UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al.,

Plaintiffs,

v.

ZIMMER BIOMET HOLDINGS, INC., et. al.

Defendants.

Case No. 3:16-cv-00815-PPS-MGG

Honorable Philip P. Simon

DECLARATION OF KARA M. WOLKE
IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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I, Kara M. Wolke, declare under penalty of perjury, pursuant to 28 U.S.C. §1746, as follows:

1. I am admitted *pro hac vice* in this Action. I am a partner at Glancy Prongay & Murray LLP ("GPM" or "Lead Counsel"). Lead Counsel served as counsel of record for Lead Plaintiffs Rajesh M. Shah and Matt Brierley and additional representative plaintiffs UFCW Local 1500 and Steven Castillo (collectively "Plaintiffs") in the above-captioned action (the "Action").[1] Kirby McInernery LLP ("Kirby") served as additional counsel for Plaintiffs, and Katz Korin Cunningham PC ("KKC") served as Court-appointed liaison counsel. GPM, Kirby, and KKC are referred to collectively herein as "Plaintiffs' Counsel." I am familiar with the proceedings in this litigation, and I have personal knowledge of the matters set forth herein based upon supervising and participating in the Action.

2. I respectfully submit this declaration, together with exhibits, in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and the concurrently-filed memorandum in support thereof (the "Final Approval Memorandum"). As set forth in the Final Approval Memorandum, Plaintiffs seek final approval of the $50,000,000 Settlement for the benefit of the Settlement Class, as well as final approval of the proposed Plan of Allocation of the Net Settlement Fund to eligible Settlement Class Members.

3. I also respectfully submit this declaration in support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses and the concurrently-filed memorandum in support thereof (the "Fee and Expense Memorandum"). As set forth in the Fee and Expense Memorandum, Lead Counsel seek an award of attorneys' fees in the amount of 33.3% of the Settlement Fund (including interest accrued thereon), and reimbursement of Litigation Expenses in the total amount of $1,595,402.94, which includes Plaintiffs' Counsel's total expenses in the amount of $1,535,402.94 and $60,000 in total to Plaintiffs ($15,000 each)

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Stipulation and Agreement of Settlement filed April 14, 2020 ("Stipulation") (ECF No. 246-1).

pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA") for their costs, including lost wages, incurred in connection with their representation of the Settlement Class.

4. The Court preliminarily approved the proposed Settlement by its Order dated May 21, 2020 (the "Preliminary Approval Order"), and thereby directed notice of the Settlement to be disseminated to the Settlement Class. *See* ECF No. 251. Pursuant to the Preliminary Approval Order, JND Legal Administration ("JND"), the Court-approved Claims Administrator, implemented a comprehensive notice program whereby notice was given to potential Settlement Class Members by mail and by publication. *See* Ex. 3 (Segura Decl.).

5. In total, 154,613 Notices have been mailed to potential Settlement Class Members, and thus far not a single objection has been received or filed on the case docket and only three (3) requests for exclusion has been received. Ex. 3 at ¶18; Ex. 3-C.

I. INTRODUCTION

6. Zimmer Biomet Holdings, Inc. ("ZBH" or the "Company") is the product of a $13.4 billion merger that closed in June 2015, between former cross-town competitors Zimmer Holdings, Inc. ("Legacy Zimmer") and Biomet, Inc. ("Legacy Biomet"). Plaintiffs allege that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Sections 11 and 15 of the Securities Act of 1933 (the "Securities Act"), based on statements Defendants made from June 7, 2016 through November 7, 2016, inclusive (the "Settlement Class Period"), and in offering documents issued in connection with ZBH's secondary public offerings in June and August of 2016 ("the Offerings"). Specifically, the Operative Complaint (ECF No. 192) alleges that the Defendants' statements were materially false and/or misleading because they did not disclose that: (i) ZBH had discovered quality systems compliance issues through internal audits at North Campus, Legacy Biomet's primary manufacturing facility; (ii) ZBH was not promptly remediating these issues despite knowing that an FDA inspection of the North Campus was imminent; and (iii) ZBH would not be able to satisfy demand until it finished remediating these issues. The Operative Complaint further alleges that Defendants made intentional

misstatements in October 2016 by blaming ZBH's Q3 revenue shortfall on supply chain integration issues, when the shortfall was actually due to the product holds that ZBH voluntarily undertook as a result of the FDA's inspection of North Campus. Plaintiffs allege that, as a result of these alleged misrepresentations and omissions, the price of ZBH Common Stock and Call Options was artificially inflated, and the price of ZBH Put Options was artificially deflated, during the Settlement Class Period. Plaintiffs further allege that when the truth was revealed, ZBH's stock price plummeted, causing losses to investors.

7. The proposed Settlement presented to the Court for final approval provides the resolution of all claims in the Action in exchange for a cash payment of $50,000,000 (the "Settlement Amount") for the benefit of the Settlement Class. As detailed herein, Plaintiffs and Lead Counsel submit that the proposed Settlement represents an excellent result for the Settlement Class in light of the significant risks to overcome and remaining in the Action.

8. The $50,000,000 cash Settlement Amount is well within the range of reasonableness under the circumstances to warrant preliminary approval of the Settlement and the issuance of notice to the Settlement Class. Here, Plaintiffs' damages expert estimates that if Plaintiffs overcame ***all*** of the obstacles to establishing liability, and completely prevailed on ***all*** of their loss causation and damages theories, the $50 million settlement would equate to approximately 8% of the total ***maximum*** damages ***potentially*** available in this Action. However, Defendants raised credible arguments that Plaintiffs could not prove all of their loss causation allegations. If Defendants had prevailed on these arguments, the total ***maximum*** damages available would be $95 million, in which case, the Settlement represents a recovery of approximately 53% of the Settlement Class's maximum total damages. A recovery within the range of 8%-53% is well above the average recovery in similar situations. *See* Ex. 8 (research finding median recoveries in 2019 were approximately 3.3%-9.4% of estimated damages in securities class actions alleging losses of a similar magnitude and a median recovery of 4.8% overall in securities class actions).

9. Thus, the Settlement provides 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 less than the Settlement Amount (or nothing) after years of additional litigation and delay.

10. The Settlement was achieved after more than three years of hard-fought litigation, during which Plaintiffs' Counsel became well-informed of the relative strengths and weaknesses of Plaintiffs' claims in the Action. In prosecuting the Action, Plaintiffs' Counsel expended great efforts and resources on behalf of the Settlement Class. Among other things, Plaintiffs' Counsel performed the following substantial work:

a. conducted a comprehensive investigation into the allegedly wrongful acts, including, among other things: (1) reviewing and analyzing (a) ZBH's filings with the U.S. Securities and Exchange Commission ("SEC"), (b) public reports, blog posts, research reports prepared by securities and financial analysts, and news articles concerning ZBH, (c) transcripts of ZBH's investor calls, and (d) documents produced in response to numerous Freedom of Information Act ("FOIA") requests to the U.S. Food and Drug Administration ("FDA") and appeals thereof; (2) retaining and working with a private investigator who conducted numerous interviews of former employees and third parties with potentially relevant information; and (3) reviewing and analyzing court filings and other publicly available material related ZBH;

b. drafted the initial complaint in the Action;

c. made the sole Lead Plaintiff application pursuant to the PSLRA;

d. retained and worked with FDA, accounting, market efficiency, and loss causation and damages experts;

e. drafted and filed two amended complaints, including the comprehensive, factually-detailed, 172-page Second Amended Class Action Complaint for Violations of the Federal Securities Laws, plus exhibits, based on the foregoing investigation;

f. researched and drafted oppositions to Defendants' motions to dismiss;

g. opposed Defendants' motion to amend the Court's September 26, 2018 Opinion and Order to include a certification under 28 U.S.C. § 1292(b) and to stay proceedings pending appeal (the "1292 Motion"), and presented argument in opposition thereto;

h. researched and fully briefed the motion for class certification, which included working with Professor Daniel Fischel on the submission of his opening and supplemental reports on market efficiency, taking the deposition of Defendants' class certification expert, Dr. Vinita Juneja, and defending the depositions of each of the four Plaintiffs, Wedge Capital Management (an advisor to Plaintiff UFCW Local 1500), Professor

Fischel and Winslow Capital Management, LLC (another advisor to UFCW Local 1500);

i. negotiated a comprehensive confidentiality order to govern the treatment of confidential evidence produced in this case;

j. engaged in extensive discovery, including, but not limited to: (1) serving six sets of requests for production of documents on Defendants; (2) responding to interrogatories and document requests directed to each of the Plaintiffs; (3) collecting, conducting a privilege review and producing documents to Defendants; (4) serving twenty eight (28) comprehensive third-party subpoenas *duces tecum*; (5) participating in lengthy and detailed meet and confer negotiations with counsel for Defendants and numerous third parties regarding search terms and/or the scope of document requests or subpoenas *duces tecum*; (6) reviewing and analyzing more than 1.23 million pages of documents produced by Defendants and third parties; (7) serving two sets of requests for admissions; (8) identifying 32 percipient witnesses for deposition and preparing deposition kits for 28 of them, consisting of an outline of questions and relevant documents, which depositions were contemplated to begin in January 2020; and (9) preparing deposition kits for the noticed Rule 30(b)(6) deposition of ZBH;

k. drafted two detailed mediation statements along with relevant exhibits that set forth the facts of the case and analyzed liability, loss causation and damages;

l. participated in two separate, full-day mediation sessions overseen by the Honorable Daniel Weinstein (Ret.) and Jed Melnick, Esq., nationally recognized mediators of complex cases;

m. drafted and then negotiated the Stipulation and related exhibits;

n. worked with Plaintiffs' damages expert to craft a plan of allocation that treats Plaintiffs and all other members of the proposed Settlement Class fairly; and

o. drafted the preliminary approval and final approval briefs.

11. Based on the foregoing efforts, Plaintiffs and Plaintiffs' Counsel are well informed of the strengths and weaknesses of the claims and defenses in the Action, and believe the Settlement represents a favorable outcome for the Settlement Class and is in the best interests of the Settlement Class Members. For all the reasons set forth herein and in the accompanying memoranda and declarations, Plaintiffs and Plaintiffs' Counsel respectfully submit that the Settlement is "fair, reasonable, and adequate" in all respects, and that the Court should grant final approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

12. In addition, 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 one of Plaintiffs' damages consultants. The Plan of Allocation provides for

the distribution of the Net Settlement Fund to each Authorized Claimant on a *pro rata* basis based on their Recognized Loss amounts.

13. Finally, Plaintiffs' Counsel seeks approval of the request for attorneys' fees and reimbursement of Litigation Expenses as set forth in the Fee Memorandum. As discussed in detail in the accompanying Fee Memorandum, the requested 33.3% fee is within the range of percentage awards granted by courts in this Circuit in comparable securities class actions. Additionally, the fairness and reasonableness of the request is confirmed by a lodestar cross-check, and is warranted in light of the risks involved and the extent and quality of the work performed and the substantial result achieved. Likewise, the requested litigation expenses of $1,535,402.94 and the requested PSLRA awards to Plaintiffs ($15,000 each) are also fair and reasonable. Accordingly, for the reasons set forth in the Fee Memorandum and for the additional reasons set forth herein, we respectfully submit that Lead Counsel's request for attorneys' fees and reimbursement of Litigation Expenses should be approved.

II. PROSECUTION OF THE ACTION

A. Background

14. ZBH designs, manufactures and markets orthopedic reconstructive products; sports medicine, biologics, extremities and trauma products; spine, bone healing, craniomaxillofacial and thoracic products; dental implants; and related surgical products. ZBH's products and solutions treat bones, joints or supporting soft tissues. ECF No. 192, ¶92.

15. ZBH's products are subject to extensive regulation by the FDA because they are "medical devices" under the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 321(h). The FDCA provides that a medical device must be manufactured, packed, stored, and installed in conformity with Current Good Manufacturing Processes ("cGMP") to ensure its safety and effectiveness. 21 U.S.C. § 360j(f). The statutory good manufacturing practice requirement is set out in the QS regulation for devices, 21 C.F.R. Part 820. A device that has been manufactured, packed, stored, or installed in violation of this requirement is deemed to be adulterated. 21 U.S.C. § 351(h). The introduction or delivery for introduction into interstate commerce of an adulterated

article of device is a violation of the FDCA. 21 U.S.C. § 331(a). FDA regulations explicitly make senior company management responsible for ensuring adherence to cGMP. *Id.* ¶¶93-94.

16. On April 24, 2014, Legacy Zimmer announced that it was acquiring competitor Biomet, Inc. Legacy Biomet for $13.35 billion, including $10.35 billion in cash and an aggregate amount of Legacy Zimmer shares valued at approximately $3 billion, with the Legacy Biomet shareholders owning approximately 16% of the combined company upon closing. The transaction was expected to close in the first quarter of 2015. At the time, Legacy Zimmer was the second largest provider of orthopedic products and Legacy Biomet was the fourth. It was perceived that the merged entity would be a leader in the $45 billion musculoskeletal healthcare market with combined revenues of approximately $7.8 billion in 2013. Shareholders were told to anticipate $135 million of synergies in the first year and approximately $270 million in revenue and operating synergies by the third-year post-closing. These synergies would purportedly be achieved through disciplined expense management, advanced manufacturing and streamlined logistics. It was also emphasized that the combination would leverage the companies' complementary sales channels and that the generation of cross-selling opportunities would be an important source of synergies from the proposed combination. *Id.* ¶¶109-111.

17. However, when the Merger closed in mid-2015, this thesis appeared to be in jeopardy. ZBH's growth rate had decelerated dramatically below market level, causing much concern among investors in the fall of 2015. In early 2016, ZBH and its executives sought to convince investors that in the second half of 2016 organic revenue growth would return to and then exceed market level. Investors were told that ZBH had successfully integrated the commercial operations of Legacy Zimmer and Legacy Biomet in the fourth quarter of 2015 (or "Q4'15"). *Id.* ¶¶11-12.

18. Unbeknownst to investors, in the first half of 2016, ZBH and its facilities were under intense FDA scrutiny. The Company's hands were full trying to remediate serious QS deficiencies that the FDA had identified in the fall of 2015 during an inspection of the primary Legacy Zimmer West Campus (the "West Campus"). The inspection had resulted in the issuance

of a serious FDA Form 483 ("FDA 483") identifying a large number of repeat observations from prior FDA inspections that had not been adequately remediated. In private correspondence to the FDA in December 2015 and February 2016, ZBH acknowledged the severity of the "systemic issues" with the West Campus' Quality Systems and outlined extensive remediation work that would purportedly occur during 2016 and as far out as June 2017. In the first half of 2016, substantial remediation and corrective actions were also needed or underway to address highly critical FDA inspections of Legacy Zimmer facilities in Puerto Rico (in November 2015) and Montreal (in January 2016), the latter of which resulted in a warning letter from the FDA in May 2016. *Id.* ¶14.

19. In part because of their ongoing problem with the West Campus, after the Merger closed, ZBH corporate management requested that corporate audits of the North Campus' Quality Systems be conducted in early 2016. Unbeknownst to investors, audit reports issued on March 31, April 13, and June 7, 2016, "alerted" ZBH's "corporate management" to even far worse "systemic issues" with respect to the Quality Systems at the North Campus. The findings contained in the audit reports were neither minor nor technical. Rather, ZBH admitted that the findings "self-identified major compliance-related issues in areas such as design controls, sterile packaging, complaint handling, nonconforming material, and [corrective and preventive actions ("CAPAs")]." As detailed in the Operative Complaint, the foregoing "major-compliance-related issues" covered a wide-range of the components of a quality management system. *Id.* ¶15.

20. In early 2016 and during the Settlement Class Period (*i.e.*, June 7, 2016 to November 7, 2016), ZBH and its executives aggressively insisted that the thesis underlying the Merger was being validated. In press releases, conference calls with investors, and discussions with analysts, ZBH claimed that the cross selling opportunities were taking hold, that organic revenue growth was reaccelerating, and that the organic revenue growth rate would once return to market level growth and exceed market level in the second half of 2016 and 2017. While touting accelerating revenue and the substantial synergies being captured from the Merger, ZBH and its executives omitted disastrous information that they had discovered in the first half of 2016 about

the existing regulatory environment at the primary Legacy Biomet North Campus. Investors were not informed that ZBH was unable to return to or sustain above market level growth because ZBH had to first extensively remediate the Quality Systems at the North Campus. Nor were they informed that remediation would limit supply of key Legacy Biomet products needed to accelerate revenue growth. *Id.* ¶13; *see also* ¶¶269-347 (detailing false or misleading statements in violation of the Exchange Act during the Settlement Class Period).

21. Artificial inflation in ZBH's stock price as a result of Defendants' misrepresentations and omissions regarding the Merger and ZBH's regulatory woes was removed when concealed risks materialized and/or the truth about the material misrepresentations and omissions was partially revealed to the public on October 31, 2016, and November 8, 2016. The combined disclosures made on those days revealed on a piecemeal basis the true nature and extent of the scheme to conceal, among others, the "systemic" issues with QS at the North Campus, that ZBH was unable to satisfy demand for its products while remediating these issues, that ZBH was unable to accelerate revenue growth to above market level in the second half of 2016, that an inspection of the North Campus was imminent, and the true reasons for the supply shortages in Q3'16 and Q4'16. *Id.* ¶400.

22. First, on October 31, 2016 ZBH announced disappointing Q3 2016 financial results and a guidance reduction for Q4 2016, purportedly due to "unanticipated supply constraints, related to our transitioning supply chain infrastructure." In response to this news, ZBH's stock price dropped $17.15 per share (nearly 14%) to close at $105.40 October 31, 2016. *Id.* ¶¶35-36. Second, November 8, 2016 securities analyst Northcoast Research published a report tying the supply shortages to an undisclosed FDA Inspection. In response to this news, ZBH's stock price fell another $2.62 per share, or 2.51%, to close at $101.83. *Id.* ¶¶38-39.

B. Commencement of the Instant Action and Appointment of Lead Plaintiffs and Lead Counsel

23. Lead Plaintiff Rajesh M. Shah initiated this action on December 2, 2016. ECF No. 1.

24. On April 3, 2017, the Court appointed Rajesh M. Shah, Matt Brierley, and Eric Levy[2] to serve as lead plaintiffs and approved their selection of GPM to serve as Lead Counsel and KKC to serve as Liaison Counsel. ECF No. 23. They were the only Lead Plaintiff movants.

C. The Comprehensive Pre-Filing Investigation and Preparation of the Complaint

25. The Lead Plaintiffs, along with plaintiff UFCW Local 1500, filed an Amended Complaint on June 16, 2017, which was corrected on June 28, 2017. ECF No. 30. The Amended Complaint asserted claims on behalf of a putative class of investors pursuant to Sections 10(b) and 20(a) of the Exchange Act against ZBH and certain of its officers, including Defendants David Dvorak, Daniel Florin, Robert Marshall, and Tony Collins (the "Officer Defendants"). Plaintiffs also asserted claims under Sections 11, 12(a)(2), and 15 of the Securities Act relating to the Offerings.[3]

26. Prior to filing the Amended Complaint, Plaintiffs' Counsel conducted an extensive and detailed pre-filing investigation of Plaintiffs' claims against Defendants, which included, among other things: (1) reviewing and analyzing the Company's public SEC filings, press releases, earnings calls, various industry conference presentations, and other public statements made by Defendants prior to, during, and after the Settlement Class Period; (2) researching, reviewing, and analyzing other publicly available documents, reports, announcement, news articles, and trade periodicals concerning the Company; (3) reviewing and analyzing documents received pursuant to multiple FOIA requests to the FDA, and working with an expert consultant in FDA regulations to analyze the documents received in response; (4) working with a finance expert to analyze price movements of the Company's securities and to evaluate issues related to market efficiency; (5) working with damages experts to analyze the losses attributable to the false and misleading

[2] Mr. Levy subsequently withdrew from the case. ECF Nos. 215-218.

[3] Plaintiffs also asserted claims under the Securities Act against: Christopher B. Begley, Betsy J. Bernard, Paul M. Bisaro, Gail K. Boudreaux, Michael J. Farrell, Larry Glasscock, Robert A. Hagemann, Arthur J. Higgins, Michael W. Michelson, Cecil B. Pickett, Ph.D., Jeffrey K. Rhodes (together with the Officer Defendants, the "Individual Defendants," Stipulation ¶1(t)); and the Underwriter Defendants (Stipulation ¶1(ccc)).

statements alleged in the Action and other issues related to loss causation and damages; (6) retaining and working with a private investigator who conducted interviews with former Company employees and other relevant third parties; and (7) reviewing and analyzing court filings and other publicly available material related to ZBH.

27. On October 5, 2017, Lead Plaintiffs and UFCW Local 1500 filed a Second Amended Complaint to include newly received information. ECF No. 60 ("SAC"). Also on October 5, 2017, Defendants Goldman Sachs & Co. and J.P. Morgan Securities LLC were voluntarily dismissed from the Action without prejudice. ECF No. 59. The SAC asserted the same claims as the CAC, excluding the claims asserted against the Underwriter Defendants, and adding claims against KKR Biomet LLC, TPG Partners IV, L.P., TPG Partners V, L.P., TPG FOF V-A, L.P., TPG FOF V-B, L.P., TPG LVB Co-Invest LLC, TPG LVB Co-Invest II LLC, GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI GmbH & Co. KG, Goldman Sachs BMET Investors, L.P., Goldman Sachs BMET Investors Offshore Holdings, L.P., PEP Bass Holdings, LLC, Private Equity Partners 2004 Direct Investment Fund L.P., Private Equity Partners 2005 Direct L.P., Private Equity Partners IX Direct L.P., and GS LVB Co-Invest, L.P. (collectively referred to as the "PE Defendants," Stipulation ¶1(hh)) under Section 20(a) of the Exchange Act and Section 12(a)(2) of the Securities Act.

28. Even after the SAC was filed, Plaintiffs' Counsel continued to conduct substantial work and investigation into the facts underlying Plaintiffs' claims. For example, Plaintiffs' Counsel engaged in substantial follow-up attempts to secure responses and productions pursuant to Plaintiffs' multiple FOIA requests, including lodging appeals with the FDA relating to the requests, and then continuing to work with their FDA expert to analyze and interpret the documents produced in response. In addition, Plaintiffs' investigator continued to identify potential witnesses and conduct interviews relating to the facts and circumstances alleged in the SAC, as well as interviews with additional witnesses to aid in Plaintiffs' Counsel's review and analysis of documents produced in response to Plaintiffs' FOIA requests. In total, Plaintiffs' investigator

interviewed 56 potential witnesses, including interviewing many witnesses on more than one occasion, and conducting numerous additional interviews even after the SAC was filed. In sum, Plaintiffs' Counsel continued to conduct substantial work and investigation—thus incurring substantial additional out-of-pocket costs and risks—to advance the case even after the SAC was filed.

D. Defendants' Motions to Dismiss the Complaint and Plaintiffs' Response

29. On December 20, 2017, multiple motions to dismiss were filed by the Defendants and the PE Defendants, including a request to strike portions of the SAC pursuant to Fed. R. Civ. P. 12(f). ECF Nos. 94-101. Among other things, Defendants argued that: (1) Plaintiffs' claims failed because Plaintiffs did not adequately plead a false or misleading statement of fact; (2) Defendants were under no duty to disclose ZBH's internal Quality Systems problems and related remediation requirements; (3) the alleged misrepresentations were not actionable because they were forward-looking statements that were protected by the safe harbor provision of the PSLRA; (4) Plaintiffs failed to adequately plead scienter for their claims brought pursuant to the Exchange Act; and (5) Plaintiffs failed to adequately plead control-person liability pursuant to Section 20(a) of the Exchange Act and Section 15 of the Securities Act.

30. On March 13, 2018, Lead Plaintiffs and UFCW Local 1500 filed and served their omnibus brief in opposition to the motions to dismiss. ECF Nos. 108-109. In opposing Defendants' motions to dismiss, Plaintiffs argued, among other things, that the alleged false statements and omissions were actionable, that the registration statements for the Offerings omitted known trends and uncertainties required to be disclosed under Item 303 of Regulation S-K; that ZBH's risk warnings and regulatory compliance statements were materially false and misleading; that Defendants' statements touting the success of the Merger and Merger-related synergies were materially misleading; and that ZBH's financial guidance was materially misleading. Plaintiffs further argued that their allegations raised a strong inference of scienter based on internal ZBH audit reports, the delayed remediation of North Campus, Defendants' knowledge and experience

with remediation efforts relating to Quality Systems problems, and Defendants' failures to disclose the FDA inspection results and product holds. ECF No. 108. Regarding the PE Defendants, Plaintiffs argued that the PE Defendants were aware of the material Quality Systems and regulatory compliance problems at ZBH, such that they were liable for Section 20A insider trading claims under the Exchange Act, and also that they were statutory sellers such that the Securities Act claims against them were sufficiently stated. *Id.*

31. On May 18, 2018, the various defendants served their reply papers in further support of their motions to dismiss. ECF Nos. 110-112.

32. On September 5, 2018, Lead Plaintiffs filed a notice of supplemental authority in further opposition to Defendants' motions to dismiss (ECF No. 115), and Defendants filed a response to the supplemental authority on September 12, 2018 (ECF No. 116).

E. The Court's Order on the Motions to Dismiss, and Defendants' Extensively Briefed 1292 Motion

33. On September 26, 2018, the Court entered its Opinion and Order granting in part, and denying in part, Defendants' motions, and denying Defendants' motion to strike pursuant to Rule 12(f). ECF No. 119. Based on the Court's Order, the claims against the PE Defendants were dismissed. *Id.*

34. On October 9, 2018, the ZBH and the Individual Defendants filed a Motion to Amend the Court's September 26, 2018 Opinion and Order to Include a Certification under 28 U.S.C. § 1292(b) and Motion to Stay Proceedings Pending Appeal (the "1292 Motion"). ECF Nos. 120-121. The 1292 Motion sought to challenge whether and to what extent a private right of action can be based on disclosure requirements under Item 303 of Regulation S-K, and whether Plaintiffs satisfied their pleading requirements under the PSLRA to the extent that their Second Amended Complaint relied upon allegations in a third-party complaint. *Id.*

35. Lead Plaintiffs and UFCW Local 1500 filed their opposition to the 1292 Motion on October 30, 2018. ECF Nos. 126-127. Among other things, Plaintiffs argued that the Item 303 question and third-party complaint questions raised by Defendants should not be certified for

appeal because they did not raise a controlling question of law, did not present a pure question of law, and resolving Defendants' questions would not materially advance the resolution of the litigation. *Id.*

36. On November 1, 2018, the parties jointly moved to seal an exhibit and portions of Plaintiffs' brief filed in opposition to the 1292 Motion. ECF No. 128. On November 8, 2018, the Court ordered the parties to provide supplemental briefing on the appropriateness of the request to seal the documents by November 26, 2018. ECF No. 130.

