiff law firms that have increasingly been involved in securities class actions. See additional discussion at page 36.

The number of federal filings remained significantly above pre-2016 levels.

Figure 4: Class Action Filings Index® (CAF Index®) Annual Number of Class Action Filings 2004–2018

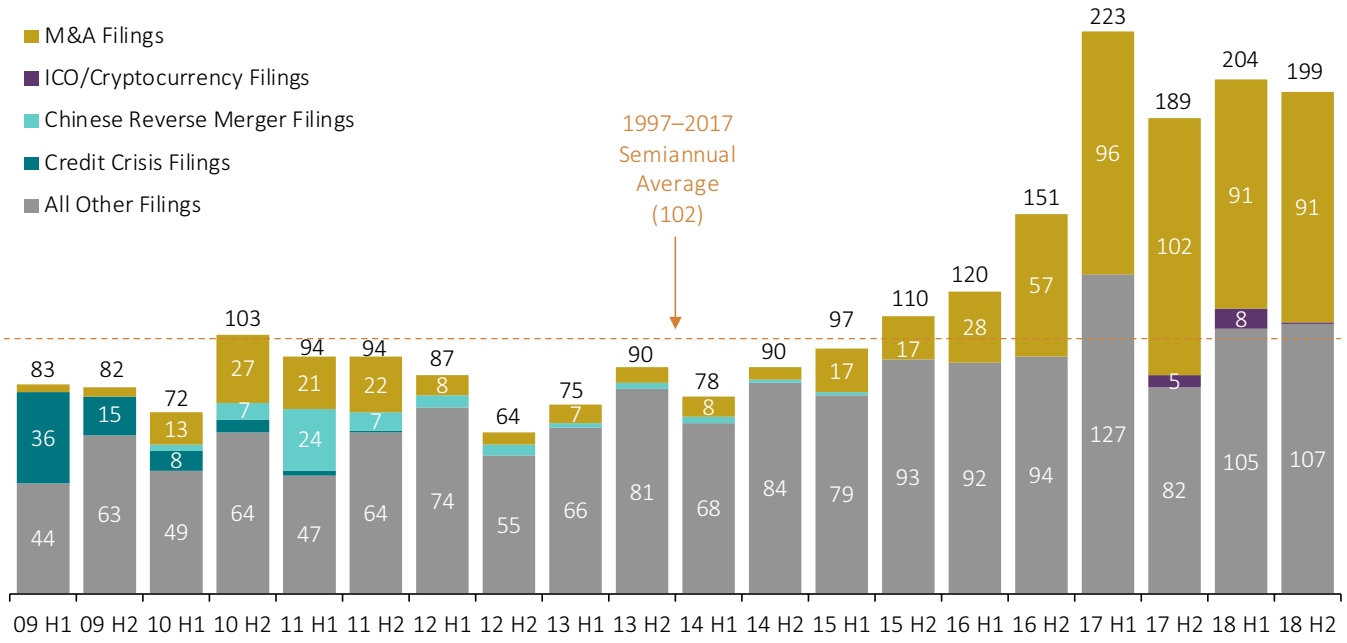


Note: There were two cases in 2011 that were both an M&A filing and a Chinese reverse merger filing. These filings were classified as M&A filings in order to avoid double counting.

- Total filing activity decreased by 2 percent in the second half of 2018 compared to the first half.
- The pace of both M&A and core filings was comparable in the first and second halves of the year.
- ICO or cryptocurrency filings first appeared in the second half of 2017. There were nine such filings in 2018 with eight in the first half of the year and only one in the second half.

The number of M&A filings continued to be significantly higher than in the years prior to 2017.

Figure 5: Class Action Filings Index® (CAF Index®) Semiannual Number of Class Action Filings
2009–2018



Note: There were two cases in 2011 that were both an M&A filing and a Chinese reverse merger filing. These filings were classified as M&A filings in order to avoid double counting.

Market Capitalization Losses

Disclosure Dollar Loss Index® (DDL Index®)

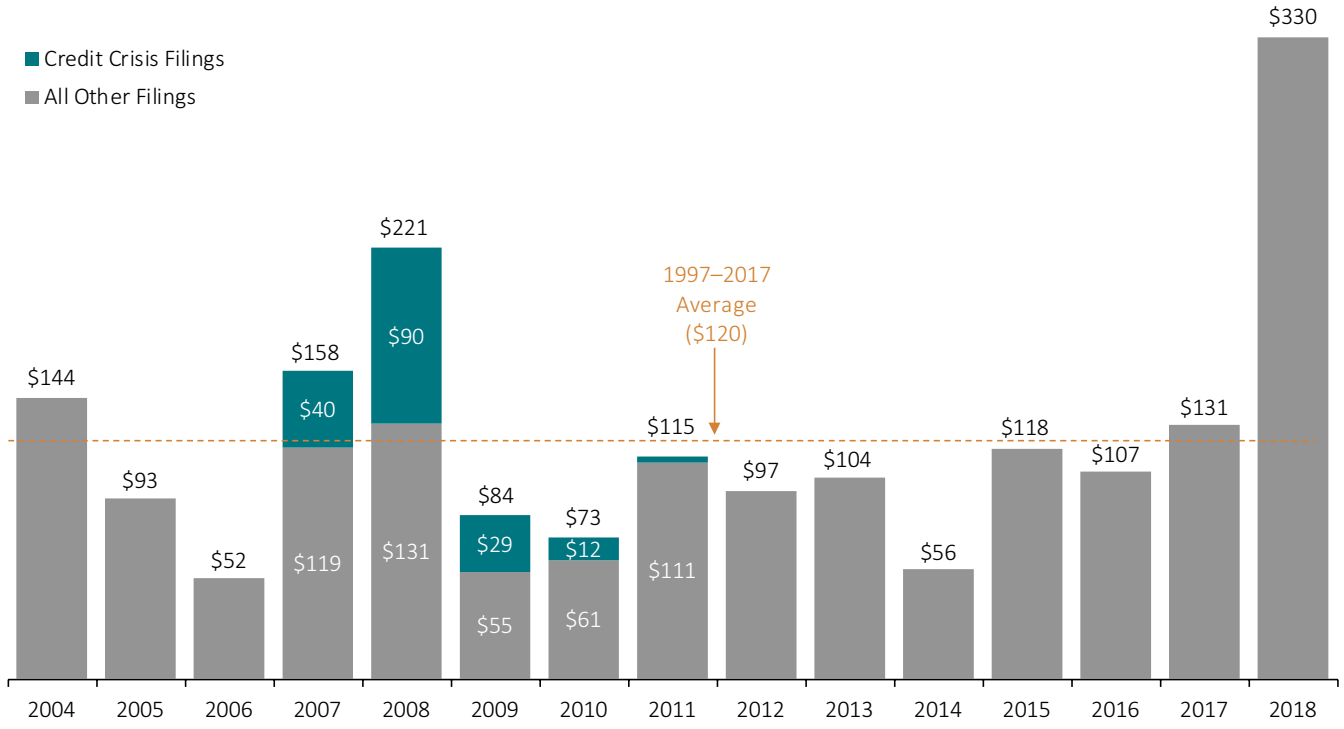
This index measures the aggregate DDL for all filings over a period of time. DDL is the dollar value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. See the Glossary for additional discussion on market capitalization losses and DDL.

The DDL Index reached record levels in 2018.

- The DDL Index reached a record $330 billion in 2018, 174 percent above the 1997–2017 average.
- The dramatic increase in DDL was driven by mega filings, which accounted for 64 percent of the DDL Index in 2018 compared with 36 percent in 2017.
- Both average and median DDL per filing in 2018 were also the highest on record. See Appendix 1.

Figure 6: Disclosure Dollar Loss Index® (DDL Index®)
2004–2018

(Dollars in Billions)



Note:
1. See Appendix 1 for the average and median values of DDL.
2. Figures may not sum due to rounding.

Maximum Dollar Loss Index® (MDL Index®)

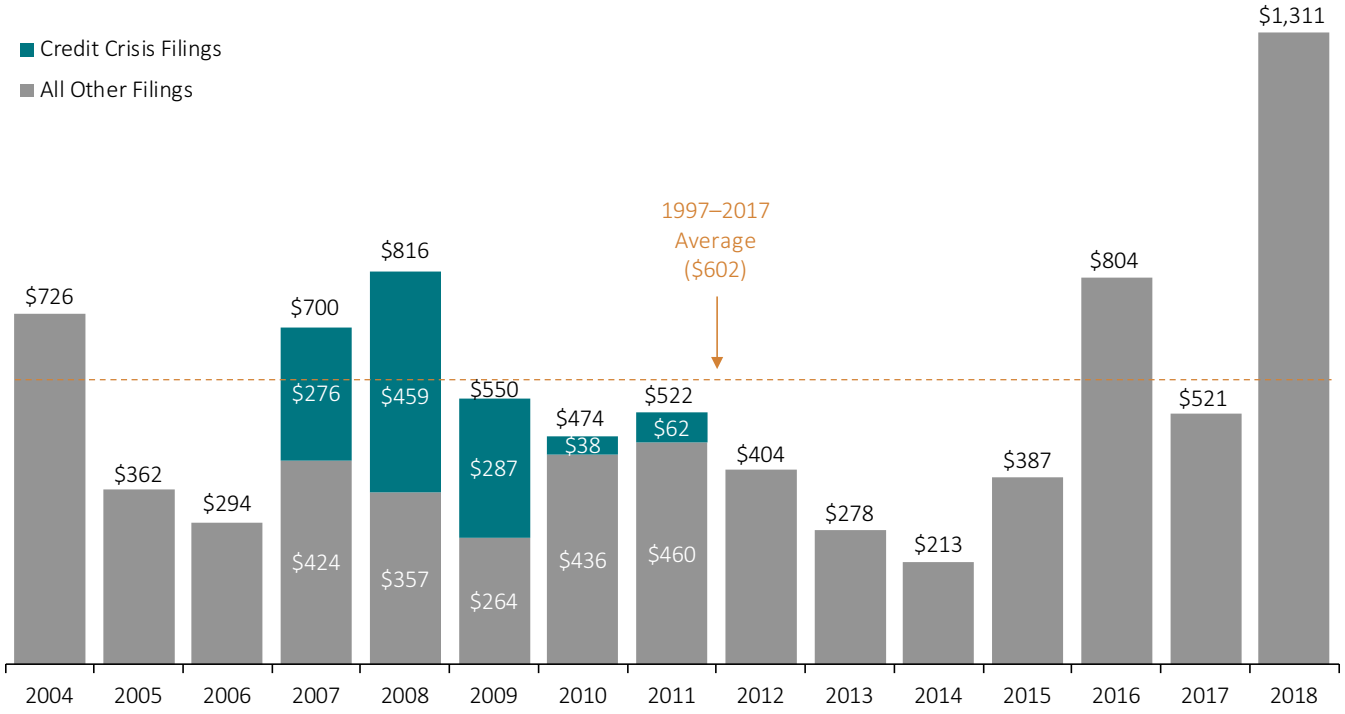
This index measures the aggregate MDL for all filings over a period of time. MDL is the dollar value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. See the Glossary for additional discussion on market capitalization losses and MDL.

- The MDL Index reached over $1.3 trillion in 2018, surpassing 2008 to become the third-largest year on record. Relative to 2017, the MDL Index increased by 152 percent.
- The increase in MDL was driven by mega filings, which increased to 27 in 2018, compared to 14 in 2017. In addition, the stock market decline in the latter part of the year magnified market value losses over class periods for many filings.

The MDL Index eclipsed $1 trillion for the first time since 2002.

Figure 7: Maximum Dollar Loss Index® (MDL Index®)
2004–2018

(Dollars in Billions)

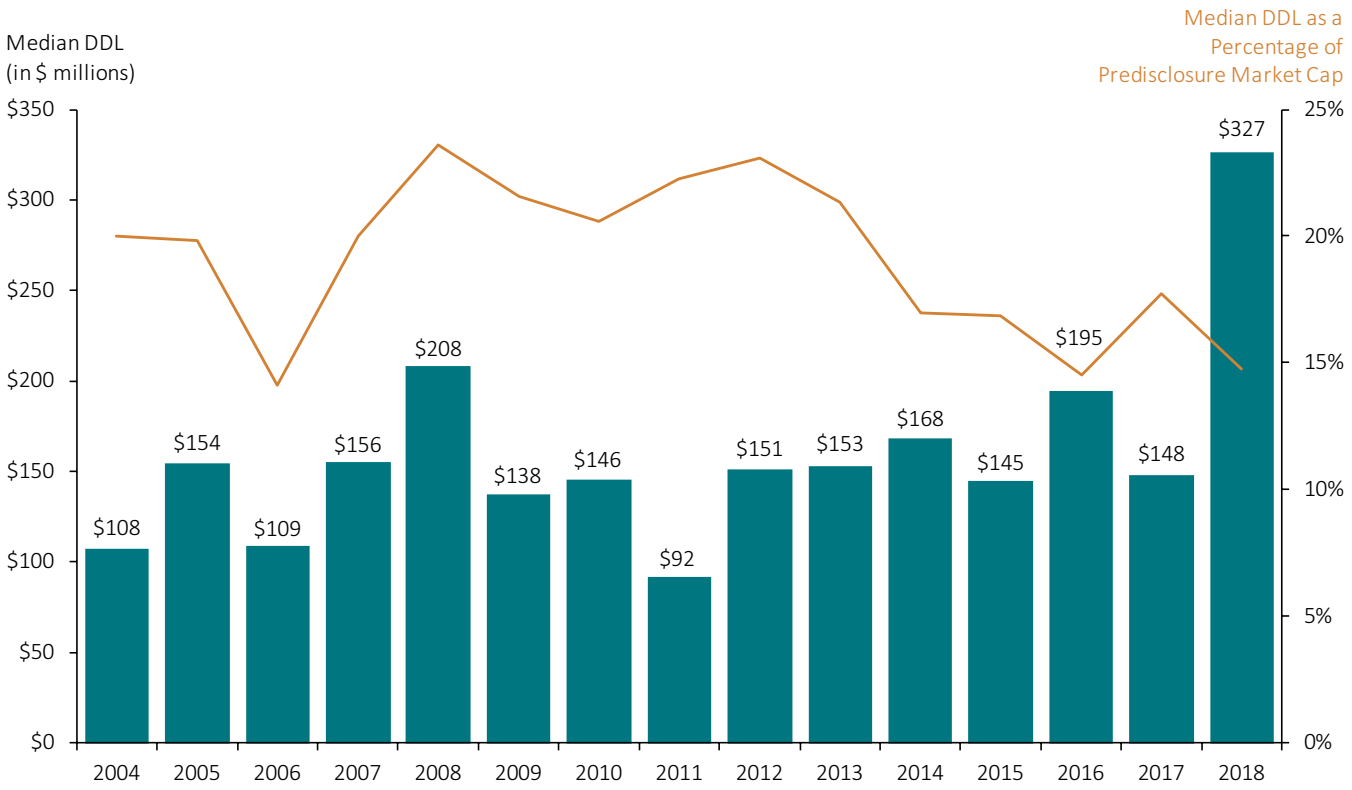


Note:
1. See Appendix 1 for the average and median values of MDL.
2. Figures may not sum due to rounding.

- The typical (i.e., median) percentage stock price drop at the end of the class periods has generally been decreasing since 2012 and reached one of its lowest levels in 2018.
- This trend coincided with more filings by the three plaintiff law firms discussed on page 36.
- At the same time, the median DDL increased dramatically in 2018, indicating that typical issuers had larger market capitalization prior to the drops at the ends of their class periods.

Median DDL was the highest on record in 2018 while the median value of DDL as a percentage of predisclosure market capitalization was one of the lowest on record.

Figure 8: Median Disclosure Dollar Loss
2004–2018



Note: For more information, see Appendix 1.

Classification of Complaints

- Section 11 claims decreased in federal courts as a portion of filing activity moved to state courts.
- Section 12(2) claims increased from 4 percent of federal filings in 2017 to 10 percent in 2018.
- Allegations of internal control weaknesses increased from 14 percent of core filings to 18 percent.
- Core filings involving restatements have declined for the last four years.

Rule 10b-5 claims were asserted in 86 percent of core filings in 2018, down from 92 percent in 2017.

Figure 9: Allegations Box Score—Core Filings

	Percentage of Filings[1]				
	2014	2015	2016	2017	2018
Allegations in Core Filings[2]					
Rule 10b-5 Claims	93%	92%	94%	93%	86%
Section 11 Claims	15%	16%	12%	12%	10%
Section 12(2) Claims	7%	9%	6%	4%	10%
Misrepresentations in Financial Documents	95%	99%	99%	100%	95%
False Forward-Looking Statements	51%	53%	45%	46%	48%
Trading by Company Insiders	16%	16%	10%	3%	5%
GAAP Violations[3]	39%	38%	30%	22%	23%
Announced Restatement[4]	19%	12%	10%	6%	5%
Internal Control Weaknesses[5]	26%	26%	21%	14%	18%
Announced Internal Control Weaknesses[6]	11%	11%	7%	7%	7%
Underwriter Defendant	12%	12%	7%	8%	8%
Auditor Defendant	1%	1%	2%	0%	0%

Note:

1. The percentages do not add to 100 percent because complaints may include multiple allegations.
2. Core filings are all federal securities class actions excluding those defined as M&A filings.
3. First identified complaint (FIC) includes allegations of GAAP violations. In some cases, plaintiff(s) may not have expressly referenced GAAP; however, the allegations, if true, would represent GAAP violations.
4. FIC includes allegations of GAAP violations and refers to an announcement during or subsequent to the class period that the company will restate, may restate, or has unreliable financial statements.
5. FIC includes allegations of internal control weaknesses over financial reporting.
6. FIC includes allegations of internal control weaknesses and refers to an announcement during or subsequent to the class period that the company has internal control weaknesses over financial reporting.

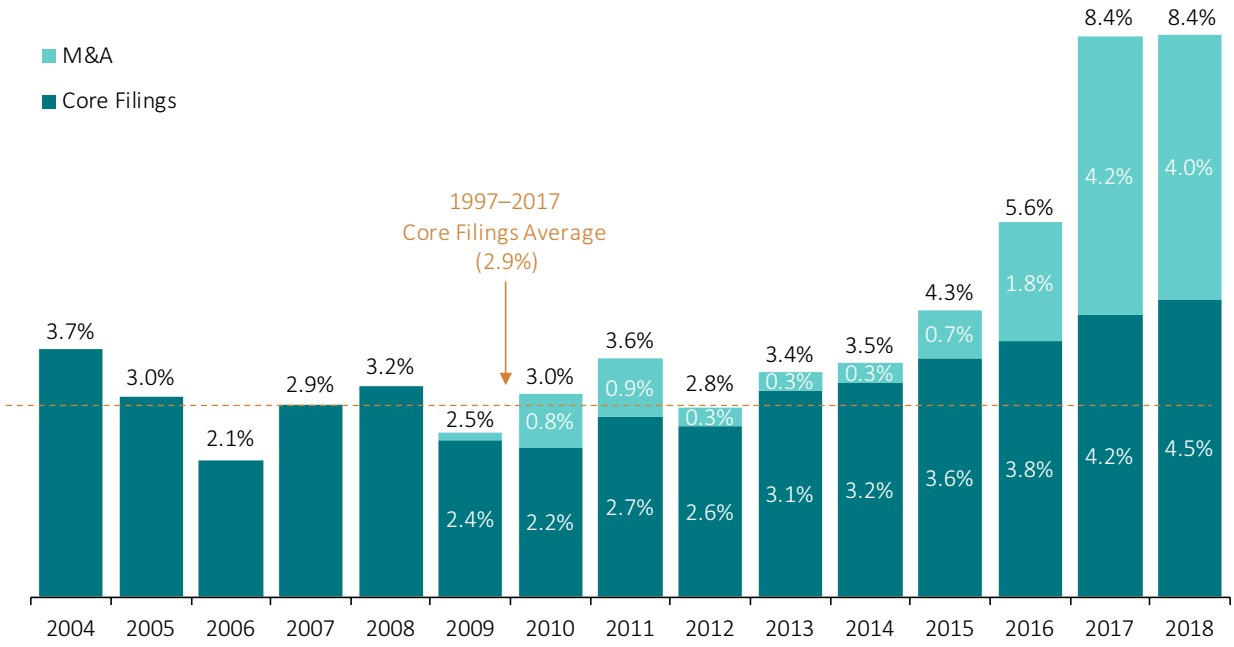
U.S. Exchange-Listed Companies

The percentages below are calculated as the unique number of companies listed on the NYSE or Nasdaq subject to federal securities fraud class actions in a given year divided by the unique number of companies listed on the NYSE or Nasdaq.

- The likelihood that U.S. exchange-listed companies were subject to core filings increased for a sixth consecutive year, from 2.6 percent in 2012 to 4.5 percent in 2018.
- Approximately one in 22 companies listed on U.S. exchanges was the subject of a core filing in 2018. See Appendix 1 for litigation likelihood over a longer time frame.
- Including M&A filings, a record 8.4 percent of U.S. exchange-listed companies were subject to filings in 2018, slightly above the rate in 2017.

The likelihood of core filings targeting U.S. exchange-listed companies surpassed the previous record set in 2017.

Figure 10: Percentage of U.S. Exchange-Listed Companies Subject to Filings
2004–2018



	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of Firms	5,643	5,593	5,525	5,467	5,339	5,042	4,764	4,660	4,529	4,411	4,416	4,578	4,593	4,411	4,406
Percent Change	(5.9%)	(0.9%)	(1.2%)	(1.0%)	(2.3%)	(5.6%)	(5.5%)	(2.2%)	(2.8%)	(2.6%)	0.1%	3.7%	0.3%	(4.0%)	(0.1%)

Source: Securities Class Action Clearinghouse; Center for Research in Security Prices (CRSP)

Note:

1. Percentages are calculated by dividing the count of issuers listed on the NYSE or Nasdaq subject to filings by the number of companies listed on the NYSE or Nasdaq as of the beginning of the year.
2. Listed companies were identified by taking the count of listed securities at the beginning of each year and accounting for cross-listed companies or companies with more than one security traded on a given exchange. Securities were counted if they were classified as common stock or American Depository Receipts (ADRs) and listed on the NYSE or Nasdaq.
3. Percentages may not sum due to rounding.

Heat Maps: S&P 500 Securities Litigation™

The Heat Maps illustrate securities class action activity by industry sector for companies in the S&P 500 index. Starting with the composition of the S&P 500 at the beginning of each year, the Heat Maps examine two questions for each sector:

(1) What percentage of these companies were subject to new securities class actions in federal court during each calendar year?

(2) What percentage of the total market capitalization of these companies was subject to new securities class actions in federal courts during each calendar year?

The likelihood of an S&P 500 company being sued was the highest since 2002.

- Of the companies in the S&P 500 at the beginning of 2018, approximately one in about 11 companies (9.4 percent) was a defendant in a core filing during the year.
- The Consumer Staples and Industrials sectors were more active in 2018 than in the previous 17 years.
- Core filings activity in the Telecommunications/ Information Tech sector increased for the fourth consecutive year.
- The percentage of companies in the Consumer Discretionary sector subject to core filings (10 percent) was double the 2001–2017 average.

Figure 11: Heat Maps of S&P 500 Securities Litigation™ Percentage of Companies Subject to Core Filings

	Average 2001–2017	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Consumer Discretionary	5.0%	3.8%	5.1%	3.8%	4.9%	8.4%	1.2%	0.0%	3.6%	8.5%	10.0%
Consumer Staples	2.9%	4.9%	0.0%	2.4%	2.4%	0.0%	0.0%	5.0%	2.6%	2.7%	11.8%
Energy/Materials	1.5%	1.5%	4.3%	0.0%	2.7%	0.0%	1.3%	0.0%	4.5%	3.3%	1.8%
Financials/Real Estate	8.1%	10.7%	10.3%	1.2%	3.7%	0.0%	1.2%	1.2%	6.9%	3.3%	7.0%
Health Care	8.3%	3.7%	13.5%	2.0%	1.9%	5.7%	0.0%	1.9%	17.9%	8.3%	16.1%
Industrials	3.5%	6.9%	0.0%	1.7%	1.6%	0.0%	4.7%	0.0%	6.1%	8.7%	8.8%
Telecommunications/ Information Tech	6.0%	1.2%	2.4%	7.1%	3.8%	9.1%	0.0%	4.2%	6.8%	8.5%	12.7%
Utilities	5.2%	0.0%	0.0%	2.9%	0.0%	0.0%	0.0%	3.4%	3.4%	7.1%	7.1%
All S&P 500 Companies	5.2%	4.4%	4.8%	2.8%	3.0%	3.4%	1.2%	1.6%	6.6%	6.4%	9.4%

Legend	0%	0–5%	5–15%	15–25%	25%+

Note:

1. The chart is based on the composition of the S&P 500 as of the last trading day of the previous year.
2. Sectors are based on the Global Industry Classification Standard (GICS).
3. Percentage of Companies Subject to New Filings equals the number of companies subject to new securities class action filings in federal courts in each sector divided by the total number of companies in that sector. See Appendix 2A for additional detail.
4. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017.

- The total market capitalization of S&P 500 companies subject to core filings more than doubled from 6.1 percent in 2017 to 14.9 percent in 2018. This represents the highest percentage since 2008.
- While the percentage of companies in the Health Care sector subject to core filings nearly doubled relative to 2017, the percentage of market capitalization subject to core filings increased more than ninefold.
- Nearly 20 percent of the market capitalization of each of the Industrials and Telecommunications/Information Tech sectors was subject to core filings.

The percentages of market capitalizations subject to core filings in four of the eight sectors were more than double their historical averages.

Figure 12: Heat Maps of S&P 500 Securities Litigation™ Percentage of Market Capitalization Subject to Core Filings

	Average 2001–2017	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Consumer Discretionary	5.3%	1.9%	4.9%	4.6%	1.6%	4.4%	2.5%	0.0%	2.8%	8.2%	4.7%
Consumer Staples	3.1%	3.9%	0.0%	0.8%	14.0%	0.0%	0.0%	1.9%	1.0%	6.7%	15.2%
Energy/Materials	3.0%	0.8%	5.2%	0.0%	0.9%	0.0%	0.2%	0.0%	19.8%	2.3%	1.4%
Financials/Real Estate	15.5%	31.2%	31.1%	6.9%	11.0%	0.0%	0.3%	3.0%	11.9%	1.5%	12.5%
Health Care	11.4%	1.7%	32.7%	0.7%	0.8%	4.4%	0.0%	3.1%	13.2%	2.7%	26.3%
Industrials	7.2%	23.2%	0.0%	2.1%	1.2%	0.0%	1.7%	0.0%	8.7%	22.3%	19.4%
Telecommunications/ Information Tech	8.2%	0.3%	5.9%	13.4%	2.2%	16.6%	0.0%	7.0%	12.3%	4.4%	19.4%
Utilities	5.9%	0.0%	0.0%	0.6%	0.0%	0.0%	0.0%	3.7%	4.4%	9.6%	6.5%
All S&P 500 Companies	8.2%	7.7%	11.1%	5.0%	4.3%	4.7%	0.6%	2.8%	10.0%	6.1%	14.9%

Legend	0%	0–5%	5–15%	15–25%	25%+

Note:

1. The chart is based on the composition of the S&P 500 as of the last trading day of the previous year.
2. Sectors are based on the Global Industry Classification Standard (GICS).
3. Percentage of Market Capitalization Subject to New Filings equals the market capitalization of companies subject to new securities class action filings in federal courts in each sector divided by the total market capitalization of companies in that sector. See Appendix 2B for additional detail.
4. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017.

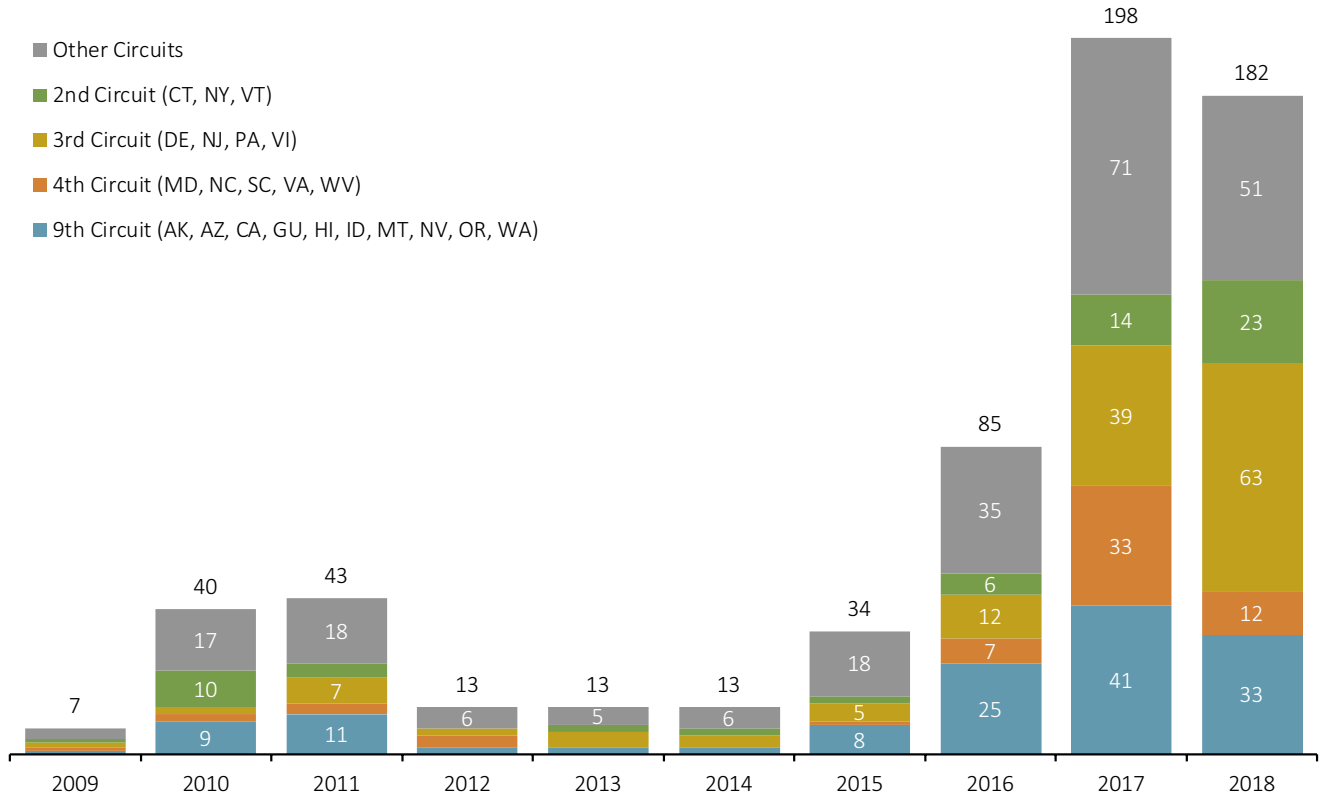
M&A Filings by Circuit

In January 2016, the Delaware Court of Chancery rejected a disclosure-only settlement in Zillow's acquisition of Trulia.[1] This appears to have resulted in some venue shifting for merger objection lawsuits from state to federal courts.

M&A filings in the Second and Third Circuits continued to increase, while M&A filings in other circuits declined.

- The number of M&A filings in each of the Second and Third Circuits was the highest since this report began recording them separately in 2009.
- The Second and Third Circuits accounted for nearly half of all M&A filings in 2018.
- The Fourth Circuit exhibited nearly a threefold decline in M&A filings in 2018, following a more than fourfold increase between 2016 and 2017.

Figure 13: Annual M&A Filings by Circuit
2009–2018



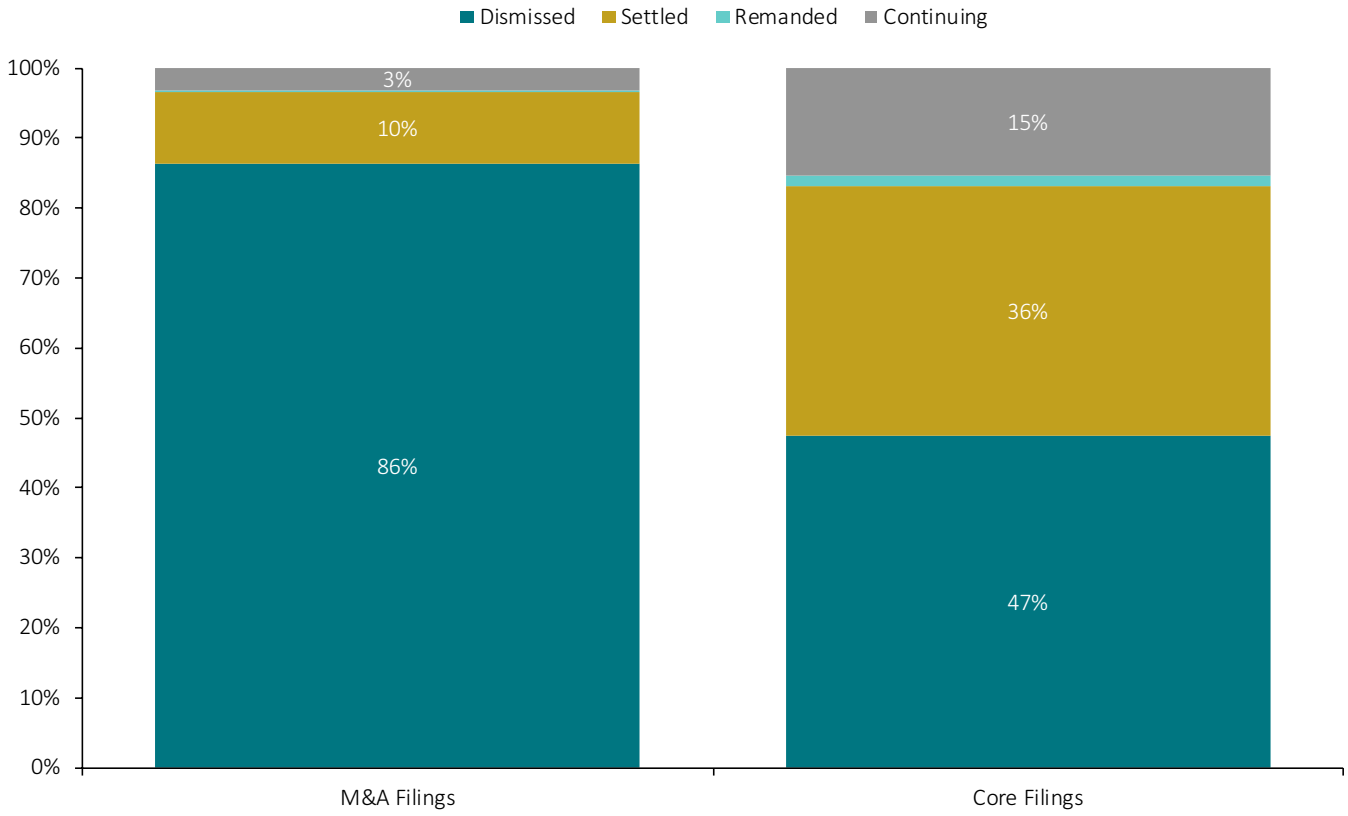
Note:
1. See http://courts.delaware.gov/opinions/download.aspx?ID=235370.
2. The Securities Class Action Clearinghouse began tracking M&A filings as a separate category in 2009.

Status of M&A Filings

- There were 446 M&A filings between 2009 and 2017, compared to 1,456 core filings. See Figure 4.
- M&A filings were dismissed at higher rates and resolved more quickly than core filings.
- M&A filings exhibited settlement rates 26 percentage points fewer than core filings.

M&A filings were dismissed at a much higher rate and settled at a much lower rate than core filings.

Figure 14: Status of M&A Filings Compared to Core Federal Filings
2009–2017



Note:
1. The Securities Class Action Clearinghouse began tracking M&A filings as a separate category in 2009.
2. The 2018 filing cohort is excluded since a large percentage of cases are ongoing.
3. For more information, see Appendix 3.

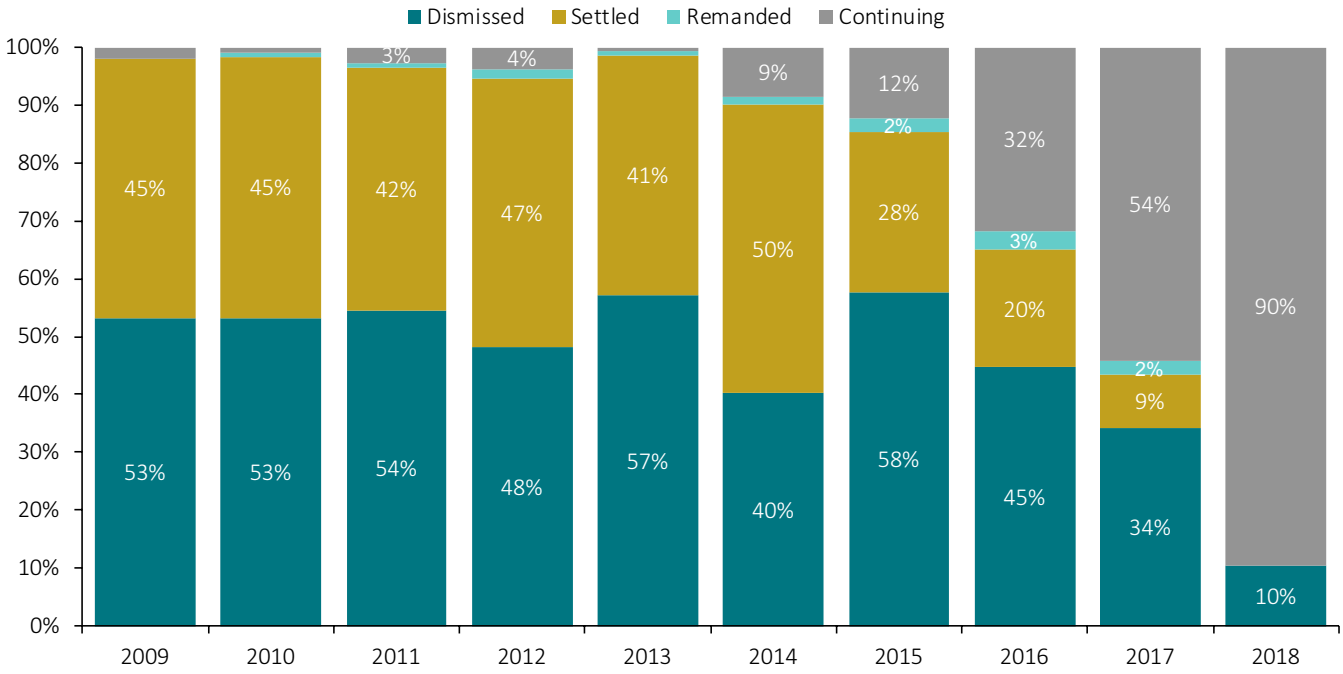
Status of Securities Class Action Filings

This analysis examines whether filing outcomes have changed over time and compares the outcomes of filing cohort groups. As each cohort ages, a larger percentage of filings are resolved—whether through dismissal, settlement, remand, or trial verdict outcome.

The dismissal rate for the 2015 filings cohort is the highest on record, despite the fact that 12 percent of the cases are continuing.

- From 1997 to 2017, 50 percent of filings settled, 43 percent were dismissed, less than 1 percent were remanded, and 6 percent are continuing. Overall, less than 1 percent of filings have reached a trial verdict.
- More recent cohorts have too many ongoing cases to determine their ultimate dismissal rates. However, the 2016 cohort will end up having a dismissal rate of at least 45 percent, more than the 1997–2017 historical average.

Figure 15: Status of Filings by Year—Core Filings
2009–2018



Note: Percentages may not sum to 100 percent due to rounding.

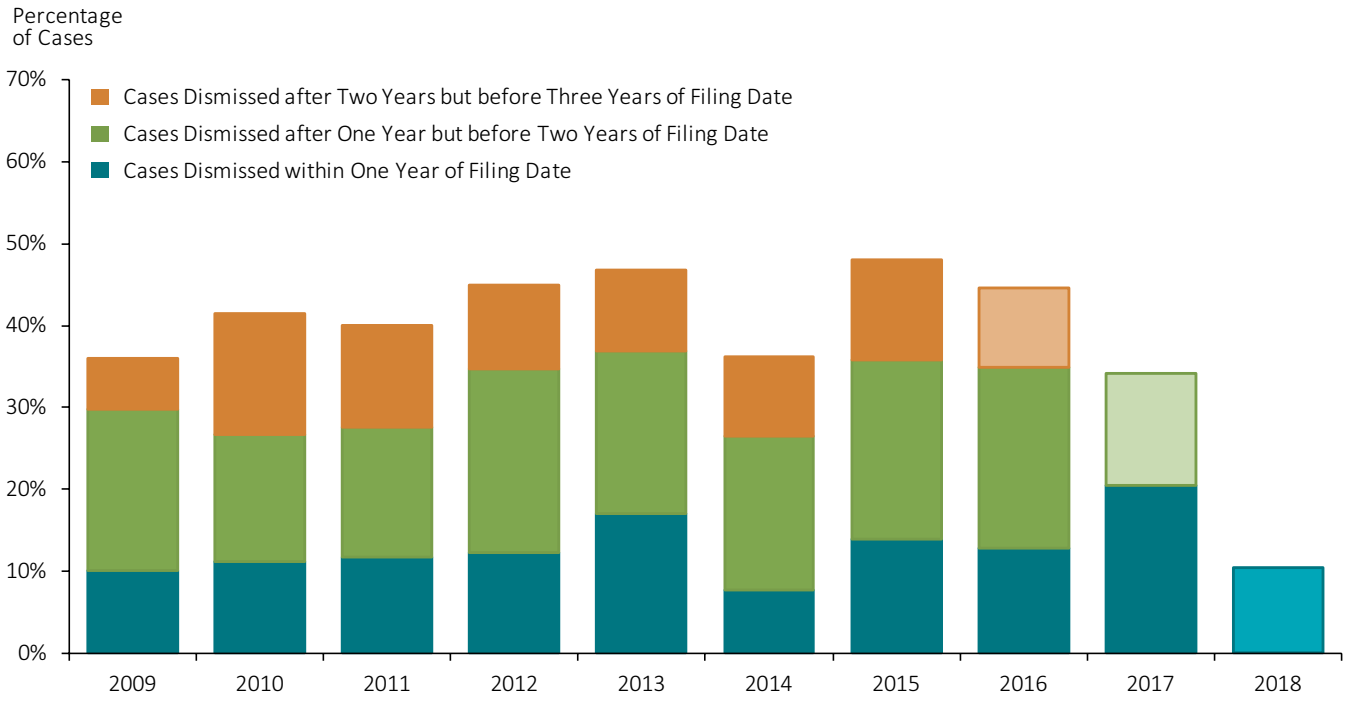
Timing of Dismissals

Given the length of time that may exist between the filing of a class action and its outcome, it may not be possible to immediately determine whether trends in dismissal rates observed in earlier annual cohort years will persist in later annual cohorts. This analysis looks at dismissal trends within the first several years of the filing of a class action to gain insight on recent dismissal rates.

The percentage of cases dismissed in the first year for the 2017 cohort was the highest on record.

- While the percentage of cases dismissed within three years of filing had generally increased for filing cohorts prior to 2013, it decreased for 2014 cohort filings before increasing again for 2015 cohort filings.
- With the benefit of a full observational history, the filings in the 2015 cohort were dismissed at the highest rate on record within the first three years.
- Early indications of the first-year dismissal rate for the 2018 cohort put it on par with 2017 and greater than the 2015 and 2016 cohorts.

Figure 16: Percentage of Cases Dismissed within Three Years of Filing Date—Core Filings
2009–2018



Note:

1. Percentage of cases in each category is calculated as the number of cases that were dismissed within one, two, or three years of the filing date divided by the total number of cases filed each year.
2. The outlined portions of the stacked bars for years 2016 through 2018 indicate the percentage of cases dismissed through the end of 2018. The outlined portions of these stacked bars therefore present only partial-year observed resolution activity, whereas their counterparts in earlier years show an entire year.
3. For more information, see Appendix 4.

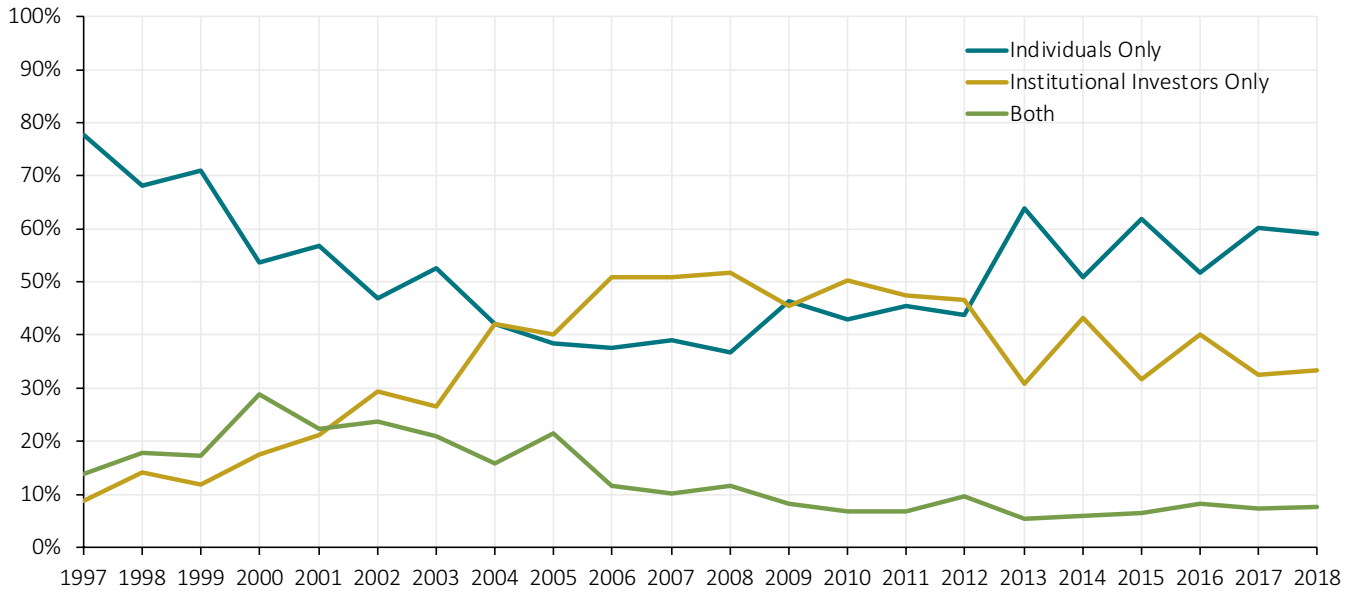
Filings by Lead Plaintiff

This analysis examines how frequently individual or institutional investors were appointed as lead plaintiff in core filings.

- From 1997 to 2003, while individuals were appointed as lead plaintiff more often than institutional investors in core filings, the difference narrowed.
- From 2004 to 2012, institutional investors were as or more likely to be appointed lead plaintiff than were individuals.
- Starting in 2013, individuals were appointed as lead plaintiff more often than institutional investors. This suggests a shift in litigation strategies by some plaintiff law firms.
- Individuals were exclusively appointed as lead plaintiff in nearly 60 percent of the filings in 2017 and 2018.

Individuals have been appointed as lead plaintiff more than institutional investors in each of the last six years.

Figure 17: Percentage of Federal Class Action Filings by Lead Plaintiff—Core Filings
1997–2018



Note:

1. Multiple plaintiffs can be designated as co-leads on a single case. This table separates percentages for which a case had only individuals as the lead/co-leads, institutional investors or investor groups as the lead/co-leads, or both individuals and institutional investors as the co-leads.
2. Cases may not have lead plaintiff data due to dismissal or settlement before a lead plaintiff is appointed or because the cases have not yet reached the stage when a lead plaintiff can be identified.
3. Lead plaintiff data are available for over 90 percent of core filings for each year from 1997 to 2017. Lead plaintiff data are available for 60 percent of 2018 core filings.

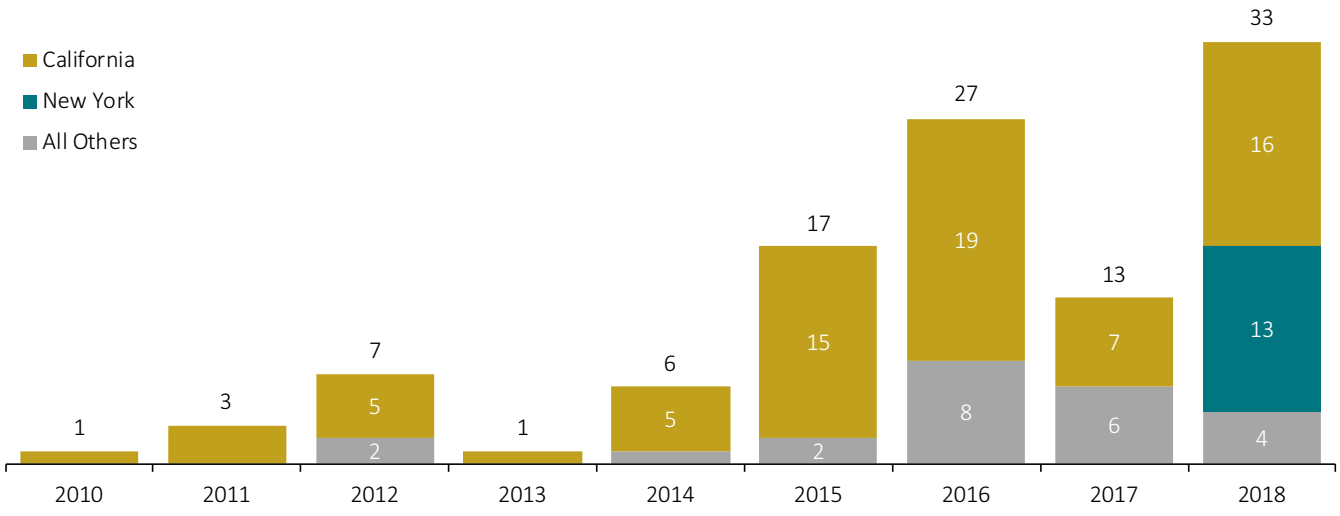
New: 1933 Act Cases Filed in State Courts

For the first time, this report includes data for 1933 Act filings in state courts other than California. The figure below illustrates all the filings currently in the dataset, even as additional class actions filed in previous years continue to be identified.

- In 2018, 16 class actions alleging violations of the 1933 Act were filed in California state courts, 13 were filed in New York state courts, and four were filed in other state courts. These filings may include Section 11, Section 12, and Section 15 claims, but do not include Rule 10b-5 claims.
- Filings in New York state courts appear to have markedly increased in 2018 as a result of the *Cyan* decision. All 13 1933 Act filings in New York were filed after the U.S. Supreme Court's ruling in March. Five of these did not have parallel federal filings.
- The other state filings in 2018 were in Florida, Georgia, Nevada, and Tennessee.

1933 Act filing activity accelerated in 2018, largely because of filings in New York state courts.

Figure 18: State 1933 Act Filings by State
2010–2018



Source: Stanford Law School and Securities Class Action Clearinghouse; Bloomberg Law; Institutional Shareholder Services' Securities Class Action Services (ISS' SCAS)

Note:

1. Other contains filings in Alabama, Arizona, Colorado, Florida, Georgia, Iowa, Massachusetts, Michigan, Nevada, New Hampshire, Oregon, Pennsylvania, Tennessee, Texas, Washington, and West Virginia.
2. California state filings in 2018 may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims.