37. On November 13, 2018, Defendants filed their reply in further support of the 1292 Motion. ECF No. 133.

38. On November 26, 2018, Defendants filed a reply in further support of the joint motion to seal. ECF No. 143.

39. On November 28, 2018, Plaintiffs moved for leave to file a sur-reply in further opposition to Defendants' 1292 Motion. ECF Nos. 148-149. Plaintiffs argued that a sur-reply was appropriate and necessary to allow Plaintiffs to apprise the Court of newly obtained evidence that Plaintiffs received after Defendants filed their reply brief and to give Plaintiffs a fair opportunity to respond to certain new arguments made by Defendants in their 1292 Motion reply. *Id.* The Court allowed the sur-reply by order dated November 29, 2018. ECF No. 150.

40. On November 30, 2018, Plaintiffs filed a supplemental response to the Court's November 8, 2018 order regarding the joint request to seal. ECF No. 152.

41. On December 6, 2018, Defendants filed a response to Plaintiffs' sur-reply, arguing, among other things, that the filing of a sur-reply itself demonstrated that there were contested issues worthy of interlocutory appeal. ECF No. 153.

42. On December 10, 2018, the Court granted the joint motion to seal. ECF No. 154. Accordingly, the redacted opposition to the 1292 Motion was filed on December 10, 2018. ECF No. 155.

43. On January 17, 2019, Plaintiffs filed a motion for leave to file a supplemental submission in further opposition to Defendants' 1292 Motion for the purpose of informing the

Court of certain new evidence relevant to Defendants' 1292 Motion, including deposition testimony of Defendant Dvorak in third-party litigation, and also requested for the supplemental submission to be filed under seal. ECF Nos. 165-170. That same day, Plaintiffs also separately filed a motion to allow the parties to refer to confidential/sealed information during the 1292 Motion hearing, scheduled for January 28, 2019. ECF Nos. 171-172.

44. On January 22, 2019, Defendants filed an opposition to Plaintiffs' motion for leave to file a supplemental submission and additional exhibits in response to Defendants' 1292 Motion. ECF No. 173.

45. On January 28, 2019, the Court held the in-person hearing on Defendants' 1292 Motion. ECF. Nos. 174, 178.

46. On February 20, 2019, in a 22-page well-reasoned opinion, the Court—noting the "avalanche" of filings sparked by Defendants' 1292 Motion—held that Defendants failed to meet the requirements for an interlocutory appeal and thus denied the 1292 Motion in full. ECF No. 183. Among other things, the Court stated that "[n]owhere in ZBH's initial motion to dismiss did it argue that Item 303's disclosure obligation could not be the basis for a Section 10(b) claim as a matter of law." *Id.* at 7. Moreover, "Plaintiffs have based the duty to disclose for purposes of Section 10(b) here, in part, on the disclosure requirements of Item 303." *Id.* at 8. Plaintiffs did not argue that an Item 303 disclosure violation *per se* gives rise to liability for a securities law violation. Regarding the allegations based on a third-party complaint, the Court noted that "it is hard to say how facts taken from the allegations of another case's complaint are materially different from alleging facts from any other third-party source, such as a leaked internal document, a news article, an academic journal, a witness interview, or even an SEC filing, so long as counsel is within the confines of Federal Rule of Civil Procedure 11(b)." *Id.* at 19.

F. Defendants' Answer and the Parties' Case Management Efforts

47. On November 12, 2018, Defendants filed their Answer to the Second Amended Complaint, which was amended on November 14, 2018. ECF Nos. 132, 134.

48. On November 27, 2018, the Court held a status conference and Rule 16 preliminary pre-trial conference before Magistrate Judge Michael G. Gotsch Sr. to discuss case management issues. ECF Nos. 129, 146. Prior to the conference, on November 12, 2018, the parties filed a joint Rule 26(f) report setting forth a discovery plan and proposed schedule for pre-trial motions, including class certification and summary judgment. ECF No. 132. The Court set a schedule for fact and expert discovery, and ordered the parties to select a mediator by January 31, 2019. ECF No. 146.

49. On January 31, 2019, the parties filed a joint status report concerning their selection of a mediator, informing the Court that the parties had not yet reached an agreement on a mediator, but would continue to meet and confer and requested an extension of thirty days to update the Court on their efforts. ECF No. 176. On February 5, 2019, the Court granted the parties' request for an extension and ordered them to provide a further update by February 28, 2019. ECF No. 180.

50. On February 7, 2019, the parties filed a joint status report concerning class certification. ECF No. 181. On February 11, 2019, the Court entered a schedule for class certification briefing, with Plaintiffs' opening motion due on April 11, 2019. ECF No. 182.

51. On February 28, 2019, the parties again requested additional time to meet and confer on the selection of a mediator (ECF No. 184), which the Court granted and extended the deadline to April 29, 2019 (ECF No. 185).

52. On April 29, 2019, the parties filed another joint status report requesting an additional extension of time to select a mediator (ECF No. 203), which the Court granted and extended the deadline to May 29, 2019.

53. On May 29, 2019, the parties filed a joint status report informing the Court that they had mutually agreed to attempt private mediation of the Action before the Honorable Daniel Weinstein (Ret.) and Jed D. Melnick. ECF No. 212.

G. Plaintiffs' Motion for Class Certification

54. On March 4, 2019, Lead Plaintiffs and UFCW Local 1500 filed a motion to add Steven Castillo as an additional named plaintiff. ECF Nos. 186-189. The Court granted the motion on March 14, 2019. ECF No. 189. On March 21, 2019, Plaintiffs filed a revised Second Amended Complaint to add Steven Castillo as an additional named plaintiff. ECF No. 192.

55. On April 11, 2019, Plaintiffs filed their motion for class certification. ECF Nos. 193-195. The motion was supported by a comprehensive expert report on market efficiency and other matters relevant to class certification by Plaintiffs' expert, Professor Daniel R. Fischel. ECF No. 195-1.

56. After deposing Plaintiffs' expert and each of the proposed class representatives, Defendants filed their opposition to Plaintiffs' motion for class certification on July 17, 2019. ECF No. 223. Defendants' opposition was supported by a competing expert report authored by Vinita M. Juneja, Ph.D. (ECF. No. 223-5), and nine other exhibits. Dr. Juneja's report argued, among other things, that Professor Fischel's report failed to provide a particularized common methodology for calculating class-wide damages in the Action, and that tracing—a necessary element to Plaintiffs' Securities Act claims—was virtually impossible in this Action because there were two secondary offerings during the Class Period. *Id.*

57. On August 20, 2019, Plaintiffs filed their reply in further support of their motion for class certification. ECF Nos. 225-226.

58. As discussed below, the motion for class certification was fully briefed and remained under submission at the time the Settlement was reached.

H. Fact Discovery and Class Certification-Related Expert Discovery

59. With the automatic stay of discovery imposed by the PSLRA having been lifted following the denial of the motions to dismiss, the Parties began conducting fact discovery.

60. Plaintiffs served their first set of requests for production of documents on Defendants on or about October 26, 2018. As discovery progressed, Plaintiffs served additional requests for production of documents, serving six separate sets of document requests in total.

61. To protect against the disclosure of potentially sensitive personal or proprietary records, the Parties drafted a comprehensive confidentiality order to govern the treatment of confidential evidence produced in this case. The Parties negotiated the extent to which, and the conditions under which, confidential information could be shown to deponents, non-parties, and others not previously privy to such information. The Parties were able to reach agreement on all of their respective areas of concern, and on December 13, 2018, filed an agreed stipulation for entry of a confidentiality order. ECF No. 157. The Court entered the proposed confidentiality order on December 17, 2018. ECF Nos. 159.

62. The Parties exchanged their Initial Disclosures pursuant to Rule 26 on or about December 17, 2018.

63. Defendants served their first set of document requests directed to Plaintiffs on or about December 21, 2018. Defendants also served two sets of interrogatories directed to Plaintiffs. Each of the four named Plaintiffs and proposed class representatives separately responded to the document requests and interrogatories.

64. On February 22, 2019, Plaintiffs served their first set of requests for admission to Defendants. Plaintiffs served a second set of requests for admission on June 26, 2019.

65. On or about May 14, 2019, Defendants served their first set of expert document requests directed to Plaintiffs.

66. In response to Plaintiffs' document requests, and following substantial efforts to meet and confer on Plaintiffs' requests and Defendants' objections thereto, the Parties then began the process of negotiating search parameters for Defendants' document production. After substantial efforts to meet and confer on the search parameters for Defendants' document production, including negotiating electronic search terms, selecting the appropriate time period(s) for search and production in response to different requests, and the identification of both custodial and non-custodial sources of information—all search parameters that were heavily negotiated—Defendants ultimately produced over 1.23 million pages of documents.

67. Lead Counsel uploaded these documents onto a database to manage the volume of documents produced. Lead Counsel also maintained an e-discovery system which Lead Counsel used to identify and track relevant documents most likely to be used in depositions and at trial (whether by Plaintiffs or Defendants), identified relevant witnesses for deposition or additional discovery requests, and established procedures to identify additional documents and information that had not been produced.

68. Plaintiffs' Counsel used search terms, date filters, custodian fields, and other metadata to analyze thousands of documents related to key issues in the case. Throughout the document review process, Plaintiffs' Counsel analyzed the information contained in the documents, determined the documents' relevance to the alleged claims, and located the evidence needed to conduct effective witness depositions, as well as to present relevant information at class certification, summary judgment, and trial, and to rebut Defendants' defenses.

69. Because a significant amount of relevant information in this Action was in the possession, custody, or control of third parties, Plaintiffs also engaged in significant efforts to conduct discovery of information possessed by third parties. Plaintiffs' Counsel prepared and served twenty-eight (28) comprehensive third-party subpoenas, including to: Goldman Sachs and J.P. Morgan Securities (the Underwriter Defendants); analysts who covered ZBH during the Class Period, including Wells Fargo Securities, Morningstar, RBC Capital Markets, Deutsche Bank, Morgan Stanley, Merrill Lynch, William Blair, Barclays, BMO Capital Markets, Piper Jaffray, Northcoast Research Partners, Leerink Partners, and SunTrust; ZBH consultants, including Boston Consulting Group, Dohmen Life Science Services, Greenleaf Health, Parexel International, and Quality Hub; ZBH contract manufacturers, including Paragon Medical and DJO Global; the former defendant PE Funds, including KKR Biomet, Kohlberg Kravis Roberts, the GS Funds (comprised of eleven Goldman Sachs-affiliated private equity funds), TPG Global LLC, and the TPG Partners Funds (comprised of four TPG-affiliated private equity funds); and the law firm of Lieff Cabraser Heimann & Bernstein, LLP for the expert reports and testimony of Defendants' expert, Vinita Juneja, in certain other securities fraud actions.

70. The foregoing third-party subpoenas required substantial efforts to meet and confer with separate counsel representing the subpoenaed parties. While these efforts to meet and confer remained in progress with respect to many of the subpoenaed third parties at the time the Settlement was reached, Plaintiffs' Counsel were able to obtain, review, and analyze approximately 30,000 pages of documents produced in response to their comprehensive third-party subpoenas.

71. In total, Plaintiffs' Counsel obtained production of, reviewed, and analyzed more than 1.23 million pages of documents.

72. Plaintiffs' Counsel also took or defended eight (8) fact witness and expert depositions, including the depositions of: Plaintiffs' class certification expert, Professor Daniel Fischel; Defendants' opposing class certification expert, Dr. Vinita Juneja; each of the named Plaintiffs, including Rajesh Shah, Matthew Brierley, Steven Castillo, and UFCW Local 1500 representative and designee Anthony Speelman; the Rule 30(b)(6) deposition of Wedge Capital Management, an advisor to UFCW Local 1500, by and through designee Brian J. Pratt; and the Rule 30(b)(6) deposition of Winslow Capital Management, LLC, an advisor to UFCW Local 1500, by and through designee Steven M. Hamill.

73. Plaintiffs' Counsel also identified percipient witness individuals and entities for deposition testimony. At the time the Parties reached an agreement to settle the Action, Plaintiffs were in the process of scheduling depositions of numerous parties and witnesses, including: ZBH (through a noticed Rule 30(b)(6) deposition); each of the individual defendants; ten additional ZBH employees or former employees, including former employee and whistleblower Robin Barney; and numerous third parties, including representatives for two ZBH consultants (Greenleaf Health and King & Spaulding), a representative from ZBH contract manufacturer (DJO Global), a representative from the GS Funds, representatives from the underwriters for the Offerings, and representatives for two different ZBH securities analysts, one of which was to be Northcoast Research. Plaintiffs' Counsel were prepared to commence taking fact witness depositions in

January 2020 and were prepared to notice additional depositions pending agreement on dates and locations.

I. Plaintiffs' Counsel's Substantial Work With Highly-Qualified Experts

74. Given the complex nature of this action, it was critical for Plaintiffs to retain highly-qualified experts to provide support for Plaintiffs' claims of Defendants' liability and damages. Plaintiffs' Counsel worked extensively with highly-experienced experts to inform them of the claims and evidence, analyze the evidence, and analyze damages. Plaintiffs retained the following individuals and firms as consulting experts in the following fields:

75. **Professor Daniel R. Fischel**: Professor Fischel is the President of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues. Professor Fischel is also the Lee and Brena Freeman Professor of Law and Business Emeritus at The University of Chicago Law School. Professor Fischel is widely recognized as one of the leading experts in the application of economics and finance to issues in securities cases. As the Seventh Circuit commented, Professor Fischel is "one of the best in the field." *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 412 (7th Cir. 2015); *see also id.* at 415 n.3 ("Apparently, he's *the* expert for this kind of financial analysis; the defendants tried to hire him as well, but they were too late.") (emphasis in original).

76. Professor Fischel served as an expert in market efficiency. Professor Fischel authored two critical reports for Plaintiffs and sat for deposition in this Action. First, on or about April 11, 2019, Professor Fischel issued a 74-page report (including substantive exhibits), in connection with Plaintiffs' motion for class certification, (1) establishing market efficiency to support Plaintiffs' invocation of the presumption of reliance and (2) opining that alleged damages can be calculated using a method common to all class members. He was deposed by Defendants in connection with his report on May 17, 2019. On or about August 19, 2019, Professor Fischel issued his rebuttal report in further support of his conclusions with respect to a common damages methodology. Professor Fischel and his staff at Compass Lexecon were also critical in assisting

Plaintiffs' Counsel to prepare for the deposition of Defendants' expert, Dr. Vinita Juneja, on August 6, 2019.

77. **Christopher Alder:** Mr. Alder is a pharmaceutical patent attorney. In his twenty years of practice, Mr. Alder has served as counsel to multiple pharmaceutical and therapeutic companies, managing all legal aspects of certain approved drugs, establishing and supporting global supply chains, and serving as FDA regulatory counsel, among others. Mr. Alder served as an FDA regulatory consultant to Plaintiffs' Counsel in this Action. During the comprehensive investigation undertaken prior to filing the Amended Complaint and Second Amended Complaint, Plaintiffs' Counsel heavily consulted with Mr. Alder, who provided explanation, analysis, and insight with respect to the FDA documents (including the integral FDA 483 issued after its North Campus inspection) Plaintiffs' Counsel received pursuant to their FOIA requests. Mr. Alder also was instrumental in Plaintiffs' Counsel's review and analysis of Defendants' produced discovery, including, but not limited to, presenting to counsel a comprehensive presentation on FDA quality regulations, cGMP, and Quality Systems to inform Plaintiffs' Counsel's review and analysis of discovery.

78. **Uri Ronnen, CPA:** Mr. Ronnen is the principal at Accounting Clues. A licensed CPA in Israel, Mr. Ronnen has been providing litigation support in securities class actions since 2003, specializing in identifying GAAP violations and misleading statements in cases where financial statements have not been restated and management has not admitted incomplete or erroneous disclosures. Prior to launching Accounting Clues, Mr. Ronnen worked in the Department of Professional Practice of the Israeli affiliate of KPMG, focusing on financial reporting issues of foreign issuers, mostly technology and communications companies, listed on US exchanges. In 1989, he earned a Ph.D. in Business from Stanford University, and between 1990 and 1999, he taught financial statements analysis and accounting courses at MIT Sloan School of Management, Rutgers University, and Baruch College. Mr. Ronnen served as an accounting consultant to Plaintiffs' Counsel in this Action. During the comprehensive investigation undertaken prior to filing the Amended Complaint, Plaintiffs' Counsel consulted

with Mr. Ronnen to identify any potential misleading statements or misleading financial results, from an accounting perspective. Mr. Ronnen also assisted Plaintiffs' Counsel in analyzing ZBH's public statements about Merger synergies and the Company's supply to inform Plaintiffs' allegations of falsity and scienter.

79. **Plaintiffs' Finance and Damages Experts**: Due to the substantial damages alleged in this Action, and particularly, due to the potential risks related to Plaintiffs' ability to prove that the stock drop on October 31, 2016 was an actionable loss causation date (*see* ¶¶102-109, 114, *infra*), Plaintiffs' Counsel worked with a number of experts to inform their understanding of the price movements of ZBH's securities, to analyze the losses attributable to the alleged false and misleading statements, and to estimate damages in this Action.

80. ***Michael Marek, CFA***: Michael Marek is the founding member of Financial Markets Analysis LLC, an economic and securities analysis consulting firm. Mr. Marek specializes in independent valuations of securities and calculation of economic damages. Mr. Marek provided Plaintiffs' Counsel with calculations of damages in this Action, and provided various analyses of ZBH's securities to Plaintiffs' Counsel to assist in assessing the appropriate alleged class period.

81. ***Global Economics Group***: Global Economics Group, an economic analysis consulting firm, as part of its Securities and Valuation practice group, provides analyses on class certification, loss causation, and damages issues in securities actions. Chad W. Coffman, the founder and president of the firm and an expert in complex securities and valuation cases, and a member of his staff, Mark Hedstrom, provided Plaintiffs' Counsel with damages analyses accounting for various inputs and situations.

82. ***Stanford Consulting Group, Inc.***: Stanford Consulting Group provides research, analysis and expert testimony in complex business litigation, including in securities litigation, providing expertise relating to materiality, market efficiency, loss causation, and damages. Zachary Nye, Ph.D., a financial economist at the group and securities litigation expert witness, and Faye Fort, M.S., an expert consultant providing assessments relative to securities litigation,

provided Plaintiffs' Counsel with damages analyses accounting for various inputs and situations. Mr. Nye and Ms. Fort further developed the Plan of Allocation in this Action.

J. Mediation Efforts, Settlement Negotiations, and Preliminary Approval of the Settlement

83. While the motion for class certification was fully briefed and pending, the Parties attempted to settle the case through private mediation. After much discussion, the Parties agreed to mediate before the Honorable Daniel Weinstein (Ret.) and Jed D. Melnick, Esq. The mediation was scheduled to occur on September 17, 2019, at JAMS Resolution Center in New York.

84. In advance of the first mediation session, Plaintiffs' Counsel dedicated substantial efforts to preparing a persuasive evidentiary-based mediation statement setting forth the facts relevant to the underlying alleged fraud, analyzing applicable law, and distilling discovery that had been completed, citing to dozens of exhibits unearthed in the discovery process to date. The Parties prepared a joint exhibit index containing eleven documents, and Plaintiffs submitted an additional fifteen (15) exhibits as evidence in support of Plaintiffs' claims. The Parties also exchanged their opening statements in advance of the September 17, 2019 session. In advance of the mediation session, Plaintiffs' Counsel spent considerable time and effort preparing their responses to the arguments raised in Defendants' mediation statement, and preparing to present Plaintiffs' compelling claims to the mediators.

85. On September 17, 2019, Plaintiffs' Counsel and Defendants' Counsel met with Judge Weinstein and Mr. Melnick, who presided over a full-day, in-person mediation session in New York, New York. During the mediation session, the Parties engaged in full and frank discussions concerning the merits of this Action, including, for example, the evidence presented to support Plaintiffs' claims, documents that Defendants believed supported their defense, and the Parties' differing damage estimates. This negotiation process enabled the Parties to meaningfully assess the relative strengths and weaknesses of their respective claims and defenses. The session ended, however, without an agreement to settle.

86. Following the mediation, Judge Weinstein and Mr. Melnick participated in further discussions with the Parties and a subsequent mediation session was scheduled for December 12, 2019 in New York, New York.

87. Plaintiffs' Counsel again prepared a comprehensive mediation statement focused on responding to the contested areas that prevented the Parties from reaching agreement during the first mediation, and included additional supporting evidence obtained in discovery following the first mediation session. Plaintiffs' Counsel focused the supplemental documents and information provided on specific issues relevant to the Action that Plaintiffs' Counsel believed would be helpful for the continued negotiation process. Along with their 20-page mediation statement, Plaintiffs' Counsel submitted a compendium of forty-five (45) exhibits in support of Plaintiffs' claims.

88. On December 12, 2019, the Parties participated in their second full-day mediation session before Judge Weinstein and Mr. Melnick in New York, New York. After substantial and meaningful negotiation, the mediation session ended with Judge Weinstein and Mr. Melnick presenting a mediators' recommendation that the Action be settled for fifty million dollars ($50,000,000). *See* Ex. 1 (Weinstein Decl.) at ¶7.

89. The Parties thereafter accepted the mediator's recommendation and subsequently negotiated the full terms of the Settlement. Following these additional negotiations, the Parties exchanged multiple drafts of—and ultimately executed—the Stipulation (ECF No. 246-1). Plaintiffs' Counsel then prepared the motion for preliminary approval of the Settlement, which was filed on April 14, 2020. ECF Nos. 244-246.

90. The Court held the hearing on Plaintiffs' motion for preliminary approval of the Settlement on May 13, 2020. ECF Nos. 247, 250. On May 21, 2020, the Court entered the Preliminary Approval Order granting preliminary approval of the Settlement, conditionally certifying the Settlement Class, and directing Notice to be disseminated to potential Settlement Class Members. ECF No. 251.

III. THE RISKS OF CONTINUED LITIGATION

91. The Settlement provides an immediate and certain benefit to the Settlement Class in the form of a non-reversionary cash payment of $50,000,000. As explained more fully in paragraphs 92-115 below, there were significant risks that Plaintiffs and the Settlement Class might recover substantially less than the Settlement Amount—or nothing at all—if the case were to proceed through additional litigation to a potentially litigated verdict, followed by inevitable appeals. For example, the most immediate risk faced by Plaintiffs and the Settlement Class existed in Plaintiffs' pending motion for class certification. In opposing class certification, Defendants raised significant arguments that Rule 23(b)(3)'s predominance requirement was not met, among other arguments against class certification. Prior to trial and a potentially litigated verdict, Plaintiffs and the proposed class also faced the imminent risks relating to the completion of fact and expert discovery and Defendants' anticipated motion for summary judgment. Indeed, on summary judgment and at trial, Defendants also had, and would have raised, substantial arguments with respect to liability, loss causation, and damages in this case. Thus, were the litigation to continue, there was no guarantee that Plaintiffs and the Settlement Class would later achieve any recovery, let alone one greater than $50 million recovery achieved in the Settlement.

A. Risks Faced in Obtaining and Maintaining Class Action Status

92. At the time the Settlement was reached, Plaintiffs' motion for class certification was fully briefed and pending the Court's ruling. While Plaintiffs' Counsel was confident that all of the requirements of Rule 23 were met and the proposed class and sub-class would be certified, Defendants had significant arguments to the contrary.

93. In addition to making a number of adequacy and typicality attacks, Defendants argued that the proposed class failed to satisfy the predominance requirement of Rule 23(b)(3) for multiple reasons. Defendants argued that Plaintiffs failed to demonstrate that damages could be calculated using a common method as purportedly required by *Comcast*. Defendants also argued that the Securities Act subclass should exclude investors whose claims are based on tracing because, according to Defendants, tracing "here [was] not possible" because there were two

secondary offerings during the Class Period—making it virtually impossible to trace any publicly traded share to either offering specifically. ECF No. 223 at 20. The Court's acceptance of any of Defendants' arguments in opposition to class certification would have been a significant hurdle for the proposed class and sub-class to overcome, and if the Court accepted Defendants' arguments that predominance was lacking under Rule 23(b)(3), could have resulted in denial of certification of the Section 11 subclass or denial of class certification in its entirety.

B. Risks to Proving Liability

94. In addition to the major hurdle of obtaining and maintaining class action status, Plaintiffs and Plaintiffs' Counsel recognized that this Action presented a number of substantial risks to establishing Defendants' liability.

95. Defendants forcefully argued in their motion to dismiss, and undoubtedly would continue to argue in a motion for summary judgment or at trial, that they made no actionable misrepresentations or omissions under the federal securities laws. Defendants argued that there was no duty to disclose ZBH's internal Quality Systems problems, related remediation requirements, and adverse business impacts from FDA inspections either under the federal securities laws, or specifically under Item 303 of Regulation S-K, which requires disclosure of known trends or uncertainties that have or that the registrant expects will have a material impact on revenue or income from continuing operations. 17 C.F.R. § 229.303(a)(3)(ii).

96. Separately, Defendants argued, and would likely have continued to argue, that any alleged misstatements and omissions were protected by the PSLRA's statutory safe harbor provision for forward-looking statements, and specifically, that the findings of ZBH's internal audit reports would support the conclusion that there was no need for Defendants to update their risk warnings.

97. Defendants further argued that, even if a duty to disclose existed, Plaintiffs failed to specifically allege, and would not be able to prove, that Defendants knew or reasonably expected that ZBH's Quality System problems and related remediation would have a material effect on

ZBH's business and financial position. Indeed, proving scienter is often one of the most risky and challenging elements of proving a Section 10(b) claim.

98. Here, Defendants vehemently disputed Plaintiffs' scienter allegations. For example, the Parties strongly disagreed over the impact of ZBH's 2016 internal audits. Rather than being the ominous red flags Plaintiffs alleged, Defendants argued that Plaintiffs conflate the FDA findings with the internal audit findings, and maintained that there was nothing to suggest that the internal audit findings identified anything other than routine issues, that the internal audit results could not have predicted the eventual North Campus product holds, and that Defendants were in-fact taking proactive steps to resolve the issues uncovered by the internal audits.

99. In addition, Defendants have vehemently refuted that the supply chain integration issues were a concocted "cover-up" story as to the cause of the Q3 revenue shortfall, and that Defendants did not have a motive to commit fraud, evidenced by their lack of insider stock sales or other personal benefits during the Settlement Class Period.

100. Defendants also argued that the October 31, 2016 explanation for the cause of ZBH's Q3 revenue miss was factually true, and thus, Plaintiffs' allegations that Defendants misled investors by pinning the cause of the revenue miss to unexpected supply constraints was not actionable under the federal securities laws. As discussed in more detail in ¶¶102-109, 114, *infra*, if Defendants were successful in this argument and Plaintiffs were unable to prove October 31, 2016 as an actionable loss causation date, they stood to lose up to 85% of the class-wide damages alleged in the Action.

101. In sum, despite believing that this Action is meritorious, Plaintiffs and Plaintiffs' Counsel were well aware of the risks they would have to overcome to ultimately prove Defendants' liability under Plaintiffs' Exchange Act claims, including overcoming: the risk of proving that Defendants made false or misleading statements, the high hurdle they would have to surmount in order to successfully prove that Defendants acted with the requisite mental state of an intent to deceive or extreme recklessness, and the risks they faced in proving the alleged stock price drops were caused by the alleged fraudulent conduct.