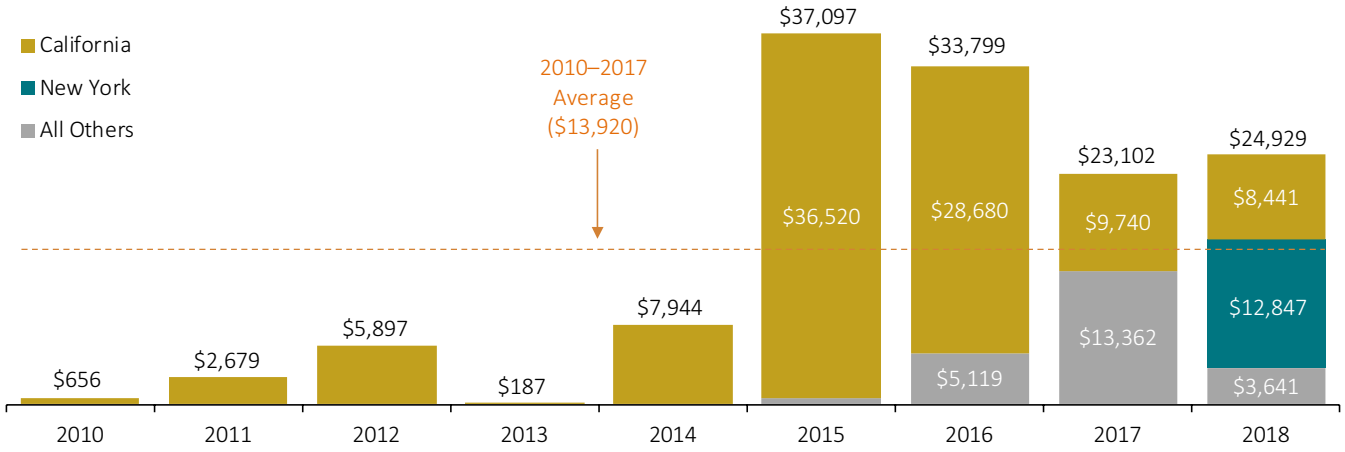
New: 1933 Act Cases Filed in State Courts—Size of Filings

- In 2018, MDL for state 1933 Act filings increased to $24.9 billion, close to double the 2010–2017 average.
- Relative to 2017, MDL for all state 1933 Act filings only increased by 8 percent despite the 154 percent increase in the number of filings.

Non-California state 1933 Act filings were 66 percent of the MDL in 2018.

Figure 19: Maximum Dollar Loss (MDL) of State 1933 Act Filings 2010–2018

(Dollars in Millions)



Source: Stanford Law School and Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note: California state filings in 2018 may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims. MDL calculations include all shares outstanding and not only shares traceable to offering materials. Therefore, these calculations overstate potential damages.

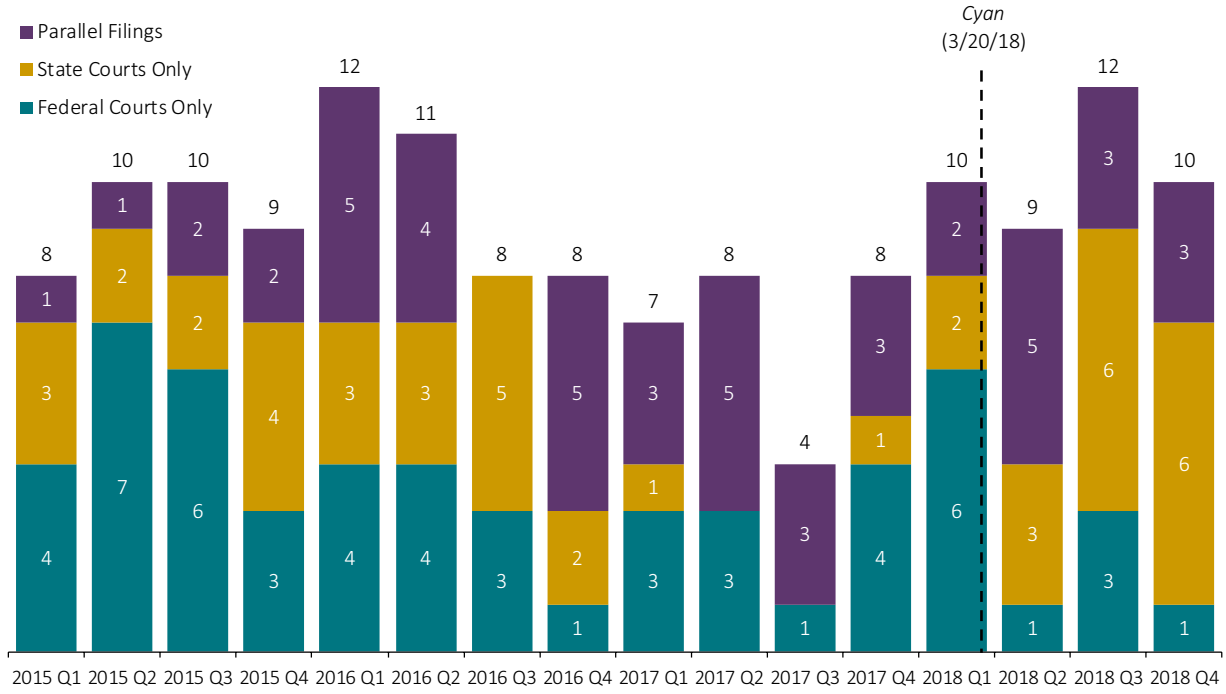
New: Comparison of Federal Section 11 Filings with State 1933 Act Filings—Pre- and Post-*Cyan*

The figure below is a combined measure of Section 11 filing activity in federal courts and 1933 Act filings in state courts. It highlights parallel (or related) class actions in federal and state courts.

- In 2018, the combined number of federal Section 11 filings and state 1933 Act filings was 41. This comprised 13 parallel filings, 17 state-only filings, and 11 federal-only filings.
- Overall, these filings in federal and state courts increased by 52 percent compared to 2017 due to the rise in state filing activity.
- The uptick in state actions following the *Cyan* decision indicates a change in approach by plaintiffs, but more data are needed to evaluate the potential trend.

State 1933 Act filings have increased since the Cyan *decision.*

Figure 20: Pre- and Post-*Cyan* Quarterly Federal Section 11 and State 1933 Act Filings
2015–2018



Source: Stanford Law School and Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note:

1. The federal Section 11 filings displayed may include Rule 10b-5 claims, but state 1933 Act filings will not.
2. Section 11 filings in federal courts may include parallel (or related) cases filed in state courts. When these cases are filed in different quarters, the earliest filing is counted. If filings against the same company are brought in different states in addition to a filing brought in federal court, the parallel filing is counted as a unique case and the state-only filing is treated as a unique case. Filings against the same company brought in different states without a parallel filing brought in federal court are counted as unique state filings.
3. California state filings in 2018 may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims.

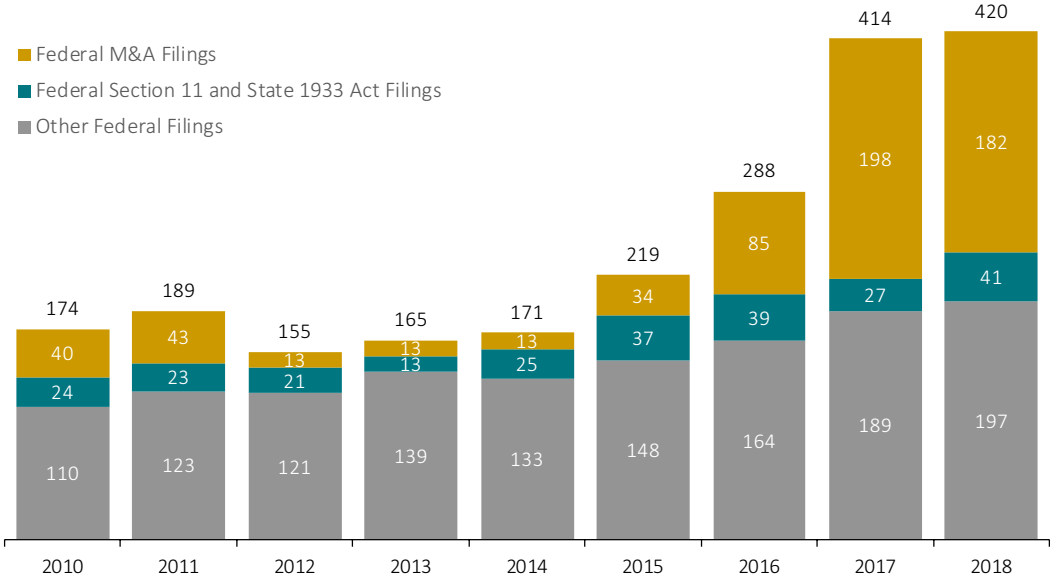
Combined Federal and State Filing Activity—Highlighting Federal Section 11 and State 1933 Act Filings

This figure below is a combined measure of class action filing activity in federal and state courts (both California and other state courts). It highlights Section 11 claims in federal courts and 1933 Act claims in state courts and the extent to which parallel actions were filed.

Combined federal Section 11 and state 1933 Act filings peaked in 2018.

- In 2018, the combined number of federal filings, state 1933 Act filings, and M&A filings was 420—the highest on record.
- Of the federal Section 11 and state 1933 Act filings, there were 11 federal-only filings and 17 state-only filings in 2018, respectively the lowest and the highest since 2010.
- There were 55 percent more state-only filings than federal-only filings in 2018.

Figure 21: Federal Section 11 and State 1933 Act Class Action Filings by Venue
2010–2018



	Federal Section 11 and State 1933 Act Filings								
	2010	2011	2012	2013	2014	2015	2016	2017	2018
Federal Courts Only	22	21	13	12	20	20	12	11	11
State Courts Only	0	1	3	0	2	11	13	2	17
Parallel Filings	2	1	5	1	3	6	14	14	13
Total	24	23	21	13	25	37	39	27	41

Source: Stanford Law School and Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note:

1. The federal Section 11 data displayed may contain Rule 10b-5 claims, but state Section 11 data do not.
2. Section 11 filings in federal courts may include parallel (or related) cases filed in state courts. When these cases are filed in different years, the earliest filing is counted. If filings against the same company are brought in different states in addition to a filing brought in federal court, the parallel filing is counted as a unique case and the state-only filing is treated as a unique case. Filings against the same company brought in different states without a parallel filing brought in federal court are counted as unique state filings.
3. California state filings in 2018 may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims.

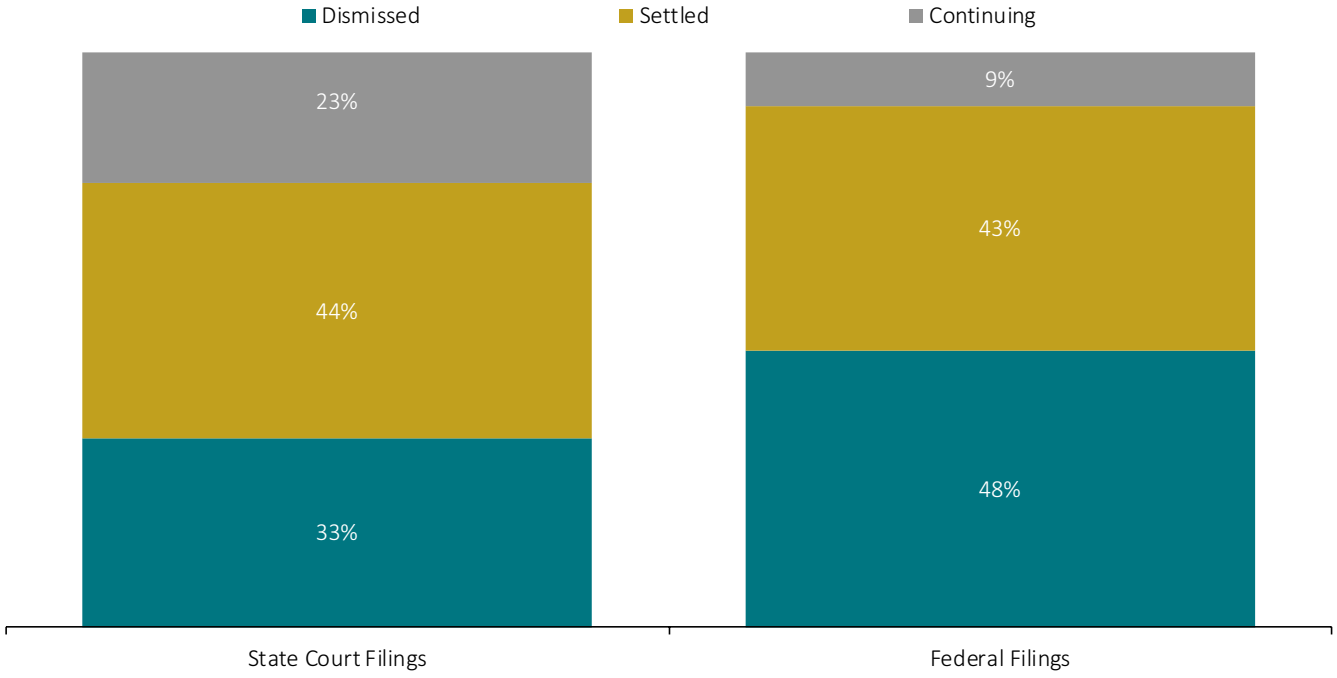
Section 11 Cases Filed in State Courts—Case Status

This analysis compares the outcomes of state Section 11 filings to federal filings that assert Section 11 claims but no Rule 10b-5 claims.

A smaller portion of Section 11–only cases in 2010–2017 were dismissed in state courts compared to federal courts.

- A higher percentage of state Section 11 filings are continuing compared to Section 11–only federal filings.
- Only 33 percent of state Section 11 filings were dismissed in 2010–2017 compared to 48 percent of Section 11–only federal filings.

Figure 22: Resolution of State Section 11 Filings Compared with Section 11–Only Federal Filings
2010–2017



Source: Stanford Law School and Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note:

1. See Appendix 5 for more detail.
2. The 2018 filing cohort is excluded since a large percentage of cases are ongoing.
3. If a matter is remanded from federal court to a state court, it is recorded in the state court column based on its state court disposition. Alternatively, if a matter is removed from a state court to federal court, it is recorded in the federal court column based on its federal court disposition.

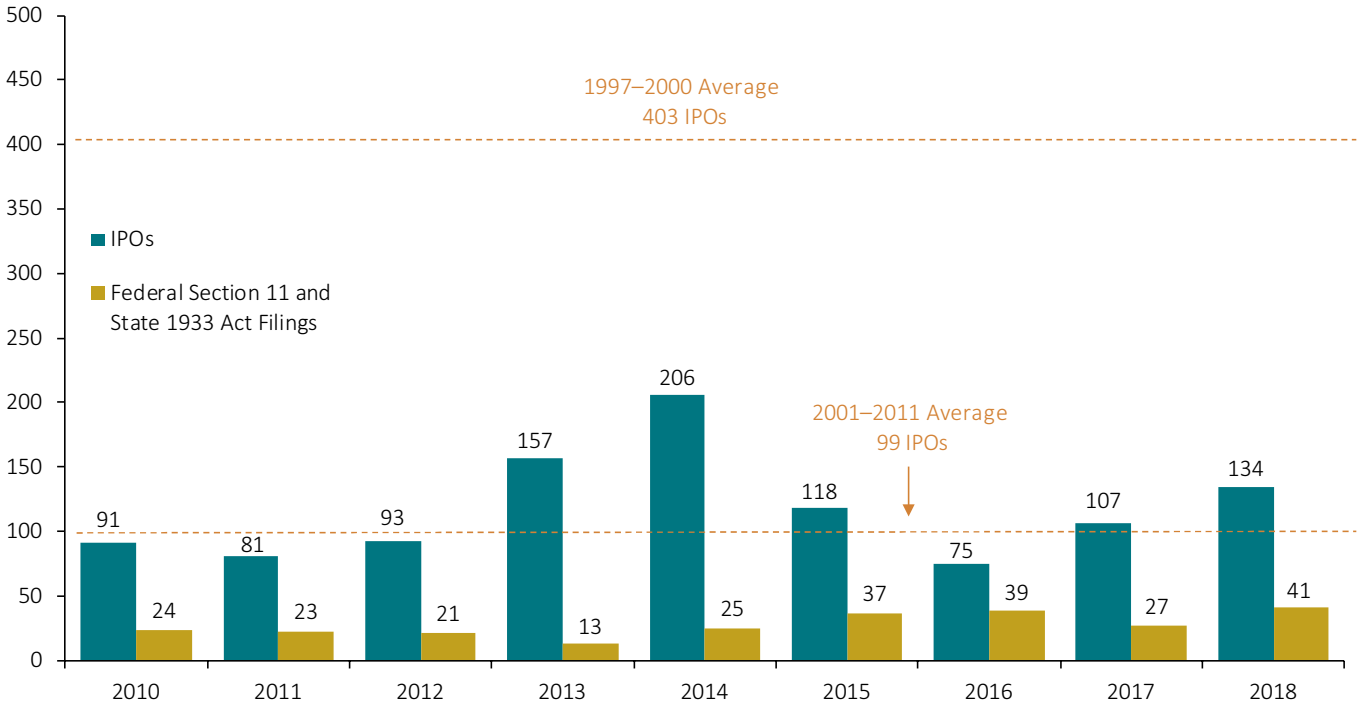
IPO Activity and Federal Section 11 and State 1933 Act Filings

- IPO activity increased 25 percent from 2017 to 2018.
- With 134 IPOs, 2018 was above the 2001–2011 average of 99 IPOs per year, but remained well below the 1997–2000 average of 403 IPOs per year.
- Heavier IPO activity appears to be correlated with increased levels of federal Section 11 and state 1933 Act filings in the ensuing years.

IPO activity has trended up since 2016, but remained below 2013–2014 levels.

- It appears likely that Section 11 filing activity will increase in 2019 relative to 2018 due to the combination of new state venues post-*Cyan* and the deferred effects of increased IPO activity in 2017 and 2018.

Figure 23: Number of IPOs on Major U.S. Exchanges and Number of Filings of Federal Section 11 and State 1933 Act Claims 2010–2018



Source: Jay R. Ritter, "Initial Public Offerings: Updated Statistics," University of Florida, December 31, 2018

Note:

1. These data exclude the following IPOs: those with an offer price of less than $5, American Depository Receipts (ADRs), unit offers, closed-end funds, real estate investment trusts (REITs), natural resource limited partnerships, small best efforts offers, banks and S&Ls, and stocks not listed in the Center for Research in Security Prices (CRSP) database.

2. The number of federal Section 11 and state 1933 Act cases is displayed. In 2018, the Securities Class Action Clearinghouse began tracking 1933 Act filings in California state courts with Section 11 or Section 12 claims, as well as filings in other state courts with Section 11 claims. The federal Section 11 cases displayed may include Rule 10b-5 claims, but state 1933 Act filings do not.

IPO Litigation Likelihood

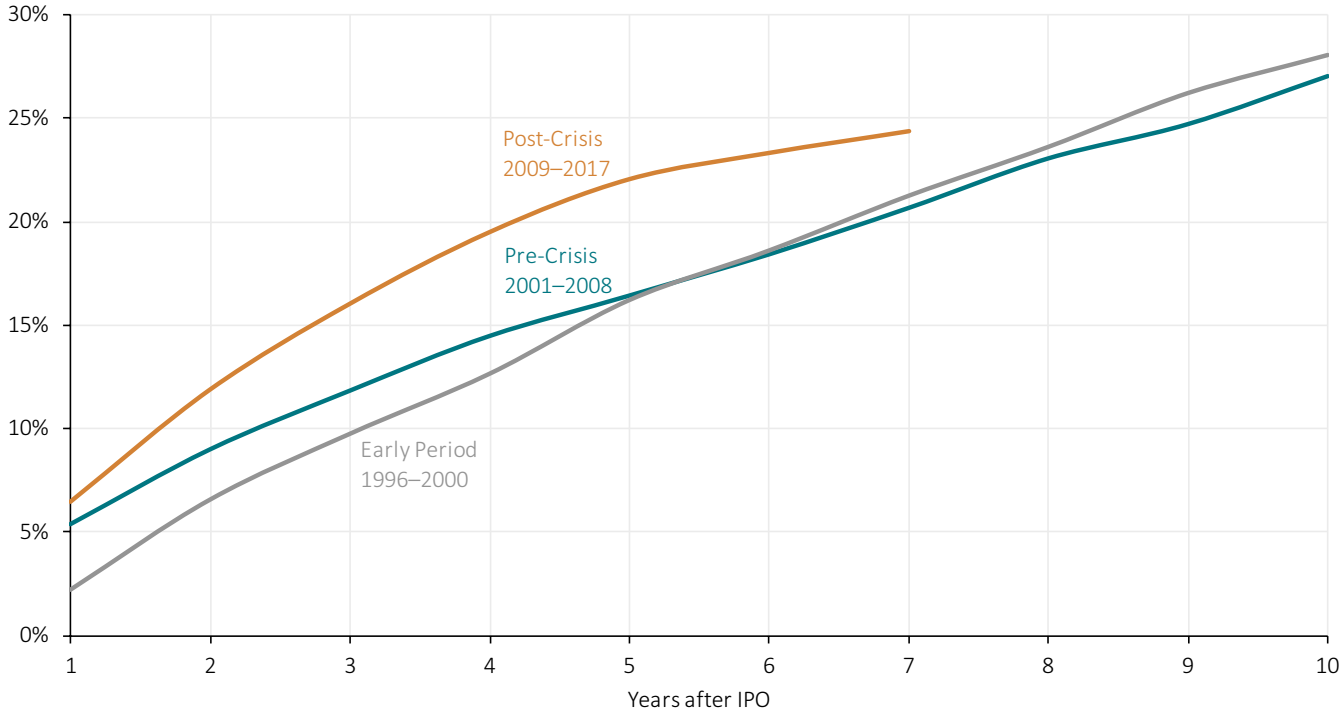
This analysis compares the cumulative litigation exposure of IPOs to federal core filings since the 2008 credit crisis (post-crisis: 2009–2017) with two other groups of IPOs—those prior to the credit crisis (pre-crisis: 2001–2008) and those prior to the dot-com collapse (early period: 1996–2000). 1933 Act filings that are exclusively in the state courts have not yet been incorporated into this analysis.

- Post-crisis IPOs have faced higher litigation exposure than the prior periods in the first few years after an IPO—for example, 19.5 percent of post-crisis IPOs have been subject to a federal core filing within four years of the IPO, compared to 14.5 percent for the pre-crisis cohort and 12.6 percent for the early period cohort.

IPOs from 2009 through 2017 have been subject to litigation at a higher rate than earlier cohorts within the first few years after the IPO.

- For each IPO grouping, the incremental litigation exposure generally decreased with each year after the IPO. See Appendix 6 for incremental exposure litigation values.

Figure 24: Likelihood of Litigation against Recent IPOs—Core Filings
2009–2017 IPOs versus Prior-Period IPOs



Source: Jay R. Ritter, "Founding Dates for Firms Going Public in the U.S. during 1975–2017," University of Florida, January 2018; Center for Research in Security Prices (CRSP)

Note:

1. Cumulative litigation exposure measures the probability that a surviving company will be a defendant in at least one securities class action during the analysis period. For a detailed explanation about the methodology, see Cornerstone Research, *Securities Class Action Filings—2014 Midyear Assessment* (page 10 and Appendix 3).

2. The post-crisis IPO cumulative litigation exposure is not presented for eight to 10 years after the IPO due to limited data for cohorts with an IPO date toward the end of this period.

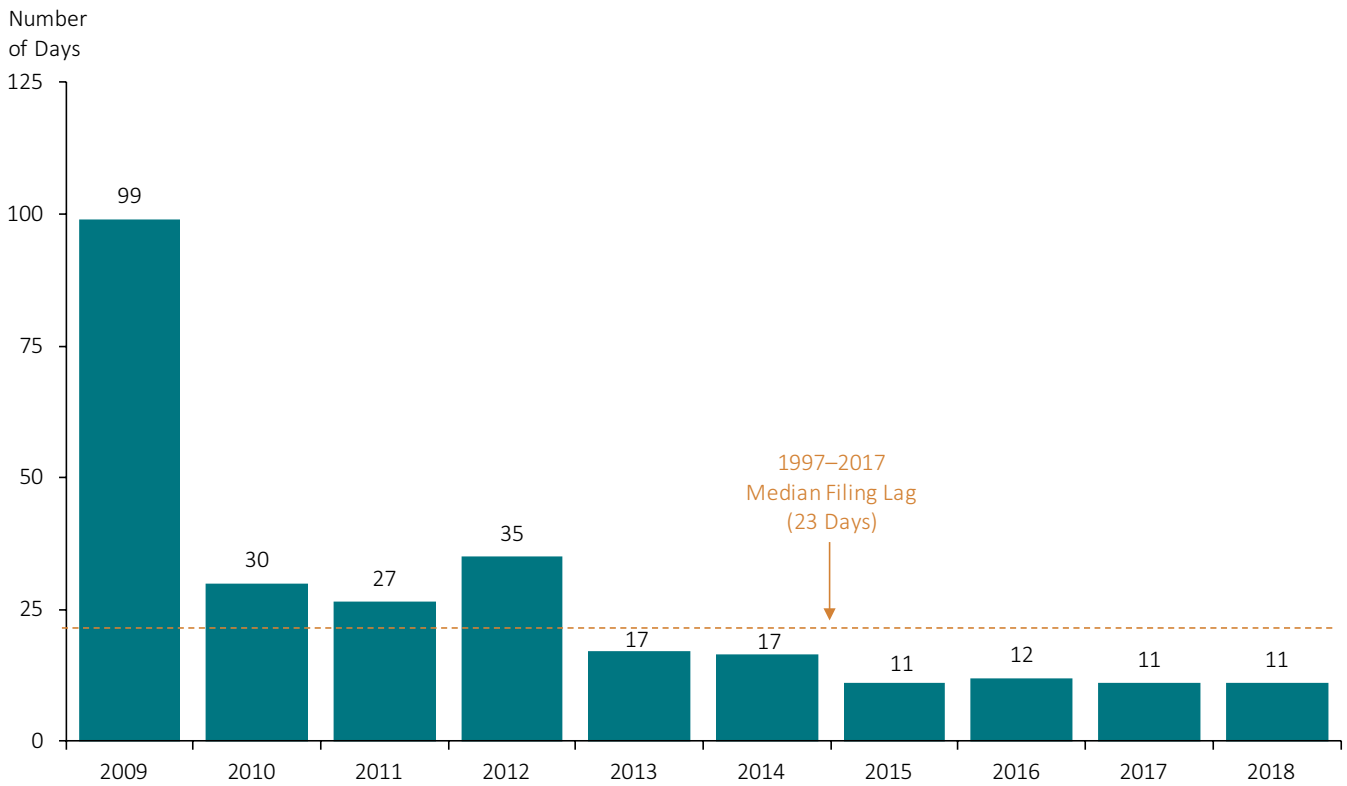
Filing Lag

This analysis reviews the number of days between the end of the class period and the filing date of the securities class action.

- The median filing lag in 2018 remained low at 11 days.
- For the last four years, the median lag has fluctuated between 11 and 12 days.
- Class actions filed more than 11 days after the end of the class period had a median MDL more than twice as large as those filed within 11 days of the end of the class period.

For the past six years, the annual median filing lag has been below the historical average.

Figure 25: Annual Median Lag between Class Period End Date and Filing Date—Core Filings
2009–2018



Note: This analysis also excludes filings with only Section 11 claims and ICO- or cryptocurrency-related filings because there is often no specified end of the class period.

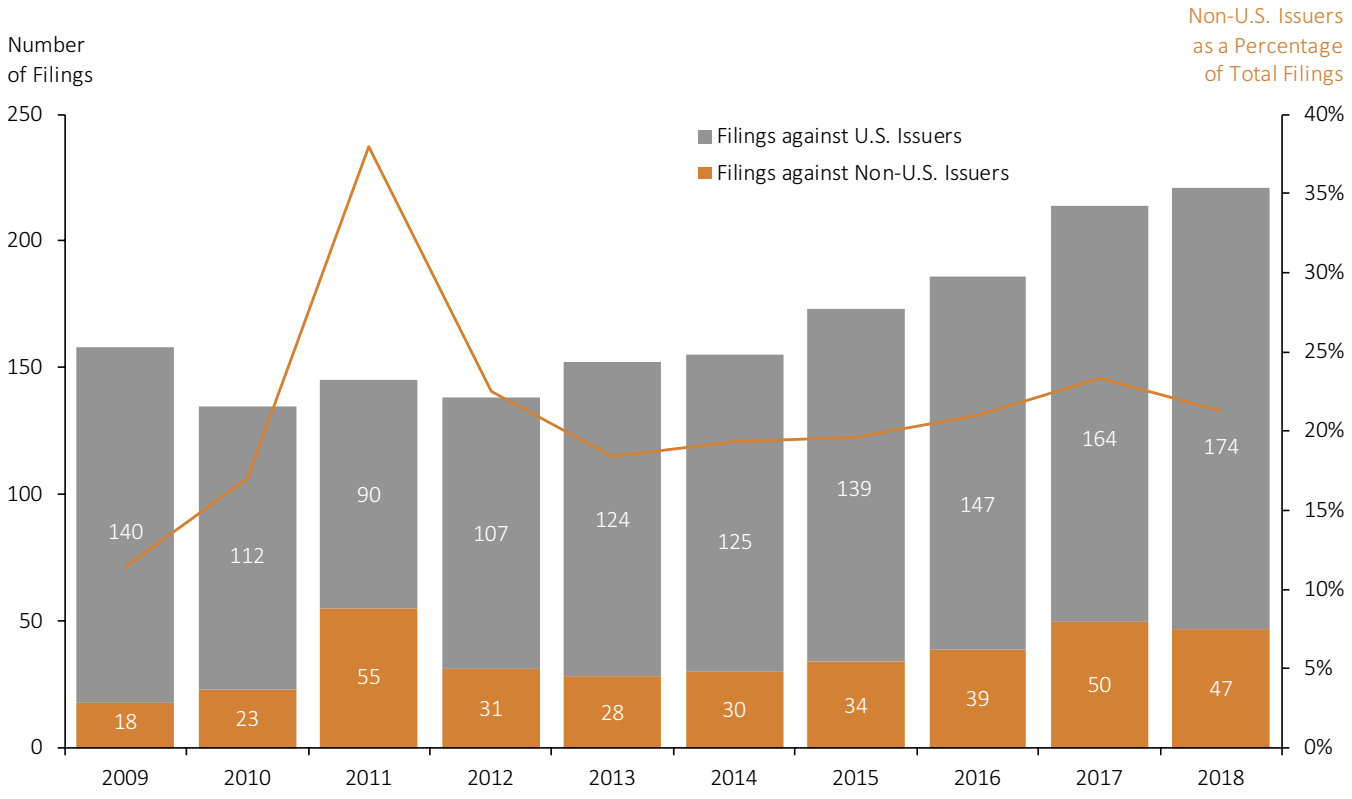
Non-U.S. Filings

This index tracks the number of filings against companies headquartered outside the United States relative to total core filings.

- The number of filings against non-U.S. issuers decreased to 47 in 2018, still nearly double the 1997–2017 average of 24.
- As a percentage of total filings, filings against non-U.S. issuers reverted back to 2016 levels.
- Filings against Asian companies increased from 6 percent of all core filings in 2017 to 9 percent in 2018, making them the most common targets of non-U.S. filings.

Filings against non-U.S. companies decreased for the first time since 2013.

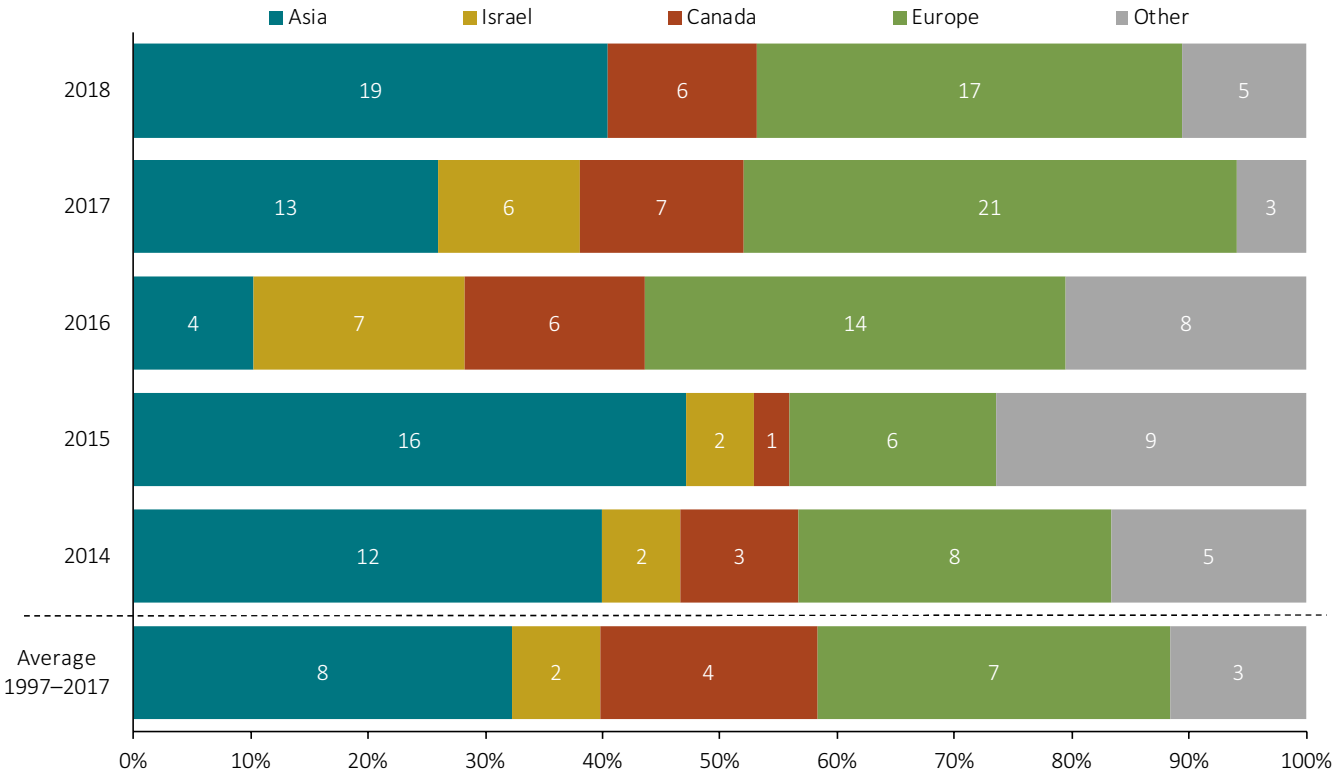
Figure 26: Annual Number of Class Action Filings by Location of Headquarters—Core Filings
2009–2018



- The number of filings against European companies remained at a level more than twice the 1997–2017 average despite decreasing by 19 percent from 2017 to 2018.
- Of the 17 filings against European companies, six were against firms headquartered in Ireland and four were against firms headquartered in the United Kingdom.
- Of the 19 filings against Asian firms, 15 involved Chinese firms and three involved Singaporean companies.
- Of the 19 filings in Asia, five were against firms in the Technology sector, accounting for roughly 23 percent of filings in that sector. See page 33.
- For the first time since 2012, companies headquartered in Israel were not subject to a class action.

Filings against Asian firms rose to 19—the most since 2011.

Figure 27: Non-U.S. Filings by Location of Headquarters—Core Filings



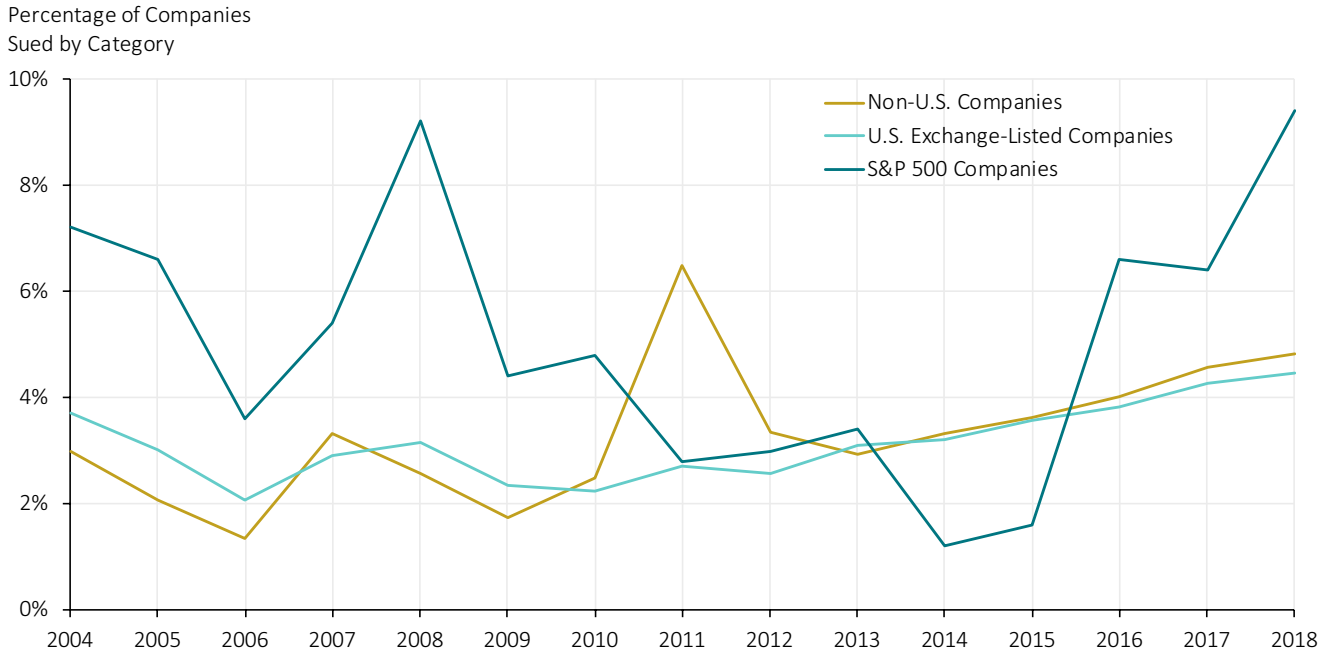
Non-U.S. Company Litigation Likelihood

This analysis examines the incidence of non-U.S. filings relative to the likelihood of S&P 500 companies or U.S. exchange-listed companies being the subject of a class action.

The percentage of S&P 500 companies sued in 2018 was 9.4 percent, making them subject to filings at nearly double the rate of non-U.S. companies.

- The percentage of non-U.S. companies subject to core filings has increased steadily each year since 2013. This percentage increased from 4.6 percent to 4.8 percent from 2017 to 2018.
- Over the last five years, the likelihood of a non-U.S. company being sued has increased faster than the increase experienced by all U.S. exchange-listed companies.

Figure 28: Percentage of Companies Sued by Listing Category or Domicile—Core Filings
2004–2018



Source: Center for Research in Security Prices (CRSP); Yahoo Finance

Note:

1. Non-U.S. companies are defined as companies with headquarters outside the United States, Puerto Rico, and Virgin Islands. Companies were counted if they issue common stock or ADRs and are listed on the NYSE or Nasdaq.

2. Percentage of companies sued is calculated as the number of filings against unique companies in each category divided by the total number of companies in each category in a given year.

Mega Filings

Mega DDL filings have a disclosure dollar loss (DDL) of at least $5 billion. Mega MDL filings have a maximum dollar loss (MDL) of at least $10 billion. MDL and DDL are only measured for core filings.

- Seventeen mega DDL filings accounted for $212 billion of DDL in 2018.
- Mega DDL in 2018 accounted for 64 percent of total DDL, well above the 1997–2017 average of 52 percent.
- There were 27 mega MDL filings in 2018 with a total MDL of $963 billion, a dramatic increase from 2017.
- Mega MDL, as a percentage of total MDL, increased by 24 percentage points from 2017 and is above the 1997–2017 average of 70 percent.

Mega DDL and MDL increased both in terms of the number of filings and dollar amounts.

Figure 29: Mega Filings

(Dollars in Billions)

	Average 1997–2017	2016	2017	2018
Mega Disclosure Dollar Loss (DDL) Filings[1]				
Mega DDL Filings	5	5	7	17
DDL	$63	$33	$47	$212
Percentage of Total DDL	52%	31%	36%	64%
Mega Maximum Dollar Loss (MDL) Filings[2]				
Mega MDL Filings	13	21	14	27
MDL	$421	$533	$253	$963
Percentage of Total MDL	70%	66%	49%	73%

Note:

1. Mega DDL filings have a disclosure dollar loss of at least $5 billion.
2. Mega MDL filings have a maximum dollar loss of at least $10 billion.
3. See Appendix 1 for total DDL values.

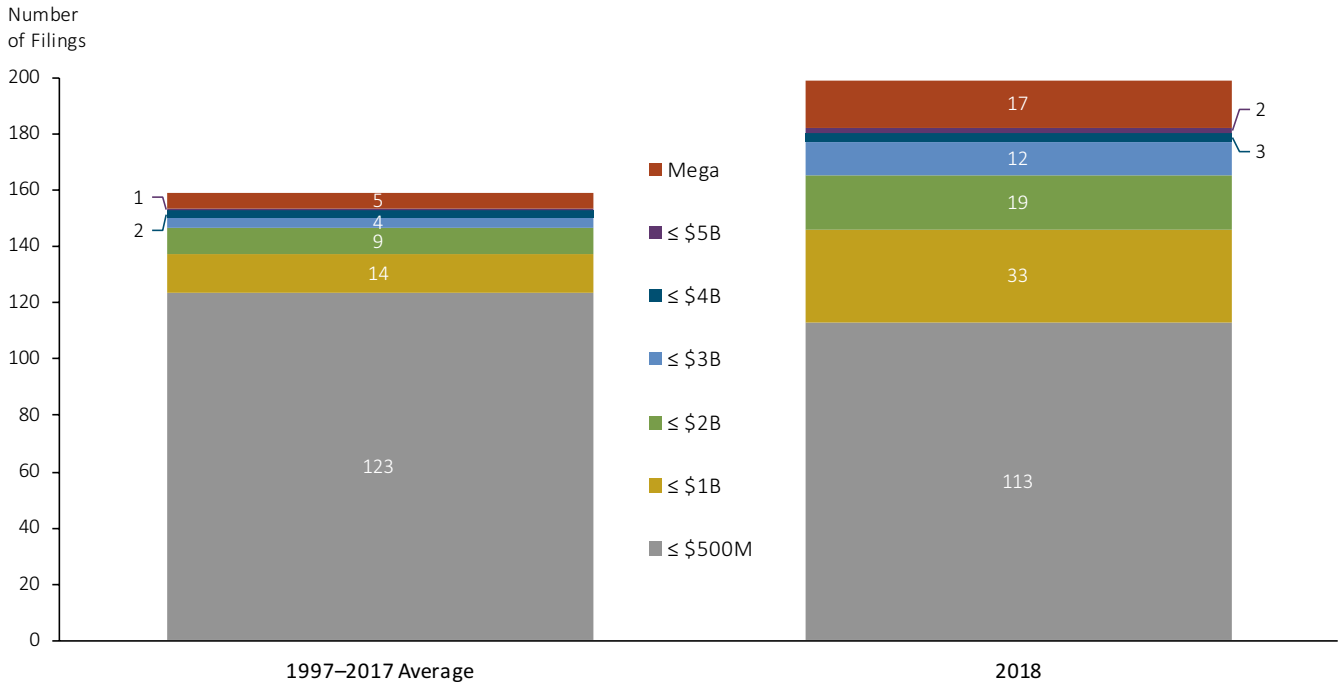
Distribution of DDL Values

The figure below compares the distribution of DDL attributable to filings of a given size in 2018 with the historical distribution of DDL.

- Mega DDL accounted for 9 percent of the total number of filings with DDL values and 64 percent of DDL in 2018.
- The number of mega DDL filings in 2018 was more than double the 2017 figure and more than triple the historical average.
- Midsize DDL filings (filings with DDL greater than $500 million but less than or equal to $5 billion) accounted for 35 percent of filings with DDL values in 2018, well above the 1997–2017 average of 19 percent.

Mega and larger DDL filings were an outsized portion of filings in 2018.

Figure 30: Distribution of Filings Based on DDL Size



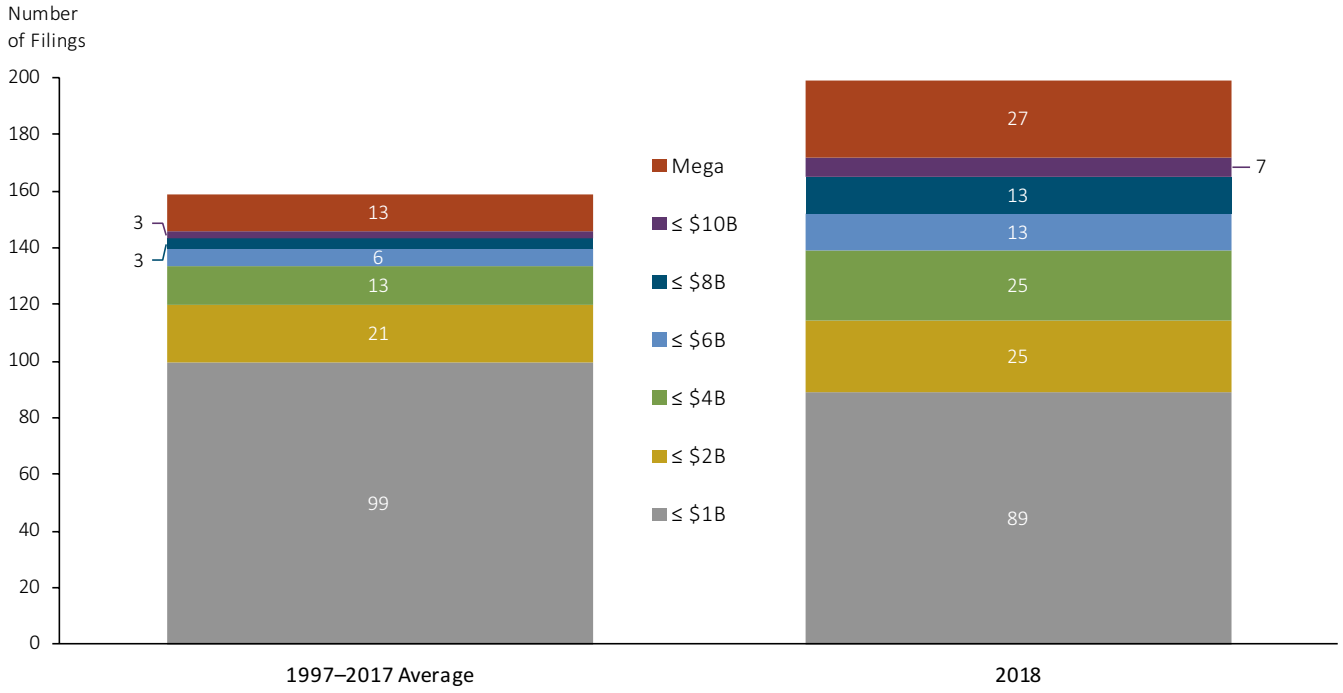
Distribution of MDL Values

The figure below compares the distribution of MDL attributable to filings of a given size in 2018 with the historical distribution of MDL.

- In 2018, mega MDL filings represented 14 percent of the total number of filings with MDL values and 73 percent of total MDL.
- The number of mega MDL filings increased from 14 in 2017 to 27 in 2018, while the number of filings with MDL less than $1 billion decreased.
- In 2018, the percentage of MDL filings greater than $2 billion but less than or equal to $4 billion was 13 percent, compared to the 1997–2017 historical average of 8 percent.

While the number of mega MDL filings nearly doubled in 2018, the distribution of MDL filings overall aligned more closely with the historical average, compared to DDL filings.

Figure 31: Distribution of Filings Based on MDL Size



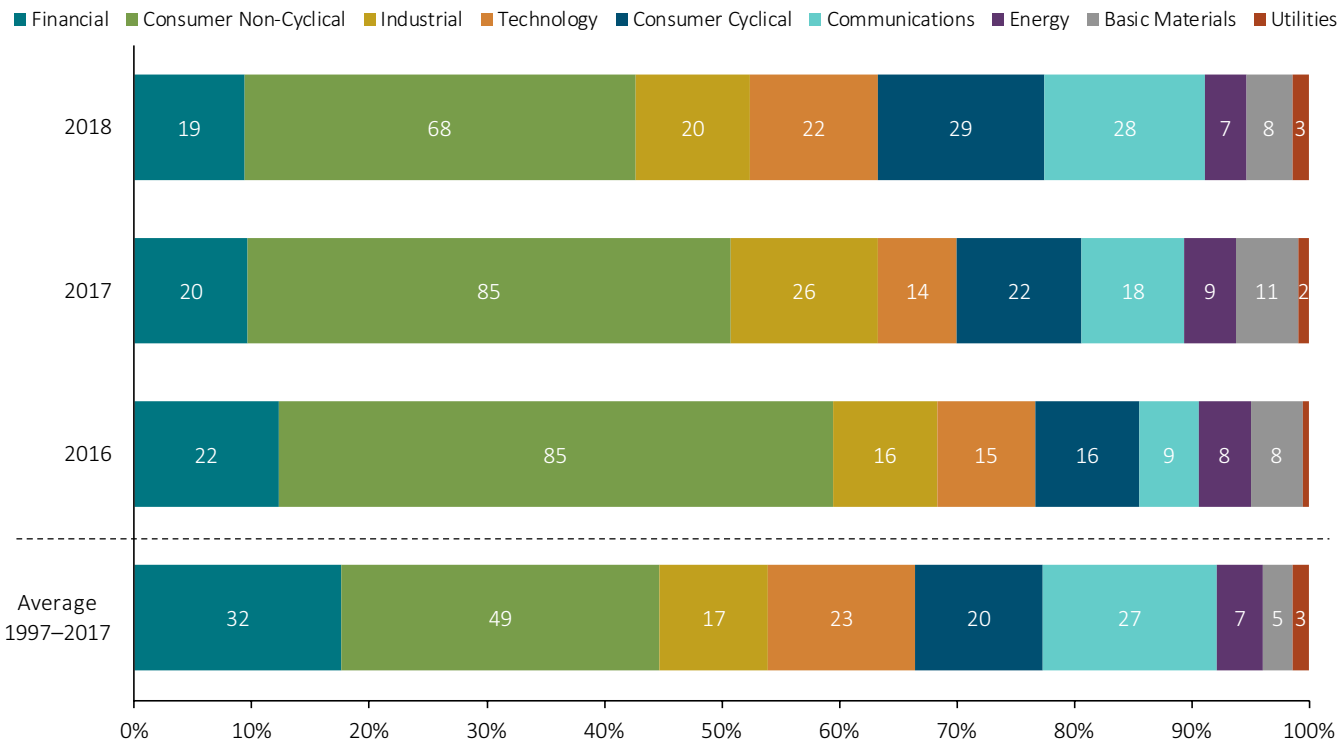
Industry

This analysis includes both the large capitalization companies of the S&P 500 as well as smaller companies.

- The 28 core filings in the Communications sector were the most since 2007, and the 29 core filings in the Consumer Cyclical sector were the most since 2005.
- Core filings against companies in the Financial sector decreased from 22 to 19 from 2016 to 2018. However, the DDL of these filings increased from $20 billion to $25 billion over the same period, which is 34 percent above the 1997–2017 average. See Appendix 7.
- From 2017 to 2018, both the total MDL and DDL of filings in the Consumer Non-Cyclical sector more than doubled, despite having fewer filings. See Appendix 7.

Filings in the Consumer Non-Cyclical Sector—which includes biotechnology, pharmaceuticals, and healthcare—decreased after two years of heavy filing activity.

Figure 32: Filings by Industry—Core Filings



Note:

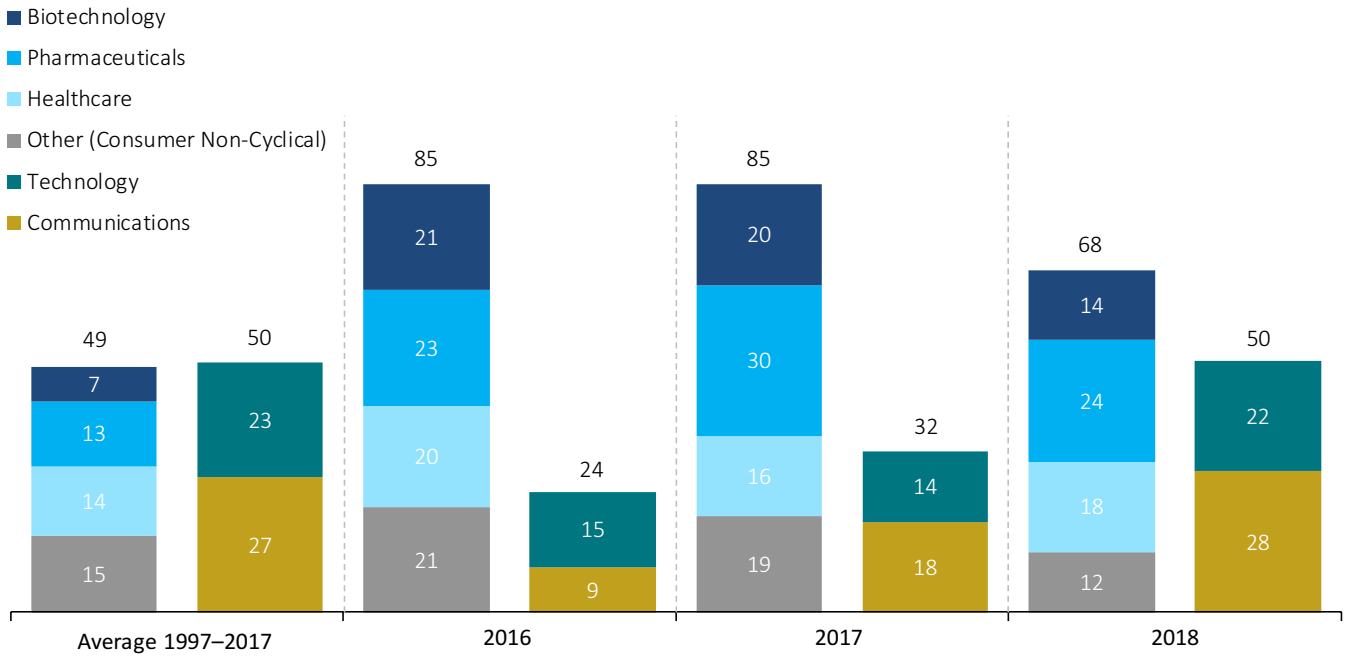
1. Filings with missing sector information or infrequently used sectors may be excluded. For more information, see Appendix 7.
2. Sectors are based on the Bloomberg Industry Classification System.

Sector Comparison: Consumer Non-Cyclical Versus Technology and Communications

- Filings against companies in the Consumer Non-Cyclical, Technology, and Communications sectors were responsible for 54 percent of all core filings from 1997 to 2017.
- Historically, filings in the Consumer Non-Cyclical sector were as numerous as filings in the Technology and Communications sectors combined.
- In 2016 and 2017, Consumer Non-Cyclical filings were disproportionately high compared to Technology and Communications filings. In 2018, the recent differences in filing activity diminished.

Despite a decline, filings against biotechnology, pharmaceutical, and healthcare companies remained well above the historical average.

Figure 33: Sector Comparison: Consumer Non-Cyclical Versus Technology and Communications—Core Filings



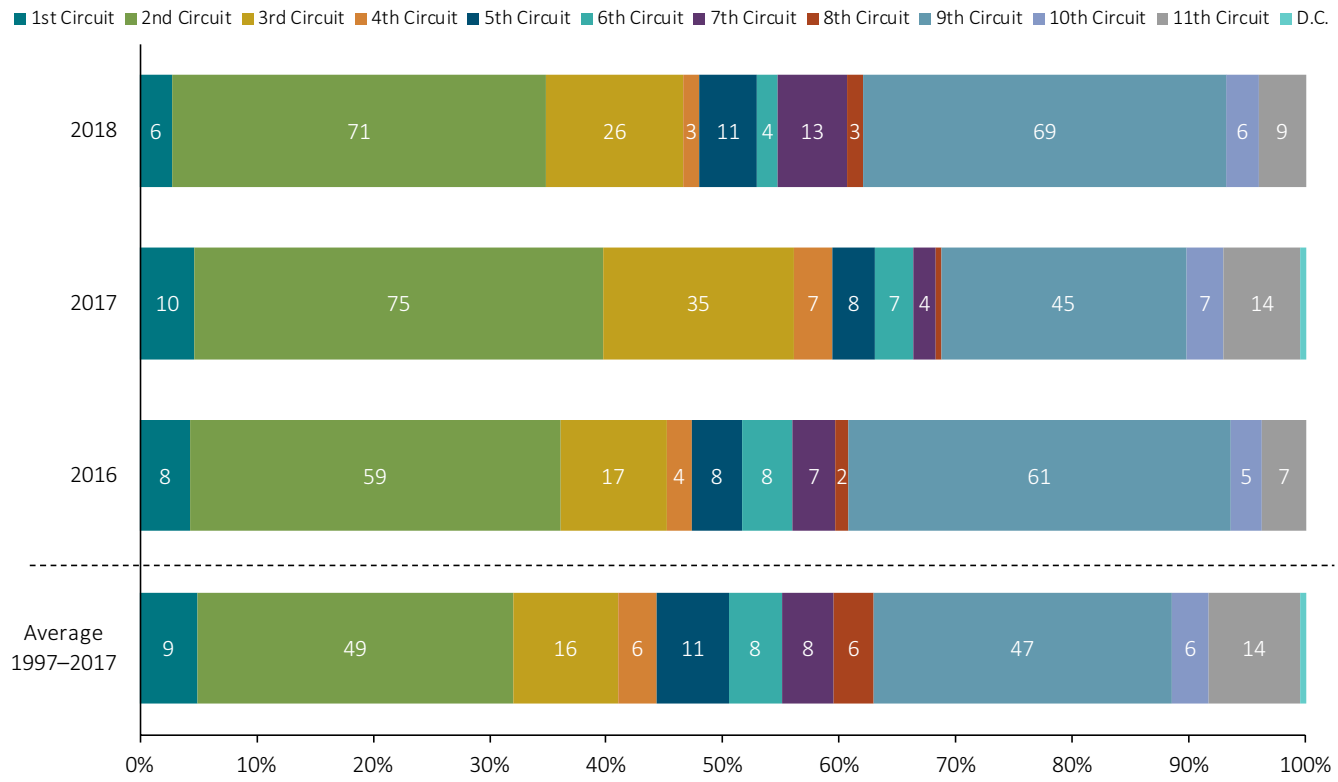
Note:
1. Sectors and subsectors are based on the Bloomberg Industry Classification System.
2. The "Other" category is a grouping primarily encompassing the Agriculture, Beverage, Commercial Services, and Food subsectors.

Circuit

- The Second and Ninth Circuits combined made up 63 percent of all core filings in 2018, higher than the 1997–2017 average of 53 percent.
- Core filings in the Third Circuit decreased from the record high of 35 in 2017 to 26 filings in 2018, but remained higher than the 1997–2017 average of 16.
- Core filings in the Seventh Circuit increased by 225 percent to 13 filings, the highest number of filings in that circuit in the past 10 years.
- Core filings in the Ninth Circuit increased by 53 percent to 69 filings.
- The total MDL for the Ninth Circuit increased from $114 billion in 2017 to $489 billion in 2018, more than three times the 1997–2017 average. See Appendix 8.

Core filings in the Ninth Circuit were the highest on record.

Figure 34: Filings by Circuit—Core Filings



Note: For more information, see Appendix 8.

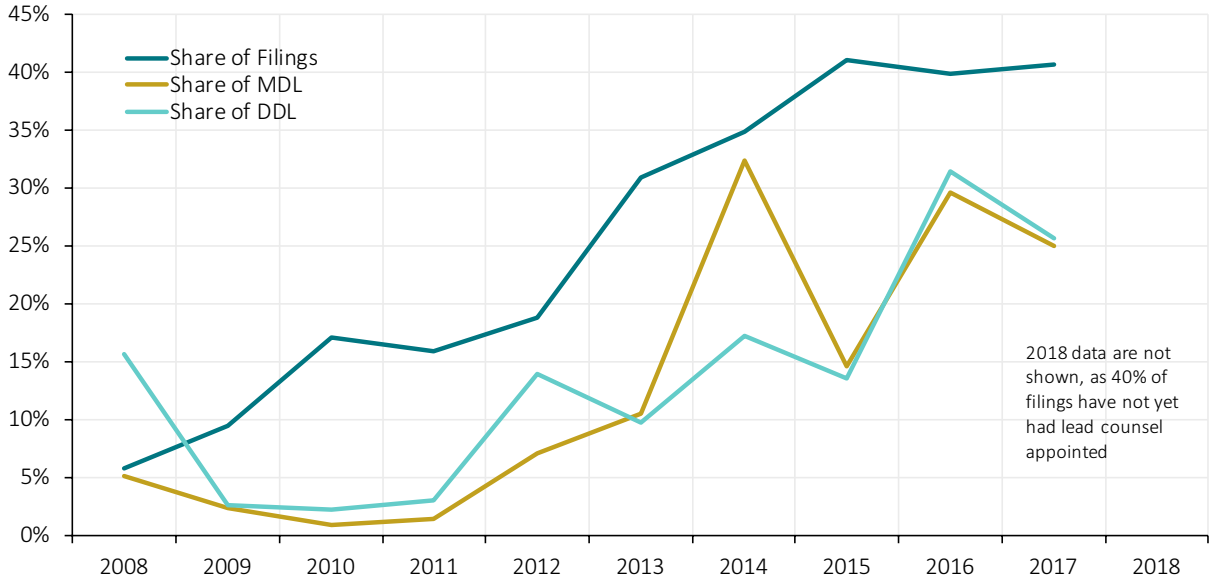
Appointment of Plaintiff Lead Counsel

This analysis focuses on three law firms—The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray LLP. While these three law firms have been responsible for the majority of first identified complaints in each cohort since 2014, their rate of appointment as lead or co-lead counsel has been lower.

- The percentage of cases for which these firms were appointed lead counsel remained essentially unchanged from 2016 to 2017.
- With the exception of 2008, these firms were typically appointed lead counsel for smaller cases (i.e., their share of filings exceeded their share of total MDL and DDL).
- These firms have been largely responsible for the declining median filing lag discussed on page 26 and for the increasing frequency of the appointment of individuals, rather than institutional investors, as lead plaintiff discussed on page 18.

From 2008 to 2017, three plaintiff law firms were increasingly appointed lead or co-lead plaintiff counsel in smaller-than-average-sized cases.

Figure 35: Frequency of Three Law Firms' Appointment as Lead or Co-lead Plaintiff Counsel—Core Filings 2008–2018



Frequency of These Firms as the Counsel of Record on the First Identified Complaint											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of Core Filings	22	23	26	35	40	66	83	104	122	127	119
% of Total Core Filings	10%	15%	19%	24%	29%	43%	54%	60%	66%	59%	54%

Note:

1. This analysis considers law firms that were appointed lead or co-lead counsel by the court. For filings in which the case was resolved prior to the appointment of lead counsel, the counsel listed on the first identified complaint (FIC) are considered the lead counsel.
2. Two percent of filings in 2016, 3 percent of filings in 2017, and 40 percent of filings in 2018 have not yet had lead counsel appointed.
3. The counts in the table include circumstances when the FIC includes one or any of these law firms, regardless of whether other plaintiff counsel are also listed on the complaint.

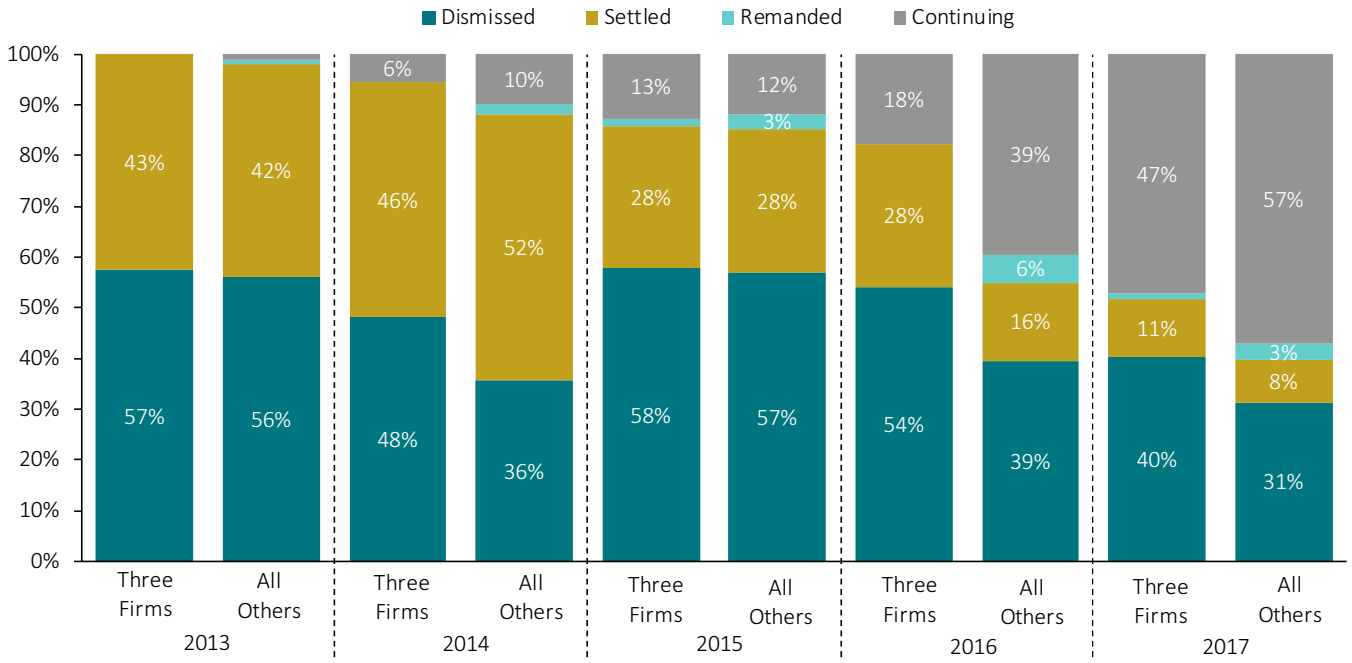
New: Case Status by Lead Plaintiff Counsel

This analysis examines the case outcomes for filings in which The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray LLP were appointed lead or co-lead counsel. The outcomes for these filings are compared with filings in which other plaintiff law firms are the lead counsel.

Class actions filed in 2016 and 2017 in which these three plaintiff law firms were appointed lead or co-lead counsel have preliminarily exhibited higher dismissal rates than other plaintiff law firms.

- From 2013 through 2017, these three firms have had 51 percent of their class actions dismissed compared to 43 percent for all other firms. However, a larger set of filings and more careful consideration of other factors such as circuit, court, industry, type of allegation, and other factors would be necessary to determine if these differences are statistically significant.
- Prior analysis of these three firms by Michael Klausner, Professor of Law at Stanford Law School, and Jason Hegland, Executive Director of Stanford Securities Litigation Analytics, indicated these firms had higher dismissal rates between 2006 and 2015 as well. See "Guest Post: Deeper Trends in Securities Class Actions 2006–2015," The D&O Diary, June 23, 2016.

Figure 36: Case Status by Plaintiff Law Firm Appointed Lead or Co-Lead Counsel—Core Filings 2013–2017



Note:

1. This analysis considers law firms that were appointed lead or co-lead counsel by the court. For filings in which the case was resolved prior to the appointment of lead counsel, the counsel listed on the first identified complaint (FIC) are considered the lead counsel.
2. Two percent of filings in 2016 and 3 percent of filings in 2017 have not yet had lead counsel appointed. These filings are not included in this analysis.
3. Percentages may not sum to 100 percent due to rounding.

New Developments

Initial Coin Offerings

The cryptocurrency and ICO markets emerged and grew rapidly in 2017, and began to cool down in 2018. This led to an increase in the number of class actions involving ICOs in 2018, concentrated in the first half of the year.

The Securities Class Action Clearinghouse identified nine ICO- or cryptocurrency-related filings in 2018, compared to five in 2017. Eight of the nine filings were in the first half of 2018. Some of these filings included Section 10(b), Section 12, and/or Section 5 claims.

The issue of whether or which federal laws govern ICOs has been litigated throughout the year.

In September 2018, a federal judge in New York ruled that a criminal case could proceed on the basis that the jury would decide if the ICO at issue was a security subject to federal criminal law. Later that month, a Massachusetts federal judge ruled that the U.S. Commodity Futures Trading Commission (CFTC) had authority to prosecute fraud involving virtual currencies.

SEC v. Blockvest LLC et al. addressed the question of whether the tokens offered during an ICO were unregistered securities. The Ninth Circuit on November 27, 2018, denied the SEC's preliminary injunction bid aimed at halting the ICO and ruled that the SEC had failed to demonstrate that the tokens were securities. This ruling marked the first court decision against the SEC's allegations that a token is a security.

Negligence Standard in M&A Claims

Varjabedian v. Emulex Corp. et al. addressed the question of whether investors must prove that the company intentionally engaged in wrongdoing when it misled shareholders or that they only needed to show that the company was being negligent to assert M&A claims under Section 14.

The case is now before the U.S. Supreme Court after an opinion split between the Ninth Circuit (which found that investors only need to show negligence rather than wrongdoing) and past rulings from five other circuits (which considered that claims under Section 14 must allege intent).

Administrative Law Judge Appointments

Lucia v. Securities and Exchange Commission was argued before the U.S. Supreme Court on April 23, 2018, and decided on June 21, 2018. At issue was the question of whether the administrative law judges (ALJs) of the SEC are Officers of the United States within the meaning of the Appointments Clause.

The Court ruled that ALJs are Officers of the United States subject to the Appointments Clause. This ruling answered the constitutional question raised by *Lucia* related to SEC ALJs, but left open the issue of how other cases adjudicated by improperly appointed ALJs should be handled in the future. In response, the SEC in August 2018 issued an order reappointing all ALJs and allowing new hearings before different ALJs for respondents in more than 120 matters.

See Cornerstone Research, *SEC Enforcement Activity: Public Companies and Subsidiaries—Fiscal Year 2018 Update*, for more information.

Glossary

Chinese reverse merger (CRM) filing is a securities class action against a China-headquartered company listed on a U.S. exchange as a result of a reverse merger with a public shell company. See Cornerstone Research, *Investigations and Litigation Related to Chinese Reverse Merger Companies*.

Class Action Filings Index® (CAF Index®) tracks the number of federal securities class action filings.

Class Action Filings Non-U.S. Index tracks the number of filings against non-U.S. issuers (companies headquartered outside the United States) relative to total filings, excluding M&A filings.

Cohort is the group of securities class actions all filed in a particular calendar year.

Core filings are all federal securities class actions excluding those defined as M&A filings.

Disclosure Dollar Loss Index® (DDL Index®) measures the aggregate DDL for all filings over a period of time. 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. DDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed at the end of the class period, including information unrelated to the litigation.

Filing lag is the number of days between the end of a class period and the filing date of the securities class action.

First identified complaint (FIC) is the first complaint filed of one or more securities class action complaints with the same underlying allegations filed against the same defendant or set of defendants.

Heat Maps of S&P 500 Securities Litigation™ analyze securities class action activity by industry sector. The analysis focuses on companies in the Standard & Poor's 500 (S&P 500) index, which comprises 500 large, publicly traded companies in all major sectors. Starting with the composition of the S&P 500 at the beginning of each year, the Heat Maps examine two questions for each sector: (1) What percentage of these companies were subject to new securities class actions in federal court during each calendar year? (2) What percentage of the total market capitalization of these companies was subject to new securities class actions in federal courts during each calendar year?

Market capitalization losses measure changes to market values of the companies subject to class action filings. This report tracks market capitalization losses for defendant firms during and at the end of class periods. They are calculated for publicly traded common equity securities, closed-ended mutual funds, and exchange-traded funds where data are available. Declines in market capitalization may be driven by market, industry, and/or firm-specific factors. To the extent that the observed losses reflect factors unrelated to the allegations in class action complaints, indices based on class period losses would not be representative of potential defendant exposure in class actions. This is especially relevant in the post-*Dura* securities litigation environment. In April 2005, the U.S. Supreme Court ruled that plaintiffs in a securities class action are required to plead a causal connection between alleged wrongdoing and subsequent shareholder losses. This report tracks market capitalization losses at the end of each class period using DDL, and market capitalization losses during each class period using MDL.

Maximum Dollar Loss Index® (MDL Index®) measures the aggregate MDL for all filings over a period of time. 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. MDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed during or at the end of the class period, including information unrelated to the litigation.

Mega filings include mega DDL filings, securities class action filings with a DDL of at least $5 billion; and mega MDL filings, securities class action filings with an MDL of at least $10 billion.

Merger and acquisition (M&A) filings are securities class actions that have Section 14 claims, but no Rule 10b-5, Section 11, or Section 12(2) claims, and involve merger and acquisition transactions.

Securities Class Action Clearinghouse is an authoritative source of data and analysis on the financial and economic characteristics of federal securities fraud class action litigation, cosponsored by Cornerstone Research and Stanford Law School.

State 1933 Act filing is a class action filed in a state court that asserts claims under Section 11 and/or Section 12 of the Securities Act of 1933. These filings may also have Section 15 claims, but do not have Rule 10b-5 claims.

Appendices

Appendix 1: Filings Basic Metrics

			Disclosure Dollar Loss			Maximum Dollar Loss			U.S. Exchange-Listed Firms: Core Filings		
Year	Class Action Filings	Core Filings	DDL Total ($ Billions)	Average ($ Millions)	Median ($ Millions)	MDL Total ($ Billions)	Average ($ Millions)	Median ($ Millions)	Number	Number of Listed Firms Sued	Percentage of Listed Firms Sued
1997	174	174	$42	$272	$57	$145	$940	$405	8,113	165	2.0%
1998	242	242	$80	$365	$61	$224	$1,018	$294	8,190	225	2.7%
1999	209	209	$140	$761	$101	$364	$1,978	$377	7,771	197	2.5%
2000	216	216	$240	$1,251	$119	$761	$3,961	$689	7,418	205	2.8%
2001	180	180	$198	$1,215	$93	$1,487	$9,120	$771	7,197	168	2.3%
2002	224	224	$201	$989	$136	$2,046	$10,080	$1,494	6,474	204	3.2%
2003	192	192	$77	$450	$100	$575	$3,363	$478	5,999	181	3.0%
2004	228	228	$144	$739	$108	$726	$3,722	$498	5,643	210	3.7%
2005	182	182	$93	$595	$154	$362	$2,321	$496	5,593	168	3.0%
2006	120	120	$52	$496	$109	$294	$2,827	$413	5,525	114	2.1%
2007	177	177	$158	$1,013	$156	$700	$4,489	$715	5,467	158	2.9%
2008	223	223	$221	$1,516	$208	$816	$5,591	$1,077	5,339	169	3.2%
2009	165	158	$84	$830	$138	$550	$5,447	$1,066	5,042	119	2.4%
2010	175	135	$73	$691	$146	$474	$4,515	$598	4,764	107	2.2%
2011	188	145	$115	$855	$92	$522	$3,894	$431	4,660	126	2.7%
2012	151	138	$97	$767	$151	$404	$3,183	$659	4,529	116	2.6%
2013	165	152	$104	$750	$153	$278	$2,011	$532	4,411	137	3.1%
2014	168	155	$56	$384	$168	$213	$1,460	$528	4,416	142	3.2%
2015	207	173	$118	$702	$145	$387	$2,305	$502	4,578	164	3.6%
2016	271	186	$107	$603	$195	$804	$4,541	$1,155	4,593	176	3.8%
2017	412	214	$131	$667	$148	$521	$2,657	$658	4,411	187	4.2%
2018	403	221	$330	$1,657	$327	$1,311	$6,590	$1,144	4,406	197	4.5%
Average (1997–2017)	203	182	$120	$758	$130	$602	$3,782	$659	5,721	164	2.9%

Note:

1. Average and median numbers are calculated only for filings with MDL and DDL data. Filings without MDL and DDL data include M&A-only filings, ICO filings, and other filings where calculations of MDL and DDL are non-obvious.
2. The number and percentage of U.S. exchange-listed firms sued are based on core filings.

Appendix 2A: S&P 500 Securities Litigation—Percentage of S&P 500 Companies Subject to Core Filings

Year	Consumer Discretionary	Consumer Staples	Energy / Materials	Financials / Real Estate	Health Care	Industrials	Telecom / IT	Utilities	All S&P 500 Companies
2001	2.4%	8.3%	0.0%	1.4%	7.1%	0.0%	18.0%	7.9%	5.6%
2002	10.2%	2.9%	3.1%	16.7%	15.2%	6.0%	11.0%	40.5%	12.0%
2003	4.6%	2.9%	1.7%	8.6%	10.4%	3.0%	5.6%	2.8%	5.2%
2004	3.4%	2.7%	1.8%	19.3%	10.6%	8.5%	3.2%	5.7%	7.2%
2005	10.3%	8.6%	1.7%	7.3%	10.7%	1.8%	6.7%	3.0%	6.6%
2006	4.4%	2.8%	0.0%	2.4%	6.9%	0.0%	8.1%	0.0%	3.6%
2007	5.7%	0.0%	0.0%	10.3%	12.7%	5.8%	2.3%	3.1%	5.4%
2008	4.5%	2.6%	0.0%	31.2%	13.7%	3.6%	2.5%	3.2%	9.2%
2009	3.8%	4.9%	1.5%	10.7%	3.7%	6.9%	1.2%	0.0%	4.4%
2010	5.1%	0.0%	4.3%	10.3%	13.5%	0.0%	2.4%	0.0%	4.8%
2011	3.8%	2.4%	0.0%	1.2%	2.0%	1.7%	7.1%	2.9%	2.8%
2012	4.9%	2.4%	2.7%	3.7%	1.9%	1.6%	3.8%	0.0%	3.0%
2013	8.4%	0.0%	0.0%	0.0%	5.7%	0.0%	9.1%	0.0%	3.4%
2014	1.2%	0.0%	1.3%	1.2%	0.0%	4.7%	0.0%	0.0%	1.2%
2015	0.0%	5.0%	0.0%	1.2%	1.9%	0.0%	4.2%	3.4%	1.6%
2016	3.6%	2.6%	4.5%	6.9%	17.9%	6.1%	6.8%	3.4%	6.6%
2017	8.5%	2.7%	3.3%	3.3%	8.3%	8.7%	8.5%	7.1%	6.4%
2018	10.0%	11.8%	1.8%	7.0%	16.1%	8.8%	12.7%	7.1%	9.4%
Average 2001–2017	5.0%	2.9%	1.5%	8.1%	8.3%	3.5%	6.0%	5.2%	5.2%

Appendix 2B: S&P 500 Securities Litigation—Percentage of Market Capitalization of S&P 500 Companies Subject to Core Filings

Year	Consumer Discretionary	Consumer Staples	Energy / Materials	Financials / Real Estate	Health Care	Industrials	Telecom / IT	Utilities	All S&P 500 Companies
2001	1.3%	6.3%	0.0%	0.8%	5.4%	0.0%	32.6%	17.4%	10.9%
2002	24.7%	0.3%	1.2%	29.2%	35.2%	13.3%	9.1%	51.0%	18.8%
2003	2.0%	2.3%	0.4%	19.9%	16.3%	4.6%	1.7%	4.3%	8.0%
2004	7.9%	0.1%	29.7%	46.1%	24.1%	8.8%	1.2%	4.8%	17.7%
2005	5.7%	11.4%	1.6%	22.2%	10.1%	5.6%	10.3%	5.6%	10.7%
2006	8.9%	0.8%	0.0%	8.2%	18.1%	0.0%	8.3%	0.0%	6.7%
2007	4.4%	0.0%	0.0%	18.1%	22.5%	2.2%	3.4%	5.5%	8.2%
2008	7.2%	2.6%	0.0%	55.0%	20.0%	26.4%	1.4%	4.0%	16.2%
2009	1.9%	3.9%	0.8%	31.2%	1.7%	23.2%	0.3%	0.0%	7.7%
2010	4.9%	0.0%	5.2%	31.1%	32.7%	0.0%	5.9%	0.0%	11.1%
2011	4.6%	0.8%	0.0%	6.9%	0.7%	2.1%	13.4%	0.6%	5.0%
2012	1.6%	14.0%	0.9%	11.0%	0.8%	1.2%	2.2%	0.0%	4.3%
2013	4.4%	0.0%	0.0%	0.0%	4.4%	0.0%	16.6%	0.0%	4.7%
2014	2.5%	0.0%	0.2%	0.3%	0.0%	1.7%	0.0%	0.0%	0.6%
2015	0.0%	1.9%	0.0%	3.0%	3.1%	0.0%	7.0%	3.7%	2.8%
2016	2.8%	1.0%	19.8%	11.9%	13.2%	8.7%	12.3%	4.4%	10.0%
2017	8.2%	6.7%	2.3%	1.5%	2.7%	22.3%	4.4%	9.6%	6.1%
2018	4.7%	15.2%	1.4%	12.5%	26.3%	19.4%	19.4%	6.5%	14.9%
Average 2001–2017	5.3%	3.1%	3.0%	15.5%	11.4%	7.2%	8.2%	5.9%	8.2%

Note: Average figures are calculated as the sum of the market capitalization subject to core filings in a given sector from 2001–2017, divided by the sum of market capitalization in that sector from 2001–2017.

Appendix 3: M&A Filings Overview

		M&A Case Status				Case Status of All Other Filings			
Year	M&A Filings	Dismissed	Settled	Remanded	Continuing	Dismissed	Settled	Remanded	Continuing
2009	7	5	2	0	0	84	71	0	3
2010	40	34	6	0	0	68	65	1	1
2011	43	40	3	0	0	67	73	1	4
2012	13	9	4	0	0	69	62	2	5
2013	13	7	6	0	0	86	64	1	1
2014	13	10	3	0	0	62	78	2	13
2015	34	26	7	0	1	99	49	4	21
2016	85	67	12	0	6	83	38	6	59
2017	198	187	3	1	7	73	20	5	116
2018	182	125	1	0	56	23	0	0	198
Average (2009–2017)	50	43	5	0	2	77	58	2	25

Note:
1. The Securities Class Action Clearinghouse began tracking M&A filings as a separate category in 2009.
2. Case status is as of the end of 2018.

Appendix 4: Case Status by Year—Core Filings

	In the First Year				In the Second Year				In the Third Year			
Filing Year	Settled	Dismissed	Trial	Total Resolved	Settled	Dismissed	Trial	Total Resolved	Settled	Dismissed	Trial	Total Resolved within Three Years
1997	0.0%	7.5%	0.6%	8.0%	14.9%	8.6%	0.0%	31.6%	16.7%	4.0%	0.0%	52.3%
1998	0.8%	7.9%	0.0%	8.7%	16.1%	12.0%	0.0%	36.8%	16.1%	8.3%	0.0%	61.2%
1999	0.5%	7.2%	0.0%	7.7%	11.0%	11.5%	0.0%	30.1%	18.2%	9.1%	0.0%	57.4%
2000	1.9%	4.2%	0.0%	6.0%	11.6%	13.0%	0.0%	30.6%	15.7%	10.6%	0.5%	57.4%
2001	1.7%	6.7%	0.0%	8.3%	11.7%	10.6%	0.0%	30.6%	18.3%	5.0%	0.0%	53.9%
2002	0.9%	5.8%	0.4%	7.1%	6.7%	9.4%	0.0%	23.2%	15.2%	11.6%	0.0%	50.0%
2003	0.5%	7.8%	0.0%	8.3%	7.8%	13.5%	0.0%	29.7%	14.6%	14.6%	0.0%	58.9%
2004	0.0%	10.5%	0.0%	10.5%	9.6%	16.2%	0.0%	36.4%	12.3%	9.6%	0.0%	58.3%
2005	0.5%	11.5%	0.0%	12.1%	8.2%	20.3%	0.0%	40.7%	17.6%	8.8%	0.0%	67.0%
2006	0.8%	9.2%	0.0%	10.0%	8.3%	16.7%	0.0%	35.0%	14.2%	6.7%	0.0%	55.8%
2007	0.6%	6.8%	0.0%	7.3%	7.9%	13.6%	0.0%	28.8%	17.5%	14.1%	0.0%	60.5%
2008	0.0%	13.0%	0.0%	13.0%	3.6%	18.4%	0.0%	35.0%	9.9%	11.2%	0.0%	56.1%
2009	0.0%	10.1%	0.0%	10.1%	4.4%	19.6%	0.0%	34.2%	8.2%	6.3%	0.0%	48.7%
2010	1.5%	11.1%	0.0%	12.6%	7.4%	15.6%	0.0%	35.6%	3.7%	14.8%	0.0%	54.1%
2011	0.0%	11.7%	0.0%	11.7%	2.8%	15.9%	0.0%	30.3%	18.6%	12.4%	0.0%	61.4%
2012	0.7%	12.3%	0.0%	13.0%	4.3%	22.5%	0.0%	39.9%	8.7%	10.1%	0.0%	58.7%
2013	0.0%	17.1%	0.0%	17.1%	5.3%	19.7%	0.0%	42.1%	9.2%	9.9%	0.0%	61.2%
2014	0.6%	7.7%	0.0%	8.4%	5.2%	18.7%	0.0%	32.3%	9.7%	9.7%	0.0%	51.6%
2015	0.0%	13.9%	0.0%	13.9%	2.3%	22.0%	0.0%	38.2%	15.6%	12.1%	0.0%	65.9%
2016	0.0%	12.9%	0.0%	12.9%	6.5%	22.0%	0.0%	41.4%	14.0%	9.7%	0.0%	65.1%
2017	0.5%	20.6%	0.0%	21.0%	8.9%	13.6%	0.0%	43.5%	-	-	-	-
2018	0.0%	10.4%	0.0%	10.4%	-	-	-	-	-	-	-	-

Note: Percentages may not sum due to rounding. Percentages below the dashed lines indicate cohorts for which data are not complete.

Appendix 5: 1933 Act Filings in State Courts and Federal Section 11–Only Filings Overview

	1933 Act Filings in State Courts			Status of 1933 Act Filings in State Courts			Status of Federal Section 11–Only Filings		
Year	California	New York	Other	Ongoing	Settled	Dismissed	Ongoing	Settled	Dismissed
2010	1	0	0	0	1	0	0	8	9
2011	3	0	0	0	1	2	0	4	5
2012	5	0	2	0	3	3	0	6	3
2013	1	0	0	0	1	0	0	2	5
2014	5	0	1	0	5	1	1	4	4
2015	15	0	2	0	10	6	0	4	5
2016	19	0	8	8	9	8	1	2	2
2017	7	0	6	8	1	3	5	2	3
2018	16	13	4	31	0	0	13	0	1
Average (2010–2017)	7	0	2	2	4	3	1	4	5

Note: If a matter is remanded from federal court to a state court, it is recorded in the state court column based on its state court disposition. Alternatively, if a matter is removed from a state court to federal court, it is recorded in the federal court column based on its federal court disposition.

Appendix 6: Litigation Exposure for IPOs in the Given Periods—Core Filings

	Cumulative Exposure			Incremental Exposure		
Years Since IPO	2009–2017	2001–2008	1996–2000	2009–2017	2001–2008	1996–2000
1	6.5%	5.4%	2.2%	6.5%	5.4%	2.2%
2	11.9%	9.0%	6.6%	5.4%	3.6%	4.4%
3	16.0%	11.9%	9.7%	4.2%	2.8%	3.2%
4	19.5%	14.5%	12.6%	3.5%	2.6%	2.9%
5	22.1%	16.4%	16.2%	2.6%	1.9%	3.6%
6	23.3%	18.4%	18.6%	1.3%	2.0%	2.4%
7	24.4%	20.7%	21.2%	1.1%	2.2%	2.6%
8	-	23.1%	23.6%	-	2.4%	2.4%
9	-	24.7%	26.2%	-	1.7%	2.6%
10	-	27.1%	28.1%	-	2.3%	1.8%

Note:

1. The post-crisis IPO cumulative litigation exposure is not presented for eight to 10 years after the IPO due to limited data for cohorts with an IPO date toward the end of this period. 1933 Act filings that are exclusively in the state courts have not yet been incorporated into this analysis.
2. Cumulative litigation exposure correcting for survivorship bias is calculated using the following formula:

$$\left(\text{cumulative litigation exposure in year } t\right) = 1 - \prod_{i=1}^{t}\left(1 - p_i\right), \text{ where:}$$

$$p_i = \frac{\text{number of companies sued in year } i}{\text{number of companies surviving at the end of year } \left(i-1\right)}$$

Appendix 7: Filings by Industry—Core Filings

(Dollars in Billions)

	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
Industry	Average 1997–2017	2016	2017	2018	Average 1997–2017	2016	2017	2018	Average 1997–2017	2016	2017	2018
Financial	32	22	20	19	$19	$20	$14	$25	$110	$169	$48	$138
Consumer Non-Cyclical	49	85	85	68	$36	$38	$42	$104	$136	$326	$165	$435
Industrial	17	16	26	20	$12	$18	$26	$28	$39	$77	$85	$240
Technology	23	15	14	22	$17	$12	$8	$65	$77	$33	$58	$150
Consumer Cyclical	20	16	22	29	$9	$5	$15	$28	$50	$41	$84	$120
Communications	27	9	18	28	$21	$1	$13	$65	$146	$49	$37	$166
Energy	7	8	9	7	$4	$11	$5	$1	$23	$56	$20	$4
Basic Materials	5	8	11	8	$2	$2	$7	$10	$14	$51	$17	$33
Utilities	3	1	2	3	$1	$0	$1	$3	$8	$2	$8	$25
Unknown/ Unclassified	1	6	7	17	$0	$0	$0	$0	$0	$1	$0	$2
Total	182	186	214	221	$120	$107	$131	$330	$602	$804	$521	$1,311

Note: Figures may not sum due to rounding.

Appendix 8: Filings by Circuit—Core Filings

	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
Circuit	Average 1997–2017	2016	2017	2018	Average 1997–2017	2016	2017	2018	Average 1997–2017	2016	2017	2018
1st	9	8	10	6	$8	$3	$1	$3	$21	$7	$6	$18
2nd	49	59	75	71	$40	$16	$46	$88	$216	$247	$161	$494
3rd	16	17	35	26	$16	$7	$27	$44	$61	$44	$106	$190
4th	6	4	7	3	$2	$2	$5	$3	$12	$3	$17	$11
5th	11	8	8	11	$7	$11	$4	$3	$37	$55	$16	$11
6th	8	8	7	4	$7	$6	$4	$6	$27	$24	$36	$19
7th	8	7	4	13	$7	$15	$3	$11	$27	$62	$20	$50
8th	6	2	1	3	$3	$2	$0	$2	$13	$13	$0	$7
9th	47	61	45	69	$22	$43	$31	$162	$151	$331	$114	$489
10th	6	5	7	6	$3	$0	$2	$2	$13	$11	$14	$9
11th	14	7	14	9	$5	$2	$8	$5	$22	$6	$20	$14
D.C.	1	0	1	0	$1	$0	$0	$0	$3	$0	$11	$0
Total	182	186	214	221	$120	$107	$131	$330	$602	$804	$521	$1,311

Note: Figures may not sum due to rounding.

Appendix 9: Filings by Exchange Listing—Core Filings

	Average (1997–2017)		2017		2018	
	NYSE/Amex	Nasdaq	NYSE	Nasdaq	NYSE	Nasdaq
Class Action Filings	83	104	159	223	158	216
Core Filings	74	92	81	111	88	111
Disclosure Dollar Loss						
DDL Total ($ Billions)	$84	$36	$84	$46	$168	$152
Average ($ Millions)	$1,227	$407	$1,053	$424	$1,972	$1,418
Median ($ Millions)	$258	$97	$387	$105	$587	$285
Maximum Dollar Loss						
MDL Total ($ Billions)	$403	$197	$324	$196	$814	$458
Average ($ Millions)	$5,959	$2,167	$4,054	$1,794	$9,580	$4,284
Median ($ Millions)	$1,302	$451	$1,528	$415	$2,226	$901

Note:
1. Average and median numbers are calculated only for filings with MDL and DDL data.
2. NYSE/Amex was renamed NYSE MKT in May 2012.

Research Sample

- The Stanford Law School Securities Class Action Clearinghouse, in collaboration with Cornerstone Research, has identified 5,188 federal securities class action filings between January 1, 1996, and December 31, 2018 (securities.stanford.edu). The analysis in this report is based on data identified by Stanford as of January 11, 2019.
- The sample used in this report includes federal filings that typically allege violations of the Securities Act of 1933 Section 11, the Securities Exchange Act of 1934 Section 10b, Section 12(a) (registration requirements), or Section 14(a) (proxy solicitation requirements).
- The sample is referred to as the "classic filings" sample and excludes IPO allocation, analyst, and mutual fund filings (313, 68, and 25 filings, respectively).
- Multiple filings related to the same allegations against the same defendant(s) are consolidated in the database through a unique record indexed to the first identified complaint.
- In addition to federal filings, class actions filed in state courts since January 1, 2010, alleging violations of the Securities Act of 1933 are also separately tracked.
- An additional 108 state class action filings in state courts from January 1, 2010, to December 31, 2018, have also been identified.

The authors request that you reference Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse in any reprint of the information or figures included in this study.

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Exhibit 8

NERA
ECONOMIC CONSULTING

29 January 2019

Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth
Average Case Size Surges to Record High
Settlement Values Rebound from Near-Record Lows

By Stefan Boettrich and Svetlana Starykh

Insight in Economics™

Foreword

I am excited to share NERA's *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* with you. This year's edition builds on work carried out over numerous years by many members of NERA's Securities and Finance Practice. In this year's report, we continue our analyses of trends in filings and settlements and present new analyses, such as how post-class-period stock price movements relate to voluntary dismissals. While space does not permit us to present all the analyses the authors have undertaken while working on this year's edition, or to provide details on the statistical analysis of settlement amounts, we hope you will contact us if you want to learn more about our work related to securities litigation. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director

Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review

Record Pace of Filings, Despite Slower Merger-Objection Growth
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29 January 2019

Introduction and Summary[2]

In 2018, the pace of securities class action filings was the highest since the aftermath of the 2000 dot-com crash, with 441 new cases. While merger objections constituted about half the total, filing growth of such cases slowed versus 2017, indicating that the explosion in filings sparked by the *Trulia* decision may have run its course.[3] Filings alleging violations of Rule 10b-5, Section 11, and/or Section 12 of the Securities Act of 1933 ("Securities Act") were roughly unchanged compared to 2017, but accelerated over the second half of the year, with the fourth quarter being one of the busiest on record.

The steady pace of new securities class actions masked fundamental changes in filing characteristics. Aggregate NERA-defined Investor Losses, a measure of total case size, came to a record $939 billion, nearly four times the preceding five-year average. Even excluding substantial litigation against General Electric (GE), aggregate Investor Losses doubled versus 2017. Most growth in Investor Losses stemmed from cases alleging issues with accounting, earnings, or firm performance, contrasting with prior years when most growth was tied to regulatory allegations. Filings against technology firms jumped nearly 70% from 2017, primarily due to cases alleging accounting issues or missed earnings guidance.

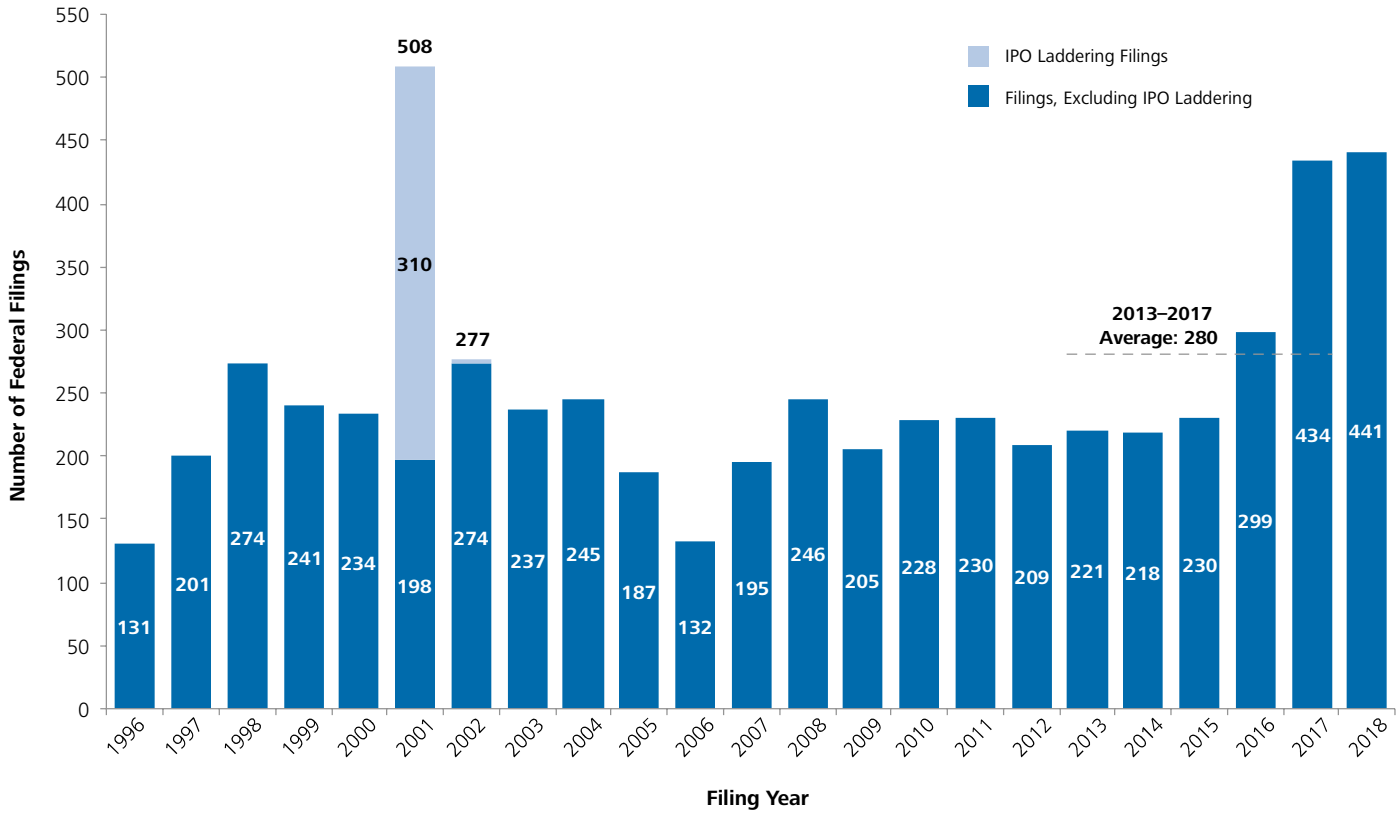
The average settlement value rebounded from the 2017 near-record low, mostly due to the $3 billion settlement against Petróleo Brasileiro S.A.—Petrobras. The median settlement nearly doubled, primarily due to higher settlements of many moderately sized cases. Despite a rebound in settlement values in 2018, the number of settlements remained low, with dismissals outnumbering settlements more than two-to-one. An adverse number of cases were voluntarily dismissed, which can partially be explained by positive returns of targeted securities during the PSLRA bounce-back periods. The robust rate of case resolutions has not kept up with the record filing rate, driving pending litigation up more than 6%.

Trends in Filings

Number of Cases Filed

There were 441 federal securities class actions filed in 2018, the fourth consecutive year of growth (see Figure 1). The filing rate was the highest since passage of the PSLRA, with the exception of 2001 when new IPO laddering cases dominated federal dockets. The dramatic year-over-year growth seen in each of the past few years resulted in a near doubling of filings since 2015, but growth moderated considerably in 2018 to 1.6%. The 2018 filing rate is well above the post-PSLRA average of approximately 253 cases per year, and solidifies a departure from the generally stable filing rate in the years following the 2008 financial crisis.

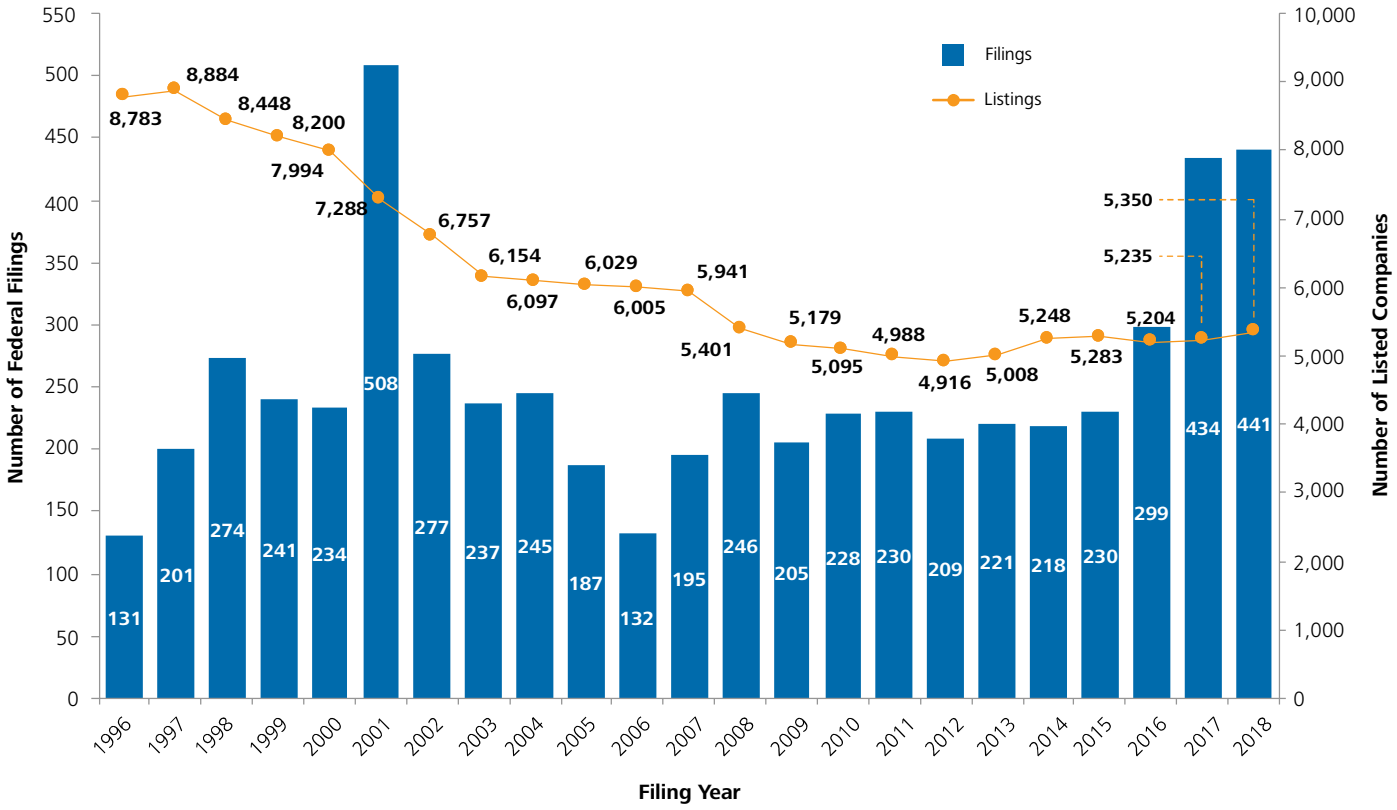
Figure 1. **Federal Filings**
January 1996–December 2018



As of November 2018, there were 5,350 companies listed on the major US securities exchanges (see Figure 2). The 441 federal securities class action suits filed in 2018 involved approximately 8.2% of publicly listed companies. The overall risk of litigation to listed firms has increased substantially since early in the decade, when only about 4.0% of public companies listed on US exchanges were subject to a securities class action.