C. Risks to Proving Loss Causation and Damages

102. Even assuming Plaintiffs overcame the above risks and successfully established Defendants' liability, Plaintiffs would have confronted considerable challenges in establishing loss causation and class-wide damages.

103. The Operative Complaint alleged two price drops occurred following two separate corrective disclosures in October and November of 2016. First, the price of ZBH's common stock dropped by $17.15, or nearly 14%, on October 31, 2016, following ZBH's announcement of disappointing financial results for Q3 2016 and a guidance reduction for Q4 2016 purportedly due to "unanticipated supply constraints, related to our transitioning supply chain infrastructure." Second, the price of ZBH's common stock dropped an additional $2.62 per share, or 2.51%, on November 8, 2016, in response to a November 8, 2016 Northcoast Report, which tied the supply shortages to an undisclosed FDA Inspection of North Campus.

104. Defendants previewed their likely loss causation challenges both in their opposition to class certification in their *Comcast*[4] challenge to Plaintiffs' proposed damages methodology and in their accompanying Expert Report of Vinita Juneja, Ph.D. In their opposition to class certification, Defendants argued that Plaintiffs cannot recover damages relating to the October 31, 2016 disclosure. ECF No. 223 at 10-11.

105. First, Defendants and their expert Dr. Juneja argued that the Q3 revenue miss announced on October 31, 2016 was due to supply chain integration issues that had "nothing to do" with Plaintiffs' alleged fraud, and thus, any stock price decline flowing therefrom would need to be disaggregated from this other confounding news. *Id.*; ECF No. 223-5 at ¶¶33-48. Second, Defendants argued that ZBH's Quality Systems problems only impacted the Company's reduction of Q4 2016 guidance announcement on October 31, 2016, and that the "explanation of which was sufficient and was protected by the safe harbor for forward-looking statements." ECF No. 223 at 11. If any of these arguments were accepted by a jury, they had the potential to drastically reduce

[4] *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013).

the amount of recoverable damages. *See infra* at ¶114. If Plaintiffs failed to prove loss causation for the October 31, 2016 disclosure, the Settlement Class's estimated maximum recoverable damages would be reduced from a total estimate of $625 million to only approximately $95 million.

106. Additionally, Plaintiffs would have had to proffer expert testimony to prove: (i) what the "true value" of ZBH's common stock would have been had there been no alleged material misstatements or omissions; (ii) the amount by which ZBH shares were allegedly inflated by the alleged material misstatements and omissions; and (iii) the amount of alleged artificial inflation removed by the disclosures on October 31, 2016 and November 8, 2016. Defendants almost certainly would have presented their own damages expert(s) to present conflicting conclusions and theories as to the reasons for ZBH's share price declines on the alleged corrective disclosure dates, and challenging Plaintiffs' expert's methodology to calculate ZBH's "true value," requiring a jury to decide the "battle of the experts"—an expensive and intrinsically unpredictable process.

107. Indeed, Defendants and their expert likewise previewed some of this expected "battle." In Defendants' opposition to class certification and accompanying expert report, Defendants and their expert Dr. Juneja argued that Plaintiffs' liability was premised solely on a "materialization of the risk" theory, and that Plaintiffs' expert's proposed methodology is not tailored to this theory. ECF No. 223 at 14-20; ECF No. 223-5 at ¶¶23-32. Defendants and their expert argued that the proposed methodology failed to account for variations in the level of inflation, as the "degree of hope" that Defendants had concerning whether FDA sanctions could be avoided changed over the course of the Class Period. *See, e.g.*, ECF No. 223-5 at ¶¶27-29.

108. Moreover, expert testimony can often rest on many assumptions, any of which risks being rejected by a jury. A jury's reaction to expert testimony is highly unpredictable, and Lead Counsel recognizes that, in a such a battle, there is the possibility that a jury could be swayed by Defendants' experts and could find only a fraction of the amount of damages Plaintiffs allege were suffered by the Settlement Class. Thus, the damages that the Settlement Class would actually recover at trial, even if successful on liability issues, was uncertain. Similarly, there was no

assurance that all of Plaintiffs' gathered documents and testimony relating to liability and damages would be admitted as evidence by the Court at trial. These issues could have seriously affected Plaintiffs' ability to successfully prosecute this Action.

109. In sum, had any of Defendants' loss causation and damages arguments been accepted a summary judgment or trial, they could have dramatically limited—if not eliminated—any potential recovery.

D. Other Risks

110. In addition to the pending class certification motion, Plaintiffs also would have had to prevail at several later stages of litigation, each of which would have presented significant risks in complex class actions such as this one. For example, Plaintiffs would have had to complete substantial additional discovery, including taking numerous fact depositions and conducting all expert discovery, the costs of which are assuredly high and the fruits of which are highly uncertain.

111. Plaintiffs further would have had to successfully navigate and prevail against Defendants' anticipated motion(s) for summary judgment, as well as at trial. Plaintiffs' Counsel know from experience that despite the most vigorous and competent of efforts, attorneys' success in contingent litigation such as this case is never assured. In fact, GPM recently received a negative verdict following a six-week antitrust jury trial in the Northern District of California after five years of litigation, which included many overseas depositions, the expenditure of millions of dollars of attorney and paralegal time, and the expenditure of more than a million dollars in hard costs. *See In re: Korean Ramen Antitrust Litigation*, Case No. 3:13-cv-04115 (N.D. Cal.).

112. Even if Plaintiffs had prevailed at all of those stages, they would have had to succeed on any appeals that would have surely followed. This process could have extended for years and might have ultimately led to a smaller recovery – or no recovery at all. Indeed, even prevailing at trial would not have guaranteed a recovery larger than the $50,000,000 Settlement.

113. Given these significant litigation risks, Plaintiffs and Plaintiffs' Counsel believe that the Settlement represents an excellent result for the Settlement Class.

E. The Settlement is Reasonable in Light of Potential Recovery in the Action

114. In addition to the attendant risks of litigation discussed above, the Settlement is also fair and reasonable in light of the potential recovery of available damages. According to analyses prepared by Plaintiffs' consulting damages experts, the Settlement value, totaling $50,000,000 in cash, is well within the range of reasonableness under the circumstances to warrant final approval of the Settlement. Here, Plaintiffs' damages expert estimates that if Plaintiffs had fully prevailed at both summary judgment and after a jury trial, and if the Court and jury fully accepted Plaintiffs' damages theory, including proof of loss causation accounting for the entirety of the stock price drops on both October 31, 2016 and November 8, 2016 – *i.e.*, Plaintiffs' ***best-case scenario*** – the total ***maximum*** damages would be approximately $625 million. Thus, the $50 million Settlement Amount represents approximately 8% of the total ***maximum*** damages ***potentially*** available in this Action. In comparison, the median recovery in securities class actions in 2019 was approximately 4.8% of estimated damages. *See* Ex. 8 Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements 2019 Review and Analysis*, at p. 6 Figure 5 (Cornerstone Research 2020). Further, if Plaintiffs failed to prove loss causation for the October 31, 2016 disclosure—a very real risk in this case—the Settlement Class's estimated maximum recoverable damages would be reduced to approximately $95 million, in which case the Settlement equates to a remarkable recovery of 53%.

115. Having evaluated the relative strengths and weaknesses of the Action in light of Defendants' arguments, and considering the very real risks presented by the hurdles of class certification, summary judgment, trial, and any eventual appeals that would have arisen, it is the informed judgment of Plaintiffs' Counsel, based upon all of the proceedings to date and their extensive experience in litigating securities class actions, that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

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

116. Pursuant to the Preliminary Approval Order, Lead Counsel and the Court-approved Claims Administrator, JND, implemented a comprehensive notice program whereby notice was given to potential Settlement Class Members by mail and publication.

117. The Court-approved Notice disclosed, among other things, the following information to Settlement Class Members: (1) the Settlement Amount; (2) the Plan of Allocation; (3) that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 33⅓% of the Settlement Fund, plus interest, and expenses incurred in prosecuting the Action in an amount not to exceed $1,900,000 which could include an application for reimbursement to each Plaintiff for their costs and expenses, and that any Settlement Class Member could object to the requested fee and expenses; (4) a detailed explanation of the reasons for the Settlement; (5) that requests for exclusion from the Settlement must be filed no later than August 13, 2020; (6) that objections to the Settlement, the Plan of Allocation, or the Fee Motion and Memorandum must be filed no later than August 13, 2020; and (7) that the deadline for filing Claim Forms is October 19, 2020.

118. Pursuant to the Court-approved notice program, on June 19, 2020, JND mailed, by first-class mail, 31,330 copies of the Notice and Claim Form (together, the "Notice Packet") to potential Settlement Class Members. Ex. 3 (Segura Decl.) at ¶7 (the "Initial Mailing").

119. The Initial Mailing included potential Settlement Class Members identified on transfer records provided by ZBH, additional potential Settlement Class Members identified by JND through its review of SEC records, and mailing to JND's Broker Database, a proprietary database maintained by JND containing names and addresses of the largest and most common banks, brokers, and other nominees that often hold securities in "street name" on behalf of clients. Ex. 3 (Segura Decl.) at ¶¶3-5.

120. JND made additional efforts to identify and reach potential Settlement Class Members, including posting the Notice for brokers and nominees on the DTC Legal Notice System

("LENS"), following up by telephone with 50 of the largest broker/nominee firms, and sending reminder postcards to nominees in the Broker Database who did not respond to the Initial Mailing. Ex. 3 (Segura Decl.) at ¶¶8-10. As a result of these efforts, JND received an additional 45,969 unique names and addresses of potential Settlement Class Members to whom JND mailed Notice Packets, as well as requests from brokers and other nominees for 77,334 copies of the Notice Packet that the nominees would forward to their customers. *Id.* at ¶11.

121. As of July 21, 2020, JND had sent a total of 154,613 Notice Packets to potential Settlement Class Members or their nominees. Ex. 3 (Segura Decl.) at ¶12.

122. Among other things, the Notice directed Settlement Class Members to the Settlement Website, www.ZimmerBiometSecuritiesLitigation.com, in order to obtain additional information on the Settlement and how to file a claim. Ex. 3 (Segura Decl.) at ¶15. JND posted the Notice and Claim Form, along with other important case-related documents, including the Stipulation of Settlement and the Preliminary Approval Order, on the Settlement Website, which became operational on or about June 18, 2020. *Id.* All documents are downloadable, and Settlement Class Members have the option of submitting Claim Forms online. *Id.*

123. JND also caused the Summary Notice to be published once in *Investor's Business Daily* and transmitted once over the *PR Newswire* on July 6, 2020. Ex. 3 (Segura Decl.) at ¶13.

124. Beginning on or about June 19, 2020, a case-specific toll-free telephone number, 888-670-1171, was established with an interactive voice response system and live operators. Ex. 3 (Segura Decl.) at ¶14. The automated attendant answers the calls and presents callers with a series of choices to respond to basic questions. Callers requiring further help have the option to be transferred to a live operator during business hours. As of July 21, 2020, JND had received a total of 324 calls to the telephone helpline. *Id.* JND promptly responded to each telephone inquiry and will continue to address Settlement Class Member inquiries. *Id.*

125. The Notice informed potential Settlement Class Members that the deadline to file objections to the Settlement, proposed Plan of Allocation and/or the Fee Motion and Memorandum, or to request exclusion from the Settlement Class is August 13, 2020. Ex. 3-A

(Notice Packet). As of July 29, 2020 (the date of execution of the Segura Declaration), only three (3) requests for exclusion had been received. *See* Ex. 3-C (copy of exclusion requests). Additionally, to date, no objections to the Settlement, the Plan of Allocation or the maximum amounts listed in the Notice that Lead Counsel would seek for an award of attorneys' fees and reimbursement of Litigation Expenses have been entered on this Court's dockets or have otherwise been received by Lead Counsel. Lead Counsel will file reply papers on August 27, 2020 to address any additional requests for exclusion and any objections that may be received.

V. ALLOCATION OF THE NET PROCEEDS OF THE SETTLEMENT

126. Pursuant to the Preliminary Approval Order (ECF No. 251), and as set forth in the Notice, all Settlement Class Members who want to participate in the distribution of the Net Settlement Fund (*i.e.*, the $50,000,000 Settlement Amount plus any and all interest earned thereon less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys' fees awarded by the Court) must submit a valid Claim Form with all required information submitted online or postmarked no later than October 19, 2020. The Net Settlement Fund will be distributed among Authorized Claimants according to the proposed Plan of Allocation, as subject to approval by the Court.

127. The proposed Plan of Allocation is detailed in the Notice. If approved, the Plan of Allocation will govern how the Net Settlement Fund will be distributed among Authorized Claimants. The Plan of Allocation's objective is to equitably distribute the Net Settlement Fund to those Settlement Class Members who suffered losses as a result of the alleged fraud as opposed to losses caused by market- or industry-wide factors or ZBH-specific factors unrelated to the alleged fraud. Under the Plan of Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund based on his, her, or its total Recognized Loss Amount as compared to the total Recognized Loss Amounts of all Authorized Claimants.

128. The Plan of Allocation, developed by one of Plaintiffs' economic expert consultants working in conjunction with Lead Counsel, is based on an out-of-pocket theory of damages

consistent with Section 10(b) of the Exchange Act and Section 11 of the Securities Act, and reflects an assessment of the damages that Plaintiffs contend could have been recovered under the theories of liability and damages asserted in the Action. More specifically, the Plan of Allocation reflects, and is based on, Plaintiffs' allegation that the price of ZBH's Common Stock and Call Options was artificially inflated and the price of ZBH's Put Options was artificially deflated during Settlement Class Period, due to Defendants' alleged materially false and misleading statements and omissions.

129. The Plan of Allocation is based on the premise that the decreases in the price of ZBH Securities that followed the alleged corrective disclosures that occurred on October 31, 2016 and November 8, 2016 (the "Corrective Disclosure Dates") may be used to measure the alleged artificial inflation in the price of ZBH Securities prior to these disclosures.

130. The Recognized Loss for Claimants with a claim under both Section 10(b) of the Exchange Act and Section 11 of the Securities Act shall be the maximum of: (i) the Recognized Loss amount calculated under Section 10(b) as described at pp. 17-19 of the Notice ("Calculation of Recognized Loss Per Share Under Section 10(b)"); or (ii) the Recognized Loss amount calculated under Section 11 as described at pp. 19-20 of the Notice ("Calculation of Recognized Loss Per Share Under Section 11") for the respective offerings.

131. An individual Claimant's recovery under the Plan of Allocation will depend on a number of factors, including when the Claimant purchased, acquired, or sold ZBH Securities during the Settlement Class Period, in what amounts, and if any securities were sold, when they were sold and in what amounts, as well as the number of valid claims filed by other Claimants.

132. If a Claimant has an overall market gain with respect to his, her, or its overall transactions in ZBH Securities during the Settlement Class Period, the Claimant's recovery under the Plan of Allocation will be zero.

133. If the prorated payment to be distributed to any Authorized Claimant is less than $10.00, no distribution will be made to that Authorized Claimant. Any prorated amounts of less than $10.00 will be included in the pool distributed to those Authorized Claimants whose prorated

payments are $10.00 or greater. In Lead Counsel's experience, processing and sending a check for less than $10.00 is cost prohibitive.

134. In sum, the Plan of Allocation was designed to allocate the proceeds of the Net Settlement Fund fairly among Settlement Class Members based on the losses they suffered on transactions in ZBH Securities that were attributable to the conduct alleged in the Complaint. Plaintiffs and Lead Counsel believe that the proposed Plan of Allocation will result in a fair and equitable distribution of the Net Settlement Fund among Settlement Class Members similar to the result if Plaintiffs prevailed at trial.

135. As noted above, more than 154,600 copies of the Notice Packet have been disseminated. To date, no objections to the proposed Plan of Allocation have been received.

VI. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

136. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel, on behalf of all Plaintiffs' Counsel, are applying for a fee award of 33.3% of the Settlement Fund (*i.e.*, $16,650,000 plus interest accrued thereon). Lead Counsel also request reimbursement in the amount of $1,535,402.94 for expenses paid or incurred by Plaintiffs' Counsel in connection with the prosecution and resolution of the Action – an amount that is well below the maximum expense amount of $1,900,000 set forth in the Settlement Notice. Finally, Lead Counsel request awards of $15,000 to each Plaintiff for their costs, including lost wages, incurred in connection to their roles as Lead Plaintiffs and/or representative plaintiffs in the Action. *See* Exs. 4-7 (representative plaintiff declarations).

137. As set forth in the accompanying Fee Memorandum, the requested 33.3% award and the resulting multiplier on Plaintiffs' Counsel's lodestar of approximately 1.13, are both well within the range of fee awards in other comparable class action settlements and are justified here in light of the extent and quality of Plaintiffs' Counsel's work. The legal authorities supporting the requested fees and expenses are set forth in the accompanying Fee Memorandum. The primary factual bases for the requested fees and expenses are set forth below.

A. The Outcome Achieved is the Result of the Significant Time and Labor that Plaintiffs' Counsel Devoted to the Action, and the Requested Award is Supported by a Lodestar "Cross-Check" Based on That Time and Labor

138. The work undertaken by Plaintiffs' Counsel in investigating and prosecuting the Action and arriving at the present Settlement in the face of substantial risks has been time-consuming and challenging. At all times throughout the pendency of the Action for a period of more than three years, Plaintiffs' Counsel's efforts were driven and focused on advancing the Action to bring about the most successful outcome for the Settlement Class, whether through settlement or trial. As previously summarized above, among other things, Plaintiffs' Counsel: (i) conducted a comprehensive investigation into the allegedly wrongful acts, which included, among other things, a review and analysis of ZBH's SEC filing, public reports and news articles concerning ZBH, transcripts of ZBH's investor calls, interviews with former employees and other potential witnesses with relevant information, and consultation with FDA, accounting, market efficiency, and loss causation and damages experts; (ii) drafted two amended complaints, including the operative 172-page Operative Complaint, plus exhibits, based on Plaintiffs' investigation; (iii) engaged in voluminous briefing related to Defendants' motions to dismiss, 1292 Motion, and Plaintiffs' motion for class certification; (iv) engaged in extensive discovery, including serving and responding to written discovery, reviewing and analyzing more than 1.2 million pages of documents produced by Defendants and third parties, and taking or defending eight (8) expert and fact depositions, and preparing for percipient witness depositions to begin in January 2020; (v) drafted and exchanged two detailed mediation statements attaching relevant exhibits and addressing both liability and damages; (vi) participated in two separate, full-day mediation sessions before the Honorable Daniel Weinstein (Ret.) and Jed D. Melnick, Esq., of JAMS; (vii) engaged in negotiations regarding the terms of the proposed Settlement; and (viii) worked with Plaintiffs' damages expert to craft a plan of allocation that treats Plaintiffs and all other members of the proposed Settlement Class fairly. *See also* ¶¶25-90, *supra*.

139. These substantial efforts resulted directly in the significant Settlement obtained for the benefit of the Settlement Class and, accordingly, this factor weighs strongly in favor of the

requested 33.3% award of attorneys' fees. Moreover, Plaintiffs' Counsel will continue to work towards effectuating the Settlement in the event the Court grants final approval. No additional compensation will be sought for this work.

140. As set forth in Exhibits 9-11, Plaintiffs' Counsel expended a combined 29,276.90 hours prosecuting this Action, for a collective total lodestar of $14,675,216.00. The following is a summary chart of the hours expended and lodestar amounts for the three firms:[5]

LAW FIRM:	**LODESTAR**
Glancy Prongay & Murray LLP (Ex. 9)	$12,776,703.50
Kirby McInerney LLP (Ex. 10)	$1,724,355.00
Katz Korin Cunningham P.C. (Ex. 11)	$174,157.50
TOTAL LODESTAR	**$14,675,216.00**

141. The hourly rates that the above lodestar calculations are based upon are similar to the rates that have been accepted in other shareholder litigation in this District. *See e.g.*, *Gupta v. Power Sols. Int'l, Inc.*, 2019 WL 2135914, at *2 (N.D. Ill. May 13, 2019) (awarding 33.3% of settlement fund as supported by lodestar cross-check including hourly rates ranging from $650 to $960 per hour for partners, $425 to $550 per hour for associates, and $395 per hour for staff attorneys); *see also id.*, Case No. 1:16-CV-08253 (ECF No. 145-4, GPM lodestar report).

142. Additionally, the rates billed by Lead Counsel (ranging from $410-$575 per hour for associates and $650-$945 per hour for partners and of counsel attorneys) are comparable to peer plaintiff and defense firms litigating matters of similar magnitude. *See* Ex. 12 (table of peer firm billing rates).

143. Throughout this litigation, Lead Counsel ensured that staffing was appropriate to litigate effectively and efficiently without negatively impacting the prosecution of the action. At all times, Lead Counsel maintained strict control of and monitored the work performed by all lawyers and other personnel on this case. Experienced attorneys at each of the Plaintiffs' Counsel

[5] Time expended in preparing Plaintiffs' Counsel's request for fees and expenses has not been included in the collective total lodestar. GPM will be compensating the Law Offices of Howard Smith for its work on the case out of GPM's portion of attorneys' fees awarded.

firms were, as necessary and appropriate, involved in the litigation of the action, the Settlement negotiations, and other matters. More junior attorneys, project attorneys, and paralegals worked on matters appropriate to their skill and experience level. Throughout the litigation, Lead Counsel took care to maintain an appropriate level of staffing and assigned work to those attorneys best suited for the task based on their level of experience and skill. This avoided unnecessary duplication of effort and ensured the efficient prosecution of this action.

144. As set forth in the attached Exhibit 13 (project attorney biographies and work summaries), project attorneys assigned to this Action are billed at between $380 to $395 per hour, depending on their years of experience or particular skills and expertise. Attorneys with less than ten years of experience are billed at $380 per hour. Attorneys with ten or more years of experience are billed at $395 per hour. The project attorneys hired to work with Plaintiffs' Counsel on this Action provided integral services for the benefit of Plaintiffs and the Settlement Class, and their work contributed greatly to the efficient and effective prosecution of the Action. Moreover, the entire project attorney team provided substantive work on a fast-paced schedule, often juggling overlapping assignments of document review and analysis, deposition preparation, review and analysis of deposition transcripts, and assistance on Plaintiffs' mediation statements, for example. Ex. 13 (project attorney biographies and work summaries).

145. The requested 33.3% attorneys' fee (which equates to $16,650,000, plus interest at the rate earned by the Settlement Fund) represents a 1.13 multiplier on the base lodestar value of Plaintiffs' Counsel's time. As shown in the accompanying Fee Memorandum, such a multiplier is below the range of multipliers that courts often award in comparably complex securities class actions. Where (as here) the requested fee amounts to a 1.13 multiplier on Plaintiffs' Counsel's total lodestar time, the lodestar cross-check fully supports the requested fee.

B. The Requested Percentage is Reasonable and Appropriate in Light of Prevailing Market Rates, the Risks of Litigation, and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Securities Cases

146. Based on the work performed and the quality of the result achieved, Lead Counsel respectfully submit that a 33.3% fee is fully merited under the "percentage of the fund" methodology. Furthermore, as set forth above, though not required in the Seventh Circuit, Lead Counsel, on behalf of all Plaintiffs' Counsel, also respectfully submit that the requested fee is fully supported by a "lodestar multiplier cross-check."

147. This prosecution was undertaken by Lead Counsel on a pure contingency-fee basis. From the outset, Lead Counsel understood that they were embarking upon a complex, expensive, and lengthy litigation with no guarantee of even 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, that funds were available to compensate attorneys and staff, and to cover the considerable litigation costs required by a case like this one. With an average lag time of many years for complex cases like this case to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel received no compensation during the course of the Action, during which they devoted more than 29,276.90 professional hours and incurred $1,535,402.94 in out-of-pocket litigation-related expenses in prosecuting the Action.

148. The requested 33.3% fee is fair and reasonable and in accordance with prevailing market rates for similar contingent litigation where plaintiffs' counsel face the risk of non-payment. *See, e.g.*, *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 599-600 (7th Cir. 2005) (noting "awards made by courts in other class actions" which "amount[ed] to 30-39% of the settlement fund"). Indeed, courts routinely award fees of 33% (or more) of common fund settlements, including in settlements valued at $50 million and greater. *See* Ex. 2 (Fitzpatrick and Silver Decl.) at ¶¶24, 26, 44-47 & tbl. 1 (compendium of common fund settlements in antitrust actions).

149. Plaintiffs' 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 of efforts, success in contingent-fee litigation like this one is never assured. Plaintiffs' Counsel knows from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

150. 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. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 320 n.4 (2007) ("private securities litigation is an indispensable tool with which defrauded investors can recover their losses – a matter crucial to the integrity of domestic capital markets.") (internal quotation marks omitted). As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private 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.

C. The Experience and Expertise of Lead Counsel, and the Standing and Caliber of Defendants' Counsel

151. As demonstrated by the firm resumes attached hereto, Plaintiffs' Counsel have extensive and significant experience in the specialized area of securities litigation. Exs. 9-11. The attorneys who were principally responsible for leading the litigation have prosecuted securities claims throughout their careers, and have recovered hundreds of millions of dollars on behalf of investors. This experience allowed Plaintiffs' Counsel to develop and implement litigation strategies to address the complex obstacles that are inherent in securities class actions and those specific to this case that were raised by Defendants. Indeed, the recovery achieved here for the Settlement Class reflects the high quality of Plaintiffs' Counsel's representation.

152. Additionally, the quality of the work performed by Plaintiffs' Counsel in obtaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were represented by Morgan Lewis & Bockius LLP, a renowned law firm that vigorously represented the interests of their clients throughout this Action. In the face of this experienced and formidable opposition, Plaintiffs' Counsel was nonetheless able to persuade Defendants to settle the case on terms favorable to the Settlement Class.

D. The Reaction of the Settlement Class Supports Lead Counsel's Fee Request

153. As noted above, as of July 21, 2020, over 154,613 Notices have been mailed advising Settlement Class Members of the Settlement in which Lead Counsel, on behalf of all Plaintiffs' Counsel, would apply for an award of attorneys' fees in an amount not to exceed 33.3% of the Settlement Fund. In addition, the Court-approved Summary Notice has been published in *Investor's Business Daily* and transmitted over the *PR Newswire*. To date, no objections to the attorneys' fees maximum set forth in the Notice have been received or entered on this Court's docket. Any objections received after the date of this filing will be addressed in Lead Counsel's reply papers to be filed on August 27, 2020.

154. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted the Action without any compensation or guarantee of success. Based on the result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submit that a fee award of 33.3%, resulting in a multiplier of 1.13 on all Plaintiffs' Counsel's time, is fair and reasonable, and is supported by the fee awards courts have granted in other comparable cases.