Broadly, the chance of a publicly listed company being subject to securities litigation depends on the number of filings relative to the number of listed companies. While the number of listed companies has increased by 7% over the last five years, the longer-term trend is toward fewer listings. Since the passage of the PSLRA in 1995, the number of listings on major US exchanges has steadily declined by about 3,000, or nearly 40%. Recent research attributed this decline to fewer new listings and an increase in delistings, mostly through mergers and acquisitions.[4]

Figure 2. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2018



Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data from 2016 through 2018 were obtained from World Federation of Exchanges (WFE). The 2018 listings data is as of November 2018. Data for prior years was obtained from Meridian Securities Markets and WFE.

Despite the long-term drop in the number of listed companies, the average number of securities class action filings has *increased* from 216 per year over the first five years after the PSLRA to about 324 per year over the past five years. The long-term trend toward fewer listed companies coupled with more class actions implies that the average probability of a listed firm being subject to such litigation has increased from about 2.6% after passage of the PSLRA to 3.7% over the past five years, and 8.0% over the past two years.

Recently, the rising average risk of class action litigation was driven by dramatic growth in merger-objection cases that, prior to 2016, were mostly filed in various state courts. Since then, state court rulings have driven such litigation onto federal dockets. Hence the increase in the typical firm's litigation risk might be less than indicated above, since 1) the risk of merger-objection litigation is specific to firms planning or engaged in M&A activity and 2) many merger-objection cases would otherwise have been filed in state courts.

The average probability of a firm being targeted by what is often regarded as a "Standard" securities class action—one that alleges violations of Rule 10b-5, Section 11, and/or Section 12—was only 4.0% in 2018, albeit higher than the average probability of about 2.6% following the PSLRA and 3.5% between 2013 and 2017.

Filings by Type

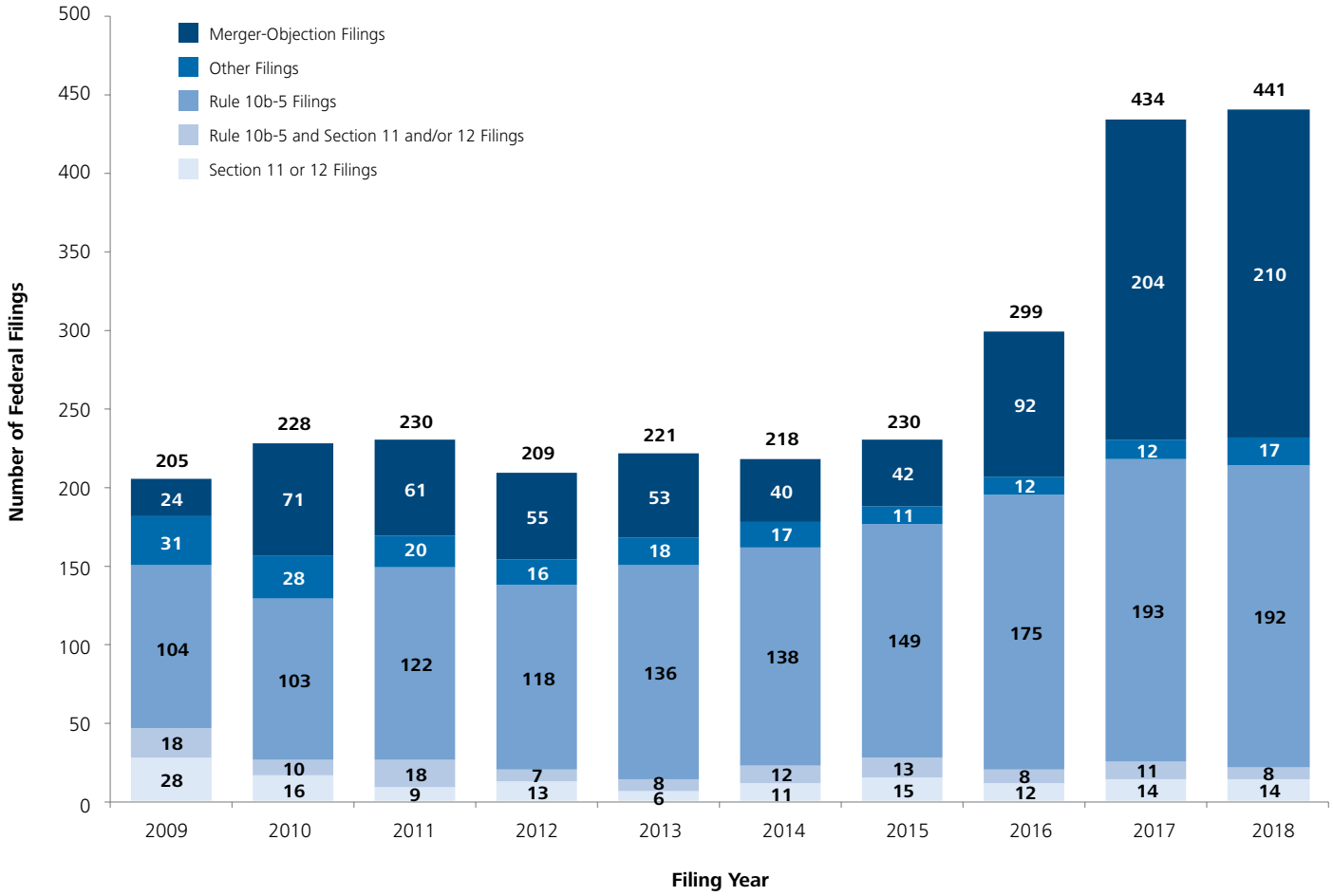
In 2018, the 441 securities class action filings were about evenly split between Standard securities class actions and merger objections, roughly matching the number seen in 2017 (see Figure 3). There were 214 Standard securities cases filed, down slightly from 2017. Prior to 2018, Standard filings grew for five consecutive years, the longest expansion on record, and by over 50% since 2013. Despite the slowdown in 2018, monthly filing growth over the second half of the year was robust, and capped by 64 filings in the fourth quarter, one of the busiest quarters on record.

Despite the 210 merger-objection filings in 2018 making up about half of all filings, yearly filing growth of such cases slowed to almost zero, as the number of filings roughly matched the level seen in 2017. The tepid filing growth implies that the rapid growth following various state-level decisions limiting "disclosure-only" settlements (including the *Trulia* decision) has likely run its course.[5] Rather, the stagnant growth in federal merger-objection filings was likely driven by relatively stagnant M&A activity.[6]

Although aggregate merger-objection filings (including those at the state level) may correspond with the rate of mergers and acquisitions, such deal activity does not appear to have historically been the primary driver of federal merger-objection filings over multiple years. The number of federal merger-objection filings generally fell between 2010 and 2015, despite increased M&A activity. The higher filing counts in 2016 and 2017 likely stemmed from trends in the choice of jurisdiction rather than trends in deal volume.[5]

Besides Standard and merger-objection cases, a variety of other filings rounded out 2018. Several filings alleged fraudulent initial coin and cryptocurrency offerings, manipulation of derivatives (e.g., VIX products and metals futures), and breaches of fiduciary duty (including client-broker disputes involving churning and improper asset allocation).

Figure 3. **Federal Filings by Type**
January 2009–December 2018



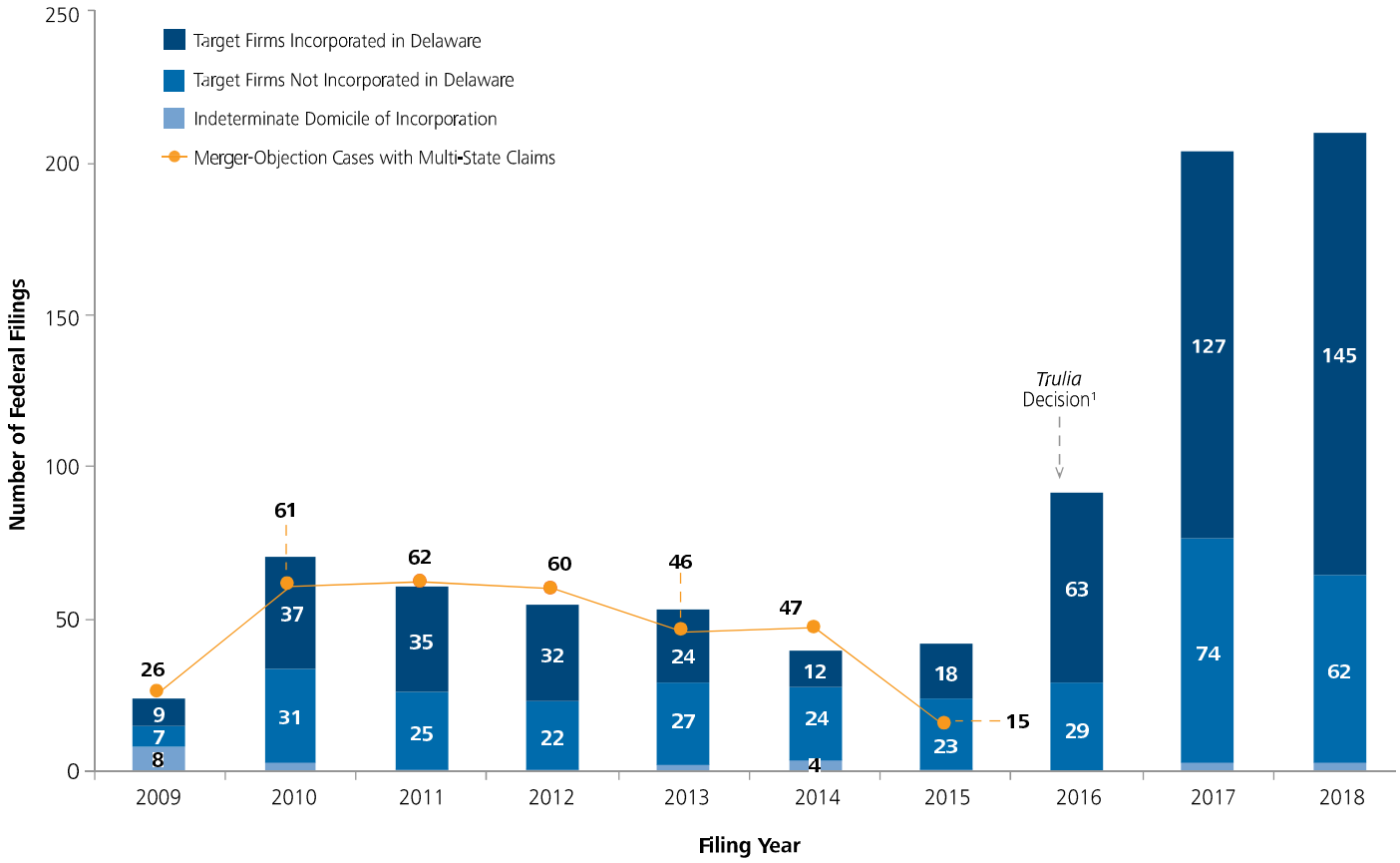
Merger-Objection Filings

In 2018, federal merger-objection filings were relatively unchanged versus 2017 (see Figure 4). Growth in federal merger-objection filings in 2016 and 2017 largely followed various state court rulings barring disclosure-only settlements, the most notable being the 22 January 2016 *Trulia* decision in the Delaware Court of Chancery.[7] Research suggested that such state court decisions would simply drive merger objections to alternative jurisdictions, such as federal courts.[8] This has largely been borne out thus far.

The dramatic slowdown in merger-objection filings growth implies that plaintiff forum selection is less of a growth factor; in 2018 and going forward, merger and acquisition activity will likely be the primary driver of federal merger-objection litigation. This assumes, however, that corporations don't increasingly adopt forum selection bylaws, and that federal courts don't increasingly follow the Delaware Court of Chancery's lead on rejecting disclosure-only settlements.[9] For instance, after the Seventh Circuit ruled strongly against a disclosure-only settlement in *In re: Walgreen Co. Stockholder Litigation*, the proportion of merger objections filed in that circuit fell by more than 60% the following year.[10]

Federal merger-objection filings typically allege a violation of Section 14(a), 14(d), and/or 14(e) of the Securities Exchange Act of 1934, and/or a breach of fiduciary duty by managers of a firm being acquired. Such filings are frequently voluntarily dismissed.

Figure 4. **Federal Merger-Objection Cases and Merger-Objection Cases with Multi-State Claims**
January 2009–December 2018



Notes: Counts of merger-objection cases with multi-state claims based on data obtained from Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016. Data on multi-state claims unavailable for 2016–2018. State of incorporation obtained from the Securities and Exchange Commission.
[1] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

Filings Targeting Foreign Companies

Foreign companies with securities listed on US exchanges have been disproportionately targeted in Standard securities class actions since 2010 (see Figure 5).[11] In 2018, foreign companies were targeted in about 25% fewer cases than in 2017, and in only about 20% of complaints, just above the share of listings. This contrasts with persistent growth in foreign firm exposure to securities litigation over the preceding four years.

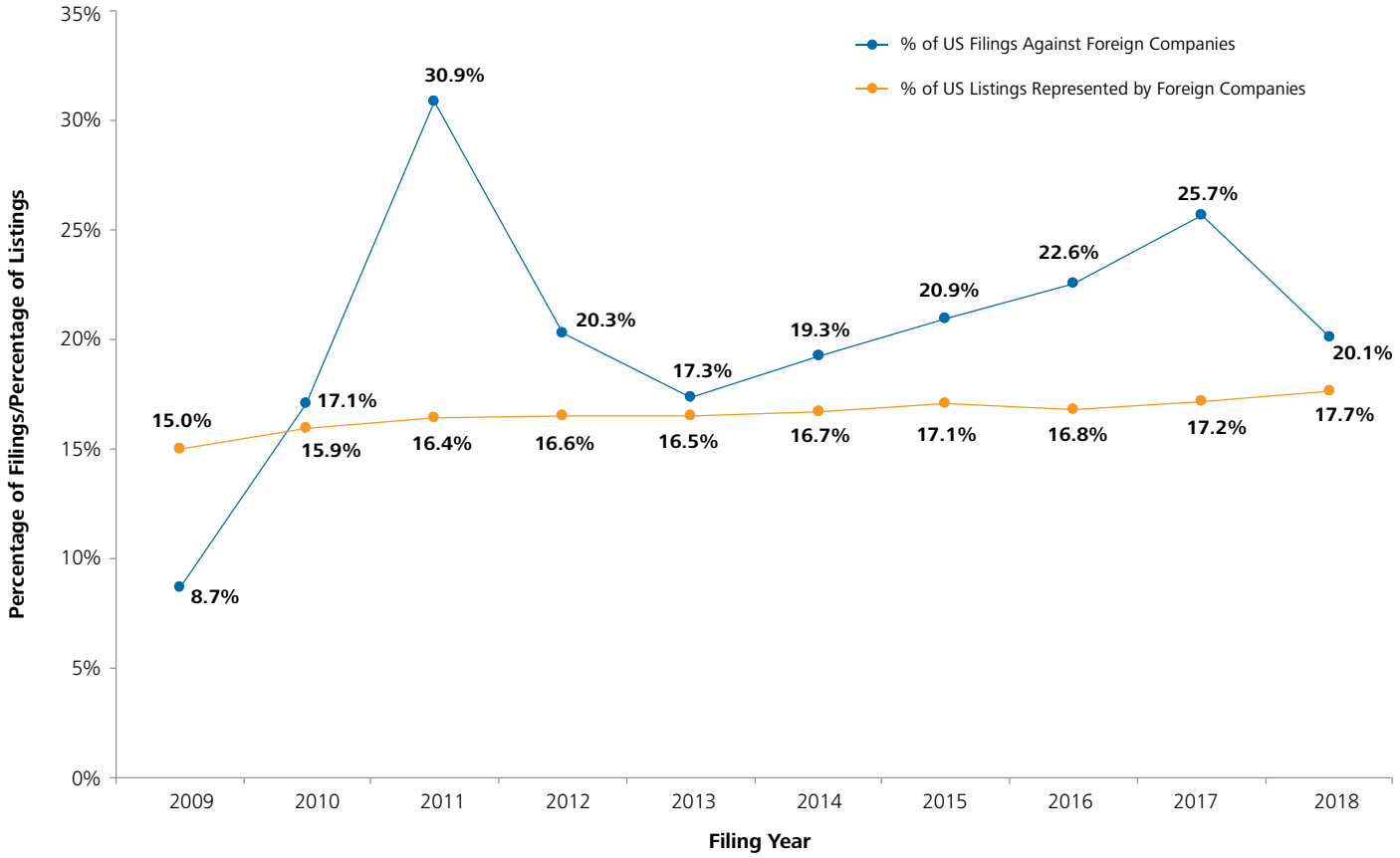
The reversion in claims against foreign firms mirrors a wider slowdown in filings with regulatory allegations. Over the last few years, growth in regulatory filings explained much of the growth in foreign filings, with 50% to 80% of new foreign cases including such allegations. That trend has reversed; in 2018, 75% of the drop in foreign filings stemmed from fewer claims related to regulation.

The slowdown in foreign regulatory filings can also be tied to fewer complaints in 2018 alleging similar regulatory violations, which adversely targeted foreign firms and particularly those domiciled in Europe. For instance, in 2017 there were multiple filings related to pharmaceutical price fixing, emissions defeat devices, and financing schemes by Kalani Investments Limited.

Filings against foreign companies spanned several economic sectors, led by a considerable jump against firms in the Electronic Technology and Technology Services sector (accounting issues were most common). Filings against foreign companies in the Health Technology and Services sector dropped by half. In past years, such filings usually claimed regulatory violations; none did in 2018.

In 2011, a record 31% of filings targeted foreign companies, mostly due to a surge in litigation against Chinese companies, which was mainly related to a proliferation in so-called "reverse mergers" years earlier. A reverse merger is a merger in which a private company merges with a publicly traded company listed in the US, thereby enabling access to US capital markets without going through the process of obtaining a new listing.

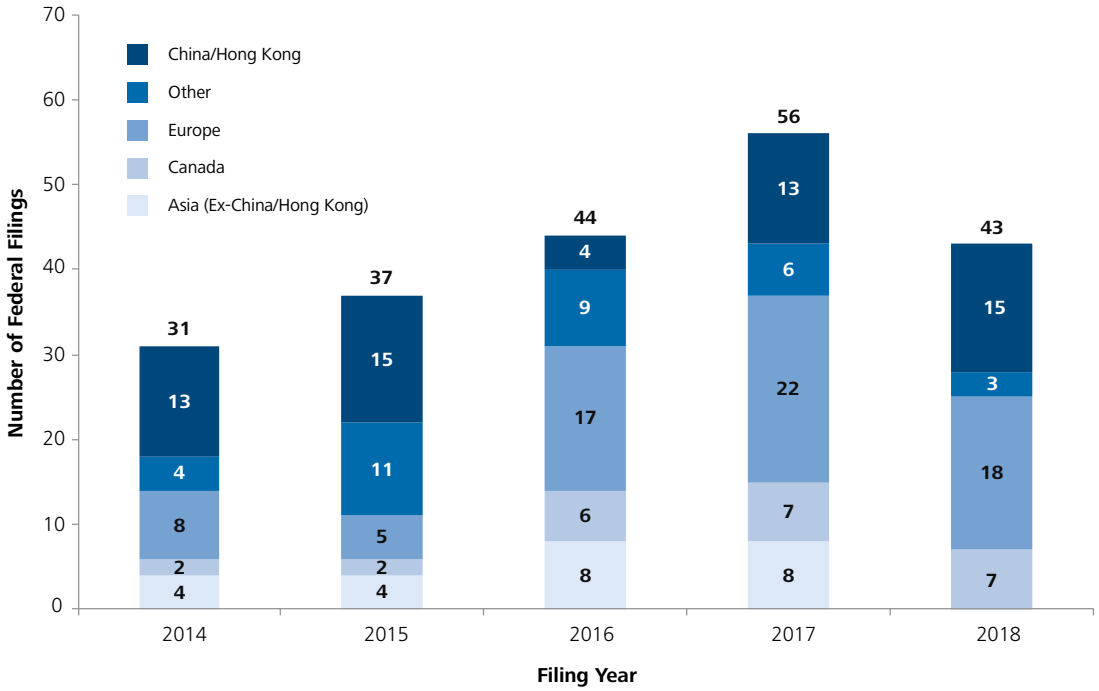
Figure 5. **Foreign Companies: Share of Filings and Share of Companies Listed on US Exchanges**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2009–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

Internationally, only Chinese firms listed on US exchanges were subject to more securities class actions in 2018 than in 2017 (see Figure 6). Filings against European firms slowed, partially due to fewer regulatory filings. There were zero filings against Israeli companies, despite an increase in listings and litigation against such companies in previous years.

Figure 6. **Filings Against Foreign Companies**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12 by Region
January 2014–December 2018



Note: Foreign issuer status determined based on location of principal executive offices.

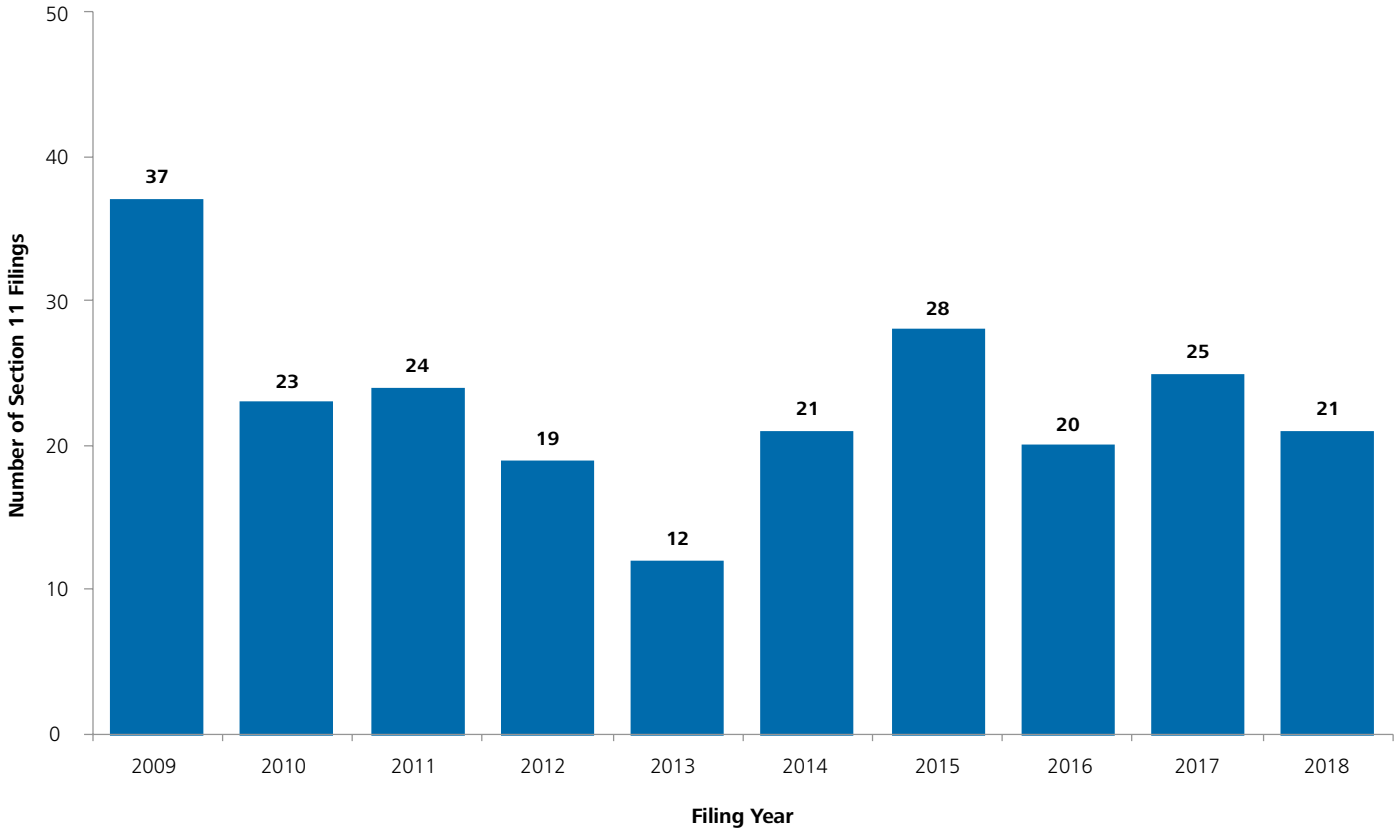
Section 11 Filings

There were 21 federal filings alleging violations of Section 11 in 2018, which approximates the five-year average (see Figure 7).

On 20 March 2018, the US Supreme Court ruled in *Cyan, Inc. v. Beaver County Employees Retirement Fund* that state courts have jurisdiction over class actions with claims brought under the Securities Act.[12] The ruling allows plaintiffs to litigate Section 11 claims in state courts, including plaintiff-friendly California state courts.

The full effect of the *Cyan* decision on federal filing trends remains to be seen, but of the 21 Section 11 filings in 2018, 14% involved firms headquartered in California, down from a quarter in 2016 (prior to the US Supreme Court granting certiorari). Of the three California firms, at least two have stated in filings with the SEC that claims under the Securities Act must only be brought in federal courts.[12]

Figure 7. **Section 11 Filings**
January 2009–December 2018



Aggregate NERA-Defined Investor Losses

In addition to the number of cases filed, we also consider the total potential size of these cases using a metric we label "NERA-defined Investor Losses."

NERA's Investor Losses variable is a proxy for the aggregate amount that investors lost from buying the defendant's stock, rather than investing in the broader market during the alleged class period. Note that the Investor Losses variable is not a measure of damages because any stock that underperforms the S&P 500 would have Investor Losses over the period of underperformance; rather, it is a rough proxy for the relative size of investors' potential claims. Historically, Investor Losses have been a powerful predictor of settlement size. Investor Losses can explain more than half of the variance in the settlement values in our database.

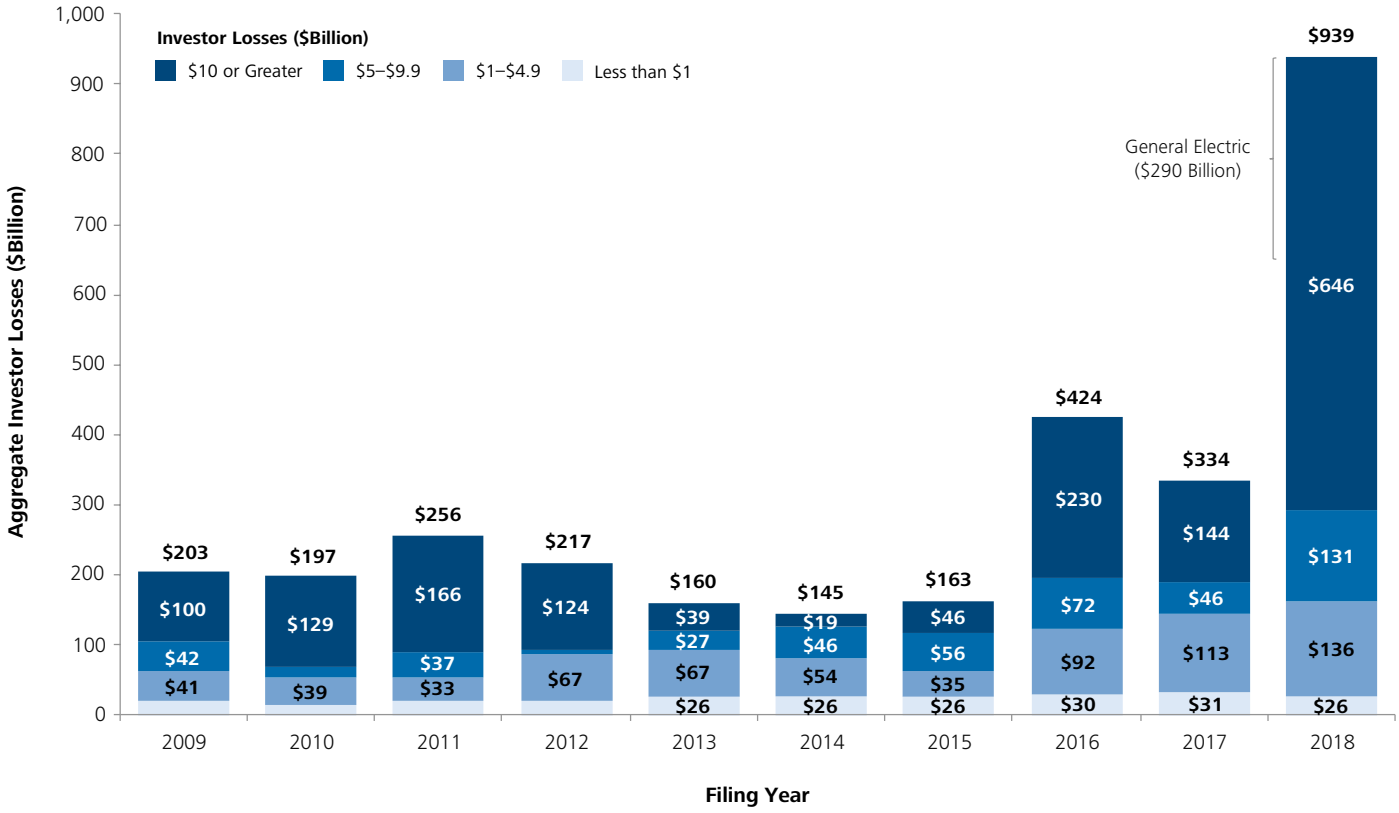
We do not compute NERA-defined Investor Losses for all cases included in this publication. For instance, class actions in which only bonds and not common stock are alleged to have been damaged are not included. The largest excluded groups are IPO laddering cases and merger-objection cases.

Despite a relatively constant rate of Standard filings in 2018, the size of those filings (as measured by NERA-defined Investor Losses) surged to nearly $1 trillion (see Figure 8). Total Investor Losses were dominated by litigation against GE, equal to about 45% of Investor Losses from all other cases combined, an especially impressive metric given the record aggregate case size.

NERA-defined Investor losses in 2018 totaled $939 billion, more than double that of any prior year and nearly four times the preceding five-year average of $245 billion. The total size of filings in all but the smallest strata grew, led by cases with more than $10 billion in Investor Losses. Coupled with the relatively stable overall filing rate, this suggests a systematic shift toward larger filings. In 2018, there were a record number of filings in each of the three largest strata, while only 88 cases had Investor Losses less than $1 billion, a record low.

Once again, there were several very large filings alleging regulatory violations, including a stock drop case against Johnson & Johnson related to claims of allegedly carcinogenic talcum powder, and a data privacy case against Facebook. Besides cases alleging regulatory violations, other very large cases included a filing against NVIDIA regarding excess inventory of GPUs (used for cryptocurrency mining) and large drug development cases against Bristol-Myers Squibb and Celgene.

Figure 8. **Aggregate NERA-Defined Investor Losses**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2009–December 2018



Over the past couple of years, growth in aggregate Investor Losses was concentrated in filings alleging regulatory violations, a substantial number of which were also *event-driven* securities cases (i.e., stock drop cases stemming from a specific event or occurrence). Between 2015 and 2017, growth in the total size of regulatory cases was due to an increased filing rate (from 31 to 57 cases) and higher median Investor Losses (from $308 million to $811 million).

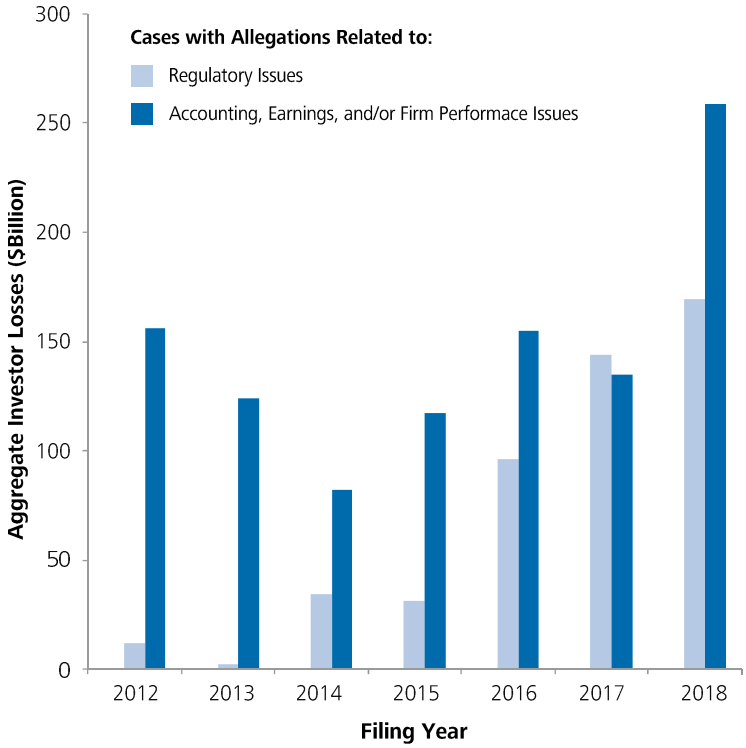
In 2018, regulatory cases were again large (half had Investor Losses greater than $4 billion), but the vast majority of total Investor Losses stemmed from what have historically been more typical securities cases, namely those that allege accounting issues, misleading earnings guidance, and/or firm performance issues.[14] This was led by litigation related to accounting issues at GE. Excluding GE, aggregate Investor Losses of such cases nearly doubled to a record $258 billion (see Figure 9).

Growth in the total size of cases alleging accounting, earnings, and/or performance issues primarily stems from growth in individual case size, as opposed to more filings. The median case with such allegations had more than $650 million in Investor Losses, about twice the average of $322 million over the preceding five years.

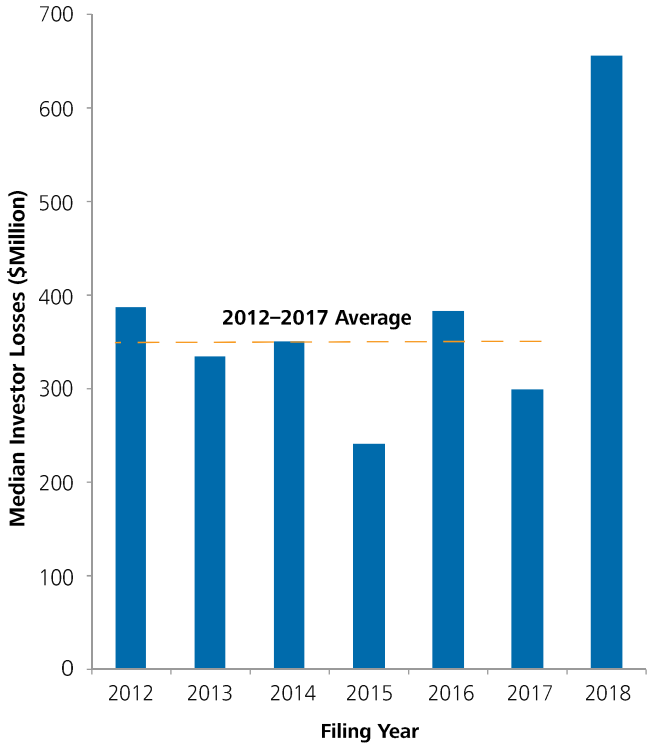
Details of the size of cases with specific types of allegations are discussed in the *Allegations* section below.

Figure 9. **NERA-Defined Investor Losses**
Filings Alleging Accounting Issues, Missed Earnings Guidance, and/or Misleading Future Performance
Excludes 2018 GE Filings

Aggregate NERA-Defined Investor Losses
January 2012–December 2018



Median NERA-Defined Investor Losses
January 2012–December 2018



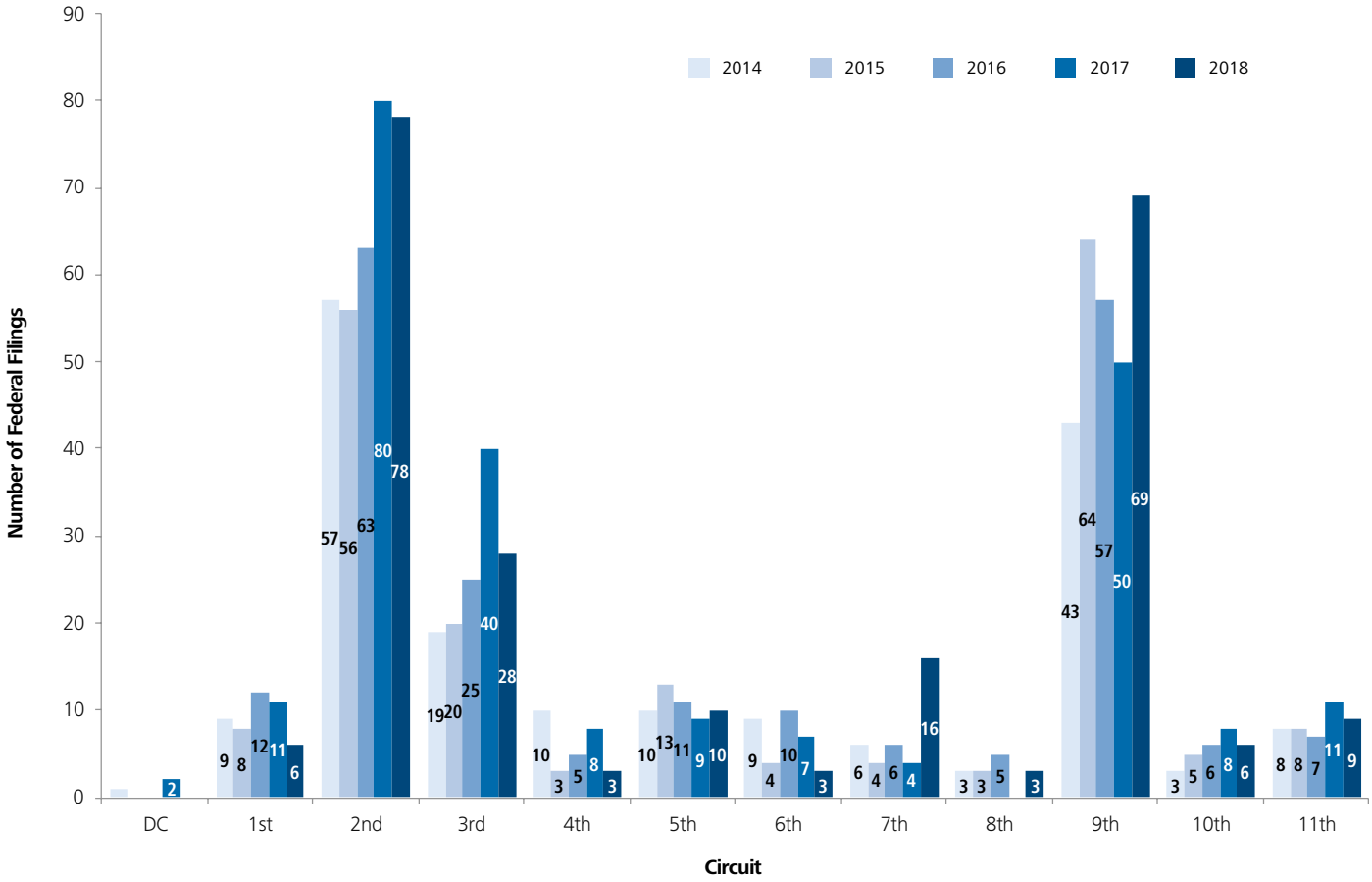
Note: Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.

Filings by Circuit

Filings in 2018 (excluding merger objections) were again concentrated in the Second and Ninth Circuits. The concentration of filings in these circuits has increased in 2018, during which they received 64% of filings, up from an average of 57% over the prior two years (see Figure 10). While the Second Circuit received the most filings, the most growth was in the Ninth Circuit, which includes Silicon Valley, mostly due to more litigation against firms in the Electronic Technology and Technology Services sector.

Merger-objection filings, not included in Figure 10, have become increasingly active in the Third Circuit, which includes Delaware. The Third Circuit received 82 merger-objection cases in 2018, double the number in 2017 and more than an eightfold increase over 2016. Nearly four-in-ten merger-objection cases were filed in the Third Circuit, twice the concentration of 2017 and coming amidst only a slight increase in the percentage of target firms incorporated in Delaware (see Figure 4). This corresponds with a decline in filings in every other circuit except the Second Circuit, where filings increased from 15 to 26.

Figure 10. **Federal Filings by Circuit and Year**
Excludes Merger Objections
January 2014–December 2018

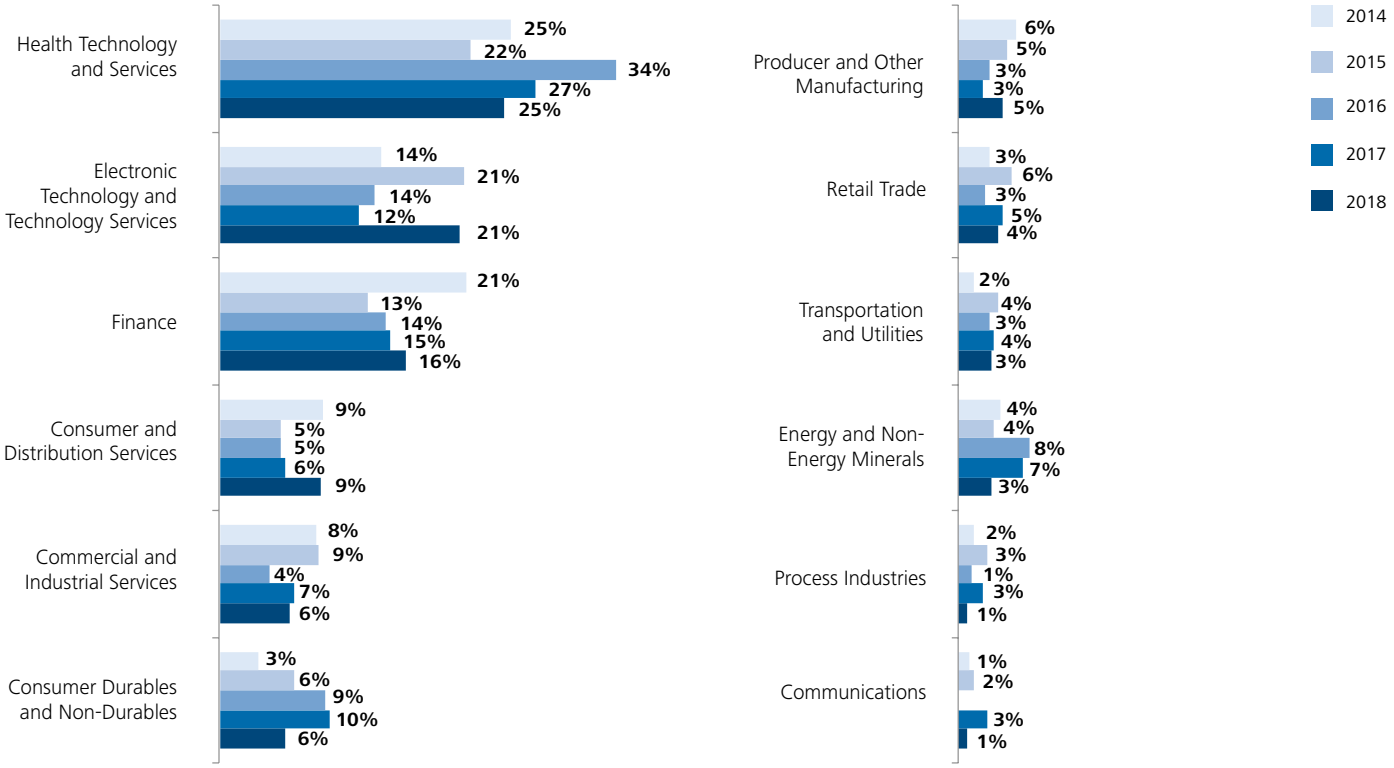


Filings by Sector

In 2018, filing counts were highest in the three historically dominant sectors, which include firms involved in health care, technology, and financial services (see Figure 11). The share of filings in these sectors increased to 62% in 2018 from about 54% in 2017, primarily due to a surge in filings against firms in the technology sector. Despite the drop in the percentage of health care companies targeted, the percentage of targeted firms in the Drugs industry (SIC 283) was nearly unchanged from 2017.

Firms in technological industries were especially at risk of securities class actions alleging accounting issues, misleading earnings guidance, or firm performance issues.[15] The industry with the highest percentage of constituent companies targeted with such allegations was the Computer and Office Equipment industry (SIC 357), with more than 9% of listed companies subject to litigation. This was followed by the Electronic Components and Accessories industry (SIC 367), with 6% of firms targeted. In the Drugs industry (SIC 283), 5% of firms were targeted with a filing with such claims (mostly related to misleading announcements regarding future performance).

Figure 11. **Percentage of Filings by Sector and Year**
Excludes Merger Objections
January 2014–December 2018



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Allegations

In contrast with growth observed in recent years, filings with regulatory claims (i.e., those alleging a failure to disclose a regulatory issue) slowed to 41 in 2018 from 57 in 2017, a drop from 26% of Standard cases to 19% (see Figure 12). While fewer regulatory cases were filed, the median case size grew fourfold to over $4 billion (as measured by NERA-defined Investor Losses). The slowdown in regulatory filings was partially offset by more allegations of accounting issues and missed earnings guidance, which grew 8% and 13%, respectively.

While the size of filed cases (as measured by NERA-defined Investor Losses) grew in each allegation category, those alleging accounting issues and missed earnings guidance were especially large and more frequently targeted technology firms. The median size of accounting claims exceeded $600 million in 2018 (a level not seen since 2008), with filings over the second half of the year being especially large. Firms in the technology sector had the most accounting claims, making up 29% of the total (up from 21% in 2017). Moreover, more than one-in-three filings against firms in the technology sector alleged accounting issues.

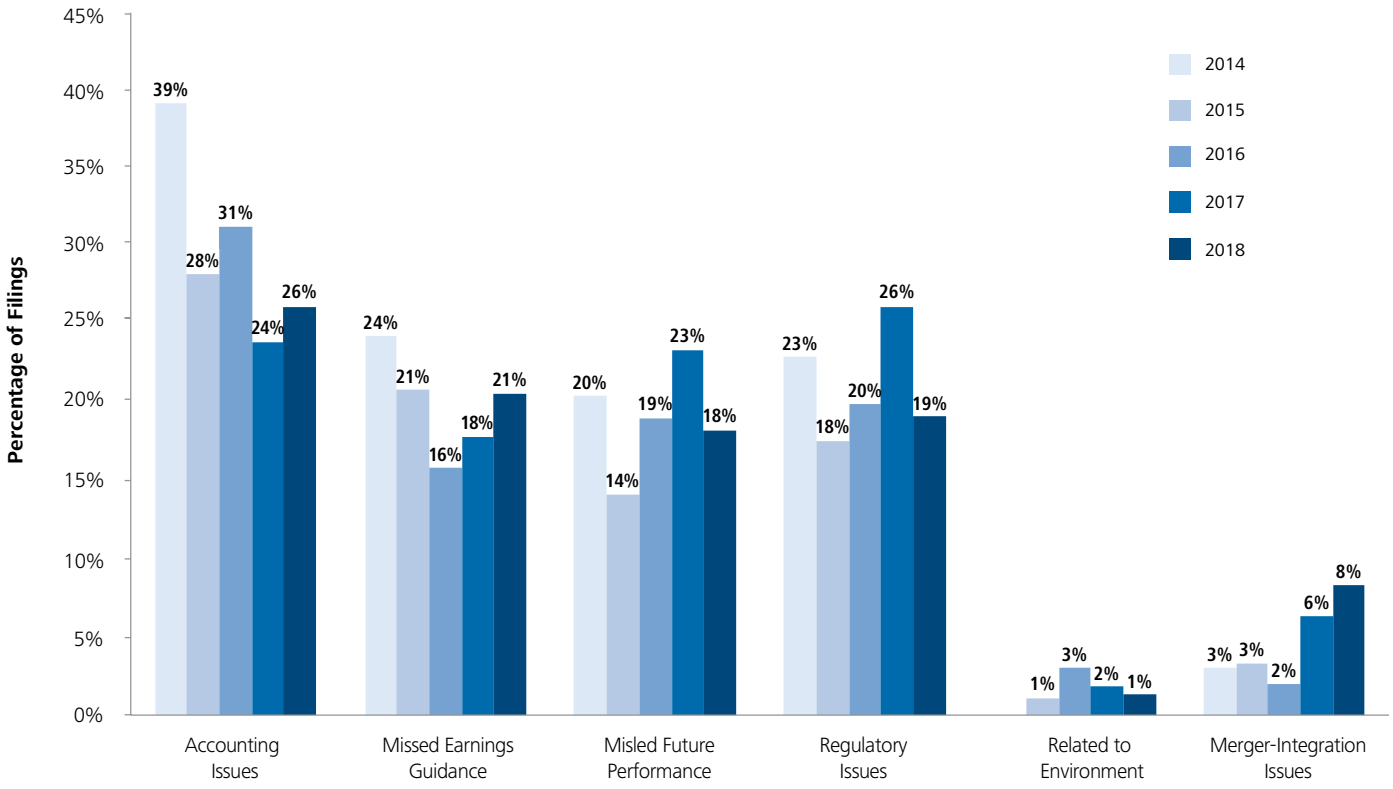
Filings claiming missed earnings guidance grew for the second straight year. Although the percentage of filings alleging missed guidance roughly matched that of 2015, the median case size (as measured by Investor Losses) was three times larger in 2018 than in 2015. Filings against firms in the technology sector with missed earnings guidance claims grew 70% since 2017 and constituted the largest share of such claims (at 27%).