E. Plaintiffs Support the Fee Request

155. As set forth in the declarations submitted by the representative Plaintiffs, each has concluded that the requested fee is fair and reasonable based on the work performed by Plaintiffs' Counsel, the recovery obtained, and the risks of the Action. Exs. 4-7. Plaintiffs' Counsel have represented Plaintiffs throughout the litigation. Plaintiffs have been intimately involved in this

case since its earliest stages, and their endorsement of the fee request supports the reasonableness of the request and should be given weight in the Court's consideration of the fee award.

F. Reimbursement of the Requested Litigation Expenses is Fair and Reasonable

156. Lead Counsel seeks a total of $1,595,402.94 in Litigation Expenses to be paid from the Settlement Fund. This includes $1,535,403.94 in expenses reasonably and necessarily incurred by Plaintiffs' Counsel in connection with commencing, litigating, and settling the Action; as well as a total of $60,000 ($15,000 to each representative Plaintiff) for the costs, including lost wages, and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. Lead Counsel respectfully submit that the request for reimbursement of Litigation Expenses is appropriate, fair, and reasonable and should be approved in the amounts submitted herein.

157. The following is a combined breakdown by category of all expenses incurred by all Plaintiffs' Counsel:

EXPENSE CATEGORY	**AMOUNT**
COURIER & SPECIAL POSTAGE	1,617.92
COURT FILING FEES	1,976.40
DOCUMENT MANAGEMENT	68,740.48
EXPERTS	1,237,009.78
INVESTIGATIONS	66,446.45
MEDIATION	37,250.76
ONLINE RESEARCH	40,607.25
OTHER RESEARCH	870.75
PHOTOIMAGING	554.98
PRESS RELEASES	145.00
SERVICE OF PROCESS	10,624.50
TELEPHONE	391.05
TRANSCRIPTS	14,684.74
TRAVEL AIRFARE	17,674.99
TRAVEL AUTO	4,905.49
TRAVEL HOTEL	26,814.83
TRAVEL MEALS	4,115.52
TRAVEL PARKING	972.05
TOTAL	**1,535,402.94**

158. The Notice informed potential Settlement Class Members that Lead Counsel would be seeking reimbursement of expenses in an amount not to exceed $1,900,000. The total amount requested by Lead Counsel and Plaintiffs, $1,595,402.94, falls well below the maximum $1,900,000 that Settlement Class Members were advised could be sought. As of July 29, 2020, no objections have been raised as to the maximum amount of expenses set forth in the Notice. If any objection to the request for reimbursement of Litigation Expenses is made after the date of this filing, Lead Counsel will address it in their reply papers.

159. From the inception of this Action, Plaintiffs' Counsel were aware that they might not recover any of the expenses they incurred in prosecuting the claims against Defendants, and, at a minimum, would not recover any expenses until the Action was successfully resolved. Plaintiffs' Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate Plaintiffs' Counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendants. Thus, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

160. The largest component of expenses, $1,237,009.78, or approximately 80.6% of the total expenses, was expended on the retention of experts in the field of FDA regulation, and economic experts to opine on class certification, loss causation, and damages. The experts were consulted at different points throughout the litigation, including on matters related to the preparation of the amended complaint, market efficiency during class certification briefing, on matters relating to negotiation of the Settlement, and on preparation of the Plan of Allocation.[6] *See* ¶¶74-82, *supra* (description of experts retained and services provided).

161. $66,446.45, or approximately 4.3% of the total expenses, was expended on the retention of an outside investigative firm's services to identify and interview witnesses to assist in the development of the facts involved in the case.

[6] Lead Counsel's request for reimbursement of expenses does not include costs incurred in connection with retaining class action legal experts, Profs. Fitzpatrick and Silver.

162. $53,510.83, or approximately 3.5% of the total expenses, was expended on work-related transportation, lodging and meal costs. Air travel was at economy or premium economy rates (*i.e.*, not business or first class), and meals were capped at $50 per person.

163. $40,607.25, or approximately 2.6% of the total expenses, was expended on the use of online research vehicles to research and support Plaintiffs' various legal arguments while engaged in voluminous motion practice.

164. $37,250.76, or approximately 2.4% of the total expenses, was expended on Plaintiffs' share of mediation fees paid for the services of Judge Weinstein and Mr. Melnick.

165. $26,814.83, or approximately 1.7% of the total expenses, was expended on the use of litigation support services, which were used to host the more than 1.2 million pages of electronic documents produced in the Action.

166. The other Litigation Expenses for which Lead Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These Litigation Expenses include, among others, court fees, copying costs, and postage and delivery expenses.

167. Finally, the representative Plaintiffs each seek reimbursement of their reasonable costs and expenses incurred directly in connection with representing the Settlement Class in the amount of $15,000 each. The effort devoted to this Action by Plaintiffs is detailed in their accompanying declarations. Exs. 4-7. Based on the substantial work done by Plaintiffs for the benefit of the Settlement Class, Lead Counsel respectfully requests that the Court should grant the Plaintiffs' request in full.

VII. CONCLUSION

168. In view of the significant recovery for the Settlement Class and the substantial risks of this Action, as described herein and in the accompanying Final Approval Memorandum, I respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should be approved as fair and reasonable. I further submit

that the requested fee in the amount of 33.3% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of total Litigation Expenses in the amount of $1,595,402.94 (which includes $60,000 total for all of the representative Plaintiffs' time and efforts on behalf of the Settlement Class) also should be approved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct. Executed this 30th day of July, 2020, at Los Angeles, California.

s/ Kara M. Wolke
KARA M. WOLKE

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG Honorable Philip P. Simon

DECLARATION OF HONORABLE DANIEL WEINSTEIN (RET.) IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, Judge Daniel H. Weinstein (Ret.), hereby declare as follows:

1. I, in conjunction with my colleague Jed D. Melnick, Esq. (collectively, the "Weinstein Melnick Team"), served as the mediators in the above-captioned action (the "Action"). I submit this declaration in support of the proposed settlement (the "Settlement") of the Action, based on my personal knowledge. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. The Weinstein Melnick Team began mediating the dispute between Court-appointed Lead Plaintiffs Rajesh Shah and Matt Brierley, and additional plaintiffs UFCW Local 1500 and Steven Castillo (collectively, "Plaintiffs"), on behalf of themselves and the Settlement Class, and defendants Zimmer Biomet Holdings, Inc., David C. Dvorak, Daniel P. Florin, Robert J. Marshall Jr., Tony W. Collins, Christopher B. Begley, Betsy J. Bernard, Paul M. Bisaro, Gail K. Boudreaux, Michael J. Farrell, Larry Glasscock, Robert A. Hagemann, Arthur J. Higgins, Michael W. Michelson, Cecil B. Pickett, Ph.D., and Jeffrey K. Rhodes (collectively, "Defendants" and, together with Plaintiffs, the "Parties") on September 17, 2019. All of the Parties who participated in the mediation of this matter executed a confidentiality agreement indicating that the mediation process was to be considered confidential and privileged under all applicable state and federal rules protecting disclosures made during such process from later discovery and/or use in evidence. The Parties further agreed that the confidentiality agreement extended to all present and future civil, judicial, quasi-judicial, arbitral, administrative, and other proceedings. Nothing in my declaration divulges any privileged information. Further, the filing of this declaration does not constitute the waiver of any such confidentiality.

3. From 1982 through 1988, I served as a Judge of the Superior Court of the State of California, County of San Francisco. I also served as an Associate Justice Pro Tem of the California Supreme Court and the First District Court of Appeal.

4. Since retiring from the bench, I have been a full-time mediator. I am one of the founders of JAMS, the world's largest provider of mediation services. For over twenty years, I have presided over the mediation of countless disputes, including many complex multi-party

disputes throughout the United States. By way of example, I have mediated dozens of class actions involving public companies such as Enron, Homestore, Qwest, Adelphia, New Century, Parmalat, Broadcom, Aviva, Marsh & McLennan, and other major New York Stock Exchange and NASDAQ corporations. I have mediated numerous types of class actions, including securities class actions, ERISA actions, intellectual property actions, environmental cases, subprime litigation, litigation with bankruptcy aspects, and litigation brought by borrowers, credit card customers, insurance purchases, and air crash victims. Many of these cases involved complex fact patterns and legal issues, and involve hundreds of millions (or billions) of dollars in claimed damages. They often included numerous plaintiffs and plaintiffs' counsel, as well as a multitude of defendants (issuers, directors, officers, insurance carriers, professional firms, etc.) and defense counsel. For each of the last twenty-one years, I have assisted parties in forging settlements of complex disputes involving more than one billion dollars in the aggregate. A true and correct copy of my *curriculum vitae* is attached hereto as **Exhibit A**.[1]

5. I set forth my background as a mediator above to provide context for the comments that follow, and to demonstrate that my perspective on the settlement of this Action is rooted in significant experience in the resolution of complex litigation. As described below, this matter presented significant and complicated legal, factual, and practical issues. The Parties were represented during the mediation process through zealous and able counsel, who negotiated aggressively and at arm's-length for their clients. I firmly believe that the Settlement of this Action represents a fair and reasonable resolution of this complex and uncertain litigation. The Court, of course, will make determinations as to the ultimate "fairness" of the Settlement under applicable legal standards. From a mediator's perspective, however, I unreservedly recommend the agreed

[1] As set forth above, I mediated the Action in conjunction with Jed D. Melnick, Esq., a panelist at JAMS and the managing partner of the Weinstein Melnick Team. Mr. Melnick has been involved in the successful resolution of thousands of disputes, with aggregate values in the billions of dollars, including, but not limited to, much of the litigation related to the Adelphia and Lehman bankruptcies, British Petroleum Securities Litigation, Wachovia Preferred Securities and Bond/Notes Litigation, and Auto Parts Antitrust Litigation (currently part of the Settlement Master's team). A true and correct copy of Mr. Melnick's curriculum vitae is attached hereto as **Exhibit B**.

upon Settlement as reasonable, hard-fought, arm's-length, and accurately reflective of the potential risks and rewards of the claims being settled.

6. In May 2019, Glancy Prongay & Murray LLP ("Lead Counsel") and Morgan Lewis & Bockius LLP ("Defense Counsel") contacted the Weinstein Melnick Team to request our assistance in mediating this Action. The Parties agreed to a private mediation to be held at the New York JAMS Resolution Center on September 17, 2019. In advance of the September 2019 session, Lead Counsel and Defense Counsel exchanged and provided to the Weinstein Melnick Team detailed and extensive mediation statements, together with exhibits, outlining their respective analyses of the claims and defenses at issue in this case. At the mediation, both Lead Counsel and Defense Counsel vigorously advocated for their respective clients, and explored the possibility of a resolution in good faith. At the conclusion of the full-day mediation, however, the Parties were unable to reach a compromise and fact discovery continued.

7. The Parties subsequently agreed to engage in a second mediation session with the Weinstein Melnick Team, to be held on December 12, 2019, at the New York JAMS Resolution Center. In preparation for the December 2019 mediation, the Parties again exchanged detailed mediation statements and exhibits addressing the issues of liability, loss causation and damages. At the second mediation, the Parties continued to strongly advocate on behalf of their clients. The mediation session ended with the Weinstein Melnick Team recommending that the Action be settled for $50 million (the "Mediator's Proposal"). The Mediator's Proposal was in a range that I—and Mr. Melnick— believed reasonably reflected the Parties' factual and legal positions, and also took into consideration the risks and costs of continued litigation. The Parties agreed to accept the Mediator's Proposal.

8. There were many significant legal risks facing Plaintiffs, including: the risk of an adverse ruling on the fully briefed motion for class certification that could potentially seriously curtail Plaintiffs' potential recovery; and complicated issues related to materiality, scienter, loss causation, and damages. Based on my involvement as mediator, I believe that the Settlement represents a fair recovery for the settlement class in light of those, as well as many other, risks.

9. Finally, the Settlement was the product of hard-fought litigation and arm's-length negotiations. I believe it is in the best interests of the Settlement Class to obtain the immediate and certain recovery conferred by the Settlement and avoid the risks of additional litigation through class certification, summary judgment, and trial.

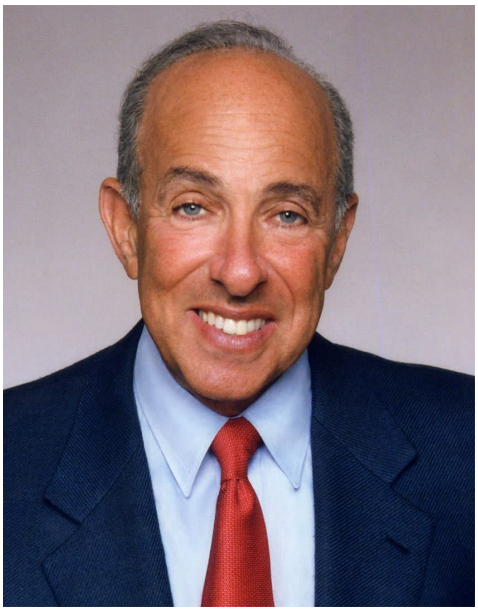
10. Although clearly an issue for the Court to decide, based on my knowledge of this Action, all of the materials provided to me, the extensive efforts of skillful advocacy and arm's-length negotiations of counsel, the litigation risks, and the benefits conferred by the proposed Settlement, it is my view that the Settlement is a fair, reasonable, and adequate resolution of this Action, and I respectfully recommend that it be approved by this Court.

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

Executed this 16th day of July, 2020, at San Francisco CA.

Hon. Daniel H. Weinstein (Ret.)

EXHIBIT A



Hon. Daniel Weinstein (Ret.)

Case Manager

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Biography

Available to conduct virtual/remote mediations, arbitrations and other ADR proceedings on a variety of online platforms, including Zoom.

Hon. Daniel Weinstein (Ret.) is one of the nation's preeminent mediators of complex civil disputes. He is a pioneer in the development of mediation and teaches and lectures to fellow mediators and lawyers throughout the United States.

Judge Weinstein is recognized as one of the premier mediators of complex, multi-party, high-stake cases, both in the United States and abroad. He is the recipient of the 2014 International Advocate for Peace Award from the Cardozo Journal of Conflict Resolution, whose past honorees have included former Presidents Jimmy Carter and Bill Clinton, Ambassador Richard Holbrooke, and Nobel Peace Prize winner Bishop Desmond Tutu.

ADR Experience and Qualifications

- Designs the process and oversees the resolution of challenging securities class actions, mass torts, intellectual property, antitrust, entertainment law, insurance allocation, environmental, toxic tort, professional malpractice, and venture capital partnership disputes
- Mediates cases with aggregate values of billions of dollars annually (since 1997), while designing innovative processes tailored to unique, complex, and highly sensitive cases
- Founded CASA (Class Action Settlement Administration), a JAMS subsidiary dedicated to the fair and speedy allocation of settlement funds in large scale matters i.e. the Union Oil Carbide settlement, African American Farmers discrimination claims, and compensation and overtime claims in retail industries
- Former California Judge and a founder of JAMS, the World's largest provider of mediation and arbitration

Representative Matters

Judge Weinstein has successfully mediated the following representative complex cases:

- **Securities cases** involving Enron, Homestore, Qwest, Adelphia, Dynegy, Providian, Clarent, and other major NYSE and NASDAQ corporations
- **Class Actions** involving borrowers, credit card customers, toxic tort claimants, low cost housing tenants, insurance purchasers, and a wide variety of product liability suits, including:
    - Resolution of the KPMG tax shelter class action cases, hepatitis C blood product class, California Phen-fen litigation, and Manufacturers Life vanishing premium cases
- **Intellectual Property** disputes including significant cases involving Apple Computer, Intel, Microsoft, Oracle, Motorola, and Hewlett Packard
- **Entertainment cases** involving numerous high profile actors and all studios, major music groups, and entertainers; Rosa Parks v. Outkast defamation case
- **Anti-Trust actions** involving price fixing allegations against multinational oil corporations, cosmetic industry companies, and major financial institutions
- **Environmental cases:**
    - Hillview Porter; Lockheed; and City of Santa Monica, major environmental superfund cases
    - PCL v. DWR, dispute involving the water resources for the State of California and the Monterey agreement
- **Human and Civil Rights matters** including Black Farmers, Doe v. Unocal, Alien Tort claims, civil rights case regarding pipeline construction in Burma, Holocaust restitution, and racial discrimination
- **International matters** involving major disputes in the international financial markets:
    - Served as the U.S. Special Representative to Bosnia for privatization to oversee $14 billion transfer of funds to Muslims, Croats, and Serbs (1999-2000)
    - Mediated the Swiss Converium case, the Parmalat case involving American banks, accounting firms, and Parmalat Bank in Italy, and the Shinsei Bank financial disaster in Tokyo, Japan
    - Currently assigned as mediator in the Vivendi litigation
    - Mediated numerous, high dollar figure reinsurance cases in Amsterdam and England, 2006-present, involving all major international insurance carriers
    - Mediated disputes for Volvo and BMW
    - Resolved litigation arising out of Adelphia, Qwest, and Enron financial “meltdowns”
    - Mediated tax shelter cases including international claims involving international accounting firms Deloitte and KPMG, among others
- **Other Complex Matters** - Paceco Corp. v. City of Long Beach, public entity litigation; City of Atascadero v. Merrill Lynch, Orange County bankruptcy case; 80 death cases arising out of Alaska Airlines flight #261 crash; and Stull v. Bank of America, involving bank escheats funds

Honors, Memberships, and Professional Activities

- Recognized as an “ADR Champion,” *National Law Journal*, 2017-2018
- Included on "National Mediators" list, *Chambers USA America’s Leading Lawyers for Business,* 2016-2020
- Honoree, International Advocate for Peace Award, Cardozo Journal of Conflict Resolution, 2014
- Recognized as a Best Lawyer, Alternative Dispute Resolution Category, *Best Lawyers in America*, 2006-2015
- Recognized as a "Top Master," *Daily Journal* Top California Neutrals List, 2013
- Recognized as a "Top California Neutral," *Daily Journal*, 2002, 2004-2012
- Northern California Super Lawyer, *San Francisco Magazine*, 2006, 2009, 2011-2014, 2019
- Recognized as One of the 500 Leading Judges in America, *Lawdragon Magazine*, 2006
- American Jewish Committee, Distinguished Learned Hand Award, 2003
- Selected as the Bay Area’s Most Popular Mediator, *The Recorder,* 2002
- San Francisco Trial Lawyers Association first recipient, Distinguished Mediator Award, 1999
- Board of Directors, Environmental Law Institute, 2009

- U.S. Representative to the Bosnian Privatization Commission, overseeing the transfer of $15 billion of state-owned assets to the citizens of Bosnia, 1998-2001
- Co-founder and President of 7 Tepees Youth Program for disadvantaged youth
- Former Chairman of the Northern California CORO Foundation, No. California Special Olympics, and The Midnight Basketball League
- Professor, Mediation Advocacy, Stanford University
- Northern California Selection Commission for Federal Judgeships, Feinstein Committee

Background and Education

- Superior Court of San Francisco, 1982-1988
- Associate Justice Pro Tem, California Supreme Court and the First District Court of Appeal, 1984
- Municipal Court of San Francisco, 1978-1982
- Chief Assistant District Attorney of San Francisco, 1976-1978
- Private practice for seven years, specializing in litigation of federal cases
- L.L.B., *cum laude,* Harvard University Law School, 1965; B.A., *cum laude,* Stanford University, 1962

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Disclaimer

EXHIBIT B

Jed D. Melnick, Esq.

Case Manager

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Biography

Jed is available to conduct virtual mediations, arbitrations and other ADR proceedings on Zoom and other online platforms.

Jed D. Melnick, Esq. serves as a Mediator and Special Master in complex business litigation pending throughout the United States and internationally. Jed is highly respected for his ability to successfully resolve disputes with patience, persistence, and creativity. Since becoming a full-time mediator in 2005, Jed has resolved over one thousand disputes, with an aggregate value in the billions of dollars. Specifically, Jed has extraordinary skill in resolving multi-party complex disputes, especially when they involve highly sensitive issues and difficult parties. Among numerous recognitions, two recent honors include Jed's twice being awarded the distinction of being an ADR Champion by the *The National Law Journal* as well as being invited to speak about "Mediation Strategies for Judges" as the closing presenter at the annual Delaware Judiciary retreat.

Jed often utilizes a team approach to mediation, which allows him to maintain a practice with the highest level of responsiveness, performance, and results. As part of Jed's team approach, and when appropriate, Jed relies on respected neutral experts to complement him and assist the involved parties by providing efficient and effective feedback on intricate accounting, insurance, economic, appraisal and environmental issues.

Jed's detailed list of representative matters is included below, but several of his more high-profile matters include: much of the litigation related to the Adelphia and Lehman bankruptcies, British Petroleum Securities Litigation, and Auto Parts Antitrust Litigation (currently part of the Settlement Master's team). Jed successfully mediated creditor claims against Dewey & LeBoeuf LLP's former chairman in the firm's Chapter 11 filing. Jed was also appointed by Judge Lewis Kaplan of the United States District Court for the Southern District of New York to serve as a mediator for the Lehman ADR Derivative Contract Program. Additionally, Jed was responsible for the successful mediation of a pro bono case between the Disability Rights Advocates and the New York City Taxi and Limousine Commission, which led to a historic settlement raising the number of handicap accessible

taxi cabs from less than 5% of the fleet to 50% of the fleet by 2020. This settlement led the judge overseeing the case to issue a statement proclaiming: "[T]his is one of the most significant acts of inclusion in this city since Jackie Robinson joined the Brooklyn Dodgers."

Representative Matters

- **Antitrust Matters**
  - *In re Polyurethane Foam Antitrust Litigation*
  - *In re Processed Egg Products Antitrust Litigation*
  - *Auto Parts Antitrust Litigation*
  - *In re Lithium Ion Batteries Antitrust Litigation*
- **Bankruptcy / Trustee Matters (Chapter 7 and Chapter 11)**
  - *Adelphia Recovery Trust v. Bank of America, NA*
  - Hunter Wise Commodities LLC re Commodity Futures Trading Commission enforcement actions
  - *In re LB Litigation Trust (Lyondell)*
  - *In re Universal Health Care Group, Inc.*
  - *In re Fresh & Easy, LLC*
- **Chinese Securities Litigation**
  - *In re HQ Sustainable Maritime Indus., Inc. Securities and related Derivative Litigation*
  - *In re China Mobile Games & Entertainment Group, Ltd. Securities Litigation*
  - *China MediaExpress Holdings, Inc., by Karl P. Barth as Receiver vs. American Home Assurance Company*
- **Contract Disputes**
  - A dispute between a South American farming conglomerate and its investors involving complex issues related to international law and land use.
  - A dispute between a major defense contractor and a uranium mining company over contracts related to the price of uranium.
  - A dispute between one of the world's largest car manufacturers and the plant producing batteries for cutting edge hybrid SUV vehicles – involving a three-day mediation in Alabama in tandem with the Federal Judge overseeing the matter.
- **Consumer Class Actions**
  - *Sullivan v. Wenner Media LLC*
  - *Kinder, Deborah, et al. vs. Meredith Corporation, et al.*
  - *Friske v. Bonnier Corporation*
  - *Krivy, Sophia vs. Jean Madeline Education Center of Cosmetology, et al.*
  - *Mouzon v. Radiancy, Inc.*
- **Coverage Litigation**
  - Hundreds of mediations involving Fortune 500 companies and Wall Street banks and those organizations' respective carrier(s) related to D&O, E&O, Casualty and Fidelity policies. Examples of these mediations include: *LB (Lyondell) Litigation Trust, Carlyle, Adelphia and MF Global*.
  - Disability policies (*In re UnumProvident Corp*)
  - Auto policies (involving an Arizona Damron Agreement)
  - Maritime policies
  - Representations & Warranty policies
- **Delaware Litigation**
  - *In re Cornerstone Therapeutics Inc. Stockholder Litigation*
  - *In re CNX Gas Corporation Shareholders Litigation*
  - *Makover, M.D., Michael E. vs. Gopinathan, M.D., Govindan* (co-mediated with Vice Chancellor Sam Glasscock III)
  - *In re TIBCO Software Inc. Stockholders Litigation*
- **Entertainment and Intellectual Property**
  - A dispute between a professor and his textbook publisher related to alleged royalties owed and other IP-related issues.
  - A highly sensitive mediation related to the personal matters of a media mogul.
  - A bankruptcy dispute involving the financing and regulatory interests of Digital Domain Media.
  - Fraud claims between a group of private equity promoters and a film financing venture.

- A legal malpractice matter involving an underlying copyright claim between a major music label and its counsel.
- **ERISA and Employment Litigation**
  - A confidential employment dispute between a nuclear scientist and a defense contractor.
  - *Fiduciary Counselors, Inc. v. Magnuson*
  - *In re Comcast Corporation Litigation*
- **False Claims Act and *Qui Tam*:** Jed mediates cases involving FCA, qui tam, whistleblower, and related claims at issue, including complex insurance coverage matters related thereto. These disputes involve: national advertising companies, military contracts, the national polling agency, and contracts involving government agencies including FEMA and the U.S. Mint and the State Department.
  - *United States of America, ex rel., et al. vs. Galena Biopharma, Inc., et. al.*
  - *Gallup, Inc. vs. Greenwich Insurance Company* (insurance coverage related thereto)
  - *Zurich American Insurance Co. vs. GSD&M Idea City LLC* (insurance coverage related thereto)
- **Government Matters**
  - *FDIC, as receiver for Orion Bank of Naples, Florida vs. U.S. Specialty Insurance Co., et al.*
  - *Federal Deposit Insurance Corporation as Receiver for United Western Bank vs. Berling, Charles J., et al.*
  - *In re Department of Labor Investigation (MagnaCare Holdings, Inc.)*
  - *In re First Farmers Financial*
- **Maritime:** Jed has experience mediating both insurance coverage disputes involving maritime insurance policies and the underlying maritime dispute.
- **Mergers and Acquisitions**
  - Kinder Morgan Acquisition: *In re El Paso Corporation Shareholder Litigation*
  - *The Dominion Transaction: In re CNX Gas Corporation Shareholders Litigation*
  - *JAC Holding Enterprises, Inc., et al. vs. Atrium Capital Partners, LLC*
- **Pharmaceutical / Healthcare Related Matters**
  - *Chelsea Therapeutics International, Ltd. Securities Litigation*
  - *In re Spectrum Pharmaceuticals, Inc. Securities Litigation*
  - *In re Cornerstone Therapeutics Inc. Stockholder Litigation*
  - *In re Department of Labor Investigation (MagnaCare Holdings, Inc.)*
  - *In re Amicus Therapeutics, Inc. Securities Litigation*
- **Securities Class Actions**
  - *In re Wachovia Preferred Securities and Bond/Notes Litigation*
  - *In re Lehman Brothers Equity/Debt Securities Litigation*
  - *In re BP p.l.c. Securities Litigation*
  - *Alan B. Marcus v. J.C. Penney Company, Inc., et al.*
  - *In re NII Holdings, Inc. Securities Litigation*
  - *In re Tower Group International Ltd. Shareholder Litigation*
  - *Westchester Putnam Counties Heavy and Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al.*
  - *In re The Bancorp, Inc. Securities Litigation*
  - *Lake County and Vicinity vs. Navistar International Corporation, et al.*
  - *In re Urban Outfitters, Inc. Securities Litigation*
  - *Plumbers & Pipefitters National Pension Fund v. Orthofix International N.V., et al.*
  - *Mitchell Arciaga, et al. vs. Barrett Business Services, Inc., et al.*
  - *Special Situations Fund III QP, L.P., et al. vs. Marrone Bio Innovations, Inc., et al.*
- **Sexual Assault and Abuse Cases (class and mass actions related thereto)**
  - *Doe 30 Mother 30 v. Bradley* - a $123 million settlement in a class-action lawsuit filed on behalf of young children who were sexually abused by former Delaware pediatrician Earl Bradley.
  - Mass action of elder abuse claims by residents and residents' families brought against the parent company of an assisted living facility.
  - The mediation and resolution of multiple issues related to Church abuse cases.
- **Special / Settlement Master**
  - Special Master in the James Square facility (assisted living facility) class action settlement
  - Deputy Settlement Master in *In re Auto Parts Antitrust Litigation*
- **Tax Matters**
  - *Swiss Reinsurance Company Ltd. et al. v. General Electric Co. et al.* – involving issues related to international tax structures.
  - *ClassicStar* - a complex multiparty dispute involving alleged "mare lease" tax shelters and numerous defendants.

    - Deloitte & Touche's settlement with The Adelphia Recovery Trust for $167.5 million – among the largest settlements ever reached between a public accounting firm and its audit client.
    - A confidential fee mediation that involved complex coverage and tax issues for fees incurred by the partners of a large accounting firm as a result of a wide ranging government investigation into the handling of certain tax shelters.
    - A confidential mediation between one of the largest auditors and a university. This settlement allowed the university to continue its operations (current as of 2017).

Honors, Memberships, and Professional Activities

- **ADR Champion (2016)** - One in 48 professionals selected by *The National Law Journal* to their inaugural list of Champions, "in honor of their passion, perseverance, and success in alternative dispute resolution."
- **Jed D. Melnick Annual Symposium of the *Cardozo Journal of Conflict Resolution*** – *The Cardozo Journal of Conflict Resolution* named its annual symposium the "Jed D. Melnick Annual Symposium of the *Cardozo Journal of Conflict Resolution*"
- **Pennsylvania Super Lawyers "Rising Star" (2010-2012)** – Honored by *Law & Politics Magazine and Philadelphia Magazine*, Jed was the only recipient in the Alternative Dispute Resolution category in the state
- **Lawyer on the Fast Track (2010)** – Recognized among 30 Pennsylvania lawyers under the age of 40 by *The Legal Intelligencer and Pennsylvania Law Weekly*
- **Philadelphia Common Pleas Appellate Mediation Program** – Former Special Master/Judge Pro-Tem
- Extensive bench and jury trial experience in the Major Trials Unit at the Defenders Association of Philadelphia and civil litigation experience in both state and federal court.

Presentations

Jed is frequently invited to speak on panels and give presentations related to the mediation of complex commercial litigation. A selection of his speaking engagements are as follows:

- Closing Panelist, "Mediation Strategies for Judges" presented at the 2017 Delaware Judicial Retreat, November 2017 (Delaware)
- Keynote Speaker, CLE Ethics Presentation at Kaufman, Borgeest & Ryan LLP, June 2017 (New York)
- Presenter, PLUS Webinar: The Nuts and Bolts of Mediating Complex D&O Claims, May 23, 2017
- Presenter, CLE Presentation on Mediation (presented to a major insurance company), January 2017 (New York)
- Panelist, "Let Us Mediate to Resolve Our Dispute," May 2017 (St. Lucia)
- Panelist [co-presenter with Judge Layn Phillips (Ret.)], "Latham & Watkins: Mediation Advocacy Training Program," April 2017 (Los Angeles)
- Panelist, "Rubenstein-Walsh CLE Seminar," February 2017 (Delaware)
- Panelist at the PLAN Regional Meeting, "D&O Marketplace 'Mediation Strategies," June 2016 (New York)
- Panelist, "Current Issues in D&O Liability & Insurance 2016," May 2016 (New York)
- Speaker, PLI's Bridge-the-Gap II for Newly Admitted New York Attorneys 2015, "Negotiation-Best Practices," August 2015 (New York)
- Panelist, 2015 ACCEC Panel, "Successfully Resolving Cases: Mediation and London Arbitration Tips from the Experts," May 2015 (Chicago)
- Panelist, 2015 CLM Bermuda Chapter Educational Event, March 2015 (Bermuda)
- Panelist, 2015 PLUS D&O Symposium, "The Post-Halliburton World: Securities Class Action Update," February 2015 (New York)
- Panelist, Webinar hosted by Advisen – Insurance Intelligence, "Advisen Webinar: Quarterly D&O Claims Trends: Q3 2014," October 2014 (New York)
- Speaker, American Conference Institute, D&O Liability, Mediation and Settlement Negotiation of D&O Claims, "Attaining a Favorable Result for Your Client or Company," October 2013 (New York)
- Speaker, Wiley Rein Professional Liability Insurance Seminar, "Mediator's Perspective on The Role of Insurance in Mediation," October 2013 (New York)
- Speaker, "Mediating Complex Disputes with Increasingly Sophisticated Parties," September 2012 (Philadelphia)
- Speaker, "Mediating Complex Disputes with Increasingly Sophisticated Parties," CLM Annual National Conference, March 2012 (San Diego)
- Speaker, "The Role of Mediation and Insurance in Bet the Company Litigation," February 2012 (Benjamin

- N. Cardozo School of Law, New York)
- Speaker, “Developments in Securities Class Actions and Derivative Litigation,” January 2012 (Bermuda)

Publications

- Author, "Video Conferencing and Mediating Complex Disputes in the New Normal: Settlements Don’t Need to Wait," New York Law Journal, March 2020
- Author, “Go Work Your Magic,” American Bar Association, Fall 2017
- Author, “Lost Opportunities in Mediation," Westlaw Journal Securities Litigation & Regulation, Vol 19, Issue 4, June 2013
- Author, Editor and Moderator, “The Role of Mediation and Insurance in Bet the Company Litigation,” Cardozo J. Conflict Resol., Vol 14.2, 2013
- Contributed to “A Time to Cut Costs,” by Gregory A. Markel, Chairman of the Cadwalader Wickersham & Taft Litigation Department, article found on Lawdragon.com, January 2012
- Co-Author with John Wilkinson, Vivien Shelanski, and Robin Gise, “Mediation Starts from the First Phone Call: Practice Points and Helpful Hints for Lawyers Going to Mediation,” Cardozo J. Conflict Resol., Vol 11, Number 2, 2010
- Author, Substantive Introduction to “The Mediation of Securities Class Action Suits, A Panel Discussion Hosted by the Benjamin N. Cardozo School of Law,” Cardozo J. Conflict Resol., Vol. 9, Number 2, Spring 2008
- Co-Author with Judge Weinstein and Michael Young, “The Role of Damages Issues – Post-Dura – in the Mediation of Securities Class Actions,” Mealey’s Emerging Securities Litigation, Vol. 6, #3, September 2007

Background and Education

- J.D., Benjamin N. Cardozo School of Law, 1999
- B.A., Grinnell College, 1994
- While in law school, Jed founded the *Cardozo Journal of Conflict Resolution* and was part of the team from the Center for Court Innovation that founded and built the Crown Heights Community Mediation Center in Brooklyn. In part, the initiative aimed to address conflicts between the Orthodox Jewish community and the Caribbean and African-American communities after the Crown Heights riots.

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EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG Honorable Philip P. Simon

JOINT DECLARATION OF PROFESSORS BRIAN FITZPATRICK AND CHARLES SILVER IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES

We, Brian Fitzpatrick and Charles Silver, declare under penalty of perjury, pursuant to 28 U.S.C. §1746, as follows:

I. SUMMARY OF OPINIONS

1. In class actions, judges are asked to act as fiduciaries for absent class members because lawyers' fees are not set by contract as they are in individual suits. In the Seventh Circuit, judges are wisely instructed to exercise this discretion by choosing for class members the kinds of fee arrangements that class members would have chosen for themselves in the open market, had they bargained with class counsel directly at the start of the case.

2. In the open market, clients—including sophisticated corporations and institutions—who hire lawyers on contingency pay them a percentage of what they recover. They neither use the lodestar method nor employ so-called "lodestar crosschecks." Clients in the open

market prefer the straight percentage-based approach because it ties lawyers' interests more firmly to theirs, shifts risks to lawyers who are in a better position to bear them, and rewards efficiency and speed.

3. The open market also reveals that clients—again, including sophisticated corporations and institutions—who hire lawyers on contingency often pay them 33⅓% or more. They sometimes link percentages to litigation stages, so that fee percentages increase as lawsuits stretch on. Clients also sometimes promise percentages that vary at higher marginal recovery increments. The one thing they never do, however, is punish success. The fee arrangements that prevail in the market always make it advantageous for lawyers to do better by their clients.

4. The Seventh Circuit's dedication to the mimic-the-market approach is reflected in both judges' use of the percentage method and the percentages that judges typically award. Although awards vary somewhat across the district courts in this Circuit, data show that awards most commonly range from 30 percent to 35 percent, and that the average award is only slightly lower.

5. In view of the facts and circumstances of this case and prevailing market rates, we conclude that class counsel's request for a fee equal to 33⅓ percent of the recovery is reasonable.

II. COMPENSATION

6. Each of us received a flat fee of $25,000 for preparing this report.

III. CREDENTIALS

A. Professor Brian Fitzpatrick

7. I am a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in

1997 and Harvard Law School in 2000. After law school, I served as a law clerk to the Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to the Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit A to this Joint Report.

8. My teaching and research at Vanderbilt have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a number of articles on class action litigation in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the University of Arizona Law Review, and the NYU Journal of Law & Business. My work has been cited by numerous courts, scholars, and popular media outlets, such as the *New York Times*, *USA Today*, and the *Wall Street Journal*. I am also frequently invited to speak at symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, 2017, and 2019, and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute.

9. In November of last year, the University of Chicago Press published my book, *The Conservative Case for Class Actions*. There, I argue that private enforcement of the law through class action lawsuits is both the most effective and the most conservative way to hold corporations accountable. Markets cannot do it alone, and the only other alternative—more government—contravenes conservative principles. Although, of course, nothing is perfect, including our class action system, in several data-driven chapters, I demonstrate that our class action system is

working better than might be expected given all the criticism it endures. But I do suggest several tweaks to the system that I hope will persuade conservatives to keep the class action device around for the next generation of consumers, employees, and shareholders.

10. I am best known for my empirical work on class actions. In particular, in December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter "*Empirical Study*"). This article is what I still believe to be the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published. Unlike other studies of class actions, which have been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period, 2006-2007. *See id*. at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements. *See id*. at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of courts,

scholars, and testifying experts.[1] This study is relied upon below and is attached as Exhibit B to this Joint Report.

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[1] *See, e.g., Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *In re Wells Fargo & Co. S'holder Derivative Litig.*, 2020 WL 1786159 at *11 (N.D. Cal. Apr. 7, 2020) (same); *Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, 2020 WL 949885 at *52 (D. Mass. Feb. 27, 2020) (same); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *34 (N.D. Ga. Jan. 13, 2020) (same); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, 2019 WL 6327363, at *4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, 2019 WL 5425475, at *2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt., Inc.*, 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman v. Safeway Inc.*, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Fed. Nat'l Mortg. Association Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Prod. Liab. Litig.*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

B. Professor Charles Silver

11. The study of attorneys' fees has been a principal focus of my academic career. My first publication after joining the law faculty at the University of Texas at Austin, which appeared in 1991, explained the restitutionary basis for fee awards in class actions. Charles Silver, *A Restitutionary Theory of Attorneys' Fees in Class Actions*, 76 CORNELL L. REV. 656 (1991). Since then, I have published about a dozen more articles, two of which are empirical studies of fee awards in class actions. Lynn A. Baker, Michael A. Perino, and Charles Silver, *Setting Attorneys' Fees In Securities Class Actions: An Empirical Assessment*, 66 Vanderbilt L. Rev. 1677 (2013); and Lynn A. Baker, Michael A. Perino, and Charles Silver, *Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions*, 115 COLUM. L. REV. 1371 (2015) ("*Is the Price Right?*"). The CORPORATE PRACTICE COMMENTATOR chose *Is the Price Right?* as one of the ten best articles in the field of corporate and securities law in 2016.

12. Altogether, I have more than 100 major writings, many of which have appeared in peer-reviewed publications and many of which focus on subjects relevant to this Joint Declaration. My writings are cited and discussed in leading treatises and other authorities, including the MANUAL FOR COMPLEX LITIGATION, THIRD (1996), the MANUAL FOR COMPLEX LITIGATION, FOURTH (2004), the RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, and the RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT.

13. Professionally, I hold the Roy W. and Eugenia C. McDonald Endowed Chair in Civil Procedure at the University of Texas School of Law, where I also serve as Co-Director of the Center on Lawyers, Civil Justice, and the Media. I joined the Texas faculty in 1987, after receiving an M.A. in political science at the University of Chicago and a J.D. at the Yale Law School. I received tenure in 1991. Since then, I have been a Visiting Professor at the University

of Michigan School of Law (twice), the Vanderbilt University Law School, and the Harvard Law School.

14. From 2003 through 2010, I served as an Associate Reporter on the American Law Institute's PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION (2010). Many courts have cited the PRINCIPLES with approval, including the U.S. Supreme Court.

15. I have testified as an expert on attorneys' fees many times. Judges have cited or relied upon my opinions when awarding fees in many class actions, including *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008), *In re Payment Card Interchange Fee and Merchant Discount Merch. Disc. Antitrust Litig.*, 2019 WL 6888488 (E.D.N.Y. Dec. 16, 2019), and *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006), all of which settled for amounts exceeding $1 billion.

16. Finally, because awards of attorneys' fees may be thought to raise issues relating to the professional responsibilities of attorneys, I note that I have an extensive background, publication record, and experience as an expert witness testifying on matters relating to the field of professional responsibility. I also served as the Invited Academic Member of the Task Force on the Contingent Fee created by the Tort Trial and Insurance Practice Section of the American Bar Association. In 2009, the Tort Trial and Insurance Practice Section of the American Bar Association gave me the Robert B. McKay Award in recognition of my scholarship in the areas of tort and insurance law. My resume is attached as Exhibit C to this Joint Declaration.

IV. DOCUMENTS REVIEWED

17. When preparing this report, one or both of us reviewed the items listed below, which unless noted otherwise, were generated in connection with this case. We also reviewed other items including, without limitation, cases and published scholarly works.

- Amended Class Action Complaint for Violations of the Federal Securities Laws (document 27, filed 06/16/17)
- Opinion and Order (granting in part and denying in part defendants' motion to dismiss) (document 119, filed 09/26/18)
- Opinion and Order (denying defendants' interlocutory appeal of denial of their motion to dismiss) (document 183, filed 02/20/19)
- Second Amended Class Action Complaint for Violations of the Federal Securities Laws (document 192, filed 03/21/19)
- Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification (document 223, filed 07/17/19)
- Memorandum of Law in Support of Plaintiffs' Unopposed Motion for: (I) Preliminary Approval of Class Action Settlement; (II) Certification of the Settlement Class; and (III) Approval of Notice of the Settlement (document 245, filed 04/14/20)
- Stipulation and Agreement of Settlement (document 246-1, filed 04/14/20)
- Opinion and Order (preliminarily approving the settlement, certifying the class, and approving class notice) (document 251, filed 05/21/20)

V. CASE BACKGROUND

18. This lawsuit was brought in December 2016 by investors in a medical device company called Zimmer Biomet Holdings, Inc. ("ZBH"). The defendants are the company, ZBH, many of its officers and executives, many of its board members, and several of its private equity investors. In essence, the lawsuit alleges that shareholders were defrauded, in violation of the federal securities laws, when the defendants failed to tell them that one of its main production

facilities was in trouble, required a substantial overhaul of policies and procedures that would seriously disrupt its production capabilities, and faced being shut down by the Food & Drug Administration. Four different motions to dismiss were filed, all of which this Court mostly denied in a lengthy, published opinion in September 2018. Then, as this Court put it, "[a]n avalanche of filings followed." The remaining defendants sought to stay discovery and take an interlocutory appeal of the denial of the motions to dismiss. In another lengthy order, this one in February 2019, this Court denied that effort, too. Thereafter the parties spent considerable time taking discovery, including the exchange of over a million pages of documents. The plaintiffs then moved for class certification, but before this Court could rule on it, the parties reached a class-wide settlement. This Court certified a settlement class and granted preliminary approval of the settlement on May 21, 2020. The parties are now moving for final approval.

19. The settlement class includes "all persons or entities who, between June 7, 2016 and November 7, 2016, inclusive, purchased or otherwise acquired ZBH Common Stock and/or ZBH Call Options, and/or wrote ZBH Put Options, and were damaged thereby." Stipulation and Agreement of Settlement ¶1(vv) (the "Settlement Agreement"). Under the settlement, the defendants will pay the class $50 million in cash, *see id.* at ¶1(uu), to be distributed *pro rata* (less taxes, notice and administration costs, litigation expenses, and attorneys' fees) based on the type of security (*i.e.*, common stock or option) and the relative size of the loss, and with no amount reverting back to the defendants. *See id.* at ¶21. In exchange, class members will release the defendants from all claims that, among other things, "relate to, directly or indirectly, the purchase or sale or other acquisition, disposition, or holding of any ZBH Securities during the Settlement Class Period." *See id.* at ¶1(qq).

20. Lead Counsel have now moved the court for an award of attorneys' fees from the common fund in the amount of approximately $16.65 million or 33.3% of the settlement. In our opinion, the requested fee is reasonable.

VI. THE SEVENTH CIRCUIT'S APPROACH TO ATTORNEYS' FEES IN CLASS ACTIONS

21. The Seventh Circuit is unique among federal circuits in that it requires district courts to replicate the market for legal services when it sets fees in class actions.[2] *See, e.g.*, *Americana Art China v. Foxfire Printing & Packaging, Inc.,* 743 F.3d 243, 246 (7th Cir. 2014) ("[W]e always seek to replicate the market value of an attorney's services . . . ."); *Silverman*, 739 F.3d at 957 ("[A]ttorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services."); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) ("When attorney's fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys."); *Sutton v. Bernard*, 504 F.3d 688, 693 (7th Cir. 2007) ("Because the court chose to wait until the end of litigation, it was required to set the fee by estimating what the parties would have agreed to had negotiations occurred at the outset."); *In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*") ("We have held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services . . . .").

22. We wholeheartedly endorse this approach. When acting as fiduciaries for class members, judges should choose the same fee arrangements that class members would have

[2] Judges in other federal circuits also take guidance from market rates, but have discretion to deviate from them.

employed had they been able to bargain with class counsel directly at the start of litigation. Rational class members would of course opt for fee arrangements that maximize their net expected recoveries, *i.e.*, the amounts they expect to take home at the end of litigation. Judges should opt for no less for them.

23. When judges look at the market, they discover several things. First, clients uniformly pay contingent-fee lawyers percentages of their recoveries. They never use the lodestar method or employ lodestar-based cross-checks.

24. Second, clients in the open market typically pay fee percentages equal to 33⅓ percent or more. This includes sophisticated clients who retain lawyers on contingency to handle sizeable claims. We bolster this claim with examples below.

25. Third, clients reward lawyers for succeeding; they do not punish them. In other words, they do not adhere to the "increase/decrease" rule where the fee percentage collected is smaller when the recovery is greater. Instead, they commonly pay flat percentages or percentages that increase with case duration. Although, as discussed in further detail in ¶¶ 62-64, *infra*, it is true that some clients taper fee percentages downward as the *marginal* recovery increases, others scale marginal percentages *upward*, so that lawyers receive larger fractions of dollars that are harder to recover. The latter approach incentivizes lawyers to maximize recoveries.

26. What is true about the market in general is true about this case. Although the institutional lead plaintiff in this case did not agree to a particular fee percentage *ex ante*, it now supports class counsel's 33.3 percent fee request. Moreover, this percentage falls within the most populous range of class action fees award in the Seventh Circuit. Although the percentage is slightly higher than average, the Seventh Circuit's *ex ante* market adjustment factors suggest that class counsel should have been able to command a higher-than-average fee percentage here.

A. The Percentage Method

27. Attorneys who lose class actions do not get paid. Their work is therefore analogous to that of direct representation lawyers who practice on contingency. As Judge Posner explained, the best measure of the compensation class action counsel should receive is "the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client." *In re Matter of Cont'l Illinois Sec. Litig*., 962 F.2d 566, 572 (7th Cir. 1992), *as amended on denial of reh'g* (May 22, 1992).

28. In the market for legal services, contingent fee lawyers almost always receive payment based on percentages of their clients' recoveries, assuming there is any recovery. *See* Charles Silver, *Due Process and the Lodestar Method: You Can't Get There from Here* 74 Tul. L.Rev. 1809, 1842-1843 (2000) (reporting that "contingent percentage compensation arrangements dominate plaintiff representations" and that "[s]ome sophisticated clients have offered contingent fees of thirty-three percent in enormous cases"). The most famous studies are by Herbert Kritzer, who focused on personal injury lawyers in Wisconsin. *See, e.g.*, Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DePaul L. Rev. 267 (1998). Although Kritzer's studies included many unsophisticated plaintiffs, studies of patent litigation confirm that sophisticated corporations that hire lawyers on contingency also use the percentage method. *See* David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335, 360 (2012).

29. It is easy to understand why sophisticated corporations and institutions that hire lawyers on contingency use the percentage of recovery method for payment. The percentage method incentivizes a lawyer to maximize the value of a client's recovery; the more the client recovers, the more the lawyer is paid. Tying the lawyer's fee to the client's recovery creates a

strong harmony of interests between principal and agent, in which the latter wants what the former wants: the largest possible recovery obtained in the most efficient manner.

30. The lodestar method creates different and much inferior incentives. Because it ties lawyers' compensation to the time they expend, it motivates counsel to focus on building their hours. But clients care about hours only when additional work increases their recoveries. They otherwise have no interest in paying lawyers to expend time. Time-based compensation also encourages delay, which lawyers use to amass the number of hours that, they hope, will maximize their compensation. As Judge Easterbrook explained in *Kirchoff v. Flynn*, 786 F.2d 320, 325–26 (7th Cir. 1986):

> The contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains . . . . The unscrupulous lawyer paid by the hour may be willing to settle for a lower recovery coupled with a payment for more hours. Contingent fees eliminate this incentive and also ensure a reasonable proportion between the recovery and the fees assessed to defendants . . . . At the same time as it automatically aligns interests of lawyer and client, rewards exceptional success, and penalizes failure, the contingent fee automatically handles compensation for the uncertainty of litigation.

31. It is especially important to use the percentage method in class actions because absent class members have little control over their attorneys. Absent class members do not hire them, fire them, or monitor them. Consequently, they must rely on the invisible hand of incentives to align their lawyers' interests with their own interests as closely as possible. As the Third Circuit observed in *In re Rite Aid Corp. Sec. Litig.*, "[t]he percentage-of-recovery method is generally favored in common fund cases because it . . . rewards counsel for success and penalizes it for

failure." 396 F.3d 294, 300 (3d Cir. 2005). Or, as Professor John C. Coffee, Jr., arguably the leading American commentator on securities class actions, observed: "[E]ven uninformed clients can align their attorney's interests with their own by compensating them through a percentage-of-recovery fee formula." John C. Coffee, Jr., *The Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large Class Action*, 54 U. Chi. L. Rev. 877, 887 (1987).

32. Formally, district courts in the Seventh Circuit have discretion to use the percentage method or the lodestar method. *Americana Art*, 743 F.3d at 247 ("[T]he choice of methods is discretionary."). But they almost always choose the percentage approach because they know it dominates the contingent fee market. *Kirchoff v. Flynn*, *supra*, 786 F.2d at 324 ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee *is* the 'market rate'" (emphasis in the original)). *See also In re Synthroid Marketing Litigation*, 325 F.3d 974, 979 (7th Cir. 2003) ("*Synthroid II*") ("Contingent-fee arrangements are used when it is difficult to monitor counsel closely; otherwise some different arrangement, such as hourly rates, is superior.").

33. The same trend exists nationwide. As one of us (Fitzpatrick) showed empirically, the lodestar method is used in only 12 percent of class settlements nationwide. *Empirical Study*, 7 J. Empirical Legal Stud. at 832; *see also* Theodore Eisenberg, *et al*., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 945 (2017) (hereinafter "Eisenberg-Miller 2017") (finding the lodestar method used only 6.29% of the time from 2009-2013, down from 13.6% from 1993-2002 and 9.6% from 2003-2008).

34. Nothing about this case suggests that it is unique in any respect that would have led the market to compensate counsel other than as a contingent percentage of the recovery had class members and class counsel been able to bargain directly.

B. The Lodestar Crosscheck

35. Some courts in other circuits sneak the lodestar method in the back door by "crosschecking" the fee percentage they are inclined to award against class counsel's lodestar. *See* Fitzpatrick, *Empirical Study*, *supra*, at 833 (finding that 49% of courts consider lodestar when awarding fees with the percentage method); Eisenberg-Miller 2017, *supra*, at 945 (finding percent method with lodestar crosscheck used 38% of the time versus 54% for percent method without lodestar crosscheck). Upon finding that a percentage-based award would exceed the lodestar basis by a multiple that is "too large," courts the apply lodestar crosschecks lower the percentage. At least, that is the theory. A recent study by one of us (Silver) found no statistically significant difference in fee awards between courts that applied crosschecks and courts that did not. *Is the Price Right?*, *supra*, 115 COLUM. L. REV. 175-181.

36. Whether or not lodestar crosschecks exert downward pressure on fee awards, we believe that judges should not use them. As the Seventh Circuit has already observed, no one in the open market ever chooses this fee arrangement. *See Rohm & Haas*, 658 F.3d at 636 ("The . . . argument . . . that any percentage fee award exceeding a certain lodestar multiplier is excessive . . . echoes the 'megafund' cap we rejected in *Synthroid*."). Again, the reason is easy to see. The crosscheck introduces the same perverse incentives as the lodestar method: it encourages lawyers to drag out cases so as to pad their lodestars and weakens the connection between the fee award and the size of the class' recovery, the only thing class members rationally care about.

37. Consider the following examples. Suppose a lawyer had worked on a case for one year and accrued a lodestar of $1 million. If the lawyer believed that a court would award a fee of 33⅓ percent or 1.5 times the lodestar, whichever was less, then the lawyer would be indifferent as between accepting a settlement offer of $4.5 million or $45 million. Either way the fee award

would be $1.5 million. Needless to say, a lawyer who is indifferent between a small settlement and a much larger one may not be the best one to put in charge of a class action.