In 2018, 8% of filings included merger integration allegations (i.e., claims of misrepresentations by a firm involved in a merger or acquisition). The substantial increase in litigation in 2017 corresponded with a 14% increase in announced M&A deals with US targets.[16] However, in 2018, despite a 12% slowdown in announced deal activity over the first three quarters, the number of federal merger integration filings rose.[17] The largest merger integration filing related to the failed Tribune Media/ Sinclair merger, making up 20% of total Investor Losses.

As in prior years, most allegations related to misleading firm performance in 2018 were against firms in the health care sector. Within health care, firms in the Drugs industry (SIC 283) were subject to two-in-three filings.

Most complaints include a wide variety of allegations, not all of which are depicted here. Due to multiple types of allegations in complaints, the same case may be included in multiple categories.

Figure 12. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2014–December 2018

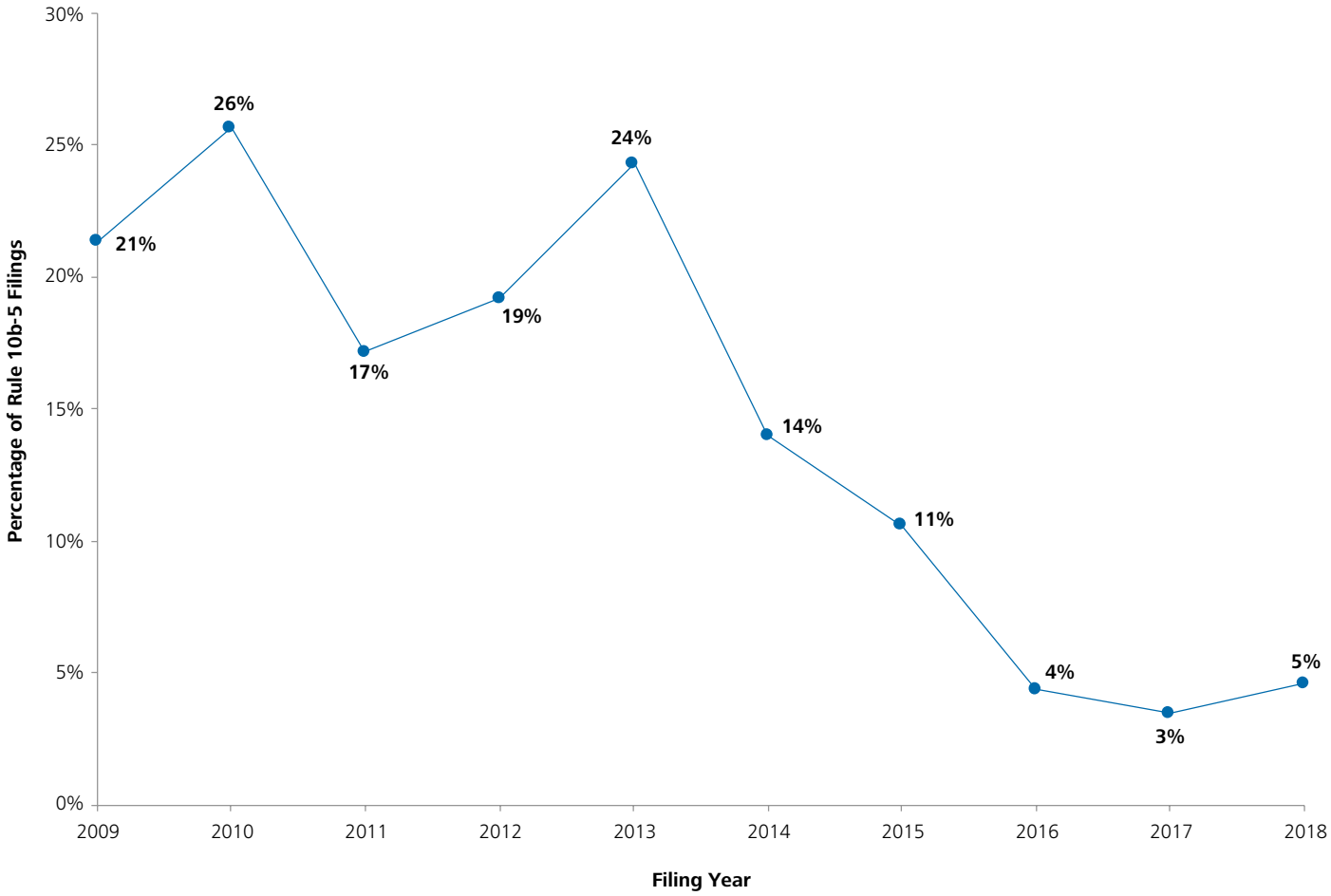


Alleged Insider Sales

Historically, Rule 10b-5 class action complaints have frequently alleged insider sales by directors and officers, usually as part of a scienter argument. Since 2013, in the wake of a multiyear crackdown on insider trading by prosecutors, the percentage of 10b-5 class actions that alleged insider sales has decreased nearly every year (see Figure 13).[18] This trend also corresponds with increased corporate adoption of 10b5-1 trading plans, allowing insiders to plan share sales while purportedly not in possession of material non-public information.[19]

Cases alleging insider sales were more common in the aftermath of the financial crisis, when a quarter of filings included insider trading claims. In 2005, half of class actions filed included such claims.

Figure 13. **Percentage of Rule 10b-5 Filings Alleging Insider Sales by Filing Year**
January 2009–December 2018



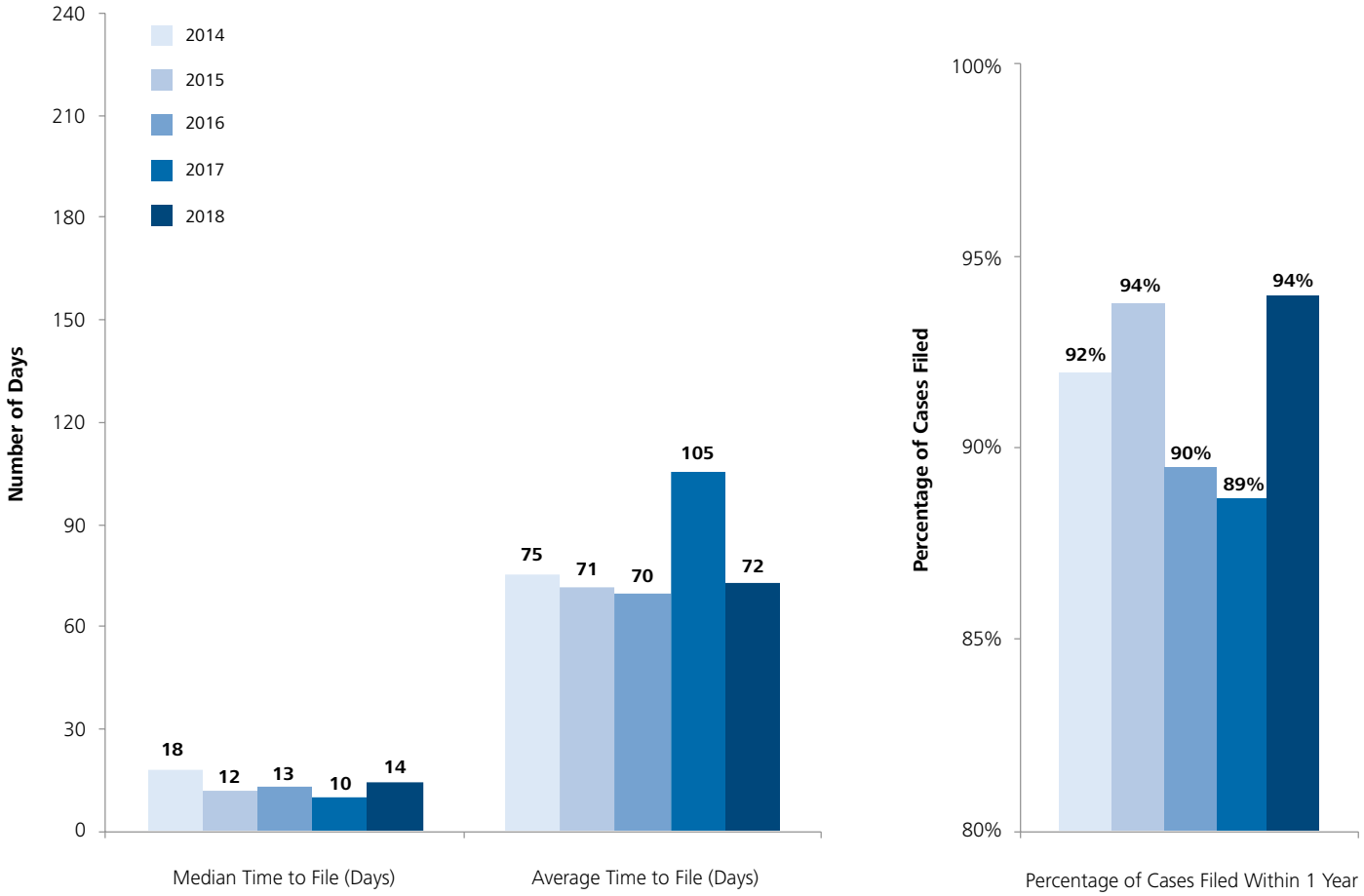
Time to File

The term "time to file" denotes the time that has elapsed between the end of the alleged class period and the filing date of the first complaint. Figure 14 illustrates how the median time and average time to file Rule 10b-5 cases (in days) have changed over the past five years.

The median time to file fell by about half over the last decade, to 14 days in 2018, indicating that it took 14 days or less to file a complaint in 50% of cases. Since the beginning of the decade, there has been a lower frequency of cases with long periods between the point when an alleged fraud was revealed and the filing of a related claim. The average time to file has followed a similar trajectory, but in 2017 was affected by 10 cases with very long filing delays. In 2017, one case against Rio Tinto, regarding the valuation of mining assets in Mozambique, took more than 4.5 years to file and boosted the average time to file by nearly 9%.[20]

Despite the small minority of cases with very long times to file, the data generally point toward a lower incidence of cases with long periods between revelations of alleged fraud and the date a related claim is filed.

Figure 14. **Time to File Rule 10b-5 Cases from End of Alleged Class Period to File Date**
January 2014–December 2018



Note: This analysis excludes cases where the alleged class period could not be unambiguously determined.

Analysis of Motions

NERA's statistical analysis has found robust relationships between settlement amounts and the stage of the litigation at which settlements occur. We track filings and decisions on three types of motions: motion to dismiss, motion for class certification, and motion for summary judgment. For this analysis, we include securities class actions in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged (i.e., Standard cases).

As shown in the figures below, we record the status of any motion as of the resolution of the case. For example, a motion to dismiss that had been granted but was later denied on appeal is recorded as denied.

Motions for summary judgment were filed by defendants in 7.1%, and by plaintiffs in only 1.9%, of the securities class actions filed and resolved over the 2000–2018 period, among those we tracked.[21]

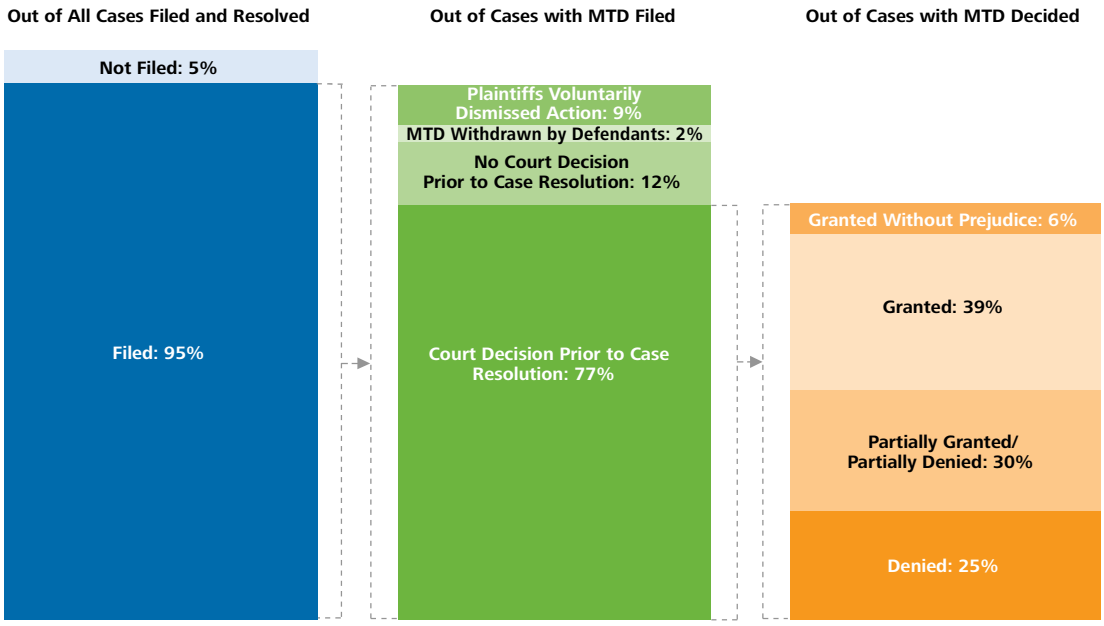
Outcomes of motions to dismiss and motions for class certification are discussed below.

Motion to Dismiss

A motion to dismiss was filed in 95% of the securities class actions tracked. However, the court reached a decision on only 77% of the motions filed. In the remaining 23% of cases, either the case resolved before a decision was reached, plaintiffs voluntarily dismissed the action, or the motion to dismiss was withdrawn by defendants (see Figure 15).

Out of the motions to dismiss for which a court decision was reached, the following three outcomes classify all of the decisions: granted with or without prejudice (45%), granted in part and denied in part (30%), and denied (25%).

Figure 15. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2000–December 2018



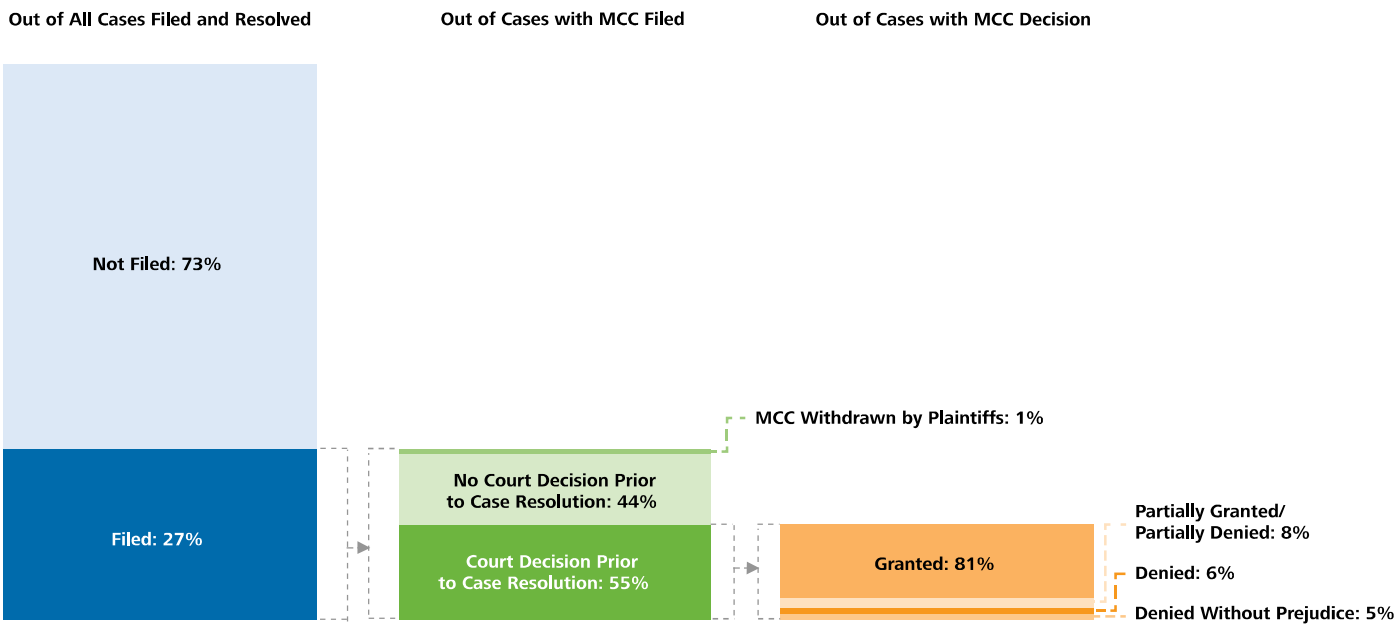
Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Motion for Class Certification

Most cases were settled or dismissed before a motion for class certification was filed: 73% of cases fell into this category. Of the remaining 27% (in which a motion for class certification was filed), the court reached a decision in only 55% of cases. Overall, only 15% of the securities class actions filed (or 55% of the 27%) reached a decision on the motion for class certification (see Figure 16).

According to our data, 89% of the motions for class certification that were decided were granted partially or in full.

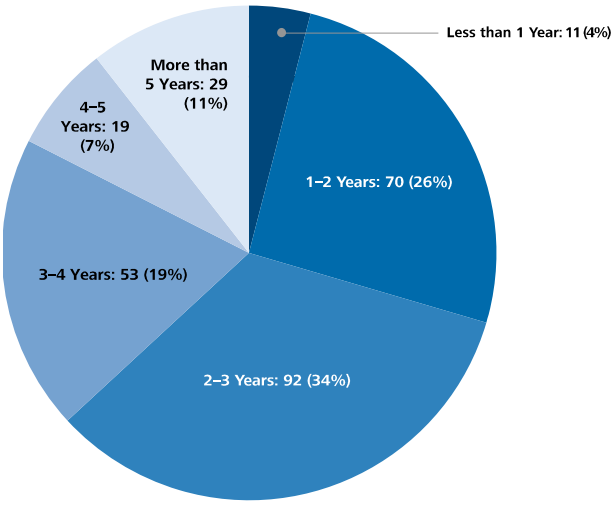
Figure 16. **Filing and Resolutions of Motions for Class Certification**
Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a Rule 10b-5, Section 11, and/or Section 12 is alleged.
Excludes IPO laddering cases.

Approximately 64% of the decisions handed down on motions for class certification were reached within three years of the complaint's original filing date (see Figure 17). The median time was about 2.5 years.

Figure 17. **Time from First Complaint Filing to Class Certification Decision**
Cases Filed and Resolved January 2000–December 2018



Note: Includes cases in which holders of common stock are part of the class and a 10b-5 or Rule 10b-5, Section 11, and/or Section 12 is alleged. Excludes IPO laddering cases.

Trends in Case Resolutions

Number of Cases Settled or Dismissed

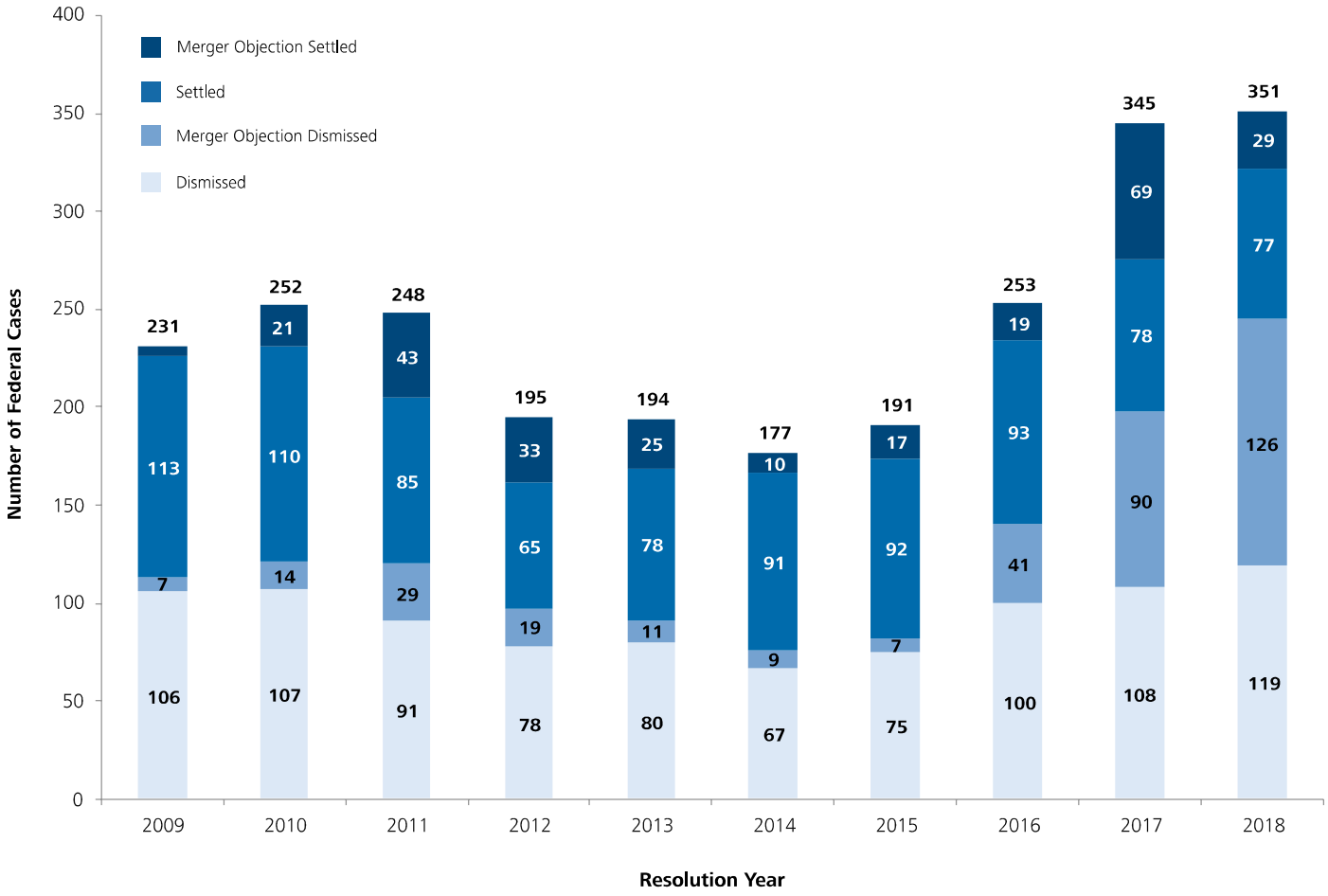
In total, 351 securities class actions were resolved in 2018, the second consecutive year in which a record number of cases concluded (see Figure 18). Resolution numbers were once again dominated by a record number of dismissals, which outnumbered settlements two-to-one for the first time.

Of the 351 resolutions, slightly less than half were resolutions of merger-objection cases (most of which were voluntarily dismissed). The uptick in resolutions over the last few years is largely due to the surge of federal merger-objection cases in the wake of the *Trulia* decision in early 2016.[22] Prior to *Trulia*, only about 13% of resolutions concerned merger-objection litigation. Merger objections had an outsized impact on resolution statistics: despite making up only about 33% of all active cases, they constituted 44% of resolutions.[23]

In 2018, 196 resolutions were of "Standard" securities class actions—those alleging violations of Rule 10b-5, Section 11, and/or Section 12. Standard settlement and dismissal counts closely matched those of 2017, and again more cases were dismissed than settled.

For the second consecutive year, an inordinate number of Standard cases were dismissed within a year of filing, most of which were voluntary dismissals. As shown in Figure 31, the decision to voluntarily dismiss litigation may change with the size of estimated damages to the class. For instance, plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases during the PSLRA bounce-back period.

Figure 18. **Number of Resolved Cases: Dismissed or Settled**
January 2009–December 2018



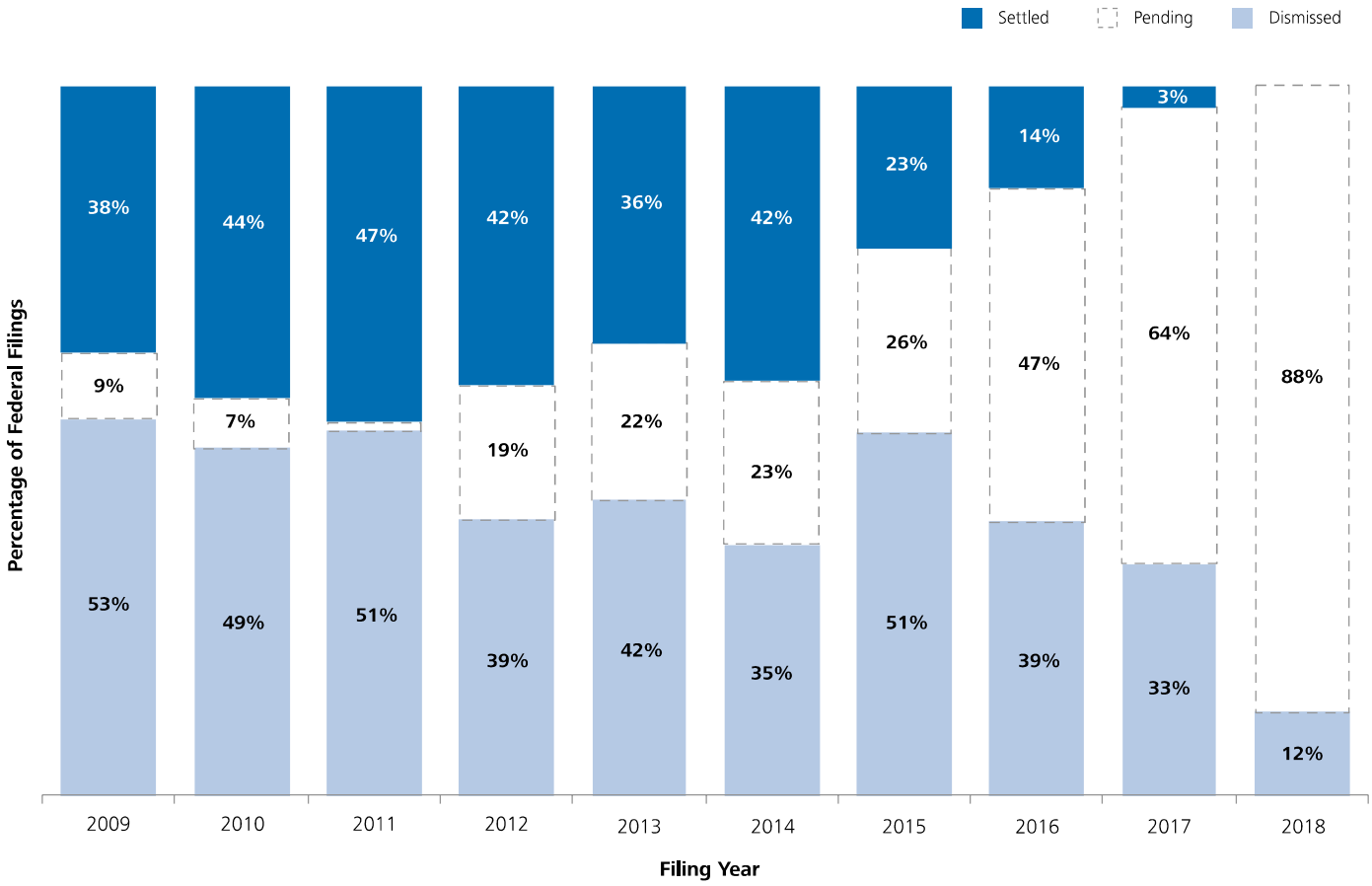
Case Status by Year

Figure 19 shows the current resolution status of cases by filing year. Each percentage represents the current resolution status of cases filed in each year as a proportion of all cases filed in that year. Merger-objection cases are excluded, as are verdicts.

Historically, more cases settled than were dismissed. However, the rate of case dismissal has steadily increased. While only about a third of cases filed between 2000 and 2002 were dismissed, in 2015, the most recent year with substantial resolution data, at least half of filed cases were dismissed.[24]

While dismissal rates have been climbing since 2000, the ultimate dismissal rate for cases filed in more recent years is less certain. On one hand, the dismissal rate may increase further, as there are more pending cases awaiting resolution. On the other hand, it may decrease because recent dismissals have more potential than older ones to be appealed or re-filed, and cases that were recently dismissed without prejudice may ultimately result in settlements.

Figure 19. **Status of Cases as Percentage of Federal Filings by Filing Year**
Excludes Merger Objections and Verdicts
January 2009–December 2018



Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

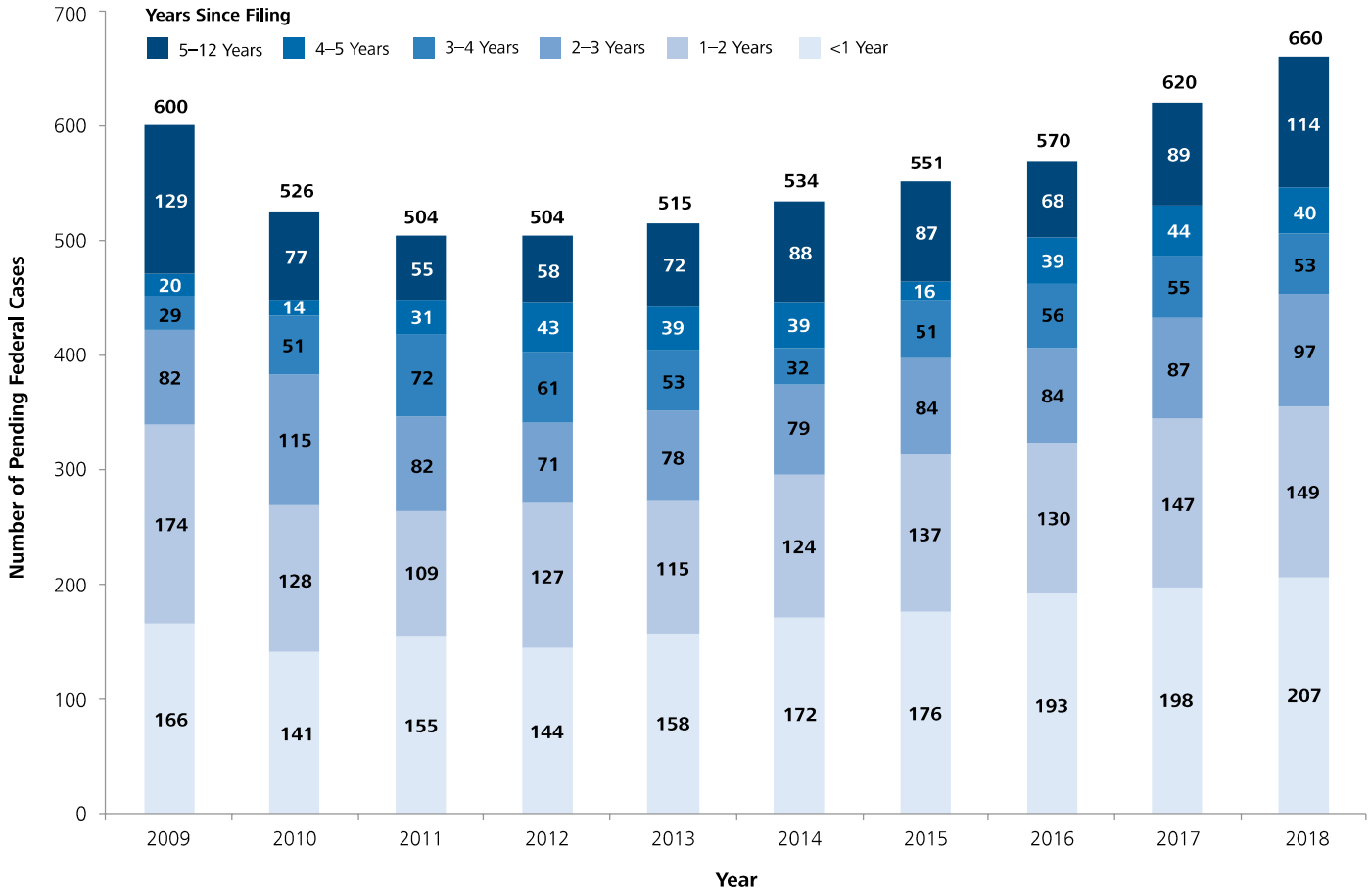
Number of Cases Pending

The number of Standard securities class actions pending in the federal system has steadily increased from a post-PSLRA low of 504 in 2012 (see Figure 20).[25] Since then, pending case counts have increased between 2% and 9% annually. In 2018, the number of pending Standard cases on federal dockets increased to 660, up 6% from 2017 and 31% from 2012.

Generally, since cases are either pending or resolved, a change in filing rate or a lengthening of the time to case resolution potentially contributes to changes in the number of cases pending. If the number of new filings is constant, the change in the number of pending cases can be indicative of whether the time to case resolution is generally shortening or lengthening.

About 50% of the long-term growth in pending litigation can be explained by recent filing growth (filed over the past two years), the vast majority of which is simply due to more cases being filed that have yet to be resolved. Delayed resolution of older filings (i.e., cases filed before 2017) explains the other 50% or so of growth in pending litigation since 2011. More old cases on federal dockets has driven the median age of pending cases up 14% since 2015 to about 1.9 years, the highest since 2010.[26]

Figure 20. **Number of Pending Federal Cases**
Excludes Merger Objections
January 2009–December 2018



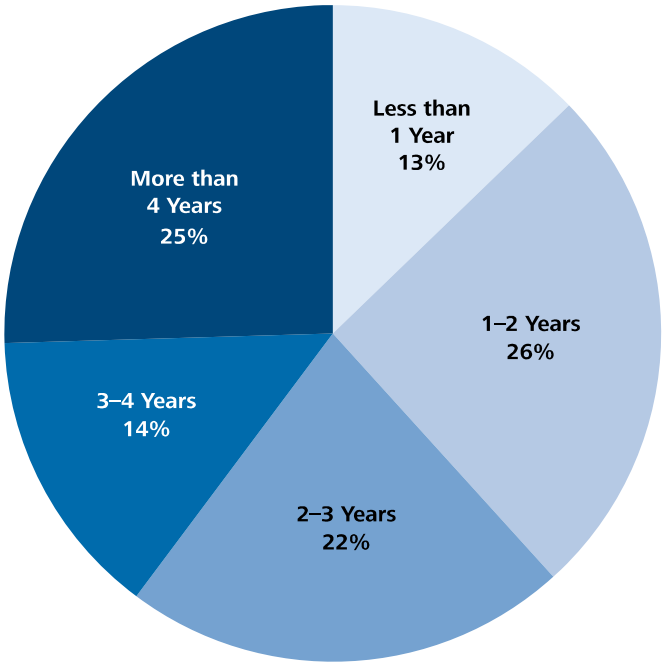
Note: The figure excludes, in each year, cases that had been filed more than 12 years earlier. Years since filing are end-of-year calculations. The figure also excludes IPO laddering cases. The 12-year limit ensure that all pending cases were filed post-PSLRA.

Time to Resolution

The term "time to resolution" denotes the time between the filing of the first complaint and resolution (whether through settlement or dismissal). Figure 21 illustrates the time to resolution for all securities class actions filed between 2001 and 2014, and shows that about 39% of cases are resolved within two years of initial filing and about 61% are resolved within three years.[27]

The median time to resolution for cases filed in 2016 (the last year with sufficient resolution data) was 2.3 years, similar to the range over the preceding five years. Over the past decade, the median time to resolution declined by more than 10%, primarily due to an increase in the dismissal rate (dismissals are generally resolved faster than settlements).

Figure 21. **Time from First Complaint Filing to Resolution**
Cases Filed January 2001–December 2014



Trends in Settlements

We present several settlement metrics to highlight attributes of cases that settled in 2018 and to compare them with cases settled in past years. We discuss two ways of measuring average settlement amounts and calculate the median settlement amount. Each calculation excludes merger-objection cases and cases that settle with no cash payment to the class, as settlements of such cases may obscure trends in what have historically been more typical cases.

In 2018, the average settlement rebounded to $69 million from a near-record low in 2017, largely due to the $3 billion settlement involving Petróleo Brasileiro S.A.—Petrobras, the fifth-highest settlement ever. Even excluding Petrobras (the only settlement of the year exceeding $1 billion), the average settlement exceeded $30 million, which is about average in the post-PSLRA era (after adjusting for inflation). The median settlement in 2018 was more than twice that of 2017, primarily due to higher settlements of many moderately sized cases and, generally, fewer very small settlements.

The upswing in 2018 settlement metrics may be a prelude to higher settlements in the future. Aggregate NERA-defined Investor Losses of pending cases, a factor that has historically been significantly correlated with settlement amounts, increased for the third consecutive year and currently exceeds $1.4 trillion (or $1.1 trillion excluding 2018 litigation against GE). Excluding GE, average Investor Losses of pending Standard cases have also increased for the third consecutive year to $2.4 billion, but have receded from a 10-year high of $3.8 billion in 2011.

To illustrate how many cases settled over various ranges in 2017 compared with prior years, we provide a distribution of settlements over the past five years. We also tabulated the 10 largest settlements of the year.

Average and Median Settlement Amounts

The average settlement exceeded $69 million in 2018, somewhat less than three times the $25 million average settlement in 2017 (see Figure 22). Infrequent large settlements, such as the 2018 Petrobras settlement, are generally responsible for the wide variability in average settlements over the past decade. Similar spikes to the one observed this year were also seen in 2010, 2013, and 2016, each primarily stemming from mega-settlements.

Figure 22. **Average Settlement Value**
Excludes Merger Objections and Settlements for $0 to the Class
January 2009–December 2018

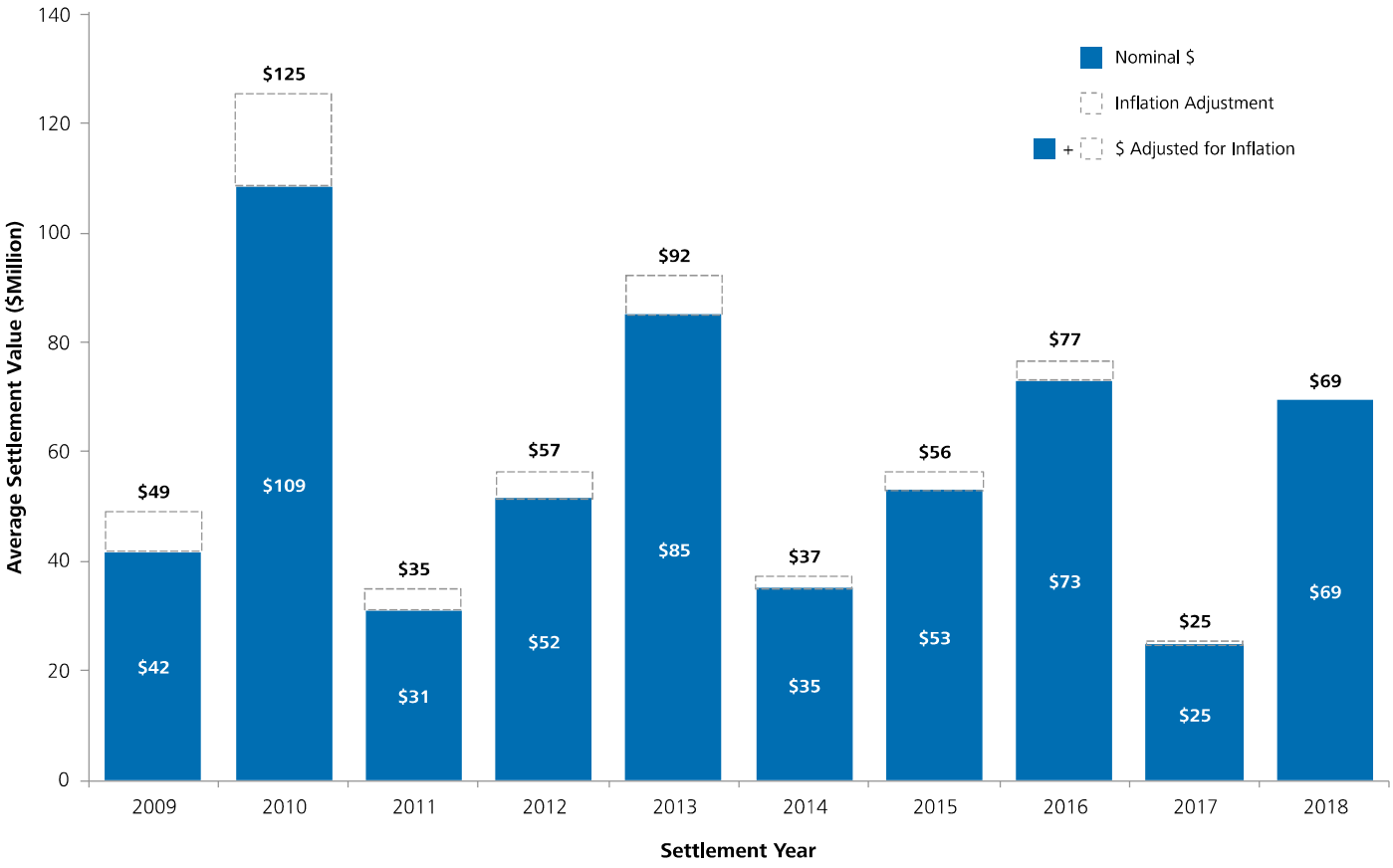
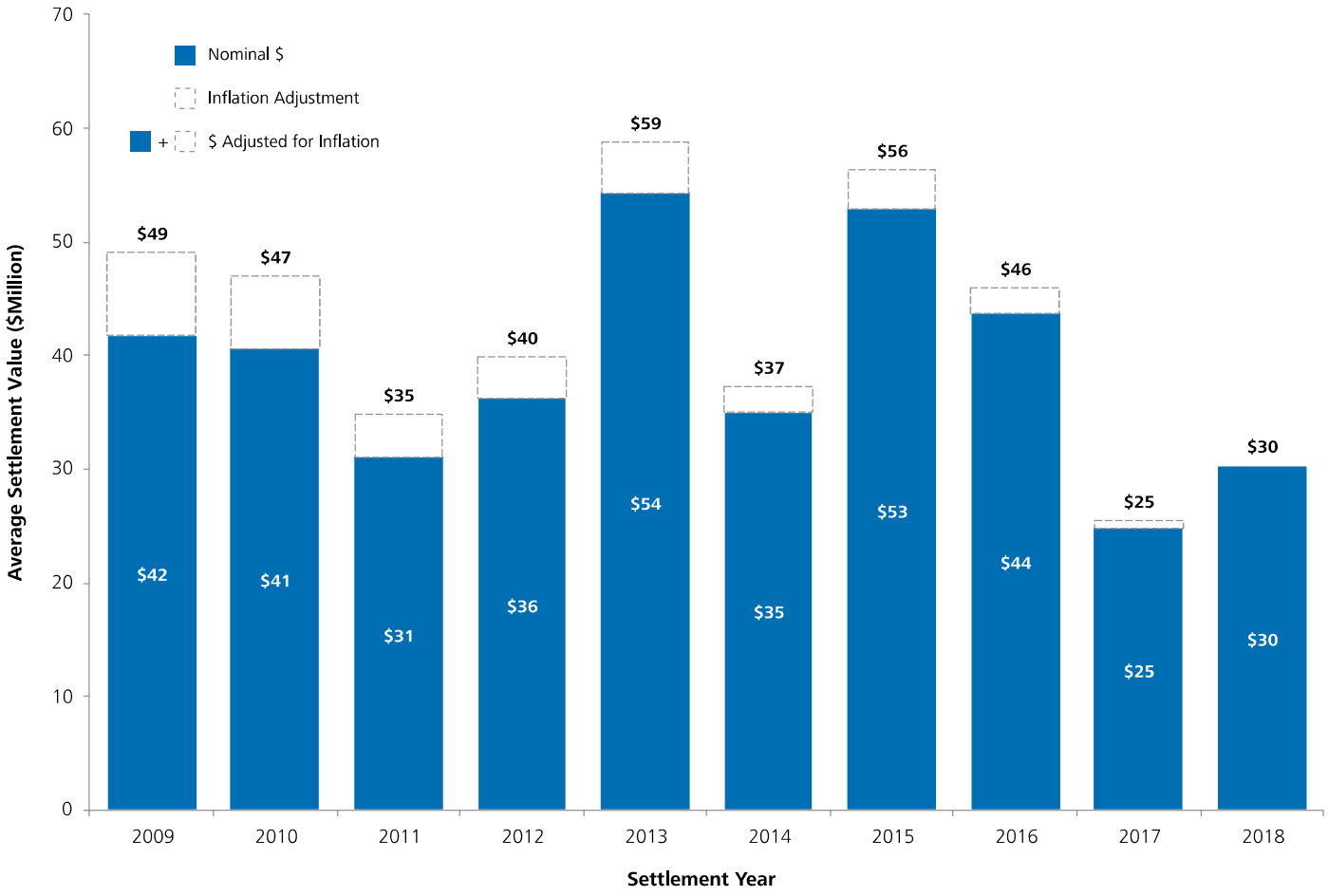


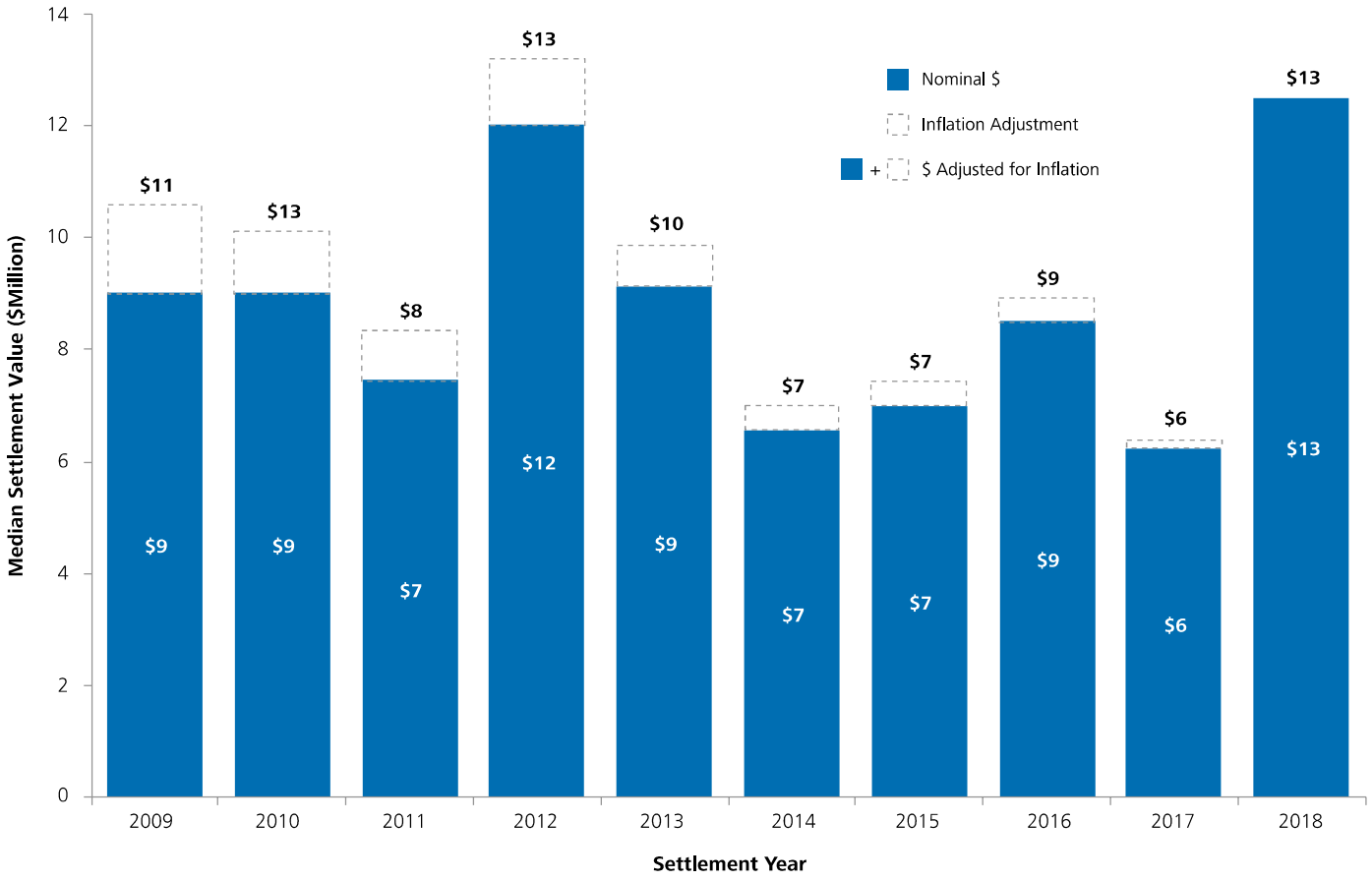
Figure 23 illustrates that, excluding settlements over $1 billion, the average settlement rebounded from the record low seen in 2017 to $30 million. Despite this rebound, and setting aside the $3 billion Petrobras settlement, the 2018 average settlement remained below average compared to the past decade. The metric would have roughly matched the near-record low seen in 2017 but for the $480 million Wells Fargo settlement that was finalized in mid-December 2018.

Figure 23. **Average Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2009–December 2018



The 2018 median settlement was a near-record $13 million. This was driven primarily by relatively high settlements of moderately sized cases (as measured by NERA-defined Investor Losses). Cases of moderate size not only made up the bulk of settlements in 2018 but also had a median ratio of settlement to Investor Losses more than 50% higher than in past years. Moreover, unlike 2017, there were generally few very small settlements.