38. Crosschecks also encourage lawyers to delay settlements so as to gain time to build their lodestars. In the example, suppose the lawyer was offered a settlement of $9 million after one year of work. If the lawyer again believed the court would not award a fee of 33⅓ percent unless it was no more than 1.5 times the lodestar, the lawyer would gain by delaying acceptance and generating another $1 million in billings. By this means, the lawyer would reap the maximum fee. But, obviously, dragging cases out for the sole purpose of logging hours is likewise bad for class members.

39. Clients who can monitors lawyers well need not worry as much about incentives as others. But, as noted above, absent class members must depend heavily on incentives because they can rarely monitor class counsel well. Lodestar crosschecks can only harm them by creating perverse incentives.

C. Choosing the Percentage

40. In theory, one might learn what the "market" percentage fee is for a class action by holding an auction at the start of litigation. *See* Fitzpatrick, *Class Action Lawyers, supra*, at 2064. In practice, though, this is hard to do. The obstacles are so severe that experimentation with auctions has ceased. *See id*.

41. Instead, most district courts in the Seventh Circuit and elsewhere set fees at the end of class actions when settlements are submitted for approval. In these situations, the Seventh Circuit has instructed district courts to approximate what the *ex ante* market percentage would have been for the legal services rendered by class counsel by looking at a number of circumstantial factors. These factors include (1) fee contracts any large-stakes class members signed with their

attorneys in this litigation, *see Synthroid II*, 325 F.3d at 976 (using fee contracts from large-stakes class members who "hired law firms to conduct this litigation"); *Synthroid I*, 264 F.3d at 719-20 (instructing courts to examine "actual agreements" between large-stakes class members and their attorneys in that very litigation); (2) fee contracts large-stakes plaintiffs sign with attorneys in similar litigation, *see Rohm & Haas*, 658 F.3d at 635 ("'actual fee contracts that were privately negotiated for similar litigation'"), *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (same); and (3) fee percentages awarded by other district court judges trying to estimate the market rate for class action lawyering. *See Taubenfeld*, 415 F.3d at 599 (affirming award where "the court considered awards made by courts in other class action cases . . . in the Northern District of Illinois"); *see also Rohm & Haas*, 658 F.3d at 635 ("'information from other cases'").[3] Moreover, the Seventh Circuit has said that district courts can and should adjust fee rates from other cases by considering how the (4) risks, (5) quality of lawyering, (6) work required, and (7) stakes in those cases differed from the cases before it because these circumstances would affect the *ex ante* fee percentage any rational lawyer would demand in order to take a case on contingency. *See Silverman*, 739 F.3d at 958 (affirming above-average fee percentage because district court could have found that the "suit was unusually risky" and "[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel"); *Rohm & Haas*,

[3] In years past, the Seventh Circuit also instructed district courts to examine fee contracts that resulted from auctions for class counsel in similar cases. *See Rohm & Haas*, 658 F.3d at 635; *Sutton*, 504 F.3d at 692 n.2; *Taubenfeld*, 415 F.3d at 599; *Synthroid I*, 264 F.3d at 719. Because auctions are not used anymore (and were never used much even in past years), the Seventh Circuit has since cast doubt on that factor. *See Silverman*, 739 F.3d at 957-58 ("In many markets competition proceeds by auction. But . . . solvent litigants do not select their own lawyers by holding auctions, because auctions do not work well unless a standard unit of quality can be defined and its delivery verified. There is no 'standard quantity' of legal services, and verification is difficult if not impossible."). As such, we do not consider auction data in this declaration.

658 F.3d at 636 (affirming award where district court "assessed the amount of work involved, the risks of nonpayment, and the quality of representation"); *Sutton*, 504 F.3d at 693 ("We have said the market price for legal fees 'depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case.'"); *Taubenfeld*, 415 F.3d at 600 (affirming fee award where "[t]he district court also evaluated other factors," including "the quality of legal services rendered" and "degree of risk"). We will consider each of these factors in turn.

1. Fee agreements with large-stakes class members in this litigation

42. There are no *ex ante* fee agreements with large-stakes class members in this litigation. Only one of the lead plaintiffs—Local 1500—is either an institutional investor or has even a moderate loss to remedy (more on why that is the case is below) and Local 1500 did not agree to a particular fee percentage *ex ante* with lead counsel. But it should be noted that Local 1500 is—as are all the lead plaintiffs—in full support of the request of a 33⅓ percent fee request.

2. Fee agreements with large-stakes class members in similar litigation

43. In *Is The Price Right?*, one of us (Silver) attempted to study fee agreements negotiated by lead plaintiffs in securities fraud class actions. Unfortunately, too few agreements could be found in court records to support robust generalizations about their terms. Our involvement in class actions as consultants provides additional information, but our experiences are biased because we see primarily cases like this one that end successfully and produce large recoveries. That said, collectively we have participated in or studied thousands of class actions of diverse types and have often observed fee agreements between class counsel and claimants with large financial stakes that contain fee percentages in the normal range, which centers on 33⅓ percent. Here are a few examples:

- In *In Payment Card*, 991 F. Supp. 2d at 444-48, a multi-billion-dollar litigation, 12 business clients signed retainer agreements which generally provided that class counsel would receive one-third of the class-wide recovery.[4]
- In *In re International Textile Group Merger Litigation*, C.A. No. 2009-CP-23-3346 (Court of Common Pleas, Greenville County, South Carolina), which settled in 2013 for relief valued at about $81 million, five sophisticated investors serving as named plaintiffs agreed to pay 35 percent of the gross class-wide recovery as fees, with expenses to be separately reimbursed. (The 35 percent fee was bargained down after initially being set at over 40 percent.)

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[4] Typical language read as follows:

(a) Fees As Class Counsel

(1) Fees for the Firm's professional services in the Action as Class Counsel will be on a contingent basis and dependent upon the results obtained. In the event of a settlement or a favorable outcome at or after a trial, the Firm shall seek to recover legal fees equal to one-third of the Value of the Recovery attributable to our representation of the Class from one or more of the defendants. Any amount which is not recovered from the defendant(s) shall be payable on a contingent fee basis as described in paragraph (2) below. The Company agrees to support any request for attorney's fees, costs and disbursements to the court that is in an amount of one-third of the Value of the Recovery or less.

(2) In the event that the court does not approve the fee requested by the Firm, the Company and the other named plaintiffs agree to pay the difference between the fee awarded by the court and an amount equal to one-third of the Value of the Recovery made on behalf of the named plaintiffs.

(b) Fees Owed If Recovery Is Made Outside Of Class Action.

In the event that The Company makes a recovery outside of the class action (as, for example, if a class is not certified or the Company withdraws as a class representative) the Company agrees to pay a contingent fee equal to one-third of the Value of the Recovery to the Company.

- In *San Allen, Inc. v. Buehrer*, Case No. CV-07-644950 (Ohio – Court of Common Pleas), which settled for $420 million, seven businesses serving as named plaintiffs signed retainer contracts in which they agreed to pay 33.3 percent of the gross recovery obtained by settlement as fees, with a bump to 35 percent in the event of an appeal. Expenses were to be reimbursed separately.
- In *In re U.S. Foodservice, Inc. Pricing Litigation*, Case No. 3:07-md-1894 (AWT) (D. Ct.), a RICO class action that produced a $297 million settlement, both of the businesses that served as named plaintiffs were represented by counsel in their fee negotiations and both agreed that the fee award might be as high as 40 percent.

44. The existing studies involving large sophisticated corporate clients report similar findings. These studies show that large sophisticated corporations are like the rest of us: they tend to pay the lawyers they hire on contingency, either with graduated rates that increase over time to more than 40%, or with flat rates of 33⅓% or more.

45. The best study comes from patent litigation. *See* David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335, 360 (2012). These lawsuits can involve billions of dollars and the largest corporations in America. Yet, Professor Schwarz found that the two main ways of setting the fees for contingent fee lawyers in these cases are the same ways the rest of us in the market set fees: a graduated rate and a flat rate. Of the agreements using a flat fee, the mean rate was 38.6% of the recovery. Of the agreements he

reviewed that used graduated rates, the average percentage upon filing was 28% and the average through appeal was 40.2%. *Id*. at 360.[5]

46. A series of related pharmaceutical antitrust cases provides a particularly compelling example. The plaintiffs in these cases were approximately 20 drug wholesalers who appeared as a class. Many were large companies—several were of Fortune 500 size or bigger—and most or all had in-house or personal counsel monitoring the litigations. The potential damages were enormous. In one of the cases, *King Drug Company of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1797-MSG (E.D. Pa. Oct. 8, 2015), the plaintiffs recovered over $500 million. In the series as a whole, they won more than $2 billion. Although the data from these cases has not yet been published, we have served as experts in many of these cases and have compiled the data from the entire set of cases between April 2003 and April 2020 for this Declaration. We set forth this data in Table 1, below. As is apparent from Table 1, class counsel requested—and received—33⅓ percent in almost every one of these cases. While some of the awards were inclusive of expenses, driving them slightly below 33⅓ percent for fees alone, in the vast majority of cases expenses were awarded in addition to the 33⅓ percent attorneys' fees.

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[5] Professor Schwartz's findings are consistent with reports found in patent blogs, one of which stated as follows.

> *Contingent Fee Arrangements*: In a contingent fee arrangement, the client does not pay any legal fees for the representation. Instead, the law firm only gets paid from damages obtained in a verdict or settlement. Typically, the law firm will receive between 33-50% of the recovered damages, depending on several factors – a strictly results-based system.

Matthew L. Cutler, *Contingent Fee and Other Alternative Fee Arrangements for Patent Litigation,* HARNESS DICKEY, June 8, 2020, https://www.hdp.com/blog/2020/06/08/contingent-fee-and-other-alternative-fee-arrangements-for-patent-litigation/.

47. Even more probative than the awards by the courts was the reaction of the sophisticated class members. Although in most of these cases we could not find reference to the retainer agreements entered into between the representative plaintiffs and class counsel in the fee briefing, we were able to find agreements for at least one class representative in three cases, and, in every case, the agreement called for 33⅓ percent. Even more telling: *not a single class member* objected to the fee request in *any* of the cases. Indeed, like here, in the vast majority of cases, one or more class members—often class members comprising a majority of the class's damages—voiced affirmative *support* for the fee request. It is hard to draw any other conclusion than in this sophisticated market, too, contingency fees of 33⅓ percent are the norm.

Table 1: Direct-Purchaser Pharmaceutical Antitrust Settlements, April 2003-April 2020

Date	Case Name & Civil Action No.	Settlement Amount	Fees Awarded	Fee Percentage	Retainer Agreement	Class Member Objection	Class Member Support
11/09/18	*Hartig Drug Company Inc. v. Senju Pharmaceutical Co. Ltd. et al*, No. 14-00719 (D. Del.)	$9,000,000	$3,000,000	33.33%	N/A	None	No
10/24/18	*In Re: Blood Reagents Antitrust Litigation*, No. 09-md-02081 (E.D. Pa.)	$41,500,000	$13,833,333	33.33%	N/A	None	No
09/20/18	*In re Lidoderm Antitrust Litigation,* No. 14-md-02521 (N.D. Cal.)	$166,000,000	$45,000,070	27.11%	33.33%	None	Yes
07/18/18	*In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, No. 14-md-02503 (D. Mass.)	$72,500,000	$24,166,667	33.33%	N/A	None	No
04/18/18	*American Sales Company, LLC v. Pfizer, Inc.*, No. 4-cv-00361 (E.D. Va.)	$94,000,000	$30,723,777	32.68%	33.33%	None	Yes
12/19/17	*In re Aggrenox Antitrust Litigation,* No. 14-md-02516 (D. Conn.)	$146,000,000	$29,200,000	20.00%	33.33%	None	Yes
12/07/17	*In re Asacol Antitrust Litigation,* No. 15-cv-12730 (D. Mass.)	$15,000,000	$5,000,000	33.33%	N/A	None	Yes

Date	Case Name & Civil Action No.	Settlement Amount	Fees Awarded	Fee Percentage	Retainer Agreement	Class Member Objection	Class Member Support
10/23/17	*Castro v. Sanofi Pasteur, Inc.*, No. 11-cv-7178 (D.N.J.)	$61,500,000	$20,500,000	33.33%	N/A	None	Yes
10/05/17	*In re K-Dur Antitrust Litigation*, No. 01-cv-01652 (D.N.J.)	$60,200,000	$20,066,666.70	33.33%	N/A	None	Yes
10/15/15	*King Drug Company of Florence, Inc. v. Cephalon, Inc., et al*, No. 06-cv-01797 (E.D. Pa.)	$512,000,000	$140,800,000.00	27.50%	N/A	None	Yes
05/20/15	*In re Prograf Antitrust Litig.*, No. 11-md-2242 (D. Mass.)	$98,000,000	$32,666,666	33.33%	N/A	None	Yes
01/20/15	*In re Prandin Direct Purchaser Antitrust Litig.*, No. 10-cv-12141 (E.D. Mich.)	$19,000,000	$6,333,000	33.33%	N/A	None	Yes
09/16/14	*Mylan Pharmaceuticals, Inc. v. Warner Chilcott PLC*, No. 12-cv-3824 (E.D. Pa.)	$15,000,000	$5,000,000	33.33%	N/A	None	No
08/06/14	*Louisiana Wholesale v. Pfizer, Inc., et al*, No. 02-cv-01830 (D.N.J.)	$190,416,438	$63,472,146	33.33%	N/A	None	Yes
06/30/14	*In re Skelaxin (Metaxalone) Antitrust Litigation*, No. 12-md-2343 (E.D. Tenn.)	$73,000,000	$24,333,000	33.33%	N/A	None	Yes
4/16/14	*In Re: Plasma-Derivative Protein Therapies Antitrust Litigation*, No. 09-07666 (N.D. Ill.)	$64,000,000	$21,333,333	33.33%	N/A	None	No
06/14/13	*American Sales Company, Inc. v. Smithkline Beecham Corporation*, No. 08-cv-03149 (E.D. Pa.)	$150,000,000	$50,000,000	33.33%	N/A	None	Yes
04/10/13	*Louisiana Wholesale Drug Company, Inc. v. Becton Dickinson & Company, Inc.*, No. 05-cv-01602 (D.N.J.)	$45,000,000	$15,000,000	33.33%	N/A	None.	Yes
11/07/12	*In re Wellbutrin XL Antitrust Litigation*, No. 08-cv-2431 (E.D. Pa.)	$37,500,000	$12,500,000	33.33%	N/A	None	Yes

Date	Case Name & Civil Action No.	Settlement Amount	Fees Awarded	Fee Percentage	Retainer Agreement	Class Member Objection	Class Member Support
05/31/12	*Rochester Drug Co-Operative, Inc., v. Braintree Laboratories, Inc.*, No. 07-cv-142 (D. Del.)	$17,250,000	$5,750,000	33.33%	N/A	None	Yes
01/12/12	*In re Metoprolol Succinate Antitrust Litigation*, No. 06-cv-52 (D. Del.)	$20,000,000	$6,666,666	33.33%	N/A	None	Yes
11/28/11	*In re DDAVP Direct Purchaser Antitrust Litigation*, No. 05-cv-2237 (S.D.N.Y.)	$20,250,000	$6,750,000	33.33%	N/A	None	Yes
11/21/11	*In re Wellbutrin SR Antitrust Litigation*, No. 04-cv-5525 (E.D. Pa.)	$49,000,000	$16,333,333	33.33%	N/A	None	Yes
08/11/11	*Meijer, Inc. v. Abbott Laboratories*, No. 07-cv-05985 (N.D. Cal.)	$52,000,000	$17,333,333	33.33%	N/A	None	Yes
01/31/11	*In re Nifedipine Antitrust Litigation*, No. 03-mc-223 (D.D.C.)	$35,000,000	$11,666,667	33.33%	N/A	None	Yes
01/25/11	*In re Oxycontin Antitrust Litigation*, No. 04-md-1603 (S.D.N.Y.)	$16,000,000	$5,333,333	33.33%	N/A	None	Yes
04/23/09	*In re Tricor Direct Purchaser Litigation*, No. 05-340 (D. Del.)	$250,000,000	$83,333,333	33.33%	N/A	None	Yes
04/20/09	*Meijer, Inc. v. Barr Pharmaceuticals, Inc.*, No. 05-cv-2195 (D.D.C.)	$22,000,000	$7,333,333	33.33%	N/A	None	Yes
11/09/05	*In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-00085 (D.N.J.)	$75,000,000	$25,000,000	33.33%	N/A	None	Yes
04/19/05	*In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-md-1317 (S.D. Fla.)	$74,572,327	$24,166,667	32.41%	N/A	None	Yes
11/30/04	*North Shore Hematology-Oncology Associates, P.C. v. Bristol-Myers Squibb Co.*, No. 04-cv-248 (D.D.C.)	$50,000,000	$16,276,928	32.55%	N/A	None	No

Date	Case Name & Civil Action No.	Settlement Amount	Fees Awarded	Fee Percentage	Retainer Agreement	Class Member Objection	Class Member Support
04/09/04	*In re Relafen Antitrust Litigation*, No. 01-cv-12239 (D. Mass.)	$175,000,000	$58,333,333	33.33%	N/A	None	No
04/11/03	*Louisiana Wholesale Drug Co. v. Bristol-Myers Squibb Co.*, No. 01-cv-7951 (S.D.N.Y.)	$220,000,000	$72,521,994	32.96%	N/A	None	Yes
				N = 33 **Median = 33.33%** **Mean = 32.48%**	**3/33**	**0/33**	**26/33**

48. In sum, as far as we can tell, when seeking to recover money in risky commercial lawsuits involving large-stakes, sophisticated business clients typically agree to pay contingent fees of at least 33⅓ percent, too. As such, we believe this factor, too, supports class counsel's fee request.

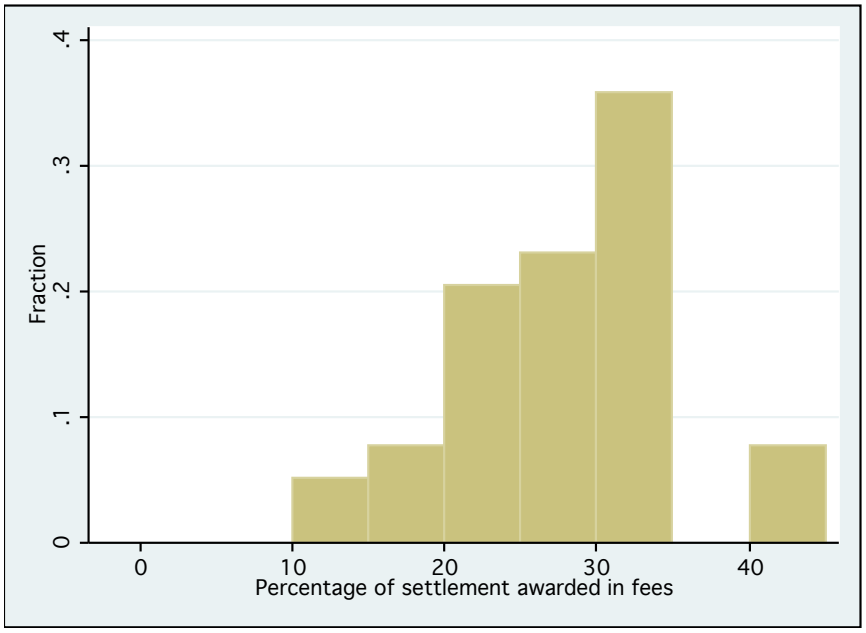
3. Fee awards in the Seventh Circuit

49. Fee awards from other district courts in the Seventh Circuit seeking to calculate the market rate for class action lawyering is largely consistent with class counsel's request as well.[6] One of us (Fitzpatrick) charted the distribution of all Seventh Circuit percentage-method fee awards. Figure 1 shows the fraction of settlements (y-axis) had fee awards within each five-point range of fee percentages (x-axis). As the figure shows, the most populous range was between 30% and 35%—exactly where class counsel's fee request is here. The mean was 27.4% and the median of 29%. *See* Fitzpatrick, *Empirical Study, supra,* at 836. The findings of the other large-scale

[6] We focus on the Seventh Circuit because that is the only Circuit where district courts are instructed to approximate the *ex ante* market rate for lawyering when setting fees in class actions.

study of class action fee awards is consistent. *See, e.g.,* Eisenberg-Miller 2017, *supra*, at 951 (finding the Seventh Circuit's mean and median from 2009 to 2013 to be 28% and 30% respectively).

Figure 1: Percentage-method fee awards in the Seventh Circuit, 2006-2007



50. It is true that the request here is slightly above average, even though it is in the most populous range. But, as we noted above, these market approximations from other class action cases must be adjusted in light of the *ex ante* market conditions that existed in this particular case. As we explain below, these adjustments all weigh in favor of class counsel's fee request.

4. *Ex ante* adjustments to the market approximation

51. The Seventh Circuit instructs district courts to adjust the data from other cases to reflect how the risks, quality, work required, and stakes at issue in this case might have affected the *ex ante* market. Here, these adjustments work in class counsel's favor.

52. To begin with, this litigation has transpired longer than the typical securities fraud class action. According to Fitzpatrick's empirical study, the average length to final approval of a

settlement in a class action case is approximately three years. *See* Fitzpatrick, *Empirical Study, supra*, at 820. Yet this case has already transpired over three and one-half years. In light of the risks presented by this case—discussed below—this was, in our opinion, predictable. In the open market, lawyers who expect to wait longer to get paid will of course demand better contingency percentages than those who expect to get paid more quickly.

53. With respect to those risks, there is little doubt that this was a risky case. In the open market, lawyers who are less certain they will recover will of course demand better contingency percentages than those who are more certain. Consider the following open questions that this case faced that many securities fraud class actions do not:

- First, it was uncertain whether the defendants had to disclose the problems at its production facility at all. Much of this uncertainty turned on both the significance and interpretation of Item 303 of SEC Regulation S-K—matters that this Court noted were questions of first impression in the Seventh Circuit. It was not surprising that these open questions prolonged this litigation as they did.
- In addition, it is still not clear whether the Defendants could take advantage of the safe harbor for forward-looking statements in the Private Securities Litigation Reform Act of 1995. Although the Court rejected this defense at the pleading stage, it noted that the outcome might be different on summary judgment or at trial.
- Finally, there were risks more typical to securities fraud cases: did the defendants act with an intent to deceive? Was the deception material to investors? If so, how much of investor losses were attributable to the deception as opposed to all the other matters that affect stock prices? But even these matters were imbued with risk here. For example, with respect to the last question, the plaintiffs were in real danger of

losing approximately 85% of the alleged class-wide losses because the defendants plausibly argued that the corrective disclosure attributable to them on October 31, 2016, was completely irrelevant to the fraud alleged here.

54. The risks presented in this case can be favorably compared to the more common securities fraud cases that allege fraud following a decision by the company to restate its own earnings, something ZBH did not do. As Professor John C. Coffee, Jr. observed:

> cases involving accounting allegations and restatements appear to have a higher settlement value than cases lacking these factors. The PSLRA's "safe harbor" for forward-looking statements is the most likely (but not the exclusive) cause of this transition because it requires the plaintiff to prove the defendant's actual knowledge of the falsity of the forward-looking statement.

John C. Coffee Jr., *Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation*, 106 COLUMBIA L. REV. 1534, 1544-1545 (2006). To put the matter another way, cases with financial restatements tend to be less risky than others because they are more likely to survive motions to dismiss as the evidence of defendants' knowledge being clearer. *See* Blakeley B. McShane, Oliver P. Watson, Tom Baker, and Sean J. Griffith, *Predicting Securities Fraud Settlements and Amounts: A Hierarchical Bayesian Model of Federal Securities Class Action Lawsuits*, 9 J. EMPIRICAL STUDIES 482, 502 (2012) ("variables that are predictive of the settlement amount" include "whether or not earnings were restated.").

55. Indeed, that this case faced risks that many securities cases do not is confirmed by the fact that not a single institutional investor applied for the lead plaintiff position and no

government investigation proceeded the lawsuit.[7] The literature on securities fraud class actions suggests that large institutional investors tend to "cherry pick" by volunteering to serve as lead plaintiffs in case with high expected values and that competition for the lead plaintiff position correlates inversely with risk. The greater the number of named plaintiffs that apply for appointment, the lower the risk of non-recovery. *See, e.g.*, *Is The Price Right?, supra*, at 33 ("[C]ompetition may be a proxy for case quality. Higher quality encourages lawyers to seek control of class actions because it implies lower risk."); Stephen Choi, Jill E. Fisch, and A.C. Pritchard, *Do Institutions Matter? The Impact of the Lead Plaintiff Provision of the Private Securities Litigation Reform Act*, 83 WASH. U. L. QUARTERLY 869, 900 (2005) ("We [] provide evidence . . . consistent with the view that public pension funds are simply cherry-picking by participating in cases in which characteristics observable prior to the filing of suit indicate the case is likely to result in a large settlement."). That there was no rush by institutions to represent the class in this case shows it was by no means low hanging fruit.

56. Similarly, the impact of investigations by regulators becomes clear when one compares settlements in cases with and without them. *See, e.g.*, John D. Finnerty & Gautam Goswami, *Determinants of the Settlement Amount in Securities Fraud Class Action Litigation*, 2 Hastings Bus. L.J. 453, 466 (2006) (empirical study finding that "the average settlement amount is significantly greater when . . . when there is an SEC investigation of the firm relating to the alleged fraud underway"). Lead counsel had no such investigation to work from here.

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[7] It is our understanding that Local 1500 agreed to step forward as an additional named Plaintiff because it purchased shares of ZBH common stock in the secondary offerings, and thus had standing to pursue the Securities Act claims.

57. Yet, despite these risks, the recovery here is outstanding. Depending on the damages model, the recovery here was between 8% and 53% of the class's damages. This is many multiplies of estimates of the typical recovery in a securities fraud case. *See, e.g.,* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements 2019 Review and Analysis*, at p. 6 Figure 5 (Cornerstone Research 2020) (reporting median percentage recoveries of 3.3 percent and 9.4 percent in cases alleging between $500-$999 million and $75-$149 million in damages, respectively, and 4.8 percent overall for all securities class actions). In the open market, lawyers who can achieve above-average results will be able to demand better contingency percentages than those who cannot. As such, these factors, too, support class counsel's fee request.

D. Bigger Recoveries Smaller Percentages?

58. Some courts in other circuits award class action lawyers a smaller percentage when they recover more than when they recover less. *See* Fitzpatrick, *Empirical Study*, *supra*, at 828 (noting this effect in settlements above $100 million). If that sounds like a recipe for bad incentives, it is. *See, e.g.*, *In re Cendant Corp. Litig.*, 264 F.3d 201, 284 n.55 (3d Cir. 2001) ("Th[e] position [that the percentage of a recovery devoted to attorneys' fees should decrease as the size of the overall settlement or recovery increases] . . . has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply." (alteration in original)). As one court has put it, "[b]y not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, [this] approach creates the perverse incentive for Class Counsel to settle too early for too little." *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1213 (S.D. Fla. 2006).

59. Consider the following example: if courts award class action attorneys 33⅓% of settlements when they are under $100 million but only 20% of settlements when they are over

$100 million, then rational class action attorneys will prefer to settle cases for $90 million (*i.e.*, a $30 million fee award) than $125 million (*i.e.*, a $25 million fee award). That is the very definition of perverse incentives.

60. This is why we are unaware of any client ever agreeing to such a scheme in the open market and why the Seventh Circuit has outright rejected it. *See, e.g.*, *Synthroid I*, 264 F.3d at 718 (Easterbrook, J.) ("This means that counsel for the consumer class could have received $22 million in fees had they settled for $74 million but were limited to $8.2 million in fees because they obtained an extra $14 million for their clients . . . . Why there should be such a notch is a mystery. Markets would not tolerate that effect . . . .").

61. Although this settlement is not so large to give rise to the perverse "megafund" rule of other Circuits, one question that sometimes arises is whether the market for class action lawyering would taper fee percentages downward on a *marginal basis* as the class's recovery becomes larger. That is, whether a client would pay, for example, say 33⅓ percent of the first $10 million in a settlement, 30 percent of the second $10 million, and so forth.

62. It is true that sophisticated clients sometimes taper fee percentages downward as recoveries become large. *See Silverman*, 739 F.3d at 959; *Synthroid I*, 264 F.3d at 721. But it is also true that sophisticated clients sometimes taper fee percentages *upward* as recoveries become large. *See, e.g.*, *In re AT & T Corp.*, 455 F.3d 160, 163 (3d Cir. 2006) (describing fee agreement between class counsel and "the lead plaintiff New Hampshire Retirement Systems": "The formula provided attorneys' fees would equal 15% of any settlement amount up to $25 million, 20% of any settlement amount between $25 million and $50 million, and 25% of any settlement amount over $50 million.").

63. We are unaware of any studies demonstrating whether one form of tapering is more common than another. The data from the study of patent litigation, above, showed only upward tapering, but based on case milestones, not on recovery size. In our study of the direct-purchaser antitrust class actions, also above, there was no tapering in either direction. For all these reasons, we think the best approximation of the market is a flat percentage rather than a tapered one.

64. We will note, however, if we had to choose between upward and downward tapering for class actions, we would choose upward tapering for one of the reasons we noted above: most class members are not monitoring class counsel's performance. As the Seventh Circuit itself has noted, downward tapering widens the gap between the incentives of contingency fee lawyers and the interests of their clients. *See Synthroid I*, 264 F.3d at 721 ("[D]eclining marginal percentages . . . create declining marginal returns to legal work . . . . This feature exacerbates the agency costs inherent in any percentage-of-recovery system . . . ."). If clients are monitoring their lawyers closely, they can overcome this gap. But in class actions, we must depend on the invisible hand of incentives to do this work for us. And the invisible hand prefers upward tapering. *See* John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 Colum. L. Rev. 669, 697 (1986) ("[T]he most logical answer to this problem of premature settlement would be to base fees on a graduated, increasing percentage of the recovery formula—one that operates, much like the Internal Revenue Code, to award the plaintiff's attorney a marginally greater percentage of each defined increment of the recovery."). The hardest dollars to recover in litigation are the last dollars not the first dollars. Thus, those are the dollars that need to be incentivized the most, not the least. Yet class counsel has not sought an escalation for their fine recovery here. This is all the more reason to grant them their request.

VII. CONCLUSION

65. For all these reasons, we believe class counsel's fee request is a reasonable approximation of the rate the *ex ante* market would have selected.

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 29th day of July, 2020 at Empire, Michigan.

Charles Silver

I declare under penalty of perjury that the foregoing facts are true and correct. Executed this 29th day of July, 2020 at Nashville, Tennessee.

Brian Fitzpatrick

EXHIBIT A

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ACADEMIC APPOINTMENTS

VANDERBILT UNIVERSITY LAW SCHOOL, *Professor*, 2012 to present
- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018
- Classes: Civil Procedure, Litigation Finance

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010
- Classes: Civil Procedure

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000
- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997
- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CAMBRIDGE INTERNATIONAL HANDBOOK OF CLASS ACTIONS (Cambridge University Press, forthcoming 2021) (ed., with Randall Thomas)

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press 2019)

ACADEMIC ARTICLES

Can the Class Action be Made Business Friendly?, 24 N.Z. BUS. L. & Q. 169 (2018)

Can and Should the New Third-Party Litigation Financing Come to Class Actions?, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)

Scalia in the Casebooks, 84 U. CHI. L. REV. 2231 (2017)

The Ideological Consequences of Judicial Selection, 70 VAND. L. REV. 1729 (2017)

Judicial Selection and Ideology, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017)

Justice Scalia and Class Actions: A Loving Critique, 92 NOTRE DAME L. REV. 1977 (2017)

A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology, 69 VAND. L. REV. 991 (2016)

The Hidden Question in Fisher, 10 NYU J. L. & LIBERTY 168 (2016)

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, 98 VA. L. REV. 839 (2012)

Twombly *and* Iqbal *Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)

An Empirical Study of Class Action Settlements and their Fee Awards, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

Do Class Action Lawyers Make Too Little?, 158 U. PA. L. REV. 2043 (2010)

Originalism and Summary Judgment, 71 OHIO ST. L.J. 919 (2010)

The End of Objector Blackmail?, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

Do Class Actions Deter Wrongdoing? in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

Judicial Selection in Illinois in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

The Future of Class Actions, National Consumer Law Center Class Action Symposium, Boston, MA (Nov. 16, 2019) (panelist)

The Conservative Case for Class Actions, Center for Civil Justice, NYU Law School, New York, NY (Nov.11, 2019)

Deregulation and Private Enforcement, Class Actions, Mass Torts, and MDLs: The Next 50 Years, Pound Institute Academic Symposium, Lewis & Clark Law School, Portland, OR (Nov. 2, 2019)

Class Actions and Accountability in Finance, Investors and the Rule of Law Conference, Institute for Investor Protection, Loyola University Chicago Law School, Chicago, IL (Oct. 25, 2019) (panelist)

Incentivizing Lawyers as Teams, University of Texas at Austin Law School, Austin, TX (Oct. 22, 2019)

"Dueling Pianos": A Debate on the Continuing Need for Class Actions, Twenty Third Annual National Institute on Class Actions, American Bar Association, Nashville, TN (Oct. 18, 2019) (panelist)

A Debate on the Utility of Class Actions, Contemporary Issues in Complex Litigation Conference, Northwestern Law School, Chicago, IL (Oct.16, 2019) (panelist)

Litigation Funding, Forty Seventh Annual Meeting, Intellectual Property Owners Association, Washington, DC (Sep. 26, 2019) (panelist)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, International Class Actions Conference, Vanderbilt Law School, Nashville, TN (Aug. 24, 2019)

A New Source of Class Action Data, Corporate Accountability Conference, Institute for Law and Economic Policy, San Juan, Puerto Rico (April 12, 2019)

The Indian Securities Fraud Class Action: Is Class Arbitration the Answer?, Ninth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 14, 2018)

MDL: Uniform Rules v. Best Practices, Miami Law Class Action & Complex Litigation Forum, University of Miami Law School, Miami, Florida (Dec. 7, 2018) (panelist)

Third Party Finance of Attorneys in Traditional and Complex Litigation, George Washington Law School, Washington, D.C. (Nov. 2, 2018) (panelist)

MDL at 50 - The 50th Anniversary of Multidistrict Litigation, New York University Law School, New York, New York (Oct. 10, 2018) (panelist)

The Discovery Tax, Law & Economics Seminar, Harvard Law School, Cambridge, Massachusetts (Sep. 11, 2018)

Empirical Research on Class Actions, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

A Political Future for Class Actions in the United States?, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

The Indian Class Actions: How Effective Will They Be?, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

Critical Issues in Complex Litigation, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

The Conservative Case for Class Actions, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

The Conservative Case for Class Actions—A Monumental Debate, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

One-Way Fee Shifting after Summary Judgment, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

The Conservative Case for Class Actions, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

One-Way Fee Shifting after Summary Judgment, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

The Constitution Revision Commission and Florida's Judiciary, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

Class Actions After Spokeo v. Robins*: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners*, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

The Ironic History of Rule 23, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

Justice Scalia and Class Actions: A Loving Critique, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

Should Third-Party Litigation Financing Be Permitted in Class Actions?, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

The Ideological Consequences of Judicial Selection, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

After Fifty Years, What's Class Action's Future, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

Where Will Justice Scalia Rank Among the Most Influential Justices, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

A Respected Judiciary—Balancing Independence and Accountability, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

Twombly *and* Iqbal *Reconsidered,* Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

The Conservative Case for Class Actions?, NATIONAL REVIEW (Nov. 13, 2019)

9th Circuit Split: What's the math say?, DAILY JOURNAL (Mar. 21, 2017)

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation "Kabuki" Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee's Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia's Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

Does the Way We Choose our Judges Affect Case Outcomes?, American Legislative Exchange Council 2018 Annual Meeting, New Orleans, Louisiana (August 10, 2018) (panelist)

Oversight of the Structure of the Federal Courts, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, United States Senate, Washington, D.C. (July 31, 2018)

Where Will Justice Scalia Rank Among the Most Influential Justices, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

Supreme Court Review 2016: Current Issues and Cases Update, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies
Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet, 2011-2017 & 2019-present; Board of Directors, Beacon Center, 2018-present; Nashville Talking Library for the Blind, 2008-2009

EXHIBIT B

JOURNAL OF
EMPIRICAL LEGAL STUDIES

Journal of Empirical Legal Studies
Volume 7, Issue 4, 811–846, December 2010

An Empirical Study of Class Action Settlements and Their Fee Awards

*Brian T. Fitzpatrick**

This article is a comprehensive empirical study of class action settlements in federal court. Although there have been prior empirical studies of federal class action settlements, these studies have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). By contrast, in this article, I attempt to study every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first attempt to collect a complete set of federal class action settlements for any given year. I find that district court judges approved 688 class action settlements over this two-year period, involving nearly $33 billion. Of this $33 billion, roughly $5 billion was awarded to class action lawyers, or about 15 percent of the total. Most judges chose to award fees by using the highly discretionary percentage-of-the-settlement method, and the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Fee percentages were strongly and inversely associated with the size of the settlement. The age of the case at settlement was positively associated with fee percentages. There was some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located, with lower percentages in securities cases and in settlements from the Second and Ninth Circuits. There was no evidence that fee percentages were associated with whether the class action was certified as a settlement class or with the political affiliation of the judge who made the award.

I. Introduction

Class actions have been the source of great controversy in the United States. Corporations fear them.[1] Policymakers have tried to corral them.[2] Commentators and scholars have

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Research for this article was supported by Vanderbilt's Cecil D. Branstetter Litigation & Dispute Resolution Program and Law & Business Program. I am grateful for comments I received from Dale Collins, Robin Effron, Ted Eisenberg, Deborah Hensler, Richard Nagareda, Randall Thomas, an anonymous referee for this journal, and participants at workshops at Vanderbilt Law School, the University of Minnesota Law School, the 2009 Meeting of the Midwestern Law and Economics Association, and the 2009 Conference on Empirical Legal Studies. I am also grateful for the research assistance of Drew Dorner, David Dunn, James Gottry, Chris Lantz, Gary Peeples, Keith Randall, Andrew Yi, and, especially, Jessica Pan.

[1]See, e.g., Robert W. Wood, Defining Employees and Independent Contractors, Bus. L. Today 45, 48 (May–June 2008).

[2]See Private Securities Litigation Reform Act (PSLRA) of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.); Class Action Fairness Act of 2005, 28 U.S.C. §§ 1453, 1711–1715 (2006).

suggested countless ways to reform them.[3] Despite all the attention showered on class actions, and despite the excellent empirical work on class actions to date, the data that currently exist on how the class action system operates in the United States are limited. We do not know, for example, how much money changes hands in class action litigation every year. We do not know how much of this money goes to class action lawyers rather than class members. Indeed, we do not even know how many class action cases are resolved on an annual basis. To intelligently assess our class action system as well as whether and how it should be reformed, answers to all these questions are important. Answers to these questions are equally important to policymakers in other countries who are currently thinking about adopting U.S.-style class action devices.[4]

This article tries to answer these and other questions by reporting the results of an empirical study that attempted to gather all class action settlements approved by federal judges over a recent two-year period, 2006 and 2007. I use class action settlements as the basis of the study because, even more so than individual litigation, virtually all cases certified as class actions and not dismissed before trial end in settlement.[5] I use federal settlements as the basis of the study for practical reasons: it was easier to identify and collect settlements approved by federal judges than those approved by state judges. Systematic study of class action settlements in state courts must await further study;[6] these future studies are important because there may be more class action settlements in state courts than there are in federal court.[7]

This article attempts to make three contributions to the existing empirical literature on class action settlements. First, virtually all the prior empirical studies of federal class action settlements have either been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as those settlements approved in published opinions). In this article, by contrast, I attempt to collect every federal class action settlement from the years 2006 and 2007. As far as I am aware, this study is the first to attempt to collect a complete set of federal class action settlements for

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[3]See, e.g., Robert G. Bone, Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness, 83 B.U.L. Rev. 485, 490–94 (2003); Allan Erbsen, From "Predominance" to "Resolvability": A New Approach to Regulating Class Actions, 58 Vand. L. Rev. 995, 1080–81 (2005).

[4]See, e.g., Samuel Issacharoff & Geoffrey Miller, Will Aggregate Litigation Come to Europe?, 62 Vand. L. Rev. 179 (2009).

[5]See, e.g., Emery Lee & Thomas E. Willing, Impact of the Class Action Fairness Act on the Federal Courts: Preliminary Findings from Phase Two's Pre-CAFA Sample of Diversity Class Actions 11 (Federal Judicial Center 2008); Tom Baker & Sean J. Griffith, How the Merits Matter: D&O Insurance and Securities Settlements, 157 U. Pa. L. Rev. 755 (2009).

[6]Empirical scholars have begun to study state court class actions in certain subject areas and in certain states. See, e.g., Robert B. Thompson & Randall S. Thomas, The Public and Private Faces of Derivative Suits, 57 Vand. L. Rev. 1747 (2004); Robert B. Thompson & Randall S. Thomas, The New Look of Shareholder Litigation: Acquisition-Oriented Class Actions, 57 Vand. L. Rev. 133 (2004); Findings of the Study of California Class Action Litigation (Administrative Office of the Courts) (First Interim Report, 2009).

[7]See Deborah R. Hensler et al., Class Action Dilemmas: Pursuing Public Goals for Private Gain 56 (2000).

any given year.[8] As such, this article allows us to see for the first time a complete picture of the cases that are settled in federal court. This includes aggregate annual statistics, such as how many class actions are settled every year, how much money is approved every year in these settlements, and how much of that money class action lawyers reap every year. It also includes how these settlements are distributed geographically as well as by litigation area, what sort of relief was provided in the settlements, how long the class actions took to reach settlement, and an analysis of what factors were associated with the fees awarded to class counsel by district court judges.

Second, because this article analyzes settlements that were approved in both published and unpublished opinions, it allows us to assess how well the few prior studies that looked beyond securities cases but relied only on published opinions capture the complete picture of class action settlements. To the extent these prior studies adequately capture the complete picture, it may be less imperative for courts, policymakers, and empirical scholars to spend the considerable resources needed to collect unpublished opinions in order to make sound decisions about how to design our class action system.

Third, this article studies factors that may influence district court judges when they award fees to class counsel that have not been studied before. For example, in light of the discretion district court judges have been delegated over fees under Rule 23, as well as the salience the issue of class action litigation has assumed in national politics, realist theories of judicial behavior would predict that Republican judges would award smaller fee percentages than Democratic judges. I study whether the political beliefs of district court judges are associated with the fees they award and, in doing so, contribute to the literature that attempts to assess the extent to which these beliefs influence the decisions of not just appellate judges, but trial judges as well. Moreover, the article contributes to the small but growing literature examining whether the ideological influences found in published judicial decisions persist when unpublished decisions are examined as well.

In Section II of this article, I briefly survey the existing empirical studies of class action settlements. In Section III, I describe the methodology I used to collect the 2006–2007 federal class action settlements and I report my findings regarding these settlements. District court judges approved 688 class action settlements over this two-year period, involving over $33 billion. I report a number of descriptive statistics for these settlements, including the number of plaintiff versus defendant classes, the distribution of settlements by subject matter, the age of the case at settlement, the geographic distribution of settlements, the number of settlement classes, the distribution of relief across settlements, and various statistics on the amount of money involved in the settlements. It should be noted that despite the fact that the few prior studies that looked beyond securities settlements appeared to oversample larger settlements, much of the analysis set forth in this article is consistent with these prior studies. This suggests that scholars may not need to sample unpublished as well as published opinions in order to paint an adequate picture of class action settlements.

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[8]Of course, I cannot be certain that I found every one of the class actions that settled in federal court over this period. Nonetheless, I am confident that if I did not find some, the number I did not find is small and would not contribute meaningfully to the data reported in this article.

In Section IV, I perform an analysis of the fees judges awarded to class action lawyers in the 2006–2007 settlements. All told, judges awarded nearly $5 billion over this two-year period in fees and expenses to class action lawyers, or about 15 percent of the total amount of the settlements. Most federal judges chose to award fees by using the highly discretionary percentage-of-the-settlement method and, unsurprisingly, the fees awarded according to this method varied over a broad range, with a mean and median around 25 percent. Using regression analysis, I confirm prior studies and find that fee percentages are strongly and inversely associated with the size of the settlement. Further, I find that the age of the case is positively associated with fee percentages but that the percentages were not associated with whether the class action was certified as a settlement class. There also appeared to be some variation in fee percentages depending on the subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all other areas, and district courts in some circuits—the Ninth and the Second (in securities cases)—awarded lower fee percentages than courts in many other circuits. Finally, the regression analysis did not confirm the realist hypothesis: there was no association between fee percentage and the political beliefs of the judge in any regression.

II. Prior Empirical Studies of Class Action Settlements

There are many existing empirical studies of federal securities class action settlements.[9] Studies of securities settlements have been plentiful because for-profit organizations maintain lists of all federal securities class action settlements for the benefit of institutional investors that are entitled to file claims in these settlements.[10] Using these data, studies have shown that since 2005, for example, there have been roughly 100 securities class action settlements in federal court each year, and these settlements have involved between $7 billion and $17 billion per year.[11] Scholars have used these data to analyze many different aspects of these settlements, including the factors that are associated with the percentage of

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[9]See, e.g., James D. Cox & Randall S. Thomas, Does the Plaintiff Matter? An Empirical Analysis of Lead Plaintiffs in Securities Class Actions, 106 Colum. L. Rev. 1587 (2006); James D. Cox, Randall S. Thomas & Lynn Bai, There are Plaintiffs and . . . there are Plaintiffs: An Empirical Analysis of Securities Class Action Settlements, 61 Vand. L. Rev. 355 (2008); Theodore Eisenberg, Geoffrey Miller & Michael A. Perino, A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 Wash. U.J.L. & Pol'y 5 (2009); Michael A. Perino, Markets and Monitors: The Impact of Competition and Experience on Attorneys' Fees in Securities Class Actions (St. John's Legal Studies, Research Paper No. 06-0034, 2006), available at <http://ssrn.com/abstract=870577> [hereinafter Perino, Markets and Monitors]; Michael A. Perino, The Milberg Weiss Prosecution: No Harm, No Foul? (St. John's Legal Studies, Research Paper No. 08-0135, 2008), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1133995> [hereinafter Perino, Milberg Weiss].

[10]See, e.g., RiskMetrics Group, available at <http://www.riskmetrics.com/scas>.

[11]See Cornerstone Research, Securities Class Action Settlements: 2007 Review and Analysis 1 (2008), available at <http://securities.stanford.edu/Settlements/REVIEW_1995-2007/Settlements_Through_12_2007.pdf>.

the settlements that courts have awarded to class action lawyers.[12] These studies have found that the mean and median fees awarded by district court judges are between 20 percent and 30 percent of the settlement amount.[13] These studies have also found that a number of factors are associated with the percentage of the settlement awarded as fees, including (inversely) the size of the settlement, the age of the case, whether a public pension fund was the lead plaintiff, and whether certain law firms were class counsel.[14] None of these studies has examined whether the political affiliation of the federal district court judge awarding the fees was associated with the size of awards.

There are no comparable organizations that maintain lists of nonsecurities class action settlements. As such, studies of class action settlements beyond the securities area are much rarer and, when they have been done, rely on samples of settlements that were not intended to be representative of the whole. The two largest studies of class action settlements not limited to securities class actions are a 2004 study by Ted Eisenberg and Geoff Miller,[15] which was recently updated to include data through 2008,[16] and a 2003 study by Class Action Reports.[17] The Eisenberg-Miller studies collected data from class action settlements in both state and federal courts found from court opinions published in the Westlaw and Lexis databases and checked against lists maintained by the CCH Federal Securities and Trade Regulation Reporters. Through 2008, their studies have now identified 689 settlements over a 16-year period, or less than 45 settlements per year.[18] Over this 16-year period, their studies found that the mean and median settlement amounts were, respectively, $116 million and $12.5 million (in 2008 dollars), and that the mean and median fees awarded by district courts were 23 percent and 24 percent of the settlement, respectively.[19] Their studies also performed an analysis of fee percentages and fee awards. For the data through 2002, they found that the percentage of the settlement awarded as fees was associated with the size of the settlement (inversely), the age of the case, and whether the

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[12]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 17–24, 28–36; Perino, Markets and Monitors, supra note 9, at 12–28, 39–44; Perino, Milberg Weiss, supra note 9, at 32–33, 39–60.

[13]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 17–18, 22, 28, 33; Perino, Markets and Monitors, supra note 9, at 20–21, 40; Perino, Milberg Weiss, supra note 9, at 32–33, 51–53.

[14]See, e.g., Eisenberg, Miller & Perino, supra note 9, at 14–24, 29–30, 33–34; Perino, Markets and Monitors, supra note 9, at 20–28, 41; Perino, Milberg Weiss, supra note 9, at 39–58.

[15]See Theodore Eisenberg & Geoffrey Miller, Attorney Fees in Class Action Settlements: An Empirical Study, 1 J. Empirical Legal Stud. 27 (2004).

[16]See Theodore Eisenberg & Geoffrey Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993–2008, 7 J. Empirical Legal Stud. 248 (2010) [hereinafter Eisenberg & Miller II].

[17]See Stuart J. Logan, Jack Moshman & Beverly C. Moore, Jr., Attorney Fee Awards in Common Fund Class Actions, 24 Class Action Rep. 169 (Mar.–Apr. 2003).

[18]See Eisenberg & Miller II, supra note 16, at 251.

[19]Id. at 258–59.

district court went out of its way to comment on the level of risk that class counsel had assumed in pursuing the case.[20] For the data through 2008, they regressed only fee awards and found that the awards were inversely associated with the size of the settlement, that state courts gave lower awards than federal courts, and that the level of risk was still associated with larger awards.[21] Their studies have not examined whether the political affiliations of the federal district court judges awarding fees were associated with the size of the awards.

The Class Action Reports study collected data on 1,120 state and federal settlements over a 30-year period, or less than 40 settlements per year.[22] Over the same 10-year period analyzed by the Eisenberg-Miller study, the Class Action Reports data found mean and median settlements of $35.4 and $7.6 million (in 2002 dollars), as well as mean and median fee percentages between 25 percent and 30 percent.[23] Professors Eisenberg and Miller performed an analysis of the fee awards in the Class Action Reports study and found the percentage of the settlement awarded as fees was likewise associated with the size of the settlement (inversely) and the age of the case.[24]

III. Federal Class Action Settlements, 2006 and 2007

As far as I am aware, there has never been an empirical study of all federal class action settlements in a particular year. In this article, I attempt to make such a study for two recent years: 2006 and 2007. To compile a list of all federal class settlements in 2006 and 2007, I started with one of the aforementioned lists of securities settlements, the one maintained by RiskMetrics, and I supplemented this list with settlements that could be found through three other sources: (1) broad searches of district court opinions in the Westlaw and Lexis databases,[25] (2) four reporters of class action settlements—*BNA Class Action Litigation Report*, *Mealey's Jury Verdicts and Settlements*, *Mealey's Litigation Report*, and the *Class Action World* website[26]—and (3) a list from the Administrative Office of Courts of all district court cases

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[20]See Eisenberg & Miller, supra note 15, at 61–62.

[21]See Eisenberg & Miller II, supra note 16, at 278.

[22]See Eisenberg & Miller, supra note 15, at 34.

[23]Id. at 47, 51.

[24]Id. at 61–62.

[25]The searches consisted of the following terms: ("class action" & (settle! /s approv! /s (2006 2007))); (((counsel attorney) /s fee /s award!) & (settle! /s (2006 2007)) & "class action"); ("class action" /s settle! & da(aft 12/31/2005 & bef 1/1/2008)); ("class action" /s (fair reasonable adequate) & da(aft 12/31/2005 & bef 1/1/2008)).

[26]See <http://classactionworld.com/>.

coded as class actions that terminated by settlement between 2005 and 2008.[27] I then removed any duplicate cases and examined the docket sheets and court orders of each of the remaining cases to determine whether the cases were in fact certified as class actions under either Rule 23, Rule 23.1, or Rule 23.2.[28] For each of the cases verified as such, I gathered the district court's order approving the settlement, the district court's order awarding attorney fees, and, in many cases, the settlement agreements and class counsel's motions for fees, from electronic databases (such as Westlaw or PACER) and, when necessary, from the clerk's offices of the various federal district courts. In this section, I report the characteristics of the settlements themselves; in the next section, I report the characteristics of the attorney fees awarded to class counsel by the district courts that approved the settlements.

A. Number of Settlements

I found 688 settlements approved by federal district courts during 2006 and 2007 using the methodology described above. This is almost the exact same number the Eisenberg-Miller study found over a *16*-year period in both federal *and* state court. Indeed, the number of annual settlements identified in this study is *several times* the number of annual settlements that have been identified in any prior empirical study of class action settlements. Of the 688 settlements I found, 304 were approved in 2006 and 384 were approved in 2007.[29]

B. Defendant Versus Plaintiff Classes

Although Rule 23 permits federal judges to certify either a class of plaintiffs or a class of defendants, it is widely assumed that it is extremely rare for courts to certify defendant classes.[30] My findings confirm this widely held assumption. Of the 688 class action settlements approved in 2006 and 2007, 685 involved plaintiff classes and only three involved

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[27]I examined the AO lists in the year before and after the two-year period under investigation because the termination date recorded by the AO was not necessarily the same date the district court approved the settlement.

[28]See Fed. R. Civ. P. 23, 23.1, 23.2. I excluded from this analysis opt-in collective actions, such as those brought pursuant to the provisions of the Fair Labor Standards Act (see 29 U.S.C. § 216(b)), if such actions did not also include claims certified under the opt-out mechanism in Rule 23.

[29]A settlement was assigned to a particular year if the district court judge's order approving the settlement was dated between January 1 and December 31 of that year. Cases involving multiple defendants sometimes settled over time because defendants would settle separately with the plaintiff class. All such partial settlements approved by the district court on the same date were treated as one settlement. Partial settlements approved by the district court on different dates were treated as different settlements.