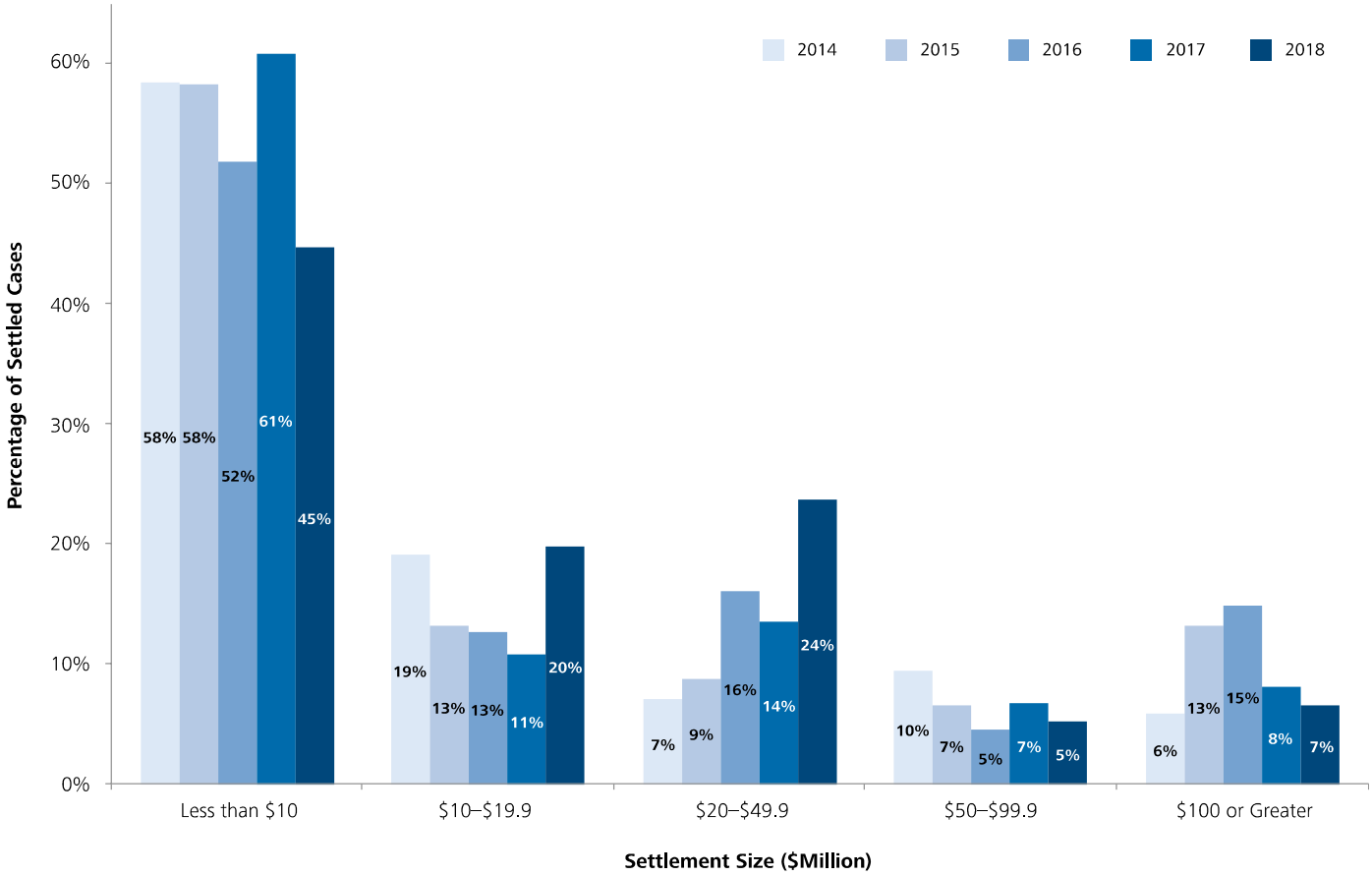
Figure 24. **Median Settlement Value**
Excludes Settlements over $1 Billion, Merger Objections, and Settlements for $0 to the Class
January 2009–December 2018



Distribution of Settlement Amounts

The relatively high settlements of moderately sized cases in 2018 are also captured in the distribution of settlement values (see Figure 25). In 2018, fewer than 45% of settlements were for less than $10 million (the lowest rate since 2010), which stands in stark contrast with 2017, when more than 60% of settlements were in the smallest strata (the highest rate since 2011).

Figure 25. **Distribution of Settlement Values**
Excludes Merger Objections and Settlements for $0 to the Class
January 2014–December 2018



The 10 Largest Settlements of Securities Class Actions of 2018

The 10 largest securities class action settlements of 2018 are shown in Table 1. The two largest settlements, against Petrobras and Wells Fargo & Company, are among many large regulatory cases filed in recent years. Three of the 10 largest settlements involved defendants in the Finance sector. Overall, these 10 cases accounted for about $4.4 billion in settlement value, a near-record 84% of the $5.3 billion in aggregate settlements.

Despite the size of the Petrobras settlement, it is not even half the size of the second-largest settlement since passage of the PSLRA, WorldCom, Inc., at $6.2 billion (see Table 2).

Table 1. **Top 10 2018 Securities Class Action Settlements**

Ranking	Case Name	Total Settlement Value ($Million)	Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
1	Petróleo Brasileiro S.A.—Petrobras (2014)	$3,000.0	$205.0
2	Wells Fargo & Company (2016)	$480.0	$96.4
3	Allergan, Inc.	$290.0	$71.0
4	Wilmington Trust Corporation	$210.0	$66.3
5	LendingClub Corporation	$125.0	$16.8
6	Yahoo! Inc. (2017)	$80.0	$14.8
7	SunEdison, Inc.	$73.9	$19.0
8	Marvell Technology Group Ltd. (2015)	$72.5	$14.1
9	3D Systems Corporation	$50.0	$15.5
10	Medtronic, Inc. (2013)	$43.0	$8.6
	Total	**$4,424.4**	**$527.4**

Table 2. **Top 10 Securities Class Action Settlements**
As of 31 December 2018

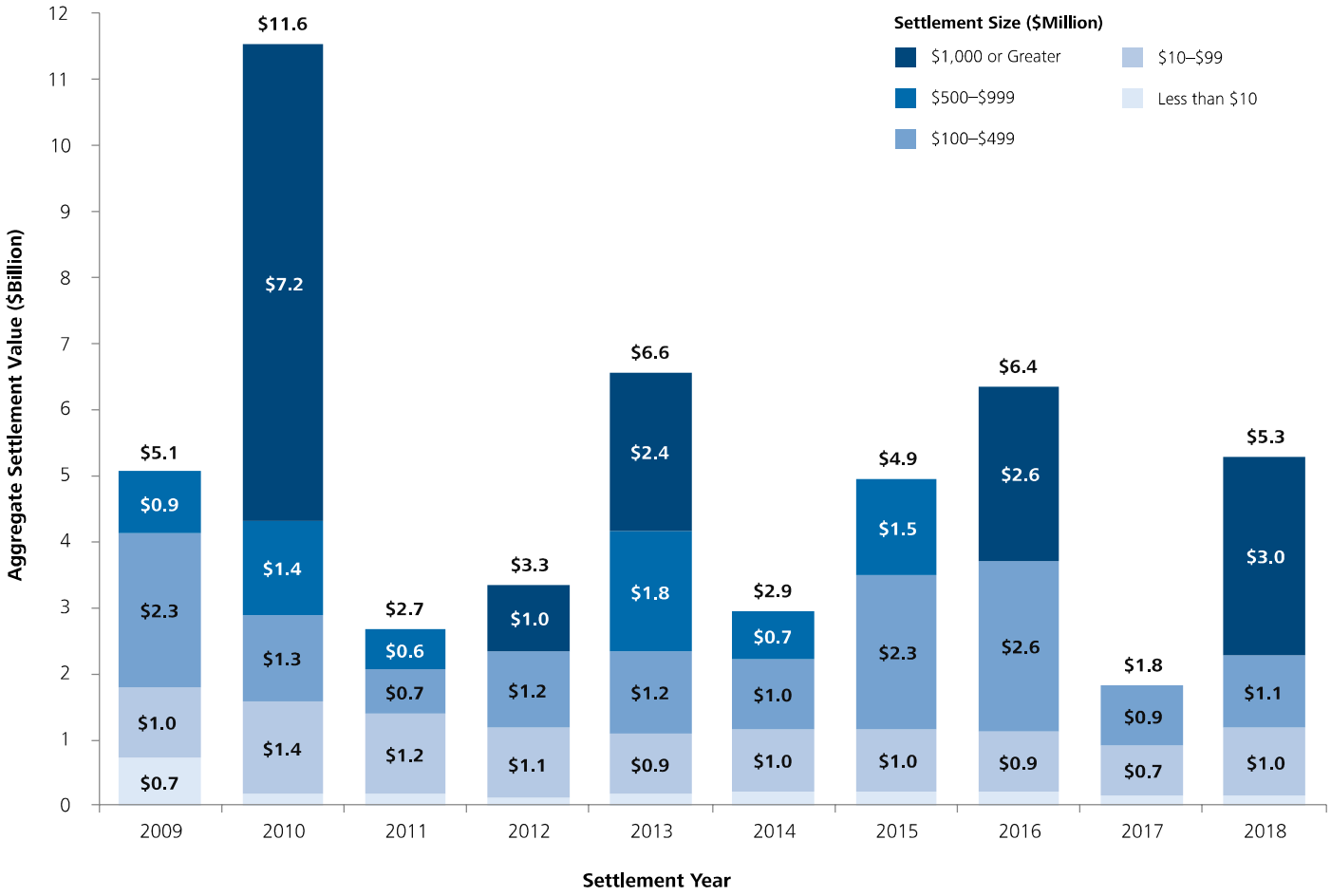
Ranking	Defendant	Settlement Year(s)	Total Settlement Value ($Million)	Codefendant Settlements		Plaintiffs' Attorneys' Fees and Expenses Value ($Million)
				Financial Institutions Value ($Million)	Accounting Firms Value ($Million)	
1	ENRON Corp.	2003–2010	$7,242	$6,903	$73	$798
2	WorldCom, Inc.	2004–2005	$6,196	$6,004	$103	$530
3	Cendant Corp.	2000	$3,692	$342	$467	$324
4	Tyco International, Ltd.	2007	$3,200	No codefendant	$225	$493
5	Petróleo Brasileiro S.A.—Petrobras	2018	$3,000	$0	$50	$205
6	AOL Time Warner Inc.	2006	$2,650	No codefendant	$100	$151
7	Bank of America Corp.	2013	$2,425	No codefendant	No codefendant	$177
8	Household International, Inc.	2006–2016	$1,577	Dimissed	Dismissed	$427
9	Nortel Networks (I)	2006	$1,143	No codefendant	$0	$94
10	Royal Ahold, NV	2006	$1,100	$0	$0	$170
	Total		**$32,224**	**$13,249**	**$1,017**	**$3,368**

Aggregate Settlements

We use the term "aggregate settlements" to denote the total amount of money to be paid to settle litigation by (non-dismissed) defendants based on the court-approved settlements during a year.

Aggregate settlements rebounded to nearly $5.3 billion in 2018, more than double the 2017 total (see Figure 26). More than 80% of the growth stems from the $3.0 billion Petrobras settlement. Excluding Petrobras and Wells Fargo, aggregate settlements are near the 2017 record low, reflecting a persistent slowdown in overall settlement activity.

Figure 26. **Aggregate Settlement Value by Settlement Size**
January 2009–December 2018



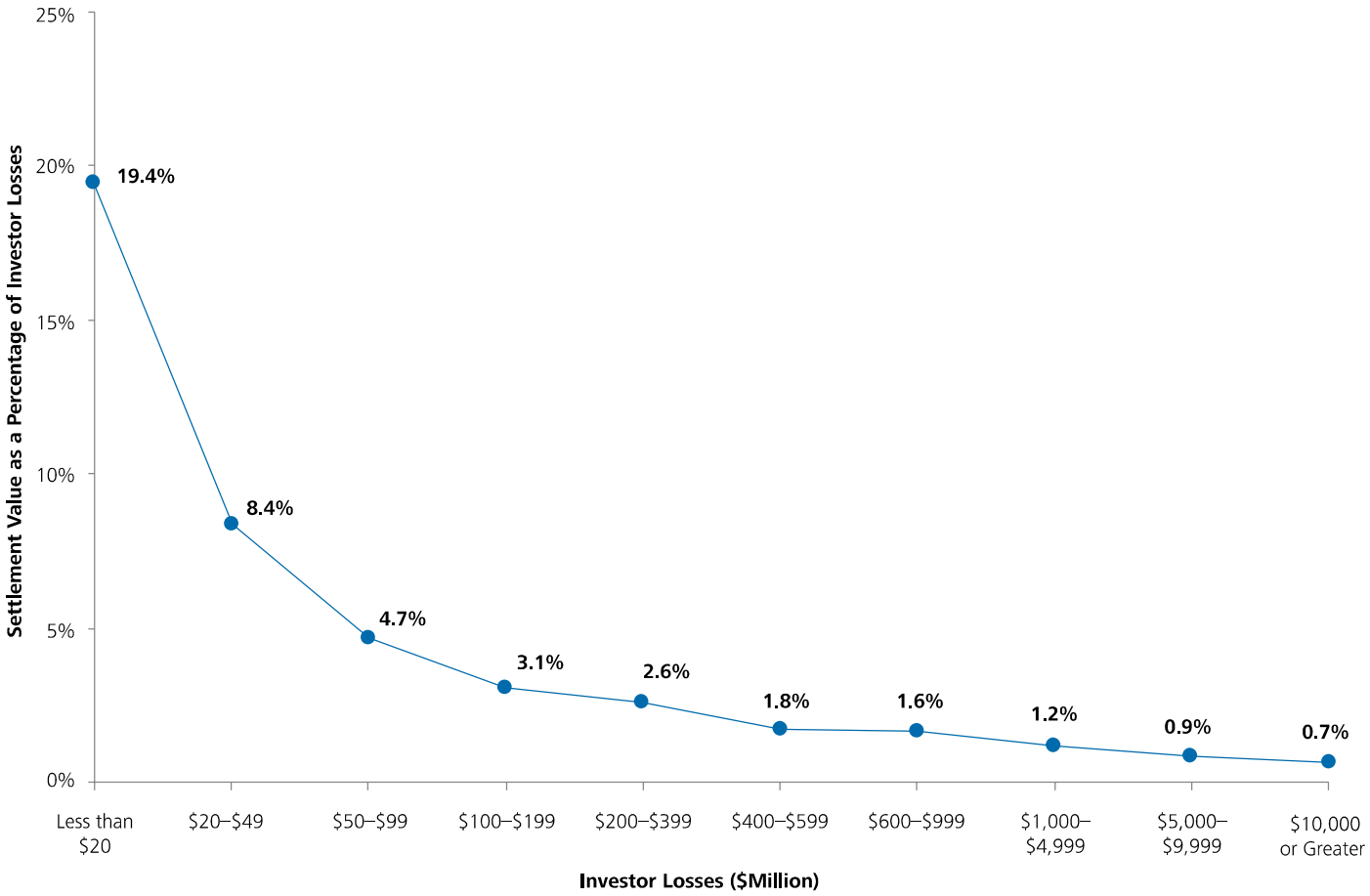
NERA-Defined Investor Losses vs. Settlements

As noted above, our proxy for case size, NERA-defined Investor Losses, is a measure of the aggregate amount investors lost from buying the defendant's stock rather than investing in the broader market during the alleged class period.

In general, settlement size grows as NERA-defined Investor Losses grow, but the relationship is not linear. Based on our analysis of data from 1996 to 2018, settlement size grows less than proportionately with Investor Losses. In particular, small cases typically settle for a higher fraction of Investor Losses (i.e., more cents on the dollar) than larger cases. For example, the ratio of settlement to Investor Loss for the median case was 19.4% for cases with Investor Losses of less than $20 million, while it was 0.7% for cases with Investor Losses over $10 billion (see Figure 27).

Our findings about the ratio of settlement amount to NERA-defined Investor Losses should not be interpreted as the share of damages recovered in settlement, but rather as the recovery compared to a rough measure of the "size" of the case. Notably, the percentages given here apply *only* to NERA-defined Investor Losses. Using a different definition of investor losses would result in a different ratio. Also, the use of the ratio alone to forecast the likely settlement amount would be inferior to a proper all-encompassing analysis of the various characteristics shown to impact settlement amounts, as discussed in the section *Explaining Settlement Values*.

Figure 27. **Median of Settlement Value as a Percentage of NERA-Defined Investor Losses by Level of Investor Losses**
Excludes Settlements for $0 to the Class
January 1996–December 2018

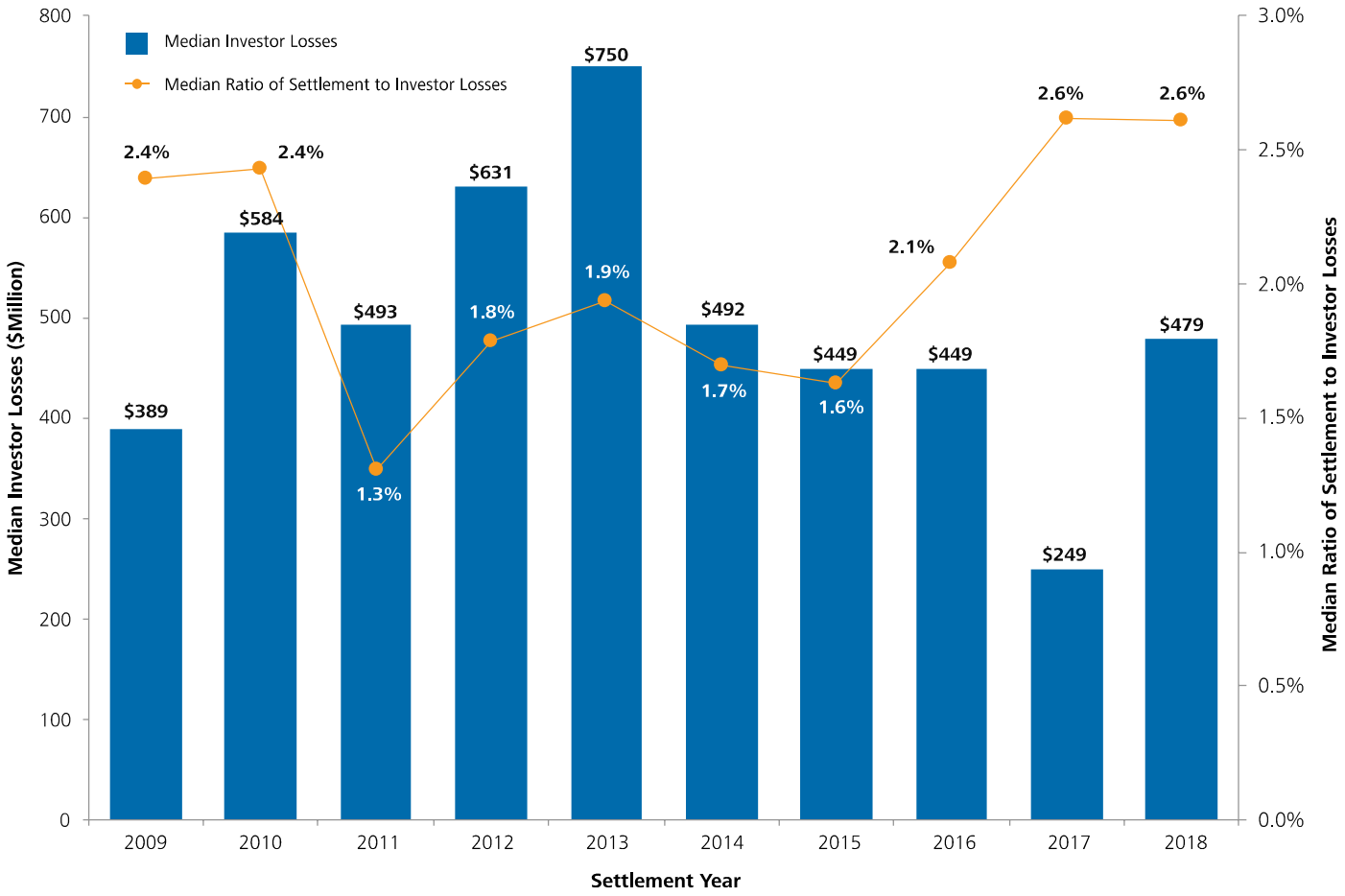


Median NERA-Defined Investor Losses over Time

Prior to 2014, median NERA-defined Investor Losses for settled cases had been on an upward trajectory since the passage of the PSLRA. As described above, the median ratio of settlement size to Investor Losses generally decreases as Investor Losses increase. Over time, the increase in median Investor Losses coincided with a decreasing trend in the median ratio of settlement to Investor Losses. Of course, there are also year-to-year fluctuations.

As shown in Figure 28, the median ratio of settlements to NERA-defined Investor Losses was 2.6% in 2018. This was the third consecutive year of at least a short-term reversal of a long-term downtrend of the ratio between passage of the PSLRA and 2015.

Figure 28. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2009–December 2018



Explaining Settlement Amounts

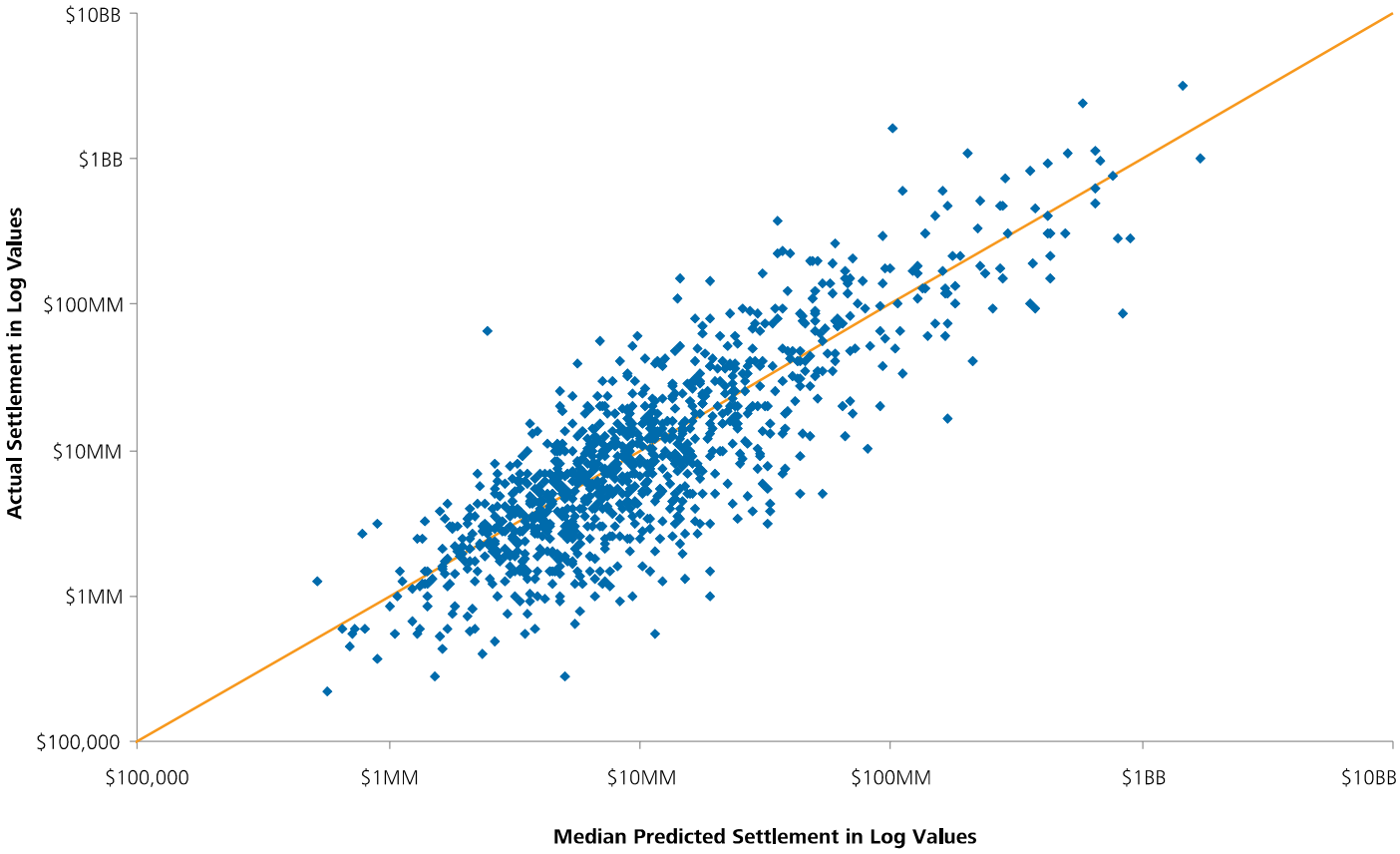
The historical relationship between case attributes and other case- and industry-specific factors can be used to measure the factors correlated with settlement amounts. NERA has examined settlements in more than 1,000 securities class actions and identified key drivers of settlement amounts, many of which have been summarized in this report.

Generally, we find that the following factors have historically been significantly correlated with settlements:

- NERA-defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer;
- Types of securities alleged to have been affected by the fraud;
- Variables that serve as a proxy for the "merit" of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- Admitted accounting irregularities or restated financial statements;
- The existence of a parallel derivative litigation; and
- An institution or public pension fund as lead plaintiff.

Together, these characteristics and others explain most of the variation in settlement amounts, as illustrated in Figure 29.[28]

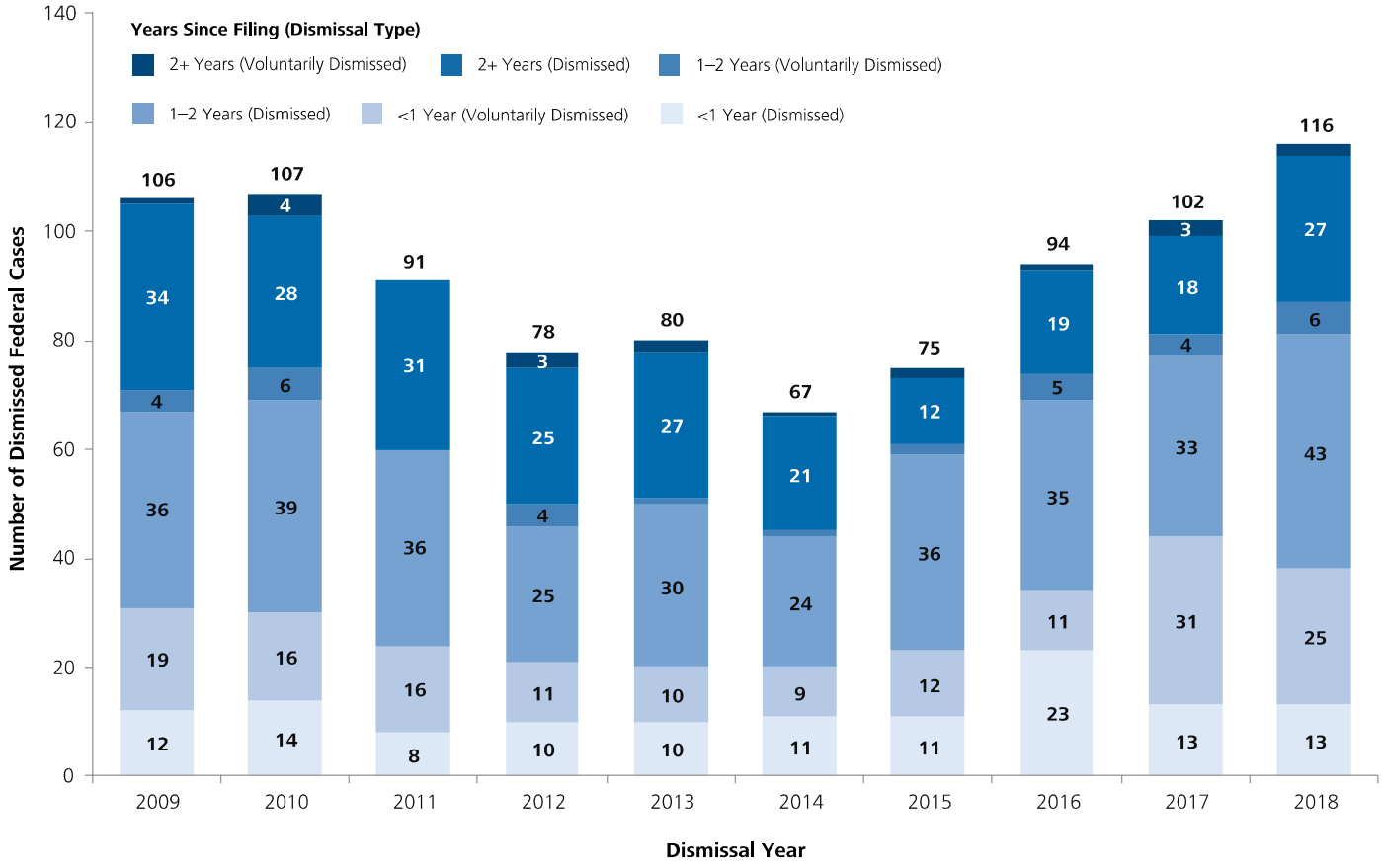
Figure 29. **Predicted vs. Actual Settlements**



Trends in Dismissals

The elevated rate of case dismissal persisted in 2018 (excluding merger objections), with more than 100 dismissals for the second consecutive year (see Figure 30). This partially stems from more cases being filed over the past couple of years, as 75% of dismissals are of cases less than two years old. Additionally, there were 25 voluntary dismissals within a year of filing, an elevated rate for the second year in a row.

Figure 30. **Number of Dismissed Cases by Case Age**
Excludes Merger Objections
January 2009–December 2018



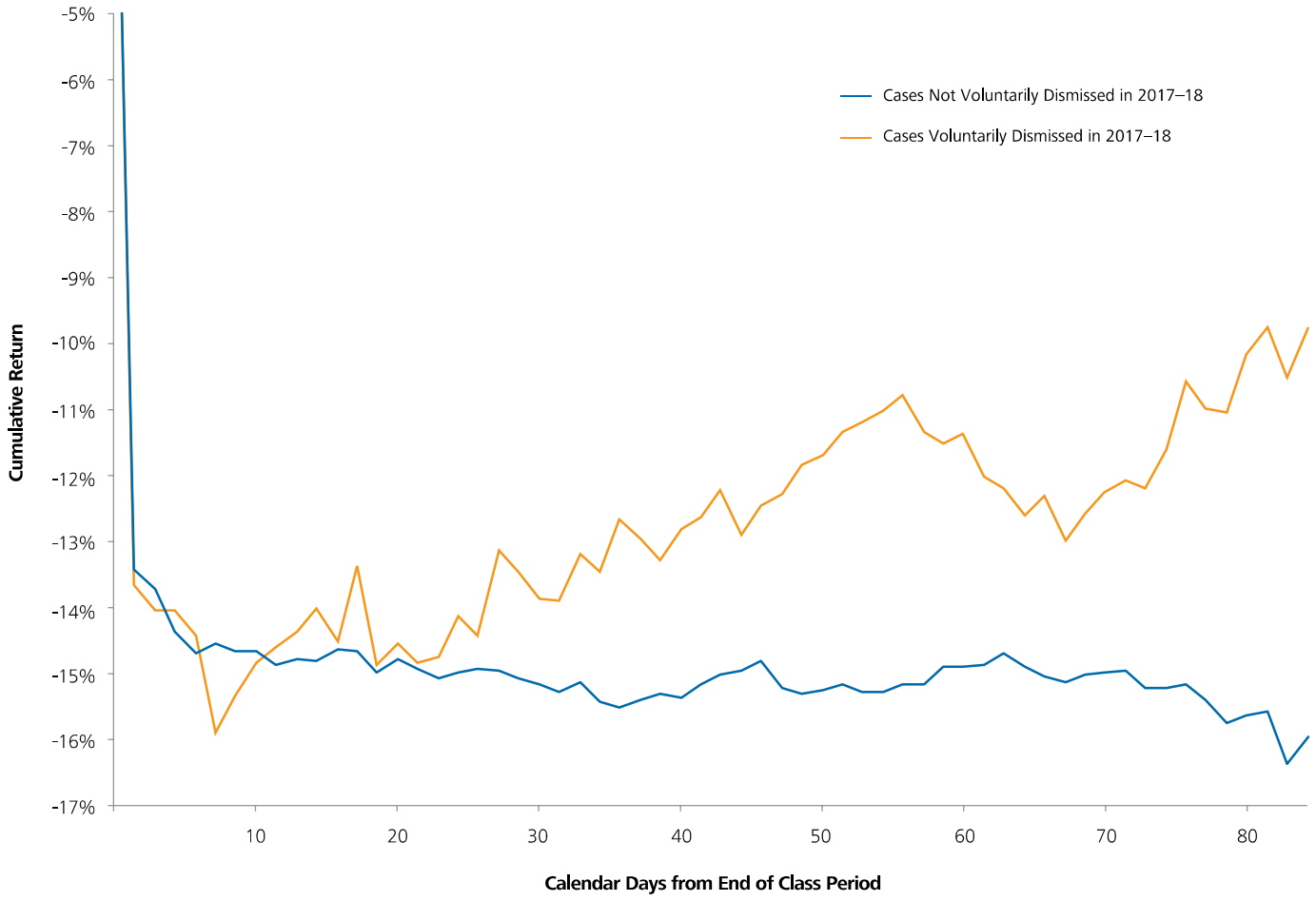
In 2018, about 12% of Standard cases were filed and resolved within the same calendar year, the second-highest rate in at least a decade (after 2017). By the end of the year, 8% of cases were voluntarily dismissed (down from 11% in 2017, but double the 2012–2016 average). Plaintiffs' voluntary dismissal of a case may be a result of perceived case weakness or changes in financial incentives. Recent research also documented forum selection by plaintiffs as a driver of voluntary dismissal without prejudice.[29]

The incentive for plaintiffs (and/or their counsel) to proceed with litigation may change with estimated damages to the class and expected recoveries since filing. For instance, the PSLRA 90-day bounce-back provision caps the award of damages to plaintiffs by the difference between the purchase price of a security and the mean trading price of the security during the 90-day period beginning on the date of the alleged corrective disclosure.

Since most securities class actions are filed well before the end of the bounce-back period (see Figure 14 for time-to-file metrics), plaintiffs may be more likely to voluntarily dismiss litigation if the price of the security at issue subsequently increases. As shown in Figure 31, in 2017 and 2018, the 90-day return of securities underlying cases voluntarily dismissed was about seven percentage points greater, on average, than securities underlying cases not voluntarily dismissed.[30]

The rate of voluntary dismissals was not particularly concentrated in terms of jurisdiction or the specific allegations we track.

Figure 31. **Average PSLRA Bounce-Back Period Returns of Voluntary Dismissals**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, or Section 12
January 2017–December 2018



Note: To control for the impact of outliers on the average of each group, for each day the most extreme 5% of cumulative returns are dropped. Observations on the three final trading days of the bounce-back period for each category are dropped due to incomplete return data.

Trends in Attorneys' Fees

Plaintiffs' Attorneys' Fees and Expenses

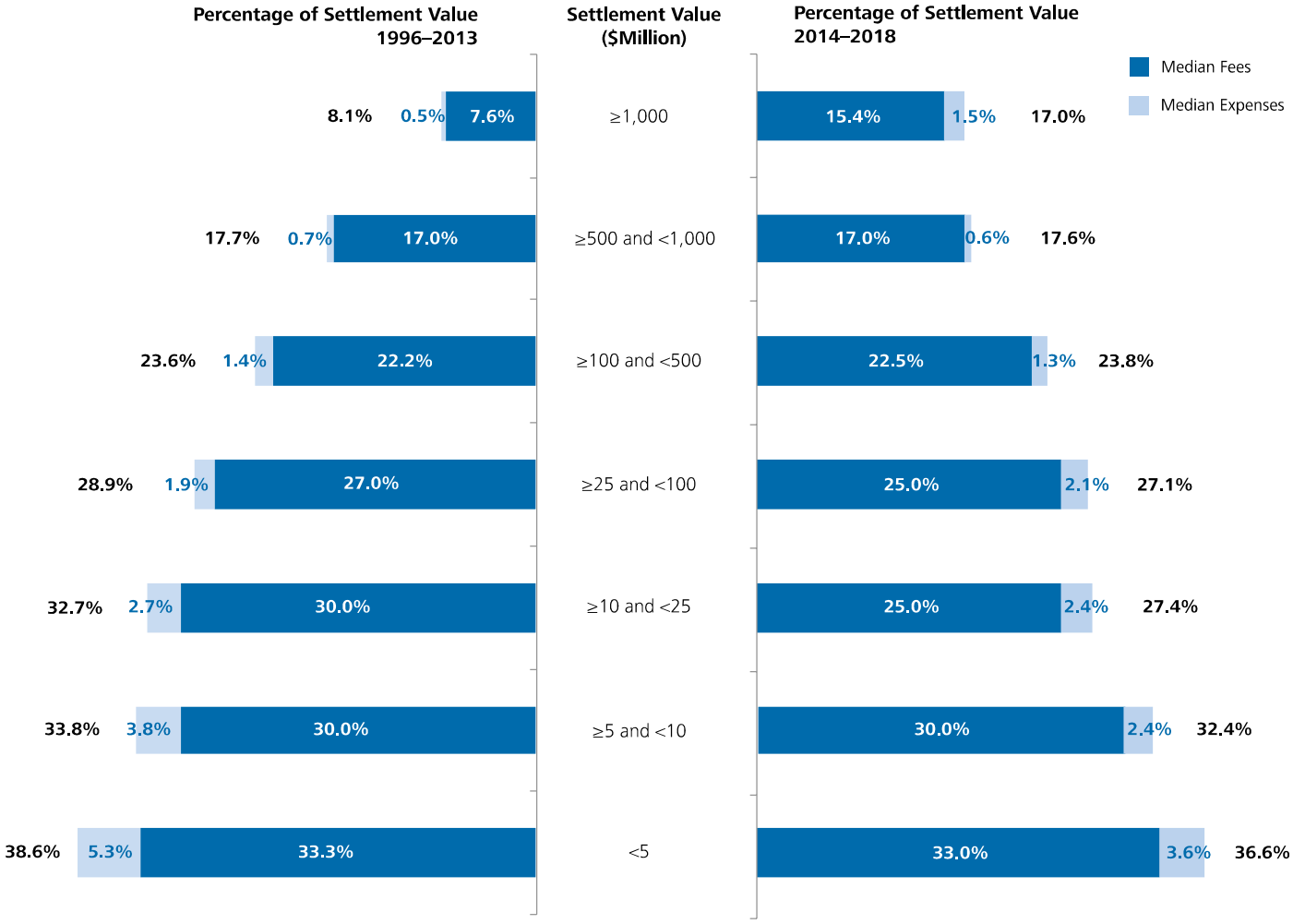
Usually, plaintiffs' attorneys' remuneration is determined as a fraction of any settlement amount in the form of fees, plus expenses. Figure 32 depicts plaintiffs' attorneys' fees and expenses as a proportion of settlement values over ranges of settlement amounts. The data shown in this figure excludes settlements for merger-objection cases and cases with no cash payment to the class.

A strong pattern is evident in Figure 32; typically, fees grow with settlement size, but less than proportionally (i.e., the fee percentage shrinks as the settlement size grows).

To illustrate that the fee percentage typically shrinks as settlement size grows, we grouped settlements by settlement value and reported the median fee percentage for each group. While fees are stable at around 30% of settlement values for settlements below $10 million, this percentage declines as settlement size increases.

We also observe that fee percentages have been decreasing over time, except for fees awarded on very large settlements. For settlements above $1 billion, fee rates have increased.

Figure 32. **Median of Plaintiffs' Attorneys' Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for $0 to the Class



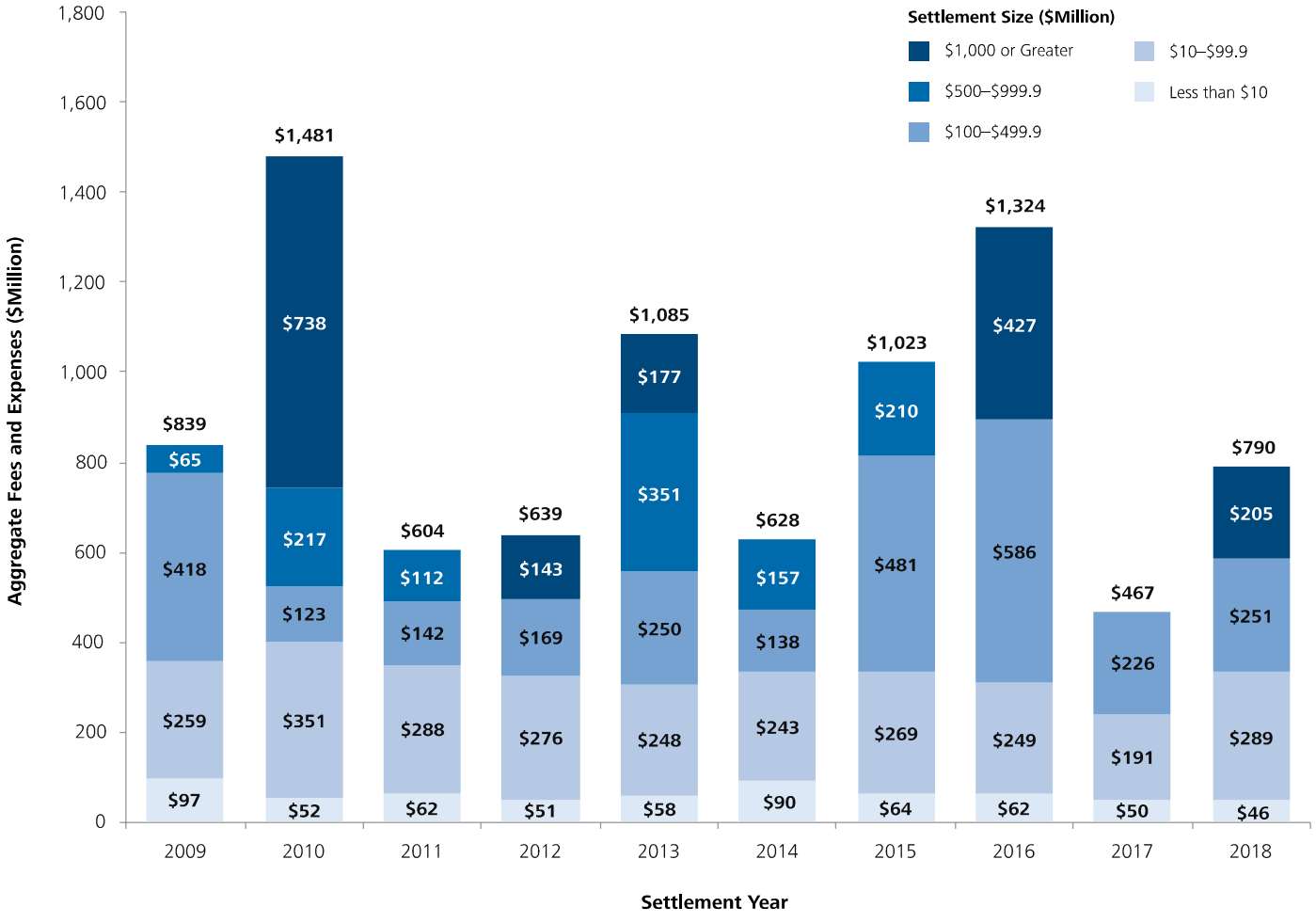
Aggregate Plaintiffs' Attorneys' Fees and Expenses

Aggregate plaintiffs' attorneys' fees and expenses are the sum of all fees and expenses received by plaintiffs' attorneys for all securities class actions that receive judicial approval in a given year.

In 2018, aggregate plaintiffs' attorneys' fees and expenses were $790 million, about 70% higher than in 2017 (see Figure 33). The increase in fees partially reflects the rebound in settlements, but fees grew substantially less than the near-tripling of aggregate settlements. This is partially due to the outsized impact of the $3 billion Petrobras settlement, one of several mega-settlements that historically generates lower fees as a percentage of settlement value.

Note that Figure 33 differs from the other figures in this section because the aggregate includes fees and expenses that plaintiffs' attorneys receive for settlements in which no cash payment was made to the class.

Figure 33. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2009–December 2018



Notes

[1] This edition of NERA's report on recent trends in securities class action litigation expands on previous work by our colleagues Lucy Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors also thank Dr. Milev for helpful comments on this edition. These individuals receive credit for improving this paper; all errors and omissions are ours.

[2] Data for this report are collected from multiple sources, including Institutional Shareholder Services Inc., complaints, case dockets, Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., Nasdaq, Inc., Intercontinental Exchange, Inc., US Securities and Exchange Commission (SEC) filings, and public press reports.

[3] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[4] Craig Doidge, G. Andrew Karolyi, and René M. Stulz, "The U.S. Listing Gap," National Bureau of Economic Research Working Paper No. 21181, May 2015.

[5] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[6] For M&A statistics, see "Mergers & Acquisitions Review: First Nine Months 2018," Thomson Reuters, October 2018, available at http://dmi.thomsonreuters.com/Content/Files/3Q2018_MA_Legal_Advisor_Review.pdf.

[7] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[8] Matthew D. Cain and Steven D. Solomon, "Takeover Litigation in 2015," Berkeley Center for Law, Business and the Economy, 14 January 2016.

[9] Warren S. de Wied, "Delaware Forum Selection Bylaws After Trulia," Harvard Law School Forum on Corporate Governance and Financial Regulation, 25 February 2016.

[10] *In re: Walgreen Co. Stockholder Litigation*, No. 15-3799 (7th Cir. Aug. 10, 2016).

[11] Federal securities class actions that allege violations of Rule 10b-5, Section 11, and/or Section 12 have historically dominated federal securities class action dockets and often been referred to as "Standard" cases.

[12] *Cyan, Inc. v. Beaver County Employees Retirement Fund*, Supreme Court No. 15-1439.

[13] See Restoration Robotics Inc. SEC Form 8-K, filed 17 October 2017, and Snap, Inc. SEC Form S-1, filed 2 February 2017.

[14] Regulatory cases with parallel accounting, performance, or missed earnings claims are excluded.

[15] Industries with fewer than 25 firms listed on US exchanges are dropped.

[16] For M&A statistics, see "Mergers & Acquisitions Review, Full Year 2017," Thomson Reuters, December 2017.

[17] For M&A statistics, see "Mergers & Acquisitions Review, First Nine Months 2018," Thomson Reuters, October 2018.

[18] "SAC to pay $1.8 billion to settle insider trading charges," Chicago Tribune, 4 November 2013, available at https://www.chicagotribune.com/business/ct-xpm-2013-11-04-chi-sac-to-pay-18-billion-to-settle-insider-trading-charges-20131104-story.html.

[19] Filings indicate that most firms in the SP 500 have adopted 10b5-1 plans as of 2014. See "Balancing Act: Trends in 10b5-1 Adoption and Oversight Article," Morgan Stanley, 2019.

[20] This case was filed after the SEC filed a complaint, more than four years after the end of the proposed class period, which plaintiffs in the class action state first revealed the alleged fraud.

[21] Outcomes of the motions for summary judgment are available from NERA but are not shown in this report.

[22] *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

[23] Active cases equals the sum of pending cases at the beginning of 2018 plus those filed during the year.

[24] Nearly 90% of cases filed before 2012 have been resolved, providing evidence of longer-term trends about dismissal and settlement rates. Data since then is inconclusive given pending litigation.

[25] We only consider pending litigation filed after the PSLRA.

[26] These metrics exclude merger objections.

[27] Each of the metrics in the *Time to Resolution* sub-section exclude IPO laddering cases and merger-objection cases because the former usually take much longer to resolve and the latter are usually much shorter to resolve.

[28] The axes are in logarithmic scale, and the two largest settlements are excluded from this figure.

[29] Commentary regarding a 2017 ruling in the Southern District of New York indicated that "[p]laintiffs in [*Cheung v. Bristol-Myers Squibb*] had originally filed their lawsuits in a federal district court, but after the federal district court issued a ruling that was unfavorable for the plaintiffs, the plaintiffs voluntarily dismissed their lawsuits without prejudice and then refiled them in Delaware state court." See Colin E. Wrabley and Joshua T. Newborn, "Getting Your Company's Case Removed to Federal Court When Sued in Your 'Home' State," *The Legal Intelligencer*, 19 December 2017. The case referred to is *Cheung v. Bristol-Myers Squibb*, Case No. 17cv6223(DLC), (S.D.N.Y. Oct. 12, 2017).

[30] To control for the impact of outliers on the average of each group, for each day the most extreme 5% of daily cumulative returns are dropped. Observations on the three final days of the bounce-back period for each category are dropped due to incomplete return data.

About NERA

NERA Economic Consulting (**www.nera.com**) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

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Exhibit 9

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BABAK HATAMIAN and LUSSA DENNJ SALVATORE, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

ADVANCED MICRO DEVICES, INC., RORY P. READ, THOMAS J. SEIFERT, RICHARD A. BERGMAN, AND LISA T. SU,

Defendants.

Case No. 4:14-cv-00226-YGR

CLASS ACTION

~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES, PAYMENT OF LITIGATION EXPENSES, AND PAYMENT OF CLASS REPRESENTATIVES' EXPENSES

On February 27, 2018, a hearing having been held before this Court to determine, among other things, whether and in what amount to award (1) plaintiffs' counsel in the above-captioned consolidated securities class action (the "Action") fees and litigation expenses directly relating to their representation of the Class; and (2) Class Representatives their costs and expenses (including lost wages), pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court (the "Settlement Notice") was mailed to all reasonably identified Class Members; and that a summary notice of the hearing (the "Summary Notice"), substantially in the form approved by the Court, was published in *Investor's Business Daily* and transmitted over *PR Newswire*; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all Class Members who have not timely and validly requested exclusion, Class Counsel, and the Claims Administrator.

2. All capitalized terms used herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated as of October 9, 2017 (the "Stipulation").

3. Notice of Class Counsel's application for attorneys' fees and payment of litigation expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the application for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, due process, and other applicable law, constituted the best notice practicable under the

circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Class Counsel are hereby awarded, on behalf of all plaintiffs' counsel, attorneys' fees in the amount of $7,375,000 plus interest at the same rate earned by the Settlement Fund (or 25% of the Settlement Fund, which includes interest earned thereon), and payment of litigation expenses in the amount of $2,812,817.52, which sums the Court finds to be fair and reasonable.

5. The award of attorneys' fees and litigation expenses may be paid to Class Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

6. In making this award of attorneys' fees and payment of litigation expenses to be paid from the Settlement Fund, the Court has analyzed the factors considered within the Ninth Circuit and found that:

(a) The Settlement has created a common fund of $29.5 million in cash and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of plaintiffs' counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Class Representatives, sophisticated institutional investors that were directly involved in the prosecution and resolution of the Action and who have a substantial interest in ensuring that any fees paid to plaintiffs' counsel are duly earned and not excessive;

(c) Plaintiffs' counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

(d) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(e) Plaintiffs' counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(f) Plaintiffs' counsel have devoted approximately 62,765 hours, with a lodestar value of $31,122,958.75 to achieve the Settlement;

(g) The amount of attorneys' fees awarded are fair and reasonable and consistent with fee awards approved in cases within the Ninth Circuit with similar recoveries;

(h) Notice was disseminated to putative Class Members stating that Class Counsel would be submitting an application for attorneys' fees in an amount not to exceed 30% of the Settlement Fund, which includes interest, and payment of litigation expenses incurred in connection with the prosecution of this Action in an amount not to exceed $3,000,000, plus interest, and that such application also might include a request that Class Representatives be reimbursed their reasonable costs and expenses (including lost wages) directly related to their representation of the Class; and

(i) There were no objections to the application for attorneys' fees or expenses.

7. In accordance with the PSLRA, the Court hereby awards Class Representative Arkansas Teacher Retirement System $8,348.25 for its costs and expenses directly related to its representation of the Class, and KBC Asset Management NV $14,875.00 for its costs and expenses directly related to its representation of the Class.

8. Any appeal or challenge affecting this Court's approval of any attorneys' fee, expense application, or award of costs and expenses to Class Representatives in the Action shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. Exclusive jurisdiction is retained over the subject matter of this Action and over all parties to the Action, including the administration and distribution of the Net Settlement Fund to Class Members.

10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

Dated: March 2, 2018

HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

Exhibit 10

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: BROCADE SECURITIES LITIGATION	Consolidated Case No.: 3:05-CV-02042-CRB **FINAL ORDER AND JUDGMENT**

WHEREAS, a consolidated class action is pending in this Court captioned: *In re: Brocade Securities Litigation*, Consolidated Case No. 3:05-CV-02042-CRB (the "Action");

WHEREAS, the Court previously certified the Class (as defined herein) in this Action by Order dated October 12, 2007, over the opposition of defendants Brocade Communications Systems, Inc. ("Brocade" or the "Company") and Gregory Reyes, Antonio Canova, Larry Sonsini, Seth Neiman, and Neal Dempsey (collectively, "Individual Defendants");

WHEREAS, on November 18, 2008, the Court preliminarily certified the same Class for purposes of effectuating the settlement among Lead Plaintiff and Class Representative, Arkansas Public Employees Retirement System ("APERS"), and Class Representative, Erie County Public Employees Retirement System ("ERIE") (together, "Class Representatives"), and KPMG LLP ("KPMG" and, collectively with Brocade and the Individual Defendants, "Defendants");

WHEREAS, pursuant to Federal Rule of Civil Procedure 23(e), this matter came before the Court for hearing pursuant to the Preliminary Approval of Settlement Agreement Order dated November 18, 2008 (the "Notice Order"), on the application of the parties for approval of a proposed settlement of the Action (the "Settlement") set forth in the following stipulations: (i) a Modified Stipulation and Agreement of Settlement dated January 14, 2009 entered into among Class Representatives, on behalf of themselves and the Class, Brocade and the Individual Defendants (the "Brocade Stipulation"), and (ii) a Stipulation and Agreement of Settlement dated October 23, 2008 entered into among Class Representatives, on behalf of themselves and the Class, and KPMG (the "KPMG Stipulation," and together with the Brocade Stipulation, the "Stipulations");

WHEREAS, due and adequate notice has been given to the Class as required in the Notice Order; and

WHEREAS, the Court has considered all papers filed and proceedings had herein and otherwise is fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Order and Final Judgment (the "Judgment") incorporates by reference the definitions in the Stipulations and all terms used herein shall have the same meanings as set forth in the Stipulations unless otherwise defined herein.

2. This Court has jurisdiction over the subject matter of the Action, and over all parties to the Action (the "Parties"), including all members of the Class.

3. The Notice of Class Action, Proposed Settlement, Motion for Attorneys' Fees and Fairness Hearing (the "Notice") has been given to the Class, pursuant to and in the manner directed by the Notice Order, proof of the mailing of the Notice and publication of the Publication Notice was filed with the Court by Plaintiffs' Counsel, and full opportunity to be heard has been offered to all Parties, the Class, and persons and entities in interest. The form and manner of Notice and Publication Notice are hereby determined to have: (a) constituted the best practicable notice, (b) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the Stipulations, including the effect of the releases provided for therein, of their right to object to the proposed Settlement, of their right to exclude themselves from the Class, and of their right to appear at the Fairness Hearing, (c) constituted reasonable, due, adequate and sufficient notice to all persons or entities entitled to receive notice, and (d) met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), 15 U.S.C. § 78u-4(a)(7), the Rules of the Court and all other applicable laws. It is further determined that all members of the Class are bound by the Judgment herein.

4. In connection with the certification of the Class, the Court has already determined that each element Federal Rule of Civil Procedure 23(a) and 23(b)(3) was satisfied as to Class Representatives' claims against Brocade and the Individual Defendants and incorporates that prior order as if set forth fully herein. Additionally, for purposes of effectuating the Settlement, each of the provisions of Fed. R. Civ. P. 23 has been satisfied and the Action has been properly maintained according to the provisions of Rules 23(a) and 23(b)(3) as to Class Representatives' claims against

KPMG. Specifically, this Court finds that: (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the claims of the Class; (d) Class Representatives and their counsel have fairly and adequately protected the interests of the Class; (e) the questions of law and fact common to members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy considering: (i) the interests of the Class Members in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Class, (iii) the desirability or undesirability of continuing the litigation of the claims asserted in this Action, and (iv) the difficulties likely to be encountered in the management of this Action as a class action.

5. Accordingly, the Action is hereby certified as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) for purposes of effectuating the Settlement with KPMG on behalf of the same Class previously certified in this Action, which consists of: all persons and entities who purchased or otherwise acquired Brocade common stock between May 18, 2000 and May 15, 2005, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are: (a) Defendants; (b) all officers, directors, and partners of any Defendant and of any Defendant's partnerships, subsidiaries, or affiliates at all relevant times; (c) members of the immediate family of any of the foregoing excluded parties; (d) the legal representatives, heirs, successors, and assigns of any of the foregoing excluded parties; and (e) any entity in which any of the foregoing excluded parties has or had a controlling interest at all relevant times. Also excluded from the Class are any putative members of the Class who excluded themselves by timely requesting exclusion in accordance with the requirements set forth in the Notice, as listed on Exhibit 1 annexed hereto.

6. The Settlement, and all transactions preparatory or incident thereto, is found to be fair, reasonable, adequate, and in the best interests of the Class, and is hereby approved. The Parties are hereby authorized and directed to comply with and to consummate the Settlement in

accordance with the Stipulations, and the Clerk of this Court is directed to enter and docket this Judgment in the Action.

7. The Action and all claims included therein, as well as all of the Settled Claims (defined in the Stipulations and in Paragraph 8(c) below) are dismissed with prejudice as to Class Representatives and all other members of the Class, and as against each and all of the Released Parties (defined in the Stipulations and in Paragraph 8(a) below). The Parties are to bear their own costs, except as otherwise provided in the Stipulations.

8. As used in this Judgment, the terms "Released Parties," "Related Parties," "Settled Claims," "Settled Defendants' Claims," and "Unknown Claims" shall have the meanings set forth below:

(a) "Released Parties" means Defendants and, as applicable, each of their Related Parties as defined below.

(b) "Related Parties" means each of Defendants' past or present directors, officers, employees, partners, principals, members, insurers, co-insurers, re-insurers, controlling shareholders, attorneys, advisors, accountants, auditors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any member of any Individual Defendant's immediate family, or any trust of which any Individual Defendant is the settlor or which is for the benefit of any member of an Individual Defendant's immediate family.

(c) "Settled Claims" means and includes any and all claims, debts, demands, controversies, obligations, losses, rights or causes of action or liabilities of any kind or nature whatsoever (including, but not limited to, any claims for damages (whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent,

accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims (defined herein) that: (i) have been asserted in this Action by Class Representatives on behalf of the Class and its Class Members against any of the Released Parties, or (ii) have been or could have been asserted in any forum by Class Representatives, Class Members or any of them against any of the Released Parties, which arise out of, relate to or are based upon the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in the Complaint and/or the Amended Complaint. Settled Claims shall also include any claims, debts, demands, controversies, obligations, losses, rights or causes of action that Class Representatives, Class Members or any of them may have against the Released Parties or any of them which involve or relate in any way to the defense of the Action or the Settlement of the Action. Notwithstanding the foregoing, Settled Claims shall not include: (i) any claims to enforce the Settlement, including, without limitation, any of the terms of the Stipulations, the Notice Order, this Judgment or any other orders issued by the Court in connection with the Settlement; (ii) any claims asserted by Persons who exclude themselves from the Class by timely requesting exclusion in accordance with the requirements set forth in the Notice; (iii) any claims, rights or causes of action that have been or could have been asserted in the Derivative Actions and/or the Company Action (as defined in the Brocade Stipulation); or (iv) any and all claims that have been asserted under the Securities Act of 1933 and the Securities Exchange Act of 1934, or any other laws, for the allegedly wrongful conduct complained of in *In re Brocade Communications Systems, Inc. Initial Public Offering Securities Litigation*, 01 CV 6613 (SAS)(BSJ), as coordinated for pretrial purposes in *In re Initial Public Offering Securities Litigation*, Master File No. 21 MC 92 (SAS), pending in the United States District Court for the Southern District of New York.

(d) "Settled Defendants' Claims" means and includes any and all claims, debts, demands, controversies, obligations, losses, costs, rights or causes of action or liabilities of any kind or nature whatsoever (including, but not limited to, any claims for damages (whether compensatory, special,

incidental, consequential, punitive, exemplary or otherwise), injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs, expenses, or any other form of legal or equitable relief whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, including both known claims and Unknown Claims, that have been or could have been asserted in the Action or any forum by the Released Parties against any of the Class Representatives, Plaintiffs' Counsel, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action. Notwithstanding the foregoing, Settled Defendants' Claims shall not include any claims to enforce the Settlement, including, without limitation, any of the terms of the Stipulations, the Notice Order, this Judgment or any other orders issued by the Court in connection with the Settlement .

(e) "Unknown Claims" means any and all claims that any Class Representative or Class Member does not know or suspect to exist and any and all claims that any Defendant does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of, as applicable, the Released Parties, Class Representatives, and Class Members, or might have affected his, her or its decision to object or not to object to this Settlement. The Class Representatives, Class Members, Defendants and each of them have acknowledged and agreed that he, she or it may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Settled Claims and/or the Settled Defendants' Claims. Nevertheless, with respect to any and all Settled Claims and Settled Defendants' Claims, the Parties to the Stipulations have stipulated and agreed that, upon the Effective Date, they shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, waived all provisions, rights and benefits of California Civil Code § 1542 and all provisions rights and benefits conferred by any law of any state or

territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. California Civil Code § 1542 provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Parties to the Stipulations have expressly acknowledged and agreed, and the Class Members shall be deemed to have, and by operation of the Judgment shall have acknowledged and agreed, that the waiver and release of Unknown Claims constituting Settled Claims and/or Settled Defendants' Claims was separately bargained for and a material element of the Settlement.

9. (a) In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out of any Settled Claim (i) by any person against Brocade or the Individual Defendants, and (ii) by Brocade or the Individual Defendants against any person, other than claims for contribution that Brocade and/or the Special Litigation Committee (as defined in the Brocade Stipulation) have asserted or may assert against the Individual Defendants, the Related Parties or any of them, are hereby permanently barred and discharged. In accordance with 15 U.S.C. § 78u-4(f)(7)(A), any and all claims for contribution arising out of any Settled Claim (i) by any person against KPMG, and (ii) by KPMG against any person, other than a person whose liability has been extinguished by the KPMG Settlement, are hereby permanently barred and discharged. This paragraph 9(a) shall be referred to herein as the "Bar Order."

(b) Notwithstanding the Bar Order or any other provision or paragraph in this Judgment or 15 U.S.C. § 78u-4(f)(7)(A) to the contrary, the Individual Defendants have acknowledged and agreed, and the Court finds, that the Individual Defendants are "person[s] whose liability has been extinguished" by the Brocade Stipulation within the meaning of 15 U.S.C. § 78u-4(f)(7)(A)(ii). Further, the Court finds that the Individual Defendants have knowingly and expressly waived the right to assert the Bar Order or 15 U.S.C. § 78u-4(f)(7)(A) as a defense to any claims for contribution that Brocade and/or the Special Litigation Committee have asserted

or may assert against them in connection with the defense and Settlement of the Action or any related litigation arising from the transactions and occurrences that form the basis of the Action; provided, however, that the Individual Defendants and their Related Parties, and each of them, shall retain the right to defend against any such claims for contribution on other grounds, including, without limitation: (i) that he or she is not at fault for the conduct giving rise to the Settlement; (ii) that his or her proportional fault is less than asserted by Brocade and/or the Special Litigation Committee; (iii) that Brocade is legally and/or contractually obligated to indemnify him or her for some or all of the Settlement Amount and/or that he or she is not required to reimburse or repay Brocade for that indemnified amount; and (iv) that the Settlement Amount is greater than warranted under all of the circumstances. Further, Brocade and the Special Litigation Committee have agreed that they will not argue or otherwise assert in any forum or proceeding that (i) by entering into the Brocade Stipulation the Individual Defendants acquiesced in the Settlement Amount or waived in any way their arguments challenging the Settlement Amount as excessive, and (ii) the Bar Order in any way affects or impairs the existing rights of the Individual Defendants to obtain indemnification and advancement of fees incurred in connection with Settled Claims or any other claim asserted against them. The Individual Defendants have agreed that they will not argue or otherwise assert in any forum or proceeding that, by entering into the Brocade Stipulation, Brocade or the Special Litigation Committee in any way compromised or otherwise affected its/their right to seek to limit or extinguish any purported obligation to indemnify or advance fees to the Individual Defendants and their Related Parties or to seek to recover any of the fees or expenses that Brocade has advanced or may advance on behalf of or for the benefit of the Individual Defendants and/or their Related Parties.

10. Upon the Effective Date, Class Representatives and all Class Members on behalf of themselves, their personal representatives, heirs, executors, administrators, trustees, successors and assigns: (a) shall have fully, finally and forever released, relinquished and discharged each and every one of the Settled Claims against the Released Parties, whether or not any such Class Member

or Class Representative executes or delivers a Proof of Claim and Release form ("Proof of Claim"); and (b) shall be deemed to have covenanted not to sue on, and shall forever be barred from suing on, instituting, prosecuting, continuing, maintaining or asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any class or other person, any Settled Claim against any of the Released Parties.

11. Upon the Effective Date, each of the Defendants, on behalf of themselves and their Related Parties: (a) shall have fully, finally and forever released, relinquished and discharged each and every one of the Settled Defendants' Claims; and (b) shall be deemed to have covenanted not to sue on, and shall forever be barred from suing on, instituting, prosecuting, continuing, maintaining or asserting in any forum, either directly or indirectly, on their own behalf or on behalf of any class or other person, any Settled Defendants' Claim against Class Representatives, Class Members and their respective counsel, or any of them.

12. Notwithstanding ¶¶ 9-11 herein, nothing in this Judgment shall bar any action or claim by any of the Parties or the Released Parties to enforce or effectuate the terms of the Stipulations or this Judgment.

13. This Judgment and the Stipulations, including any provisions contained in the Stipulations, any negotiations, statements, or proceedings in connection therewith, or any action undertaken pursuant thereto:

(a) shall not be offered or received against any Released Party as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by the Released Parties with respect to the truth of any fact alleged by any of the plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of any Released Party;

(b) shall not be offered or received against any Released Party as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to

any statement or written document approved or made by any Released Party;

(c) shall not be offered or received against any Released Party as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulations; provided, however, that the Released Parties may offer or refer to the Stipulations to effectuate the terms of the Stipulations, including the releases and other liability protection granted them hereunder, and may file the Stipulations and/or this Judgment in any action that may be brought against them (other than one that has been or may be brought by Brocade and/or the Special Litigation Committee) in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) shall not be construed against any Released Party as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(e) shall not be construed as or received in evidence as an admission, concession or presumption against the Class Representatives or any of the Class Members that any of their claims are without merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable under the Action would not have exceeded the Settlement Amount.

14. The Plan of Allocation is approved as fair and reasonable, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Settlement in accordance with the terms and provisions of the Stipulations.

15. The Court finds that all Parties and their counsel have complied with each requirement of the PSLRA and Rules 11 and 37 of the Federal Rules of Civil Procedure as to all proceedings herein and that Class Representatives and Plaintiffs' Counsel at all times acted in the best interests of the Class and had a good faith basis to bring, maintain and prosecute this Action as

to each Defendant in accordance with the PSLRA and Federal Rule of Civil Procedure 11.

16. Only those Class Members who submit valid and timely Proofs of Claim shall be entitled to receive a distribution from the Net Settlement Fund. The Proof of Claim to be executed by the Class Members shall further release all Settled Claims against the Released Parties. All Class Members shall be bound by all of the terms of the Stipulations and this Judgment, including the releases set forth herein, whether or not they submit a valid and timely Proof of Claim, and shall be barred from bringing any action against any of the Released Parties concerning the Settled Claims.

17. No Class Member shall have any claim against Plaintiffs' Counsel, the Claims Administrator, or other agent designated by Plaintiffs' Counsel based on the distributions made substantially in accordance with the Settlement and Plan of Allocation as approved by the Court and further orders of the Court.

18. No Class Member shall have any claim against the Defendants, Defendants' counsel, or any of the Released Parties with respect to: (a) any act, omission or determination of Plaintiffs' Counsel, the Escrow Agent or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (b) the management, investment or distribution of the Gross Settlement Fund and/or the Net Settlement Fund; (c) the Plan of Allocation; (d) the determination, administration, calculation or payment of claims asserted against the Gross Settlement Fund and/or the Net Settlement Fund; (e) the administration of the Escrow Account; (f) any losses suffered by, or fluctuations in the value of, the Gross Settlement Fund and/or the Net Settlement Fund; or (g) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Gross Settlement Fund and/or the Net Settlement Fund or the filing of any tax returns.

19. Any order approving or modifying the Plan of Allocation set forth in the Notice, or the application by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses or any request of Class Representatives for reimbursement of reasonable costs and expenses shall not disturb or affect the Finality of this Judgment, the Stipulations or the Settlement contained

therein.

20. Plaintiffs' Counsel are hereby awarded a total of $986,039 in reimbursement of expenses, plus accrued interest. After deducting such expenses from the Gross Settlement Fund, Plaintiffs' Counsel also are hereby awarded attorneys' fees in the amount of 25% of the Gross Settlement Fund (net of any reimbursed expenses), plus accrued interest, which sum the Court finds to be fair and reasonable. The foregoing awards of fees and expenses shall be paid to Plaintiffs' Counsel from the Gross Settlement Fund, and such payment shall be made at the time and in the manner provided in the Stipulations, with interest from the date the Gross Settlement Fund was funded to the date of payment at the same net rate that interest is earned by the Gross Settlement Fund. The appointment and distribution among Plaintiffs' Counsel of any award of attorneys' fees shall be within Plaintiffs' Counsel's sole discretion.

21. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Gross Settlement Fund, the Court has considered and found that:

(a) the Settlement has created a fund of $160,098,500 million in cash that is already on deposit, plus interest thereon, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement;

(b) Over 500,000 copies of the Notice were disseminated to putative Class Members stating that Plaintiffs' Counsel were moving for attorneys' fees not to exceed 25% of the Gross Settlement Fund and reimbursement of expenses from the Gross Settlement Fund in a total amount not to exceed $1.2 million, and no objections were filed by any Class Member against the terms of the proposed Settlement or the ceiling on the fees and expenses contained in the Notice;

(c) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement in good faith and with skill, perseverance and diligent advocacy;

(d) The Action involves complex factual and legal issues and was actively prosecuted for over three years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that the Class Representatives and the Class may have recovered less or nothing from the Defendants;

(f) Plaintiffs' Counsel have advanced in excess of the requested $986,039 in costs and expenses to fund the litigation of this Action; and

(g) The amount of attorneys' fees awarded and expenses reimbursed from the Gross Settlement Fund are fair and reasonable under all of the circumstances and consistent with awards in similar cases.

22. No Class Member filed an objection to the terms of the settlement or the fee application. Two objections were filed by former defendants who are not Class Members. Those objections have been withdrawn and are no longer before the Court. All other objections, if any, are hereby denied.

23. Without affecting the Finality of this Judgment in any way, the Court reserves exclusive and continuing jurisdiction over the Action, the Class Representatives, the Class, and the Released Parties for purposes of: (a) supervising the implementation, enforcement, construction, and interpretation of the Stipulations, the Plan of Allocation, and this Judgment; (b) hearing and determining any application by Plaintiffs' Counsel for an award of attorneys' fees, costs, and expenses and/or reimbursement to the Class Representatives, if such determinations were not made at the Fairness Hearing; and (c) supervising the distribution of the Gross Settlement Fund and/or the Net Settlement Fund.

24. In the event that the Settlement is terminated or does not become Final in accordance with the terms of the Stipulations for any reason whatsoever, or in the event that the Gross Settlement Fund, or any portion thereof, is returned to Brocade or KPMG, then this Judgment shall be rendered null and void and shall be vacated to the extent provided by and in accordance with the Stipulations and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulations.

25. In the event that, prior to the Effective Date, Class Representatives or Brocade institutes any legal action against the other to enforce any provision of the Brocade Stipulation or this Judgment or to declare rights or obligations thereunder, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any such action. Neither KPMG nor the Individual Defendants shall have any obligation under this paragraph.

26. There is no reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED January 26, 2009.

THE HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: BROCADE SECURITIES LITIGATION	Consolidated Case No.: 3:05-CV-02042-CRB **NOTICE OF MOTION, MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES** Date: January 23, 2009 Time: 10:00 a.m. Dept.: Courtroom 8, 19th Floor Judge: Hon. Charles R. Breyer

INTRODUCTION

In connection with the approval of the Settlements[2] in this Action, Court-appointed Class Counsel, Nix, Patterson & Roach, LLP ("NPR") and Patton Roberts, PLLC ("PR"), hereby respectfully move the Court for: (1) attorneys' fees constituting 25% of the Settlement Fund[3] (net of any reimbursed expenses), plus interest; and (2) reimbursement of $986,039.00 in expenses, plus interest, incurred in successfully prosecuting this litigation. The requested fee is fair and reasonable in light of the work performed, the expenses incurred and the outstanding recovery for the Class achieved by Class Counsel.[4] Further, because the fee percentage is requested net of reimbursed expenses, the requested fee is below the benchmark of 25% approved by the Ninth Circuit, and is consistent with fee awards previously awarded by this Court in other cases.

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[2] "Settlements" refers to the $160,000,000. Settlement with Brocade, whereby the Class' claims against Brocade and the Individual Defendants were released, and the $98,500,000.00 Settlement with KPMG, whereby the Class' claims against KPMG were released. This Memorandum incorporates by reference the definitions in the separate Brocade and KPMG Stipulations of Settlement, each filed October 24, 2008 (hereinafter the "Brocade Stipulation" or "KPMG Stipulation"), which resolve the Action between Lead Plaintiff and all Defendants ("Parties"). All terms used herein shall have the same meaning as set forth in each Stipulation. The Brocade Stipulation was modified by the Class Representatives, Brocade and the Individual Defendants as directed by the Court in its November 18, 2008 Order Granting Preliminary Approval. In support of this Fee Memorandum, Class Counsel also are submitting the Declaration of Jeffrey J. Angelovich in Support of Proposed Class Action Settlement and Application for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Angelovich Declaration" or "Angelovich Decl.").

[3] The "Settlement Fund" consists of a payment of $160,000,000.00 from Defendant Brocade and a payment of $98,500.00 from Defendant KPMG, plus all accrued interest.

[4] The Court appointed NPR and PR Lead Counsel and Class Counsel. NPR and PR have led this litigation at all times. As such, the terms "Class Counsel" and/or "Lead Counsel" refer to NPR and PR. The following firms also assisted NPR and PR and/or Class Representatives in this case: Keil & Goodson, PA ("KG"), which also represents Lead Plaintiff and Class Representative Arkansas Public Employees Retirement System ("APERS") as "of counsel;" the law firm of Barroway, Topaz, Kessler, Meltzer & Check LLP ("BTKMC"), which represents Class Representative Erie County Pennsylvania Employees Retirement System ("ERIE") as "of counsel;" and the law firm of Kaplan, Fox & Kilsheimer, LLP ("KF"), which the Court appointed as "Liaison Counsel." In the interest of brevity, the time and expense incurred by these firms is included in references to "Class Counsel" herein. As discussed below, each of the firms listed above has submitted a declaration setting forth their respective time and expenses incurred in the litigation of this matter. Class Counsel directed this litigation at all times in an efficient manner in order to avoid unnecessary, wasteful and/or duplicative work. Angelovich Decl. at ¶50.

settlement reached soon after formal discovery initiated); *In re 2TheMart.com, Inc. Sec. Litig.*, SACA-99-1127-DOC (ANx), slip. op. at 2 (C.D. Cal. July 8, 2002) (awarding 33 1/3% of $2.7 million settlement fund); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of fees equal to 33 1/3% of total recovery); *In re Fluor Corp. Sec. Litig.*, No. SA CV 97-0734-HHS (EEx), slip op. at 1 (C.D. Cal. June 27, 2005) (awarding 30% of settlement fund); *In re Pub. Serv. Co.*, Case No. 91-0536M,1992 U.S. Dist. LEXIS 16326, at *12 n.1 (S.D. Cal. July 28, 1992) (awarding 33 1/3% of the settlement fund).

Therefore, Class Counsel respectfully submit that the present request for a fee of 25% of the Settlement Fund (net of reimbursed expenses), plus interest, is reasonable in relation to the fees awarded in complex class actions in this Circuit.

F. An Analysis of Class Counsel's Lodestar Supports the Requested Fee Award

Although an analysis of the lodestar is not required for an award of attorneys' fees in the Ninth Circuit, a cross-check of Class Counsel' fee request with its lodestar further demonstrates the reasonableness of the requested fee award. *See Vizcaino,* 290 F.3d at 1048-50; *see also Florida ex rel. Butterworth v. Exxon Corp. (In re Petroleum Prods. Antitrust Litig.),* 109 F.3d 602 (9th Cir. 1997) (comparison of the lodestar fee to the percentage fee is an appropriate measure of a percentage fee's reasonableness); *In re Heritage Bond Litigation,* 2005 U.S. Dist. LEXIS 13627, at *50 (same).

Here, Class Counsel directed this litigation at all times in an efficient manner in order to avoid unnecessary, wasteful and/or duplicative work. Class Counsel, together with all of Plaintiffs' Counsel, have devoted substantial effort to this case—collectively working no less than 24,092 hours since this case's inception. Angelovich Decl. at ¶46; Exh. 1-5. As a result, the lodestar is $11,335,689.40, which results in the application of a very reasonable multiplier of 3.5 to the lodestar. *Id*. Such a modest multiplier falls on the lower end of multipliers typically awarded in complex securities cases in the Ninth Circuit. *See, e.g., Vizcaino*, 290 F.3d at 1048-50 (applying 3.65 multiplier); *In re Veritas Software Corp. Sec. Litig.,* Master File No. C-03-0283, 2005 U.S. Dist.

LEXIS 30880, at *42 (N.D. Cal. Nov. 15, 2005) (awarding percentage amount equating with multiplier of 4.0 where motion to dismiss pending and no formal discovery taken).

Therefore, Class Counsel submits that the attorneys' fee request as a percentage of the Settlement Fund is fair and reasonable when cross-checked with the lodestar analysis

IV. CLASS COUNSEL IS ENTITLED TO REIMBURSEMENT FOR REASONABLE LITIGATION EXPENSES

"There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund." *West v. Circle K Stores, Inc.,* No. Civ. S-04-0438, 2006 U.S. Dist. LEXIS 76558, at *25 (E.D. Cal. Oct. 19, 2006). Here, Class Counsel requests reimbursement of $986,039.00 for out-of-pocket expenses incurred to date in the prosecution of this Action. Angelovich Decl. at ¶45.

These expenses have been approved by Class Representatives. Stone Decl. at ¶11; Weber Decl. at ¶9. Further, Counsel agreed to place a cap on all lodging costs at the lesser of actual cost or $300.00 per night and have not requested payment for meals. *Id.*; Angelovich Decl. at ¶47. Further, Class Counsel has decided not to request reimbursement for an additional several hundred-of-thousand dollars in case expenses. Angelovich Decl. at ¶47. Moreover, the requested expense reimbursement amount is $213,961.00 less than the $1.2 million set forth in the Notice. While Class Counsel have been diligent in obtaining finalized invoices and statements in order to submit the most accurate reimbursement amount to the Court, it is possible that Class Counsel will incur additional expenses following the Court's final approval of the Settlements. Accordingly, Class Counsel reserve the right to request—post-final approval—reimbursement for any such expenses incurred, in an amount not to exceed $213,961.00 or a total of $1.2 million for all reimbursement requests.

These expenses were incidental and necessary to the effective representation of the Class. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *In re dj Orthopedics, Inc. Sec. Litig.*, No.

Exhibit 11

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re 3COM SECURITIES LITIGATION,	Master File No. C 97-21083 EAI
This Document Relates to: ALL ACTIONS	CLASS ACTION ORDER AWARDING ATTORNEYS FEES AND REIMBURSEMENT OF EXPENSES [Regarding Docket No. 162]

I. INTRODUCTION

The settlement of this consolidated securities class action created an all-cash $259 million fund for distribution to the class members. Plaintiffs' counsel now seeks an award of attorneys fees in the amount of 25% of the common fund and reimbursement of expenses.[1] Notice was given to members of the class, both by direct mailing to 165,807 class members and by publication in *The Wall Street Journal*. The motion came on for hearing before the court on February 23, 2001. Having considered the moving papers submitted by plaintiffs' counsel, the supplemental papers submitted by plaintiffs' counsel in response to the court's January 29, 2001 order, the objection and

[1] Plaintiffs' counsel also filed a motion for approval of the settlement and a motion for approval of the plan of allocation of the settlement proceeds, and all three motions came on for hearing on February 23, 2001. The court approved the settlement and plan of allocation at the February 23 hearing and took the motion for attorneys fees and reimbursement of expenses under submission.

memorandum of points and authorities of class member John H. Morrow, and the arguments of counsel and Mr. Morrow at the hearing, and for good cause appearing, the motion for an award of attorneys fees and reimbursement of expenses is granted in part, as set forth below.

II. BACKGROUND

This is a consolidated securities class action arising out of the merger between 3Com and U.S. Robotics ("USR") in June of 1997. The certified class includes all persons who purchased the common stock of 3Com on the open market from April 23, 1997 through November 5, 1997.[2] The core of plaintiffs' case was 3Com's failure to disclose USR's loss of $160.3 million in the two months preceding the June 1997 merger. There were also allegations that defendants had falsely reported the market demand for 56kbps (x2) modems.

There were substantial liability questions raised and strong defenses presented. It was by no means certain that plaintiffs would have established liability at trial or that any damages were caused by the alleged misrepresentations. Thus, there was a significant risk that plaintiffs could recover nothing at all. Assuming that liability was established, however, the estimates of recoverable damages ranged from $60-750 million.

The settlement was reached in an arms-length negotiation that spanned several sessions. It resulted in an all-cash, interest bearing, settlement fund in the amount of $259 million to be distributed to the class under the approved plan of allocation, after fees and expenses are deducted. Class counsel seeks an award of attorneys fees in the amount of 25% of the fund (nearly $65 million), plus reimbursement of expenses in the amount of $1,189,767.15, plus reimbursement of expenses to the two institutional lead plaintiffs in the amount of $38,461.09, plus interest.

III. ANALYSIS AND DISCUSSION

A. Attorneys Fee Award

The district court has the discretion to use either the percentage-of-the-fund or the

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[2] The class excluded the defendants, members of the individual defendants' immediate families, any entity in which any defendant has or had a controlling interest, current and former directors and officers of 3Com and USR and members of their immediate families, and the legal representatives, heirs, successors or assigns of any such excluded person or entity. Additionally, the shares of 3Com common stock that were acquired by shareholders of USR in connection with the merger were also excluded from the class.

lodestar/multiplier method for determining an attorneys fee award in a common fund case. In re Washington Public Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1296 (9th Cir. 1994). "[N]o presumption in favor of either the percentage or the lodestar method encumbers the district court's discretion to choose one or the other." Id. However, when determining attorneys fees, a district court must ensure that the fee awards out of common funds be reasonable under the circumstances. Id. Regardless of which approach is used, the district court "must assume the role of fiduciary for the class plaintiffs" because "the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage." Washington Public Power, 19 F.3d at 1302. Every dollar awarded to the attorneys out of the settlement fund is a dollar removed from distribution to the class.

Under the lodestar/multiplier method, the court first calculates a lodestar figure representing the number of hours reasonably incurred in the action multiplied by a reasonable hourly rate. After conducting a searching inquiry of the reasonableness of the hours expended and determining that the claimed rates are reasonable within the appropriate legal community, the court may then consider a variety of factors to establish the appropriate multiplier to apply to the lodestar in order to arrive at an enhanced, or decreased, award. The factors that may be relevant to a lodestar/multiplier analysis include: 1) the time and labor required; 2) the novelty and difficulty of the questions involved; 3) the requisite legal skill necessary; 4) the preclusion of other employment due to acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) the time limitations imposed by the client or circumstances; 8) the amount in controversy and the result obtained; 9) the experience, reputation and ability of the attorneys; 10) the undesirability of the case; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. Kerr v. Screen Extras Guild, 526 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951 (1976).

Under the percentage of the fund method, by contrast, "the court simply awards the attorneys a percentage of the fund sufficient to provide class counsel with a reasonable fee." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998). "This approach allow[s] for the cost of litigation to be spread proportionately among each of the beneficiaries, prevent[s] unjust enrichment by class counsel at the expense of the class, and yet provide[s] an incentive to the bar to pursue cases where the prospect of compensation is uncertain and remote in time." In re NASDAQ Market-Makers

Antitrust Litigation,187 F.R.D. 465, 483 (S.D.N.Y. 1998).

The trend in common fund cases has been to move away from the lodestar/multiplier approach and towards the percentage of the fund method. See In re NASDAQ Market-Makers Antitrust Litigation,187 F.R.D. 465, 483-85 (S.D.N.Y. 1998) (tracing the history of attorney fee awards in common fund cases). Courts and commentators have recognized the drawbacks imposed by the lodestar method. Among other things, the lodestar method increases the workload of an already overtaxed judicial system, encourages inefficiency and protracted law and motion practice and otherwise unjustified legal work, creates a disincentive for early settlement, and creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law. See Court Awarded Attorney Fees, Report of the Third Circuit Task Force, 108 F.R.D. 237, 246-49 (1986); accord; In re Activision Securities Litigation, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989); NASDAQ, 187 F.R.D. at 485. "The advantages of the percentage of the fund method over the lodestar method include ease of administration, permitting the judge to focus on 'a showing that the fund conferring a benefit on the class resulted from the lawyers' efforts' rather than collateral disputes over billing. This better respects the Supreme Court's admonition that '[a] request for attorney's fees should not result in a second major litigation.'" NASDAQ, 187 F.R.D. at 485 (citations omitted).

The percentage-of-the-fund method is the superior method for awarding attorneys fees in common fund cases. Accordingly, the court will exercise its discretion to award attorneys fees under the percentage-of-the-fund method in this case. The question remains, however, what percentage is appropriate under the circumstances. In the Ninth Circuit, the benchmark for a percentage award of attorneys fees is 25% of the settlement fund. Paul, Johnson, Alston & Hunt v. Graulty, 886 F.2d 268, 273 (9th cir. 1989); Powers v. Eichen, 229 F.3d 1249, 1256 (9th Cir. 2000). This benchmark may be adjusted "upward or downward to fit the individual circumstances of [the] case. Such an adjustment, however, must be accompanied by a reasonable explanation of why the benchmark is unreasonable under the circumstances." Graulty, 886 F.2d at 273. Circumstances warranting adjustment of the benchmark include situations where the percentage of the recovery would be too large or too small in light of the hours devoted to the case or other relevant factors. Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990).

Adjustment may also be warranted where the shear size of the settlement fund may make a benchmark percentage award unreasonable. "Reasonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion. A 25% benchmark might be reasonable in some cases, but arbitrary if the fund were extremely large." In re Coordinated Pretrial Proceedings In Petroleum Products Antitrust Litigation,109 F.3d 602, 607 (9th Cir. 1997). There is no necessary correlation between a particular percentage and a reasonable fee, and particularly where the fund is large, "picking a percentage without reference to all the circumstances, including the size of the fund, would be like picking a number out of the air." WPPSS, 19 F.3d at 1297. Thus, while 25% is the benchmark, the court cannot award 25% as a matter of course. Instead, because the court assumes the role of fiduciary for the class at the fee setting stage, the court must carefully consider all of the relevant factors and circumstances in order to ensure that a the fee awarded is reasonable under the circumstances.

1. The Percentage Method

In this case, the benchmark 25% sought by plaintiffs' counsel would result in a fee award of $64,750,000. The objector argues that the fee award should be much smaller, in the 6-10% range, primarily because the benchmark percentage is simply too high where the settlement fund is so large. Because of the large size of the settlement—which may be in part due to the large size of the class—a 25% benchmark percentage award results in an astoundingly high legal fee.

Both the objector and plaintiffs' counsel have cited legal authorities to justify their respective arguments that an appropriate fee under the circumstances should be either 6-10% or 25%, respectively. The authorities cited by plaintiffs' counsel involving cases where the settlement funds are greater than $75 million reflect attorney fee awards ranging from 14-37%. The cases cited by the objector suggest that in such megafund situations, the attorney fee awards are typically in the 6-10% range. The rationale for the lower percentage in larger fund cases may in part be explained by economies of scale, recognizing that it generally is not 150 times more difficult to prepare, try, or settle a $150 million case than it is to prepare, try or settle a $1 million case. The plethora of legal authorities cited, however, serves more to confirm the court's wide discretion in this area than to establish a guiding rule for decision.

The court has considered all of the circumstances of the litigation and the resulting settlement, including the risks of the litigation, the strengths and weaknesses of plaintiffs' case, the substantial result obtained by counsel, the skill of counsel, the arms length nature of the settlement, the predominant response of the class members to the settlement (no objection) and to the proposed fee (one objection), the contingent nature of the case, and the financial burden carried by counsel during the litigation. All of these factors justify a substantial attorneys fee award. When the size of the settlement is also considered, however, along with the hours expended by counsel, a 25% award amounting to nearly $65 million may be unreasonable. The Ninth Circuit has cautioned that the benchmark 25% award may be unreasonable where the settlement fund is extremely large. Petroleum Products, 109 F.3d at 607. This is such a case. The court finds that while 25% is unreasonable under the circumstances, an 18% award would be both reasonable and appropriate.

2. The Lodestar Cross-Check

As a further check on the reasonableness of the fee award, the court considers a thumbnail lodestar analysis in order to ensure that the percentage awarded is reasonable under the circumstances. See In re Coordinated Pretrial Proceedings In Petroleum Products Antitrust Litigation, 109 F.3d 602, 607 (9th Cir. 1997) (it is reasonable for the court to compare the lodestar fee to the 25% benchmark as one measure of the reasonableness of the fee); Brooktree, 915 F. Supp. at 199-200; Van Vranken v. Atlantic Richfield Co., 901 F. Supp. 294, 298 (N.D. Cal. 1995).

In response to the court's January 29, 2001 order, plaintiffs' counsel submitted additional information identifying the attorneys and paralegals who performed work on the litigation and summarizing the number of hours worked by each and their associated hourly rates. The time expended on the litigation by counsel and professional staff amounted to 21,651.06 hours.[3] At their ordinary billing rates, the resulting lodestar is $6,987,729.10.

Under the lodestar approach, courts consider a series of factors and then adopt a multiplier to

[3] Thirty law firms participated on behalf of the plaintiffs and 278 legal professionals performed services in the course of the representation. On a per-firm basis, the hours ranged from 12 to 5,292 total hours; on a per-attorney basis, the hours ranged from .1 to 2,016.75. The billing rates for attorneys ranged from $190-535 per hour, and the mean hourly rate was $362.50. The hourly rate for professional staff ranged from $25-180, and the mean rate was $102.50. Overall, the blended rate, calculated by dividing the total lodestar by the total number of hours is $322.74 per hour.

apply to the lodestar figure to determine the ultimate fee to be awarded. The requested fee in this case reflects a multiplier of approximately 9.27, which, while not unprecedented, is at the higher end of the scale. See Van Vranken, 901 F. Supp. at 298 (noting that multipliers in the 3-4 range are common in lengthy and complex class action litigation). Thus, the lodestar cross-check is an indication that the 25% benchmark sought by counsel is too high under all of the circumstances. However, the same lodestar cross-check demonstrates that an award of 18%—reflecting a multiplier of 6.7—is more reasonable. While still a high multiplier, the overall circumstances of this case, particularly the risks of the litigation and the superb results achieved by class counsel in settlement, justify a multiplier greater than the common range.

a. The Results Obtained

The result achieved is a significant factor to consider in making a fee award. Hensley v. Eckerhart, 461 U.S. 424, 436 (1983) (the most critical factor is the degree of success obtained). In the present action, the settlement is an extraordinary result for the members of the class. The damage estimates ranged from $60-$750 million, assuming liability was established, but the risk of a zero recovery was not insignificant. Thus, the $259 million all-cash settlement allows the class members to recover a substantial amount of the damages that they would recover if successful at trial. Additionally, the settlement appears to be the third largest recovery ever obtained in a securities class action, and it is the largest settlement in the Ninth Circuit since the enactment of the Private Securities Litigation Reform Act of 1995. Thus, this factor weighs in favor of a substantial award of fees, and under the lodestar analysis, would command a high multiplier.

b. Risks of Litigation

The risk of the litigation is also an important factor to consider in determining an appropriate fee award. WPPSS, 19 F.3d at 1299-1301. In this case, there were substantial risks that plaintiffs would be unable to establish liability, loss causation or damages.

1) The Liability Risks

In order to prevail in this securities fraud action, plaintiffs would have had to prove that the defendants made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not

misleading. 15 U.S.C. § 78u-4(b)(1). Plaintiffs would also have had to establish that defendants acted with scienter, which in the context of securities fraud, is a "mental state embracing intent to deceive, manipulate, or defraud." See Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193-94 n.12, 96 S. Ct. 1375, 1381 n.12, 47 L.Ed.2d 668 (1976). There was a significant risk that plaintiffs would have been unable to prove scienter.

First, defendants vigorously contested liability throughout the litigation and appeared to be prepared to defend on the basis that their merger accounting fully complied with SEC regulations setting forth the procedure to follow for combining fiscal periods when the two companies being merged had different, non-contiguous fiscal years. Moreover, according to defendants, the decision not to include USR's April and May results in 3Com's financial statements was approved by 3Com's auditors and had been made long before USR's April and May 1997 results were known.

Plaintiffs also faced substantial risks with respect to the alleged accounting improprieties that occurred during USR's March Quarter, in particular with respect to USR's pre-merger revenue recognition practices. USR's auditors had approved a number of the practices which plaintiffs alleged were improper, and after the merger, 3Com's auditors concluded that any accounting errors that occurred during the March Quarter were not material when measured by the combined results of 3Com and USR. Thus, at trial, 3Com would have argued that it was entitled to rely on the advice of its independent auditors that the USR March Quarter results did not need to be restated. Defendants also appear to have been prepared to defend each of the challenged transactions on a case-by-case basis, which would have required plaintiffs to overcome serious obstacles to establish that each defendant had knowledge of each of the particular transactions. Thus, there was a significant risk that a jury could determine that the 3Com merger accounting complied with Generally Accepted Accounting Principles and that the defendants were entitled to rely on the advice of their accountants when making these accounting decisions.

Finally, plaintiffs faced substantial challenges to establish liability on their allegations that defendants had misrepresented the demand for and sales of one of their key products, the 56kbps (x2) modem. While plaintiffs alleged that defendants had "stuffed the channel" with x2 modems during the March Quarter, defendants forcefully argued that stuffing the channel was USR's regular

business practice and was the strategy USR had used to become the world's dominant modem manufacturer.

The risks of failing to establish liability, and in particular that the defendants acted with the requisite scienter, were significant.

2) Loss Causation and Damages Risks

Even if plaintiffs were to prevail and establish liability, plaintiffs nevertheless faced significant risks relating to their ability to establish damages, materiality and loss causation. First, there was a substantial chance that plaintiffs would not be able to recover for the non-disclosure of the $160 million loss that formed the core of plaintiffs' case. Defendants contended that the April and May loss was disclosed in a September 1997 conference call, following the release of 3Com's quarterly results. However, there was no statistically significant decline in the price of 3Com stock following the conference call. The $160 million loss was also disclosed on October 14, 1997 upon the filing of 3Com's Form 10-Q, followed less than a week later by articles in the *San Francisco Chronicle* and *The New York Times* reporting on the defendants had engaged in "accounting alchemy" and had manipulated USR's financial results by stuffing the channel with inventory. Once again, however, there was no statistically significant decline in the price of 3Com stock after these disclosures; to the contrary, the price of 3Com stock actually increased following the publication of one of the articles. Thus, there was a substantial risk that a jury could find that USR's April and May 1997 results were not material to 3Com's investors and that the failure to disclose the $160 million loss did not cause any damages.

There were also substantial questions raised regarding the extent to which modem sales had declined during the class period. There was evidence that modem sales did not decline until late in the class period, in October 1997, after a standard for the 56kbps technology unexpectedly failed to be set in late September. Thus, defendants could have presented strong defensive arguments at trial.

Finally, to the extent there was a decline in the price of 3Com stock towards the end of the class period, there were substantial questions raised regarding what portion of the overall stock decline was attributable to the alleged fraud rather than to general market conditions that existed, including the Asian economic crisis, increased competition from others, and the lack of an industry

standard.

Thus, there was a very real and substantial risk that plaintiffs would not prevail at trial, in which case plaintiffs would have recovered nothing and counsel would not receive any compensation for their services. Nonetheless, counsel successfully negotiated a substantial favorable settlement for the class, meriting an award of significant attorneys fees.

Taken together, the results achieved in view of the risks associated with the litigation justify a lodestar multiplier of between 6 and 7. In this case, that multiplier would result in fees in the range of $42-49 million.

3. The Fee Award

Having considered all of the foregoing, the court is persuaded that the 25% benchmark is unreasonable under the circumstances and that a lower percentage should be awarded. Considering the outstanding results achieved, however, the court is not inclined to award a percentage fee as low as that suggested by the objector. Instead, under the totality of the circumstances and mindful of its role as fiduciary guardian of the interests of the class, the court finds that a reasonable and appropriate fee is 18% of the fund, or $46,620,000. An 18% award is also reasonable in consideration of the lodestar, reflecting a multiplier of 6.67. This multiplier is admittedly higher than the typical range, but it would be appropriate here where counsel's efforts have achieved extraordinary results for the class at considerable risk.

The downward departure from the benchmark should not be read or understood to imply any criticism of plaintiffs' counsel, nor should a percentage award below the benchmark be considered as punishment rather than as reward to counsel. To the contrary, counsel's representation was excellent, and as discussed above, the results they achieved were substantial and extraordinary. Counsel deserves to be amply rewarded. However, after carefully weighing the relevant factors in the court's capacity as fiduciary for the class members, the court finds that an award of $46,620,000 reasonable and appropriate.

B. Reimbursement of Expenses

1. Costs and Expenses Actually Incurred by Plaintiffs' Counsel

Plaintiffs' counsel also seeks reimbursement of the expenses incurred in an aggregate amount

of $1,189,767.15. It is appropriate to reimburse counsel for reasonable expenses that were incurred in the course of representing the class, provided that the expenses are of a type that ordinarily would be billed by attorneys to paying clients. Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994). Counsel has submitted declarations from each of the law firms identifying the expenses and attesting that the expenses were actually incurred. The court has reviewed the declarations and finds that the expenses should be reimbursed in full out of the settlement fund.

2. Costs and Expenses of Lead Plaintiffs

The lead institutional plaintiffs, the Louisiana School Employees Retirement System ("LSERS") and the Louisiana Municipal Police Employees Retirement System ("LMPERS"), have also submitted a request for reimbursement of expenses under 15 U.S.C. §78u-4(a)(4). That section of the PSLRA allows for representative parties to be awarded reimbursement of their reasonable costs and expenses, including lost wages, that were directly related to the representation of the class. Specifically, LMPERS and LSERS seek an award of $38,461.09, of which $10,161.09 constitutes litigation related travel expenses of their General Counsel, Mr. Roche, and $28,300 constitutes that portion of Mr. Roche's salary corresponding to the time he spent on matters associated with the litigation. Roche Decl. ¶ 3, 5. The lead plaintiffs characterize the salary reimbursement as "lost wages" that are recoverable under the act, but cite no case law in support of their interpretation.

The court has not discovered any case law construing "lost wages" as used in the statute. However, the plain meaning of the statutory phrase connotes income that was lost or foregone as a direct result of attending to the litigation as a representative party. The phrase does not embrace reimbursement of salary that would have been paid anyway, regardless of the nature of the work performed by Mr. Roche on behalf of his employers. Thus, the statute does not authorize the partial reimbursement of in-house counsel's salary.

Therefore, the court will award to LMPERS and LSERS only the $10,161.09 in out-of-pocket expenses and will disallow the $28,300 in claimed wages.

3. Expenses of Objector John Morrow

Finally, the court considers the reimbursement of the expenses incurred by the objector, Mr. Morrow. Mr. Morrow himself has not affirmatively sought reimbursement of his expenses or an

award of fees for his participation. The court, however, raised the issue sua sponte at the February 23, 2001 hearing and authorized Mr. Morrow to submit a declaration to substantiate the expenses he incurred. Mr. Morrow's declaration establishes that he incurred $1,339.63 in expenses in connection with objecting to the motion for attorneys fees, primarily for traveling to San Jose, California to attend the hearing. The expenses are reasonable and are approved.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. The court hereby awards Representative Plaintiffs' Counsel attorneys' fees of 18% of the settlement fund and reimbursement of litigation expenses in the amount of $1,189,767.15, together with interest earned thereon for the same time period and at the same rate as that earned on the settlement fund until paid. Said fees and expenses shall be allocated among the Representative Plaintiffs' Counsel in a manner which, in Plaintiffs' Lead Counsel's good faith judgment, reflects each such Representative Plaintiff's Counsel's contribution toward the institution, prosecution, and resolution of the litigation. The awarded attorneys' fees and expenses shall be paid to Plaintiffs' Lead Counsel immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation of Settlement, and in particular, ¶7.2 thereof, which terms, conditions and obligations are incorporated herein.

2. The court finds that an award of attorneys' fees of 18% of the Settlement Fund is fair and reasonable under the percentage-of-the-fund method. The settlement was obtained largely through the efforts of plaintiffs' counsel. Plaintiffs' counsel diligently prosecuted this litigation for approximately three years with a substantial risk of no recovery for the class, and obtained an excellent result. Representative Plaintiffs' counsel have received no compensation during the three years of the litigation, and any fee award has always been at risk and completely contingent on the result achieved. The litigation was complex, and involved substantial issues of law, including the uncertain interpretation and application of the Private Securities Litigation Reform Act of 1995. Additionally, the litigation presented difficult questions of proof on issues including liability, materiality, loss causation, and damages.

3. Objector Morrow is awarded $1,339,63, to be paid out of the settlement fund to

reimburse him for the reasonable costs and expenses he incurred in objecting to the motion for an award of attorneys fees.

4. LMPERS and LSERS, the two institutional lead plaintiffs, are awarded $10,161.09, to be paid out of the settlement fund, to reimburse them for the reasonable costs and expenses they incurred in representing the class.

Lead counsel for the plaintiffs shall serve a copy of this order on counsel of record for the parties.

IT IS SO ORDERED.

DATED: MAR 9 9 2021

EDWARD A. INFANTE

Edward A. Infante
United States Magistrate Judge

Copy of Order Mailed on MAR 0 6 2001.

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Exhibit 12

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GARY HEFLER, et al.,

Plaintiffs,

v.

WELLS FARGO & COMPANY, et al.,

Defendants.

Case No. 16-cv-05479-JST

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES

Re: ECF Nos. 238, 239

Before the Court are Lead Plaintiff's motion for final approval of a class action settlement and plan of allocation and Plaintiff's Counsel's[1] motion for an award of attorneys' fees and litigation expenses. ECF Nos. 238, 239. The Court previously granted a motion for preliminary approval of the settlement, ECF No. 234, and held a fairness hearing on December 18, 2018. The Court will grant the motions.

I. BACKGROUND

A. The Parties and Claims

Plaintiffs bring this federal securities class action against Wells Fargo & Company and several of its officers and directors for violations of sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 and the Securities and Exchange Commission's Rule 10b-5. *See* ECF No. 207.

Lead Plaintiff Union Asset Management Holding, AG ("Union") brings these claims "on behalf of all persons who purchased Wells Fargo common stock between February 26, 2014 and

[1] Because Class Counsel seeks this award on behalf of the counsel for all class representatives as well, *see* ECF No. 239 at 9, the Court refers to the proposed fees recipients collectively as "Plaintiffs' Counsel," except where referring to individual firms.

September 20, 2016, inclusive (the 'Class Period')." ECF No. 207 ¶ 2.

The substance of Union's claims is set forth in greater detail in the Court's prior order granting in part and denying in part Defendants' motions to dismiss. *See* ECF No. 205. In short, Union alleges that Defendants made "repeated misrepresentations and omissions about a core element of Wells Fargo's business: its acclaimed 'cross-selling' business model," ECF No. 207 ¶ 3, artificially inflating Wells Fargo's stock price, *id.* ¶ 261. Union seeks damages related to this inflation of Wells Fargo's stock price and its subsequent decline when the truth about Wells Fargo's practices came to light through a series of disclosures in September 2016. *See, e.g.*, *id.* ¶¶ 262, 270.

B. Procedural Background

Plaintiff Gary Hefler filed the initial complaint in this action on September 26, 2016. ECF No. 1. Several related lawsuits based on the same misconduct were subsequently filed against Wells Fargo. ECF Nos. 8, 12, 14, 18, 47, 55, 222. On January 5, 2017, the Court granted Union's motion to consolidate *Hefler v. Wells Fargo & Co.*, Case No. 16-cv-5479, with *Klein v. Wells Fargo & Co.*, Case No. 16-cv-5513, and to appoint Union as Lead Plaintiff, Motley Rice LLC as Lead Counsel, and Robbins Geller Rudman & Dowd LLP as Liaison Counsel. ECF No. 58. The Court later granted Union's motion to substitute Bernstein Litowitz Berger & Grossman LLP ("BLB&G") as Lead Counsel. ECF No. 95.

Wells Fargo and the Individual Defendants filed a set of eight motions to dismiss, which the Court granted in part and denied in part on February 27, 2018. *See* ECF No. 205. Shortly thereafter, Union filed the operative second amended class action complaint. ECF No. 207.

On July 31, 2018, Union filed an unopposed motion to certify a settlement class and for preliminary approval of a settlement. ECF No. 225. On September 4, 2018, the Court granted the motion for preliminary approval, conditionally certified the class, and appointed BLB&G as Class Counsel. ECF No. 234. Union has now filed a motion for final approval of the class action settlement and the plan of allocation and Class Counsel has filed a motion for an award of attorneys' fees and litigation expenses. ECF Nos. 238, 239. The Court held a fairness hearing on December 18, 2018.

C. Terms of the Agreement

The proposed settlement agreement ("Settlement") resolves claims between Wells Fargo and the class, which the Court conditionally certified as follows:

> [A]ll persons and entities who purchased Wells Fargo common stock from February 26, 2014 through September 20, 2016, inclusive. Excluded from the Settlement Class are: (i) Defendants; (ii) Immediate Family Members of any Individual Defendant; (iii) any person who was a director or member of the Operating Committee of Wells Fargo during the Class Period and their Immediate Family Members; (iv) any parent, subsidiary or affiliate of Wells Fargo; (v) any firm, trust, corporation, or other entity in which Defendants or any other excluded person or entity has, or had during the Class Period, a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded persons or entities. Notwithstanding the foregoing exclusions, no Investment Vehicle shall be excluded from the Settlement Class. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

ECF No. 234 at 2-3; *see also id.* at 6-7.

Under the Settlement, Wells Fargo has paid $480 million dollars (the "Settlement Amount") into the Settlement Fund. ECF No. 225-1 at 13, 17; *see also* ECF No. 240 ¶ 102. The following amounts will be subtracted from the Settlement Amount: (1) taxes; (2) notice costs; and (3) attorneys' fees and expenses. ECF No. 225-1 at 17; ECF No. 225 at 33.[2]

Pursuant to the proposed plan of allocation, class members who submit timely claims will receive payments on a pro rata basis based on the date(s) class members purchased and sold Wells Fargo common stock, as well as the total number and amount of claims filed. ECF No. 225-1 at 75–78. To calculate the amount that will be paid to each class member, the Claims Administrator[3] will determine each claim's share of the Settlement Fund proceeds based upon the claimant's recognized loss. *Id.* at 75–76. The recognized loss calculation will be "based primarily on the difference in the amount of alleged artificial inflation in the prices of Wells Fargo common stock at the time of purchase and at the time of sale or the difference between the actual purchase price

[2] Although the Settlement indicates that it may be used to pay service awards to named Plaintiffs, they no longer seek a service award. *See* ECF No. 240 ¶ 243.

[3] The Court approved Union's selection of Epiq Class Action & Mass Tort Solutions as the Claims Administrator. ECF No. 234 at 18-19; *see also* ECF No. 225 at 30.

and the sale price." *Id.* at 75. Before deducting any costs or attorneys' fees, the Settlement represents an average recovery of $0.44 per eligible share. *Id.* at 62. After deductions, the recovery will be approximately $0.35 per share. *See id.* at 64 ("The estimated average cost per affected share of Wells Fargo common stock, if the Court approves Lead Counsel's fee and expense application, is $0.09 per share."). No distribution will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00; instead, those funds will be included in the distribution to other Authorized Claimants. *Id.* at 78. Nine months after the initial distribution, the Claims Administrator will make additional re-distributions to class members if it is cost effective to do so. *Id.* Any Settlement Funds not distributed to the class will be paid to a cy pres recipient: the Investor Protection Trust. *Id.*

In exchange for the settlement payment, Plaintiffs agree to release the following:

> [A]ny and all claims, debts, demands, rights or causes of action or liabilities of every nature and description (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether known claims or Unknown Claims, whether arising under federal, state, local, foreign, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, that both (i) concern, arise out of, relate to, or are based upon the purchase, acquisition, or ownership of Wells Fargo common stock during the Class Period and (ii) were asserted or could have been asserted in this Action by Lead Plaintiff or any other member of the Settlement Class against any of the Defendants' Releasees that arise out of, relate to, or are based upon any of the allegations, circumstances, events, transactions, facts, matters, occurrences, statements, representations or omissions involved, set forth, or referred to in the Complaint, except for claims relating to the enforcement of the Settlement.

Id. at 12. The Settlement does not, however, cover "the claims asserted in any derivative or ERISA action against any of the Defendants." *Id.* at 12–13.

Wells Fargo reserves the right to terminate the Settlement "in the event that Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet the conditions set forth in Wells Fargo's confidential supplemental agreement with Lead Plaintiff."

ECF No. 225-1 at 28.[4]

II. FINAL APPROVAL OF SETTLEMENT AGREEMENT

A. Legal Standard

"The claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "Adequate notice is critical to court approval of a class settlement under Rule 23(e)." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998).

In addition, Rule 23(e) "requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." *Id.* at 1026. Under Ninth Circuit precedent, the district court must balance a number of factors in this analysis:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004). Recent amendments to Rule 23 require the district court to consider a similar list of factors, namely, whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

[4] The Court granted Union's motion to file the confidential supplemental agreement under seal in connection with preliminary approval of the settlement. ECF No. 234 at 9-11.

Fed. R. Civ. P. 23(e)(2).[5] In the notes accompanying these amendments, the Advisory Committee acknowledged that "[c]ourts have generated lists of factors" to determine the fairness, reasonableness, and adequacy of a settlement, and that "each circuit has developed its own vocabulary for expressing these concerns." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment. The Advisory Committee notes explain that adding these specific factors to Rule 23(e)(2) was not designed "to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id.*; *see also United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) ("[T]he Advisory Committee Notes provide a reliable source of insight into the meaning of a rule . . . ."). Accordingly, the Court applies the framework set forth in Rule 23, while continuing to draw guidance from the Ninth Circuit's factors and relevant precedent. The Court bears in mind, moreover, the Advisory Committee's instruction not to let "[t]he sheer number of factors . . . distract both the court and the parties from the central concerns that bear on review under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment.

Settlements that occur before formal class certification also require a higher standard of fairness. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such settlements, in addition to considering the above factors, the court also must ensure that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

B. Class Action Fairness Act Compliance

This action is subject to the requirements of the Class Action Fairness Act of 2005 ("CAFA"), which requires that, within ten days of the filing of a proposed settlement, each

[5] After promulgating the amendments, the Supreme Court transmitted them to Congress with the instruction that the amendments "shall take effect on December 1, 2018, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending." Order Submitting Amendments to Federal Rules of Civil Procedure at 3 (April 26, 2018), https://www.supremecourt.gov/orders/courtorders/frcv18_5924.pdf; *see generally*, *In re Pangang Grp. Co., LTD.*, 901 F.3d 1046, 1050 (9th Cir. 2018) (describing amendment process). The Court finds it is just and practicable to apply the new Rule to this proceeding, particularly because Union has addressed the new Rule in its briefing on this motion. *See* ECF No. 238 at 24-27.

defendant serve a notice containing certain required information upon the appropriate State and Federal officials. 28 U.S.C. § 1715(b). Defendants have provided evidence that they complied with this requirement on August 10, 2018, ten days after the motion for preliminary approval was filed. *See* ECF No. 235.

CAFA also prohibits a court from granting final approval until ninety days have elapsed since notice was served under § 1715(b). 28 U.S.C. § 1715(d). This requirement has also been satisfied.

C. Analysis

1. Adequacy of Notice

"The class must be notified of a proposed settlement in a manner that does not systematically leave any group without notice." *Officers for Justice v. Civil Serv. Comm'n of City & County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted).

The Court has previously approved the parties' proposed notice procedures. ECF No. 234 at 19. In the motion for final approval, Union states that the parties have since carried out this notice plan. ECF No. 238 at 23. Epiq, the Claims Administrator, mailed 1,866,302 Notice Packets to potential class members, including various institutions that requested copies to forward to stock holders. ECF No. 240-3 at 4 ¶ 8. The Notice informed class members about all key aspects of the Settlement, the date, time, and place of the fairness hearing, and the process for objections. *Id.* at 9-23. 9,416 Notice Packets were returned as undeliverable. *Id.* at 4-5 ¶ 8. Epiq obtained forwarding addresses from the post office for 2,637 of the class members and mailed each a second Notice Packet. *Id.*

In addition, the Court-approved Summary Notice was published in *The Wall Street Journal* and the *Los Angeles Times*, as well as transmitted over the *PR Newswire* on October 9, 2018. *Id.* at 5 ¶ 9. As required by the Preliminary Approval Order, Epiq also maintains and posts information regarding the Settlement on a dedicated website established for the Action, www.WellsFargoSecuritiesLitigation.com, to provide class members with information concerning the Settlement, as well as downloadable copies of the Notice Packet, Settlement, and Preliminary Approval Order. *Id.* at 5 ¶ 13. Finally, Epiq maintains a toll-free number that class members can

call for further information; the number is provided in the Notice Packet, Summary Notice, and on the Website. *Id.* at 5 ¶¶ 10-12.

The deadline for class members to submit objections to the Settlement, the Plan of Allocation, or the Fees and Expenses Motion, or to request exclusion from the Settlement Class, was November 27, 2018. *Id.* at 6 ¶ 14. In its reply brief, Union states that 9 objections and 253 requests for exclusion[6] have been received. ECF No. 249 at 6 & nn. 2-3.

In light of these actions, and the Court's prior order granting preliminary approval, the Court finds the parties have sufficiently provided notice to the settlement class members. *See Lundell v. Dell, Inc.*, Case No. 05–3970 JWRS, 2006 WL 3507938, at *1 (N.D. Cal. Dec. 5, 2006) (holding that notice sent via email and first class mail constituted the "best practicable notice" and satisfied due process requirements).

2. Fairness, Adequacy, and Reasonableness

a. Procedural Concerns

The Court must consider whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(A)-(B). As the Advisory Committee notes suggest, these are "matters that might be described as 'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e)(2)(A)-(B) advisory committee's note to 2018 amendment. These concerns implicate factors such as the non-collusive nature of the negotiations, as well as the extent of discovery completed and stage of the proceedings. *See Hanlon*, 150 F.3d at 1026.

i. Adequate Representation of the Class

The Ninth Circuit has explained that "adequacy of representation . . . requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 462.

[6] 15 of those requests for exclusion were received after the November 27, 2018 deadline. ECF No. 249 at 6 n.3. Union asks the Court to exclude those class members as well. *Id.*

In its Preliminary Approval Order, the Court found that there was no evidence of a conflict between either class representatives or Class Counsel and the rest of the class. ECF No. 234 at 5. No contrary evidence has emerged.

Similarly, the Court found that Class Counsel had vigorously prosecuted this action through dispositive motion practice, extensive initial discovery, and formal mediation. *Id.* at 7, 15. The Court further found that, given this prosecution of the action, counsel "possessed 'sufficient information to make an informed decision about settlement.'" *Id.* at 15 (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459). Moreover, counsel's preliminary approval motion included information regarding the settlement outcomes of similar cases, further indicating that counsel "had an adequate information base" when negotiating the settlement. Fed. R. Civ. P. 23(e)(2)(A)-(B) advisory committee's note to 2018 amendment. The Court finds that Class Counsel have continued to represent the class's interest by diligently complying with the notice plan and other settlement procedures.

For its part, Union actively participated in the prosecution of this case, including reviewing filings and discovery, and attending and participating in settlement negotiations. ECF No. 240-2 ¶¶ 8-12.

Accordingly, the Court concludes that this factor weighs in favor of approval.

ii. Arm's Length Negotiations

Here, the Settlement was the product of arm's length negotiations through two full-day mediation sessions and multiple follow-up calls supervised by former U.S. District Judge Layn Phillips. *See* ECF No. 240-1 ¶¶ 7-14.

Moreover, pursuant to Ninth Circuit precedent, the Court must examine the Settlement for additional indicia of collusion that would undermine seemingly arm's length negotiations. Because the Settlement was reached prior to class certification, "there is an even greater potential for a breach of fiduciary duty owed the class during settlement," and the Court must examine the risk of collusion with "an even higher level of scrutiny for evidence of collusion or other conflicts of interest." *In re Bluetooth*, 654 F.3d at 946. Signs of collusion include: (1) a disproportionate distribution of the settlement fund to counsel; (2) negotiation of a "clear sailing provision"; and (3)

an arrangement for funds not awarded to revert to defendant rather than to be added to the settlement fund. *Id.* at 947. If "multiple indicia of possible implicit collusion" are present, a district court has a "special 'obligat[ion] to assure itself that the fees awarded in the agreement were not unreasonably high.'" *Id.* (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003)).

The Court previously found no signs of collusion because Class Counsel's intended fee request was presumptively proportionate to the settlement fund, there was no clear sailing provision, and no funds would revert to Defendants. ECF No. 234 at 13-14. These findings remain applicable. Further, as discussed in greater detail when evaluating the fees motion, the Court finds that the requested fees are in fact reasonable.

The Court therefore concludes that this factor weighs in favor of approval.

b. Substantive Concerns

Rule 23(e)(2)(C) and (D) set forth factors for conducting "a 'substantive' review of the terms of the proposed settlement." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. In determining whether "the relief provided for the class is adequate," the Court must consider "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). In addition, the Court must consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D).

i. Strength of Plaintiffs' Case and Risk of Continuing Litigation

Consistent with Rule 23's instruction to consider "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), courts in this circuit evaluate "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; [and] the risk of maintaining class action status throughout the trial," *Hanlon*, 150 F.3d at 1026.

In its prior order, the Court found that Plaintiffs faced significant obstacles in surviving

summary judgment and ultimately prevailing at trial. ECF No. 234 at 14. As set forth in Union's motion, these obstacles include inherent difficulties in proving scienter and loss causation, as well as overcoming a "truth-on-the-market" defense that could have eliminated any recovery. ECF No. 238 at 17-18. In addition to this uncertainty, the Court found that any relief to class members obtained through trial and possible appeals would be substantially delayed. ECF No. 234 at 14-15.

The Court continues to find that this factor weighs in favor of approval.

ii. Effectiveness of Distribution Method, Terms of Attorneys' Fees, and Supplemental Agreements

The Court must consider "the effectiveness of [the] proposed method of distributing relief to the class." Fed. R. Civ. P. 23(e)(2)(C)(ii). As explained below, the Court concludes that the plan of allocation, which is based on the relative size of claims compromised, is reasonable. The Court further finds that the proposed claims process provides an effective method of implementing that plan by ensuring that the claimant provides sufficient information to calculate the recognized loss amount. Therefore, this factor weighs in favor of approval.

The Court evaluates in detail "the terms of [the] proposed award of attorney's fees," Fed. R. Civ. P. 23(e)(2)(C)(iii), in connection with Class counsel's motion for fees and costs. In short, this factor also weighs in favor of approval.

The only supplemental "agreement identified under Rule 23(e)(3)," Fed. R. Civ. P. 23(e)(C)(iv), permits Wells Fargo to terminate the Settlement if a certain percentage of the class requests exclusion. ECF No. 234 at 9; ECF No. 225-1 at 28. The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015). The Court previously reviewed the supplemental agreement under seal and concluded that the termination provision is fair and reasonable. ECF No. 234 at 17. The Court concludes that the agreement does not weigh against approval.

iii. Equitable Treatment of Class Members

Consistent with Rule 23's instruction to consider whether "the proposal treats class

members equitably relative to each other," Fed. R. Civ. P. 23(e)(2)(C)(i), the Court considers whether the Settlement "improperly grant[s] preferential treatment to class representatives or segments of the class." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

Under the Settlement, class members who submit timely claims will receive payments on a pro rata basis based on the date(s) class members purchased and sold Wells Fargo shares as well as the total number and amount of claims filed. ECF No. 225-1 at 75-78. In granting preliminary approval, the Court found that this allocation did not constitute improper preferential treatment. ECF No. 234 at 16. As explained in greater detail below, the Court adheres to its view that the allocation plan is equitable.

In its motion for preliminary approval, Union indicated that it intended to seek service awards on behalf of Named Plaintiffs. *See* ECF No. 234 at 16. Although such awards are permissible, *see, e.g.*, *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009), Union now indicates that it will not seek any additional service award, *see* ECF No. 240 ¶ 243.

The Court therefore concludes that this factor weighs in favor of approval.

iv. Settlement Amount

Although not articulated as a separate factor in Rule 23(e), "[t]he relief that the settlement is expected to provide to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. The Court therefore examines "the amount offered in settlement." *Hanlon*, 150 F.3d at 1026.

To evaluate the adequacy of the settlement amount, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware*, 484 F. Supp. 2d at 1080. But "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *Officers for Justice*, 688 F.2d at 628.

Here, the $480 million fund achieves a good result for the class. Union's expert calculates that the maximum potential damages the class could have won at trial ranged from $353.1 million to $3.063 billion, depending on which "corrective disclosures were accepted as demonstrating loss

causation." ECF No. 225-2 ¶ 34. Even accepting the high estimate that the class is settling claims worth $3.063 billion, the Settlement provides the class with a greater than 15 percent recovery. *Id.* ¶ 36. This recovery is higher than recoveries achieved in other securities fraud class actions of similar size (over $1 billion in estimated damages), which settled for median recoveries of 2.5 percent between 2008 and 2016, and 3 percent in 2017. *Id.* (citing Cornerstone Research, Securities Class Action Settlements, 2017 Review and Analysis, at 8 (2018)).[7] Accordingly, the amount of the Settlement also weighs in favor of approval.

v. Counsel's Experience

The Court also considers "the experience and views of counsel." *Hanlon*, 150 F.3d at 1026. That counsel advocate in favor of this Settlement weighs in favor of its approval.[8]

c. Reaction of the Class

Finally, the Court considers the class's reaction to the Settlement. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision*, 559 F. Supp. 2d at 1043 (citation omitted).

In this case, the Court received and filed correspondence from nine class members. *See* ECF Nos. 237, 241, 242, 243, 244, 245, 246, 247, 248.[9] In addition, Class Counsel provided the Court with an email from a putative class member. ECF No. 250-1.

These ten letters are properly construed as objections. Although the precise number of potential class members is unclear, the Claims Administrator mailed out more than 1.8 million Notice Packets to potential class members. ECF No. 240-3 at 4 ¶ 8. Even assuming some

[7] Neither Union's percentage calculations for this action nor the calculation of comparison cases appears to exclude attorneys' fees paid from the common fund. But even subtracting Class counsel's fees and costs, *see* Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment, the Class's recovery of roughly $384 million (or 12.5 percent) still far outstrips comparable securities class actions.

[8] The Court considers this factor, as it must, but gives it little weight. "[A]lthough a court might give weight to the fact that counsel for the class or the defendant favors the settlement, the court should keep in mind that the lawyers who negotiated the settlement will rarely offer anything less than a strong, favorable endorsement." *Principles of the Law of Aggregate Litigation* § 3.05 cmt. a (Am. Law. Inst. 2010).

[9] The Court considers all of these letters even though four – ECF Nos. 245, 246, 247, 248 – were filed after the November 27, 2018 deadline to file objections. *See* ECF No. 240-3 at 21.

duplication, 10 objections represents a minute fraction of the potential class, as does the 253 requests for exclusion. *See* ECF No. 249 at 6 & n.3. Moreover, the objectors have alleged ownership of a combined 452 shares, as compared to 1.1 billion shares affected. *See id.* at 6. This overwhelmingly positive response supports approval. *See Rodriguez*, 563 F.3d at 967 (54 objections out of roughly 376,000 putative class members); *Churchill Vill.*, 361 F.3d at 577 (45 objections and 500 opt-outs from approximately 90,000 class members); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2009) (3 objections out of approximately 57,000 class members). Further, no institutional investor submitted an objection or requested exclusion, although institutional investors held between 80.9 to 92.1 percent of outstanding shares of Wells Fargo common stock throughout the Class Period. ECF No. 250 ¶ 3. Under these circumstances, "[t]hat not one sophisticated institutional investor objected to the Proposed Settlement is indicia of its fairness." *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, No. MDL 12-2389, 2018 WL 6168013, at *9 (S.D.N.Y. Nov. 26, 2018); *see also In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004).

Turning to the specific objections, the Court observes as a preliminary matter that five of the objectors do not indicate that they are members of the class. *See* ECF Nos. 237, 241, 242, 245, 250-1; *cf.* ECF No. 240-3 at 21 (instructing objectors to state "the basis for your belief that you are a member of the settlement class"). The Court could reject their objections on this basis, but nonetheless finds that they lack merit as well. *See Perkins v. Linkedin Corp.*, No. 13-CV-04303-LHK, 2016 WL 613255, at *3 (N.D. Cal. Feb. 16, 2016).

The Court construes[10] six of the objections as expressing dissatisfaction with this lawsuit or securities lawsuits in general, including suggestions that suing Wells Fargo would actually harm shareholders. ECF Nos. 237, 241, 242, 245, 246, 250-1. Objections that a "case should never have been brought" and advocating "no recovery for the Class" are contrary to the interests

[10] Many of the objections failed to "state with specificity the grounds for the objection." Fed. R. Civ. P. 23(e)(5)(A). Nonetheless, the Court "take[s] care . . . to avoid unduly burdening class members who wish to object" by "recogniz[ing] that a class member who is not represented by counsel may present objections that do not adhere to technical legal standards." Fed. R. Civ. P. 23(e)(5)(A) advisory committee's note to 2018 amendment.

of the class and are therefore not a basis for finding a settlement unreasonable. *Perkins*, 2016 WL 613255, at *4. The Court therefore overrules these objections.

One objection contended that Wells Fargo should pay the full amount of damages and attorneys' fees. ECF No. 244. Another objection contended that the Settlement Amount was inadequate because each class member's loss amount will be determined by the lower of various metrics. ECF No. 245 at 1.[11] As an initial matter, the loss amount goes to determining each class member's pro rata share, but does not affect the total Settlement Amount, i.e., the class's recovery. *See* ECF No. 225-1 at 21. Thus, contrary to the objection, choosing the lesser of or the greater of those metrics does not reflect a lack of zealous advocacy on the part of Class Counsel. Moreover, as Union points out, this provision parallels the relevant damage provisions of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(e). And finally, for the reasons stated above, the Court finds that the amount of the class's recovery is reasonable under the Settlement. Thus, these objections are overruled.

Two objectors argued that they should not have to spend their own resources to opt out of the class or file objections. ECF Nos. 241, 242. These costs are an inherent feature of opt-out class actions, which are authorized by the Federal Rules. Moreover, the Court finds that the Notice Plan did not make it unduly difficult for class members to exercise their rights to request exclusion or object.

Two objectors argued that they received inadequate notice prior to the November 27, 2018 deadline. The first objector received notice in late October. ECF No. 245 at 1. Epiq has no record of mailing a Notice Packet to the objector, suggesting that he received one from "a nominee who requested Notice Packets from Epiq in bulk to forward to its clients." ECF No. 250-10 ¶ 3(a). The second objector received notice on November 14, 2018. ECF No. 247 ¶ 3. Epiq received the objector's information from Fidelity Investments on October 16, 2018, and mailed a Notice Packet on October 22, 2018. ECF No. 250-10 ¶ 3(b). Where "brokerages, banks and institutions [hold]

[11] For instance, for shares held at the end of the Class Period, the loss amount "will be *the lesser of*: (1) the amount of artificial inflation per share on the date of purchase as stated in Table A; or (ii) the purchase price *minus* $48.96." ECF No. 240-3 at 19.

shares in their street names for the beneficial owners," delays in dissemination of class notice may result. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993). Nonetheless, adequacy of notice does not turn on "whether some individual shareholders got adequate notice, but whether the class as a whole had notice adequate to flush out whatever objections might reasonably be raised to the settlement." *Id.* at 1375; *see also Silber v. Mabon*, 18 F.3d 1449, 1452-54 (9th Cir. 1994) (finding that best notice practicable had been given even though individual shareholder did not receive notice from nominee until after opt-out deadline). Indeed, in both *Torrisi* and *Silber*, the objectors did not receive notice until after the deadline to object or opt-out. *See Silber*, 18 F.3d at 1454; *Torrisi*, 8 F.3d at 1374. Here, both objectors received notice between two to four weeks before the deadline and the Court has considered the merits of their objections. Although these pro se objectors' desire for more time is understandable, it does not mean that notice to the class was inadequate.

One objector contended that the class should have been certified earlier in the litigation. ECF No. 247 ¶ 4. "Litigation takes time." *Orange Cty. Water Dist. v. Unocal Corp.*, No. SACV0301742CJCANX, 2016 WL 11201024, at *13 (C.D. Cal. Nov. 3, 2016). It is not surprising that litigation of this scale over sums of this magnitude took a period of many months to resolve. In any event, this fact does not bear on the reasonableness of the Settlement.

That same objector argued that the Settlement should have included holders of Wells Fargo preferred stock. ECF No. 247 ¶ 6. Plaintiffs have never asserted claims on behalf of preferred shareholders and those claims are not released by the Settlement. *See* ECF No. 207 ¶ 2; ECF No. 225-1 at 12-13. This objection is thus largely immaterial. To the extent it is relevant to the adequacy of representation of the class, courts have generally rejected objections challenging lead plaintiffs' decisions not to bring certain claims in securities class actions. *See N.Y. State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 239 (E.D. Mich. 2016) (rejecting objection because "the Settlement does not preclude warrant holders from bringing their own lawsuit and claims seeking recovery against GM" and "the decision whether to include GM warrant holders in this litigation fell within NYSTRS' discretion as lead plaintiff"); *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, No. 12-CV-4081, 2013 WL 4399215, at *3

(S.D.N.Y. Aug. 13, 2013) (observing that courts "have consistently held that a lead plaintiff has the sole authority to determine what claims to pursue on behalf of the class").[12]

Two objections argued that the Settlement's de minimis provision was unreasonable because class members with less than $10.00 in claims do not receive a distribution. *See* ECF No. 245 at 1; ECF No. 248 at 3-7; *see also* ECF No. 225-1 at 78. A $10 threshold, however, is "standard in securities class actions and benefit[s] the Settlement Class as a whole because [it] reduce[s] the costs associated with printing and mailing checks for de minimis amounts, as well as costly follow-up to ensure those checks have been received and cashed." *N.Y. State Teachers' Ret. Sys.*, 315 F.R.D. at 241; *see also In re MGM Mirage Sec. Litig.*, 708 F. App'x 894, 897 (9th Cir. 2017) (collecting cases and noting that "numerous cases that have approved similar or higher minimum thresholds" than $10).[13]

One objection disagreed with the chosen cy pres beneficiary, the Investor Protection Trust. ECF No. 248 at 7. As Union notes, a cy pres distribution will be made only after an initial 100 percent distribution to the class and subsequent rounds of re-distribution until the amount "of uncashed or returned checks is sufficiently small that a further re-distribution to claimants would not be cost-effective." ECF No. 249 at 17 (citing ECF No. 240-3 at 20). Moreover, the Court concludes that the Investor Protection Trust's mission of educating investors makes it an appropriate cy pres beneficiary. *See In Re: Volkswagen "Clean Diesel" Mktg., Sales Practices, And Prods. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2018 WL 6198311, at *5 (N.D. Cal. Nov. 28, 2018) (finding the Trust an appropriate cy pres beneficiary because "[a] savvy, educated investor is hopefully more likely to identify signs of securities fraud, which furthers the Exchange Act's purpose of maintaining "fair and honest markets" (quoting 15 U.S.C. § 78b)). As to the objector's proposal that claimants vote on their preferred beneficiaries, ECF No. 248 at 9, the Court

[12] The credibility of this objector's claim is also undermined by the fact that he attempted to solicit a $1 million payment from Class counsel to withdraw his objection. *See* ECF No. 250-11 ¶ 3. The Advisory Committee specifically remarked on this predatory practice and amended Rule 23 to provide additional safeguards: "But some objectors may be seeking only personal gain, and using objections to obtain benefits for themselves rather than assisting in the settlement-review process." Fed. R. Civ. P. 23(e)(5)(B) advisory committee's note to 2018 amendment.

[13] Pursuant to Ninth Circuit Rule 36-3, *In re MGM* is not precedential. Nevertheless, the Court relies upon it as persuasive authority.

concludes that the administrative costs of implementing that system at this stage of the litigation would outweigh any putative benefits to the class.

For the foregoing reasons, the Court overrules the above objections. Objectors also raised concerns regarding the proposed attorneys' fees. The Court considers those objections in connection with that motion.

Balancing the relevant factors, the Court finds the Settlement fair and reasonable.

III. FINAL APPROVAL OF PLAN OF ALLOCATION

A. Legal Standard

"Approval of a plan of allocation of settlement proceeds in a class action . . . is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate." *In re Oracle Sec. Litig.*, No. C–90–0931–VRW, 1994 WL 502054, at *1-2 (N.D. Cal. June 16, 1994) (citing *Class Pls. v. City of Seattle*, 955 F.2d 1268, 1284-85 (9th Cir. 1992)).

B. Analysis

The allocation plan for the Settlement tailors the recovery of each class member to the timing of any sales or purchases of Wells Fargo common stock relative to periods of alleged artificial inflation and corrective disclosures, as well as the number of shares involved with each class member's claim. *See* ECF No. 225 at 28. In other words, the allocation plan disburses the Settlement Fund to class members "on a *pro rata* basis based on the relative size of" the potential claims that they are compromising. *Id.* This type of pro rata distribution has frequently been determined to be fair, adequate, and reasonable. *See, e.g.*, *Thomas v. MagnaChip Semiconductor Corp.*, No. 14-CV-01160-JST, 2017 WL 4750628, at *8 (N.D. Cal. Oct. 20, 2017); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *4 (N.D. Cal. Apr. 3, 2013) (approving similar plan of distribution); *In re Vitamins Antitrust Litig.*, No. 99-197 TFH, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000) ("Settlement distributions, such as this one, that apportions funds according to the relative amount of damages suffered by class members, have repeatedly been deemed fair and reasonable."). The Court concludes that this plan, which does not

discriminate between class members, is fair and reasonable.[14]

IV. ATTORNEYS' FEES

A. Legal Standard

"While attorneys' fees and costs may be awarded in a certified class action where so authorized by law or the parties' agreement, Fed. R. Civ. P. 23(h), courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth*, 654 F.3d at 941. Courts have discretion to "award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar." *Id.* at 942.

For more than two decades, the Ninth Circuit has set the "benchmark for an attorneys' fee award in a successful class action [at] twenty-five percent of the entire common fund." *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). Courts in the Ninth Circuit generally start with the 25 percent benchmark and adjust upward or downward depending on:

> the extent to which class counsel "achieved exceptional results for the class," whether the case was risky for class counsel, whether counsel's performance "generated benefits beyond the cash . . . fund," the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.

In re Online DVD-Rental Antitrust Litig., 779 F.3d at 954-55 (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002)).

Courts often also cross-check the amount of fees against the lodestar. "Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050.

B. Analysis

Plaintiffs' Counsel move the Court for 20 percent of the overall $480 million Settlement Amount. ECF No. 239 at 9. This represents an award of approximately $95.9 million in

[14] The Court GRANTS Union's request to strike the portion of the plan of allocation that imposes restrictions on how an ERISA Plan claimant may distribute funds to its own beneficiaries, given the potential conflict with applicable law. *See* ECF No. 238 at 29.

attorneys' fees. ECF No. 239 at 19.[15] Plaintiffs' Counsel argue that the award is reasonable because counsel achieved an excellent recovery, faced substantial litigation risks, displayed a high level of skill and professionalism, and pursued the litigation on a contingent basis. *Id.* at 24-29.

1. Benchmark Analysis

After careful review of Plaintiffs' Counsel's declarations and filings, the Court concludes that awarding $95.9 million in attorneys' fees is reasonable. Because the 20 percent award requested is below the "benchmark" percentage for a reasonable fee award in the Ninth Circuit, it is "presumptively reasonable." *Ching v. Siemens Industry, Inc.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at *7 (N.D. Cal. June 27, 2014) (quoting *In re Bluetooth*, 654 F.3d at 942). In addition, it is within the median range of 19-22.3 percent in fees awarded in cases with large settlements over $100 million. *See Rodman v. Safeway Inc.*, No. 11-CV-03003-JST, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018). Plaintiffs' Counsel also provide a report on securities fraud class action settlements, which reveals a similar range. The report documents a median attorneys' fee of 22 percent in settlements of $100-500 million and 17 percent in settlements of $500 million-$1 billion, consistent during the periods from 1996 to 2011 and from 2012 to 2017. NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review* at 42 (2018), ECF No. 240-11 at 45.

In addition, the other relevant factors do not support a downward adjustment. The Court considers the results achieved; the level of risk; and the burdens on class counsel. The first and "most critical factor [in determining an attorneys' fee] is the degree of success obtained."[16] *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). As noted above, Plaintiffs' Counsel obtained an excellent result for the class when compared to similar cases, despite comparable risks. *See In re Omnivision*, 559 F. Supp. 2d at 1046 (noting that a 9 percent recovery for the class was "more than triple the average recovery in securities class action settlements"); ECF No. 239 at 16 (collecting

[15] Counsel request that the 20 percent share be applied after subtracting any litigation expenses awarded. ECF No. 239 at 9.

[16] As the Court has noted in the past, consideration of counsel's degree of success is at least partly subsumed by the percentage recovery method, under which "counsel's success provides its own reward." *Rodman*, 2018 WL 4030558, at *3 n.3.

cases). Second, Plaintiffs' Counsel faced substantial risks in pursuing this litigation, given the inherent uncertainties of trying securities fraud cases and the demanding pleading standards of the PLSRA. *Id.* at 1046; *see also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 2018 WL 6168013, at *15 ("Courts have recognized that, in general, securities actions are highly complex and that securities class litigation is notably difficult and notoriously uncertain." (internal quotation marks and citations omitted)). Given the litigation resources involved, any victory in this Court would almost certainly have had to be defended on appeal as well. Third, although the two-plus year lifespan of this litigation is not as lengthy as some other cases, *see Rodman*, 2018 WL 4030558, at *3 (six years), Plaintiffs' Counsel bore a heavy financial burden in expending substantial resources – a claimed lodestar of over $29 million – on a contingency basis. Each of these factors weighs in favor of the award.

2. Lodestar Cross-Check

To confirm an award's reasonableness through a lodestar cross-check, a court takes "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461 U.S. at 433. "[T]he determination of fees 'should not result in a second major litigation'" and "trial courts need not, and indeed should not, become green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826, 838 (2011) (quoting *Hensley*, 461 U.S. at 437). Rather, the Court seeks to "do rough justice, not to achieve auditing perfection." *Fox*, 563 U.S. at 838. A district court must "exclude from this initial fee calculation hours that were not 'reasonably expended.'" *Hensley*, 461 U.S. at 434 (citation omitted). Additionally, the reasonable hourly rate must be based on the "experience, skill, and reputation of the attorney requesting fees" as well as "the rate prevailing in the community for similar work performed by [comparable] attorneys. . . ." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986), *amended by* 808 F.2d 1373 (9th Cir. 1987). To inform and assist the Court in making this assessment, "the burden is on the fee applicant to produce satisfactory evidence . . . that the requested rates are in line with those prevailing in the community." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).

Plaintiffs' Counsel's rates range from $650 to $1,250 for partners or senior counsel, from

$400 to $650 for associates, and from $245 to $350 for paralegals.[17] ECF No. 240-5 at 11-13; ECF No. 240-6 at 10; ECF No. 240-7 at 12; ECF No. 240-8 at 8. The blended hourly rate for all timekeepers is $406. For purposes of the lodestar cross-check, the Court finds that these rates are reasonable. *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (finding reasonable rates of $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals, given blended hourly rate of $529).

Plaintiffs' Counsel have documented in detail the amount of hours spent on different tasks per month. The Court has some concerns about counsel's hours. For instance, BLB&G spent 1,192 hours preparing complaints and its substitution motion, and 1,535 hours opposing the motions to dismiss. ECF No. 240-5 at 88. Even given the complexity of this litigation and the eight concurrent motions to dismiss, these hours are excessive. More problematically, a disproportionate amount of this time was spent by senior partners with top-of-market billing rates. BLB&G partner Salvator Graziano – whose claimed rate is $995 per hour – billed 84.25 hours for "[p]reparation of complaints & substitution of BLB&G" and 197.75 hours for "[m]otion to dismiss." *Id.* at 70. Similarly, partner Gerald Silk billed 124 hours towards the complaints and the substitution motions at a rate of $995 per hour. *Id.* at 71. Partner Adam Wierzbowski devoted 307.5 hours to the motion to dismiss, at a rate of $750 per hour. *Id.*

Plaintiffs' Counsel's total lodestar of $29,504,271.25 results in a multiplier of 3.22. And even if the Court were to reduce the senior partner billing rates for drafting tasks to a more reasonable $500 per hour, or reduce by half the hours spent on complaint drafting and responding to motions to dismiss, the multiplier would still be less than four. Percentage awards in the range of one to four times the lodestar are typical in common fund cases. *See Vizcaino*, 290 F.3d at 1051 n.6 (citations omitted) (finding a range of 0.6 to 19.6 in a survey of 24 cases, with 83 percent

[17] The Court uses Plaintiffs' Counsel's current rather historic rates, which is a well established method of ensuring that "[a]ttorneys in common fund cases [are] compensated for any delay in payment." *Fischel v. Equitable Life Assur. Soc'y of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002) (citing *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 609 (9th Cir. 1997)).

in the 1.0 to 4.0 range and 54 percent in the 1.5 to 3.0 range). Because Plaintiffs' Counsel's lodestar multiplier is within the range of reasonableness, it supports the requested award.

3. Reaction of the Class

As with the Settlement itself, the lack of objections from institutional investors "who presumably had the means, the motive, and the sophistication to raise objections" weighs in favor of approval. *In re Bisys Sec. Litig.*, No. 04 CIV. 3840(JSR), 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007).

Five objectors generally asserted that Plaintiffs' Counsel's fees request was unreasonably high, but they provided no specific objections as reasons to reject the request. ECF Nos. 241, 242, 245, 246. These generalized objections do not provide a basis to contravene the Court's benchmark analysis and lodestar cross-check. *See Asghari v. Volkswagen Grp. of Am., Inc.*, No. CV1302529MMMVBKX, 2015 WL 12732462, at *30 (C.D. Cal. May 29, 2015) (overruling objections that "conclusorily assert that the fees are too high as compared to the benefits class members will receive"). Two of the objectors also requested that the Court appoint an independent expert to assess the fee request. ECF Nos. 241, 242. Given the above analysis, the Court declines to exercise its discretion to do so. *See Vizcaino*, 290 F.3d at 1051 n.7. Another one of the objectors contended that Plaintiffs' Counsel had provided inadequate documentation in support of their fee request, but he appears to have been mistakenly referring to the Notice Packet. ECF No. 247 ¶ 5 (citing "Notice ¶ 22"). Plaintiffs' Counsel have produced meticulous documentation in support of their motion.

One objection also contended that fees should be reduced because "the great bulk of the time in the case" was billed by staff attorneys rather than senior partners. ECF No. 248 at 10. Because the staff attorneys have lower billing rates, however, this results in a lower lodestar, which factors into the Court's cross-check. The objector also expressed dissatisfaction with effectively applying a multiplier to time spent by paralegals and other support personnel. *Id.* To the extent that the objector – who is represented by counsel – contends that paralegals' work, unlike that of senior partners, is not worthy of a multiplier in meritorious cases, the Court disagrees with the premise of the argument and is not aware of any authority to support it.

The objector further contended that Plaintiffs' Counsel's hours were duplicative because the same documents were produced in a related case. *Id.* at 10-11 (citing *In re Wells Fargo & Company Shareholder Derivative Litigation*, No. 16-cv-05541-JST (N.D. Cal.)). The derivative litigation is still ongoing. Even assuming that counsel requested the same documents in both cases, the appropriate remedy would be to preclude double recovery in the derivative litigation, not to withhold compensation in this case.

The objector argued that Plaintiffs' Counsel faced less substantial risk because of the government enforcement action against Wells Fargo. ECF No. 248 at 11. But the government's investigation and enforcement action concerned Wells Fargo's underlying fraudulent consumer practices. It was not addressed to fraud on investors, and it did not reduce the costs or risks of litigating this securities fraud case or help establish elements of the securities claims such as materiality, scienter, or loss causation.

Finally, an objector argued that Union's 20 percent fee agreement with Class Counsel was unreasonable, citing another litigation where Class Counsel purportedly agreed to a fee scale that would have produced an 8.5% fee. ECF No. 243 at 2-3. While plaintiffs and counsel may negotiate for such graduated fee scales, Union was not required to do so in its role as Lead Plaintiff. And in any event, courts are not bound by such agreements, and Plaintiffs' Counsel's request falls within the range for settlements of this size. *See Rodman*, 2018 WL 4030558, at *5. Indeed, Class Counsel ultimately received a 20 percent award from an approximately $1 billion settlement in the case on which the objector relies. *See In re Merck & Co., Inc. Sec., Deriv. & "ERISA" Litig.*, No. 2:05-cv-02367, slip op. at 10-11 (D.N.J. June 28, 2016) (ECF No. 240-15 at 11-12).[18] Accordingly, the Court does not find the objector's argument persuasive as to the adequacy of Union or the reasonableness of Plaintiffs' Counsel's fees.[19]

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[18] *In re Merck* does not help Class Counsel as much as they represent, however. There, counsel's lodestar was $205.6 million, for a multiplier of roughly one. ECF No. 240-3 at 12.

[19] The Court notes, but does not rely on, the apparent history of objector's counsel, Steve Miller and John Pentz, as serial meritless objectors. *See, e.g.*, *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 890 (C.D. Cal. 2016) (listing Miller as one of the "'serial' objectors who are well-known for routinely filing meritless objections to class action settlements for the improper purpose of extracting a fee rather than to benefit the Class"); *In re Wal-Mart Wage & Hour Employment Practices Litig.*, No. 2:06CV00225-PMPPAL, 2010 WL 786513, at *1 (D. Nev. Mar. 8, 2010)

The Court therefore overrules those objections. Because the Court has verified under both the lodestar method and the percentage-recovery method that the amount of requested fees is reasonable, the Court awards 20 percent of the $480 million Settlement Amount, or $95,906040.956, to Plaintiffs' Counsel.

V. EXPENSES

A. Legal Standard

An attorney is entitled to "recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted). To support an expense award, Plaintiffs should file an itemized list of their expenses by category, listing the total amount advanced for each category, allowing the Court to assess whether the expenses are reasonable. *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at *30 (N.D. Cal. Apr. 1, 2011), *supplemented*, No. 06-cv-05778-JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011).

B. Analysis

Although the Notice Packet informed class members that Plaintiffs' Counsel would seek reimbursement of up to $750,000 in expenses, ECF No. 240-3 at 21, counsel are now seeking reimbursement of $469,795.22 in expenses, ECF No. 239 at 30; ECF No. 240 ¶ 236. Plaintiffs' Counsel have provided itemized lists of the costs and expenses separated by category. ECF No. 240-9; *see also, e.g.*, ECF No. 240-5 at 97-132. Most expenses resulted from retention of experts, research costs, and Freedom of Information Act request charges. ECF No. 249-9 at 2. The Court finds counsel's expenses reasonable and grants the request.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. For the reasons set forth in its September 4, 2018 order, ECF No. 234, the Court confirms its certification of the class for settlement purposes only.

(noting Pentz's "documented history of filing notices of appeal from orders approving other class action settlements, and thereafter dismissing said appeals when they and their clients were compensated by the settling class or counsel for the settling class").

2. For the reasons set forth in its September 4, 2018 order, ECF No. 234, the Court confirms its appointment of Bernstein Litowitz Berger & Grossman LP as Class Counsel.

3. The Court grants final approval of the proposed settlement and plan of allocation.

4. The Court grants the 253 requests to be excluded from the class.

5. The Court grants the motion for attorneys' fees and litigation expenses.

IT IS SO ORDERED.

Dated: December 17, 2018

JON S. TIGAR
United States District Judge

United States District Court
Northern District of California

Exhibit 13

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE HP SECURITIES LITIGATION,

This Document Relates To: All Actions

MASTER FILE NO. 3:12-CV-05980-CRB

CLASS ACTION

[~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND LITIGATION EXPENSES

This matter came for hearing on November 13, 2015 (the "Settlement Hearing"), on Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee and Expense Application"). The Court having considered Lead Counsel's Fee and Expense Application and all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that due and adequate notice of the Settlement, the Settlement Hearing and related matters, including Lead Counsel's motion for an award of attorneys' fees and Litigation Expenses, was given to the Settlement Class as required by the Court's July 17, 2015 Order (the "Preliminary Approval Order").

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order hereby incorporates by reference the definitions in the Stipulation of Settlement and Release dated as of June 8, 2015 (the "Stipulation"), and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction to enter this Order. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's Fee and Expense Application was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of Lead Counsel's Fee and Expense Application met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, the Constitution of the United States, and any other applicable law, and constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto.

4. Settlement Class Members have been given the opportunity to object to Lead Counsel's Fee and Expense Application in compliance with Rule 23(h)(2) of the Federal Rules of Civil Procedure.

5. Lead Counsel is hereby awarded attorneys' fees in the amount of 11% of the Settlement Amount, net of Court-approved Litigation Expenses, which sum the Court finds to be fair and reasonable, and $1,023,971.29 in reimbursement of Litigation Expenses, plus interest earned on both amounts at the same rate as earned by the Settlement Fund. The foregoing attorneys' fees and Litigation Expenses shall be paid from the Settlement Fund in accordance with the terms of the Stipulation.

6. Lead Plaintiff PGGM Vermogensbeheer B.V. is hereby awarded $162,900 from the Settlement Fund as reimbursement for its costs and expenses directly related to its representation of the Settlement Class.

7. In making the foregoing awards of attorneys' fees and Litigation Expenses to be paid from the Settlement Fund, the Court has considered and found that:

a. The Settlement has created a fund of $100 million in cash that has been deposited into an escrow account for the benefit of the Settlement Class pursuant to the terms of the Stipulation, and eligible members of the Settlement Class who submit acceptable Claim Forms will benefit from the Settlement that occurred because of Lead Counsel's efforts;

b. Lead Counsel's Fee and Expense Application has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiff, a large, sophisticated institutional investor that was actively involved in the prosecution and resolution of the Action;

c. Copies of the Notice which stated that Lead Counsel would apply to the Court for attorneys' fees in an amount not to exceed eleven percent (11%) of the Settlement Amount, net of Litigation Expenses, and reimbursement of Litigation Expenses in an amount not to exceed $1.25 million, were mailed to over 809,000 potential Settlement Class Members or their nominees. In addition, the Notice stated that the maximum amount of Litigation Expenses included reimbursement of costs

and expenses (including lost wages) incurred by Lead Plaintiff in connection with its representation of the Settlement Class, in an amount not to exceed $175,000;

d. There were no objections to Lead Counsel's Fee and Expense Application;

e. Lead Counsel has conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

f. The Action involves complex factual and legal issues and was actively prosecuted for nearly three years;

g. Had Lead Counsel not achieved the Settlement, there would remain a significant risk that Lead Plaintiff and the other members of the Settlement Class may have recovered less or nothing from the Defendants;

h. Lead Counsel devoted over 17,723 hours, with a lodestar value of approximately $9.4 million, to achieve the Settlement; and

i. The amount of attorneys' fees and Litigation Expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

8. Any appeal or any challenge affecting this Court's award of attorneys' fees and Litigation Expenses shall in no way disturb or affect the finality of the Judgment.

9. Jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

10. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with terms of the Stipulation.

11. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: 11/13/2015

The Honorable Charles R. Breyer
United States District Judge

Exhibit 14

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re GERON CORPORATION SECURITIES LITIGATION	Case No. 3:14-CV-01224-CRB **[~~PROPOSED~~] ORDER GRANTING LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**
This Document Relates To: ALL ACTIONS	Judge: Charles R. Breyer

WHEREAS:

A. On July 21, 2017, the Court entered a Final Order and Judgment which granted approval of the settlement of this Action as fair, reasonable, and adequate;

B. Lead Counsel for the Class has applied for an award of attorneys' fees in the amount of $1,519,421.22 plus accrued interest, reimbursement of expenses in the amount of $172,315.12 to be paid from the Settlement Fund, and a $10,000 incentive award for Lead Plaintiff to be paid from the Settlement Fund; and

C. The capitalized terms in this Order shall have the same meaning as they have in the Stipulation and Agreement of Settlement dated as of March 2, 2017.

NOW, THEREFORE, based on the submissions of the parties, the arguments of Lead Counsel at the Final Fairness Hearing held on July 21, 2017, and the entire record in this Action, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses is granted. Lead Counsel is awarded attorneys' fees in the amount of 25% of the Settlement Fund, after deduction of Litigation Expenses, or $1,519,421.22 and awarded reimbursement of Litigation Expenses in the amount of $172,315.12. Lead Plaintiff is granted an incentive award in the amount of $10,000.

2. The Court finds that the amount of attorneys' fees awarded is reasonable when considered as a percentage of the Settlement Fund created for the benefit of the Class, and also reasonable when measured against Lead Counsel's lodestar of $2,038,773.75 and the 3,421.75 hours expended as set forth in the Declaration of Nadeem Faruqi in Support of Lead Plaintiff's Motion for Final Approval of the Class Action Settlement and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, dated June 9, 2017 (the "Faruqi Declaration") and the Faruqi Firm's Detailed Lodestar Report attached as Exhibit E thereto.

3. The Court finds that the expenses incurred by Lead Counsel in the amount of $172,315.12, as set forth in the Faruqi Declaration and Exhibit F attached thereto, were appropriately expended to benefit the Class and are reasonable.

4. The amounts of attorneys' fees and expenses herein awarded shall be paid to Lead Counsel from the Settlement Fund upon entry of this Order.

5. Lead Plaintiff shall be awarded $10,000 as an incentive award for his service in representation of the Class in this Action.

6. The amounts of the incentive award for Lead Plaintiff shall be paid to Lead Plaintiff from the Settlement Fund upon entry of this Order.

IT IS SO ORDERED.

Dated: San Francisco, California

July 21, 2017

Honorable Charles R. Breyer
United States District Court Judge
Northern District of California