[30]See, e.g., Robert H. Klonoff, Edward K.M. Bilich & Suzette M. Malveaux, Class Actions and Other Multi-Party Litigation: Cases and Materials 1061 (2d ed. 2006).

defendant classes. All three of the defendant-class settlements were in employment benefits cases, where companies sued classes of current or former employees.[31]

C. Settlement Subject Areas

Although courts are free to certify Rule 23 classes in almost any subject area, it is widely assumed that securities settlements dominate the federal class action docket.[32] At least in terms of the number of settlements, my findings reject this conventional wisdom. As Table 1 shows, although securities settlements comprised a large percentage of the 2006 and 2007 settlements, they did not comprise a majority of those settlements. As one would have

Table 1: The Number of Class Action Settlements Approved by Federal Judges in 2006 and 2007 in Each Subject Area

	Number of Settlements	
Subject Matter	*2006*	*2007*
Securities	122 (40%)	135 (35%)
Labor and employment	41 (14%)	53 (14%)
Consumer	40 (13%)	47 (12%)
Employee benefits	23 (8%)	38 (10%)
Civil rights	24 (8%)	37 (10%)
Debt collection	19 (6%)	23 (6%)
Antitrust	13 (4%)	17 (4%)
Commercial	4 (1%)	9 (2%)
Other	18 (6%)	25 (6%)
Total	304	384

NOTE: Securities: cases brought under federal and state securities laws. Labor and employment: workplace claims brought under either federal or state law, with the exception of ERISA cases. Consumer: cases brought under the Fair Credit Reporting Act as well as cases for consumer fraud and the like. Employee benefits: ERISA cases. Civil rights: cases brought under 42 U.S.C. § 1983 or cases brought under the Americans with Disabilities Act seeking nonworkplace accommodations. Debt collection: cases brought under the Fair Debt Collection Practices Act. Antitrust: cases brought under federal or state antitrust laws. Commercial: cases between businesses, excluding antitrust cases. Other: includes, among other things, derivative actions against corporate managers and directors, environmental suits, insurance suits, Medicare and Medicaid suits, product liability suits, and mass tort suits.

SOURCES: Westlaw, PACER, district court clerks' offices.

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[31]See Halliburton Co. v. Graves, No. 04-00280 (S.D. Tex., Sept. 28, 2007); Rexam, Inc. v. United Steel Workers of Am., No. 03-2998 (D. Minn. Aug. 29, 2007); Rexam, Inc. v. United Steel Workers of Am., No. 03-2998 (D. Minn. Sept. 17, 2007).

[32]See, e.g., John C. Coffee, Jr., Reforming the Security Class Action: An Essay on Deterrence and its Implementation, 106 Colum. L. Rev. 1534, 1539–40 (2006) (describing securities class actions as "the 800-pound gorilla that dominates and overshadows other forms of class actions").

expected in light of Supreme Court precedent over the last two decades,[33] there were almost no mass tort class actions (included in the "Other" category) settled over the two-year period.

Although the Eisenberg-Miller study through 2008 is not directly comparable on the distribution of settlements across litigation subject areas—because its state and federal court data cannot be separated (more than 10 percent of the settlements were from state court[34]) and because it excludes settlements in fee-shifting cases—their study through 2008 is the best existing point of comparison. Interestingly, despite the fact that state courts were included in their data, their study through 2008 found about the same percentage of securities cases (39 percent) as my 2006–2007 data set shows.[35] However, their study found many more consumer (18 percent) and antitrust (10 percent) cases, while finding many fewer labor and employment (8 percent), employee benefits (6 percent), and civil rights (3 percent) cases.[36] This is not unexpected given their reliance on published opinions and their exclusion of fee-shifting cases.

D. Settlement Classes

The Federal Rules of Civil Procedure permit parties to seek certification of a suit as a class action for settlement purposes only.[37] When the district court certifies a class in such circumstances, the court need not consider whether it would be manageable to try the litigation as a class.[38] So-called settlement classes have always been more controversial than classes certified for litigation because they raise the prospect that, at least where there are competing class actions filed against the same defendant, the defendant could play class counsel off one another to find the one willing to settle the case for the least amount of money.[39] Prior to the Supreme Court's 1997 opinion in *Amchem Products, Inc. v. Windsor*,[40] it was uncertain whether the Federal Rules even permitted settlement classes. It may therefore be a bit surprising to learn that 68 percent of the federal settlements in 2006 and 2007 were settlement classes. This percentage is higher than the percentage found in the Eisenberg-Miller studies, which found that only 57 percent of class action settlements in

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[33]See, e.g., Samuel Issacharoff, Private Claims, Aggregate Rights, 2008 Sup. Ct. Rev. 183, 208.

[34]See Eisenberg & Miller II, supra note 16, at 257.

[35]Id. at 262.

[36]Id.

[37]See Martin H. Redish, Settlement Class Actions, The Case-or-Controversy Requirement, and the Nature of the Adjudicatory Process, 73 U. Chi. L. Rev. 545, 553 (2006).

[38]See Amchem Prods., Inc v Windsor, 521 U.S. 591, 620 (1997).

[39]See Redish, supra note 368, at 557–59.

[40]521 U.S. 591 (1997).

state and federal court between 2003 and 2008 were settlement classes.[41] It should be noted that the distribution of litigation subject areas among the settlement classes in my 2006–2007 federal data set did not differ much from the distribution among nonsettlement classes, with two exceptions. One exception was consumer cases, which were nearly three times as prevalent among settlement classes (15.9 percent) as among nonsettlement classes (5.9 percent); the other was civil rights cases, which were four times as prevalent among nonsettlement classes (18.0 percent) as among settlements classes (4.5 percent). In light of the skepticism with which the courts had long treated settlement classes, one might have suspected that courts would award lower fee percentages in such settlements. Nonetheless, as I report in Section III, whether a case was certified as a settlement class was not associated with the fee percentages awarded by federal district court judges.

E. The Age at Settlement

One interesting question is how long class actions were litigated before they reached settlement. Unsurprisingly, cases reached settlement over a wide range of ages.[42] As shown in Table 2, the average time to settlement was a bit more than three years (1,196 days) and the median time was a bit under three years (1,068 days). The average and median ages here are similar to those found in the Eisenberg-Miller study through 2002, which found averages of 3.35 years in fee-shifting cases and 2.86 years in non-fee-shifting cases, and

Table 2: The Number of Days, 2006–2007, Federal Class Action Cases Took to Reach Settlement in Each Subject Area

Subject Matter	*Average*	*Median*	*Minimum*	*Maximum*
Securities	1,438	1,327	392	3,802
Labor and employment	928	786	105	2,497
Consumer	963	720	127	4,961
Employee benefits	1,162	1,161	164	3,157
Civil rights	1,373	1,360	181	3,354
Debt collection	738	673	223	1,973
Antitrust	1,140	1,167	237	2,480
Commercial	1,267	760	163	5,443
Other	1,065	962	185	3,620
All	1,196	1,068	105	5,443

SOURCE: PACER.

[41]See Eisenberg & Miller II, supra note 16, at 266.

[42]The age of the case was calculated by subtracting the date the relevant complaint was filed from the date the settlement was approved by the district court judge. The dates were taken from PACER. For consolidated cases, I used the date of the earliest complaint. If the case had been transferred, consolidated, or removed, the date the complaint was filed was not always available from PACER. In such cases, I used the date the case was transferred, consolidated, or removed as the start date.

medians of 4.01 years in fee-shifting cases and 3.0 years in non-fee-shifting cases.[43] Their study through 2008 did not report case ages.

The shortest time to settlement was 105 days in a labor and employment case.[44] The longest time to settlement was nearly 15 years (5,443 days) in a commercial case.[45] The average and median time to settlement varied significantly by litigation subject matter, with securities cases generally taking the longest time and debt collection cases taking the shortest time. Labor and employment cases and consumer cases also settled relatively early.

F. The Location of Settlements

The 2006–2007 federal class action settlements were not distributed across the country in the same way federal civil litigation is in general. As Figure 1 shows, some of the geographic circuits attracted much more class action attention than we would expect based on their docket size, and others attracted much less. In particular, district courts in the First, Second, Seventh, and Ninth Circuits approved a much larger share of class action settlements than the share of all civil litigation they resolved, with the First, Second, and Seventh Circuits approving nearly double the share and the Ninth Circuit approving one-and-one-half times the share. By contrast, the shares of class action settlements approved by district courts in the Fifth and Eighth Circuits were less than one-half of their share of all civil litigation, with the Third, Fourth, and Eleventh Circuits also exhibiting significant underrepresentation.

With respect to a comparison with the Eisenberg-Miller studies, their federal court data through 2008 can be separated from their state court data on the question of the geographic distribution of settlements, and there are some significant differences between their federal data and the numbers reflected in Figure 1. Their study reported considerably higher proportions of settlements than I found from the Second (23.8 percent), Third (19.7 percent), Eighth (4.8 percent), and D.C. (3.3 percent) Circuits, and considerably lower proportions from the Fourth (1.3 percent), Seventh (6.8 percent), and Ninth (16.6 percent) Circuits.[46]

Figure 2 separates the class action settlement data in Figure 1 into securities and nonsecurities cases. Figure 2 suggests that the overrepresentation of settlements in the First and Second Circuits is largely attributable to securities cases, whereas the overrepresentation in the Seventh Circuit is attributable to nonsecurities cases, and the overrepresentation in the Ninth is attributable to both securities and nonsecurities cases.

It is interesting to ask why some circuits received more class action attention than others. One hypothesis is that class actions are filed in circuits where class action lawyers

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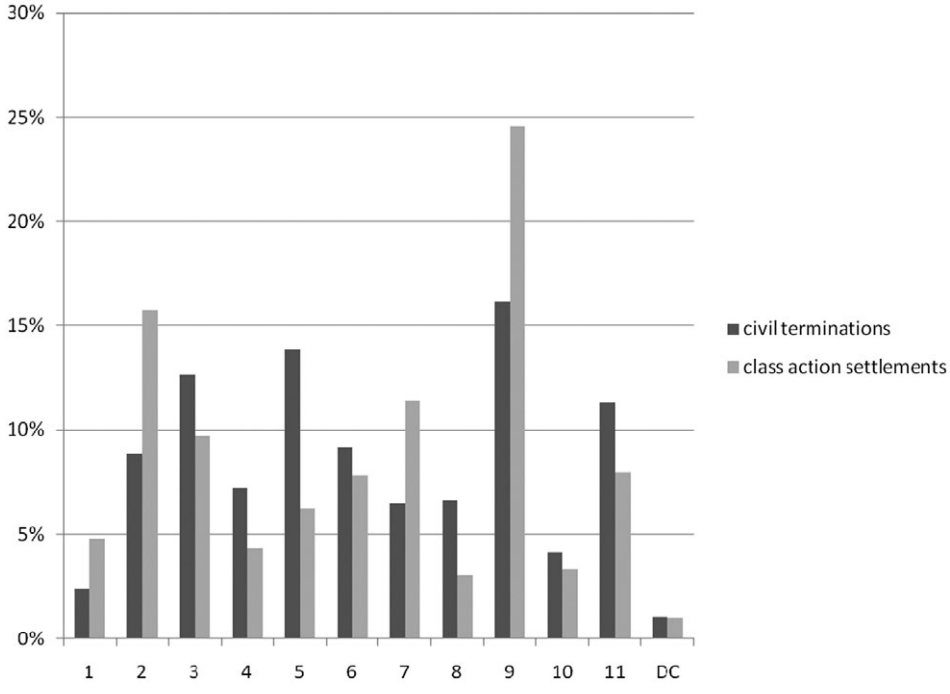
[43]See Eisenberg & Miller, supra note 15, at 59–60.

[44]See Clemmons v. Rent-a-Center W., Inc., No. 05-6307 (D. Or. Jan. 20, 2006).

[45]See Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006).

[46]See Eisenberg & Miller II, supra note 16, at 260.

Figure 1: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



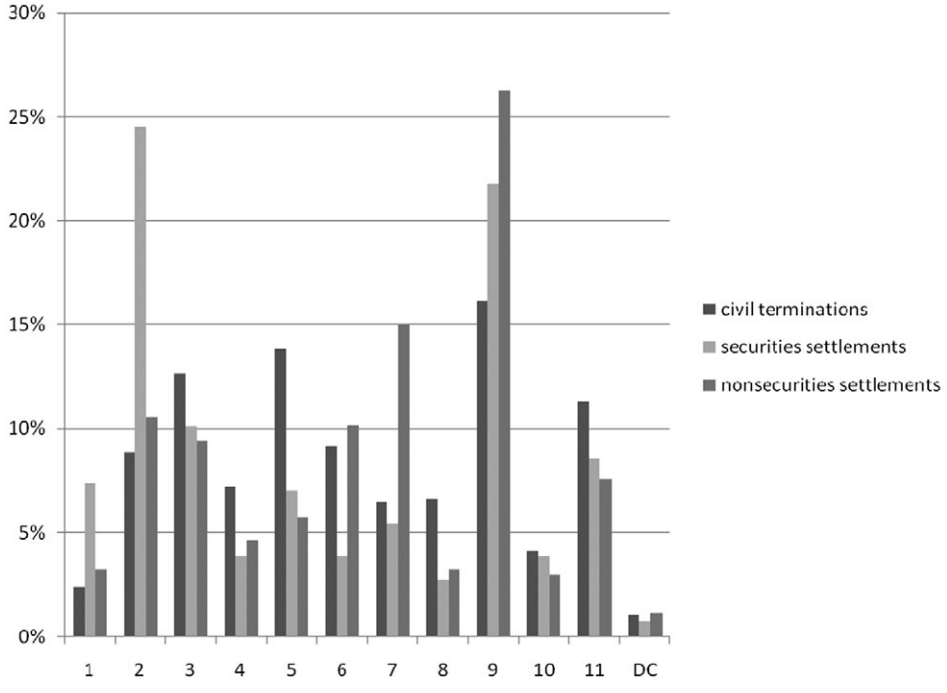
SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

believe they can find favorable law or favorable judges. Federal class actions often involve class members spread across multiple states and, as such, class action lawyers may have a great deal of discretion over the district in which file suit.[47] One way law or judges may be favorable to class action attorneys is with regard to attorney fees. In Section III, I attempt to test whether district court judges in the circuits with the most over- and undersubscribed class action dockets award attorney fees that would attract or discourage filings there; I find no evidence that they do.

Another hypothesis is that class action suits are settled in jurisdictions where defendants are located. This might be the case because although class action lawyers may have discretion over where to file, venue restrictions might ultimately restrict cases to jurisdic-

[47]See Samuel Issacharoff & Richard Nagareda, Class Settlements Under Attack, 156 U. Pa. L. Rev. 1649, 1662 (2008).

Figure 2: The percentage of 2006–2007 district court civil terminations and class action settlements in each federal circuit.



SOURCES: PACER, Statistical Tables for the Federal Judiciary 2006 & 2007 (available at <http://www.uscourts.gov/stats/index.html>).

tions in which defendants have their corporate headquarters or other operations.[48] This might explain why the Second Circuit, with the financial industry in New York, sees so many securities suits, and why other circuits with cities with a large corporate presence, such as the First (Boston), Seventh (Chicago), and Ninth (Los Angeles and San Francisco), see more settlements than one would expect based on the size of their civil dockets.

Another hypothesis might be that class action lawyers file cases wherever it is most convenient for them to litigate the cases—that is, in the cities in which their offices are located. This, too, might explain the Second Circuit's overrepresentation in securities settlements, with prominent securities firms located in New York, as well as the

[48]See 28 U.S.C. §§ 1391, 1404, 1406, 1407. See also Foster v. Nationwide Mut. Ins. Co., No. 07-04928, 2007 U.S. Dist. LEXIS 95240 at *2–17 (N.D. Cal. Dec. 14, 2007) (transferring venue to jurisdiction where defendant's corporate headquarters were located). One prior empirical study of securities class action settlements found that 85 percent of such cases are filed in the home circuit of the defendant corporation. See James D. Cox, Randall S. Thomas & Lynn Bai, Do Differences in Pleading Standards Cause Forum Shopping in Securities Class Actions?: Doctrinal and Empirical Analyses, 2009 Wis. L. Rev. 421, 429, 440, 450–51 (2009).

overrepresentation of other settlements in some of the circuits in which major metropolitan areas with prominent plaintiffs' firms are found.

G. Type of Relief

Under Rule 23, district court judges can certify class actions for injunctive or declaratory relief, for money damages, or for a combination of the two.[49] In addition, settlements can provide money damages both in the form of cash as well as in the form of in-kind relief, such as coupons to purchase the defendant's products.[50]

As shown in Table 3, the vast majority of class actions settled in 2006 and 2007 provided cash relief to the class (89 percent), but a substantial number also provided in-kind relief (6 percent) or injunctive or declaratory relief (23 percent). As would be

Table 3: The Percentage of 2006 and 2007 Class Action Settlements Providing Each Type of Relief in Each Subject Area

Subject Matter	*Cash*	*In-Kind Relief*	*Injunctive or Declaratory Relief*
Securities ($n = 257$)	100%	0%	2%
Labor and employment ($n = 94$)	95%	6%	29%
Consumer ($n = 87$)	74%	30%	37%
Employee benefits ($n = 61$)	90%	0%	34%
Civil rights ($n = 61$)	49%	2%	75%
Debt collection ($n = 42$)	98%	0%	12%
Antitrust ($n = 30$)	97%	13%	7%
Commercial ($n = 13$)	92%	0%	62%
Other ($n = 43$)	77%	7%	33%
All ($n = 688$)	89%	6%	23%

NOTE: Cash: cash, securities, refunds, charitable contributions, contributions to employee benefit plans, forgiven debt, relinquishment of liens or claims, and liquidated repairs to property. In-kind relief: vouchers, coupons, gift cards, warranty extensions, merchandise, services, and extended insurance policies. Injunctive or declaratory relief: modification of terms of employee benefit plans, modification of compensation practices, changes in business practices, capital improvements, research, and unliquidated repairs to property.

SOURCES: Westlaw, PACER, district court clerks' offices.

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[49]See Fed. R. Civ. P. 23(b).

[50]These coupon settlements have become very controversial in recent years, and Congress discouraged them in the Class Action Fairness Act of 2005 by tying attorney fees to the value of coupons that were ultimately redeemed by class members as opposed to the value of coupons offered class members. See 28 U.S.C. § 1712.

expected in light of the focus on consumer cases in the debate over the anti-coupon provision in the Class Action Fairness Act of 2005,[51] consumer cases had the greatest percentage of settlements providing for in-kind relief (30 percent). Civil rights cases had the greatest percentage of settlements providing for injunctive or declaratory relief (75 percent), though almost half the civil rights cases also provided some cash relief (49 percent). The securities settlements were quite distinctive from the settlements in other areas in their singular focus on cash relief: every single securities settlement provided cash to the class and almost none provided in-kind, injunctive, or declaratory relief. This is but one example of how the focus on securities settlements in the prior empirical scholarship can lead to a distorted picture of class action litigation.

H. Settlement Money

Although securities settlements did not comprise the majority of federal class action settlements in 2006 and 2007, they did comprise the majority of the money—indeed, the *vast majority* of the money—involved in class action settlements. In Table 4, I report the total amount of ascertainable value involved in the 2006 and 2007 settlements. This amount

Table 4: The Total Amount of Money Involved in Federal Class Action Settlements in 2006 and 2007

	Total Ascertainable Monetary Value in Settlements (and Percentage of Overall Annual Total)			
Subject Matter	*2006* (n = *304*)		*2007* (n = *384*)	
Securities	$16,728	76%	$8,038	73%
Labor and employment	$266.5	1%	$547.7	5%
Consumer	$517.3	2%	$732.8	7%
Employee benefits	$443.8	2%	$280.8	3%
Civil rights	$265.4	1%	$81.7	1%
Debt collection	$8.9	<1%	$5.7	<1%
Antitrust	$1,079	5%	$660.5	6%
Commercial	$1,217	6%	$124.0	1%
Other	$1,568	7%	$592.5	5%
Total	$22,093	100%	$11,063	100%

NOTE: Dollar amounts are in millions. Includes all determinate payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.

SOURCES: Westlaw, PACER, district court clerks' offices.

[51]See, e.g., 151 Cong. Rec. H723 (2005) (statement of Rep. Sensenbrenner) (arguing that consumers are "seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong").

includes all determinate[52] payments in cash or cash equivalents (such as marketable securities), including attorney fees and expenses, as well as any in-kind relief (such as coupons) or injunctive relief that was valued by the district court.[53] I did not attempt to assign a value to any relief that was not valued by the district court (even if it may have been valued by class counsel). It should be noted that district courts did not often value in-kind or injunctive relief—they did so only 18 percent of the time—and very little of Table 4—only $1.3 billion, or 4 percent—is based on these valuations. It should also be noted that the amounts in Table 4 reflect only what defendants *agreed to pay*; they do not reflect the amounts that defendants *actually paid* after the claims administration process concluded. Prior empirical research has found that, depending on how settlements are structured (e.g., whether they awarded a fixed amount of money to each class member who eventually files a valid claim or a pro rata amount of a fixed settlement to each class member), defendants can end up paying much less than they agreed.[54]

Table 4 shows that in both years, around three-quarters of all the money involved in federal class action settlements came from securities cases. Thus, in this sense, the conventional wisdom about the dominance of securities cases in class action litigation is correct. Figure 3 is a graphical representation of the contribution each litigation area made to the total number and total amount of money involved in the 2006–2007 settlements.

Table 4 also shows that, in total, over $33 billion was approved in the 2006–2007 settlements. Over $22 billion was approved in 2006 and over $11 billion in 2007. It should be emphasized again that the totals in Table 4 understate the amount of money defendants agreed to pay in class action settlements in 2006 and 2007 because they exclude the unascertainable value of those settlements. This understatement disproportionately affects litigation areas, such as civil rights, where much of the relief is injunctive because, as I noted, very little of such relief was valued by district courts. Nonetheless, these numbers are, as far as I am aware, the first attempt to calculate how much money is involved in federal class action settlements in a given year.

The significant discrepancy between the two years is largely attributable to the 2006 securities settlement related to the collapse of Enron, which totaled $6.6 billion, as well as to the fact that seven of the eight 2006–2007 settlements for more than $1 billion were approved in 2006.[55] Indeed, it is worth noting that the eight settlements for more than $1

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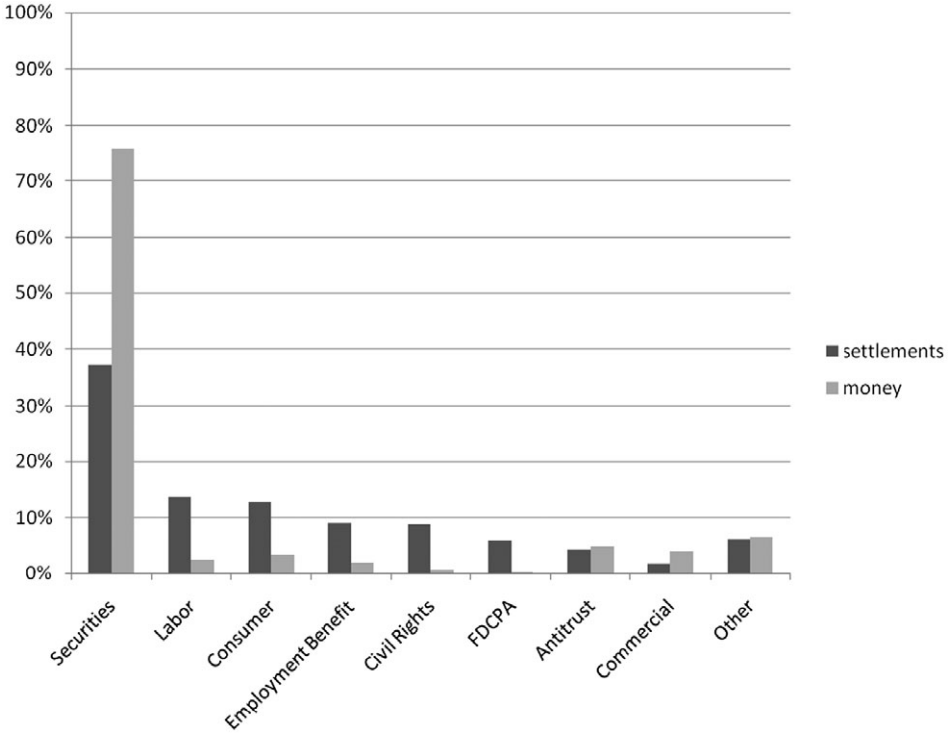
[52]For example, I excluded awards of a fixed amount of money to each class member who eventually filed a valid claim (as opposed to settlements that awarded a pro rata amount of a fixed settlement to each class member) if the total amount of money set aside to pay the claims was not set forth in the settlement documents.

[53]In some cases, the district court valued the relief in the settlement over a range. In these cases, I used the middle point in the range.

[54]See Hensler et al., supra note 7, at 427–30.

[55]See In re Enron Corp. Secs. Litig., MDL 1446 (S.D. Tex. May 24, 2006) ($6,600,000,000); In re Tyco Int'l Ltd. Multidistrict Litig., MDL 02-1335 (D.N.H. Dec. 19, 2007) ($3,200,000,000); In re AOL Time Warner, Inc. Secs. & "ERISA" Litig., MDL 1500 (S.D.N.Y. Apr. 6, 2006) ($2,500,000,000); In re: Diet Drugs Prods. Liab. Litig., MDL 1203 (E.D. Pa. May 24, 2006) ($1,275,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel I), No. 01-1855 (S.D.N.Y. Dec. 26, 2006) ($1,142,780,000); In re Royal Ahold N.V. Secs. & ERISA Litig., 03-1539 (D. Md. Jun. 16, 2006)

Figure 3: The percentage of 2006–2007 federal class action settlements and settlement money from each subject area.



SOURCES: Westlaw, PACER, district court clerks' offices.

billion accounted for almost $18 billion of the $33 billion that changed hands over the two-year period. That is, a mere 1 percent of the settlements comprised over 50 percent of the value involved in federal class action settlements in 2006 and 2007. To give some sense of the distribution of settlement size in the 2006–2007 data set, Table 5 sets forth the number of settlements with an ascertainable value beyond fee, expense, and class-representative incentive awards (605 out of the 688 settlements). Nearly two-thirds of all settlements fell below $10 million.

Given the disproportionate influence exerted by securities settlements on the total amount of money involved in class actions, it is unsurprising that the average securities settlement involved more money than the average settlement in most of the other subject areas. These numbers are provided in Table 6, which includes, again, only the settlements

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($1,100,000,000); Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) ($1,075,000,000); In re Nortel Networks Corp. Secs. Litig. (Nortel II), No. 05-1659 (S.D.N.Y. Dec. 26, 2006) ($1,074,270,000).

Table 5: The Distribution by Size of 2006–2007 Federal Class Action Settlements with Ascertainable Value

Settlement Size (in Millions)	*Number of Settlements*
[$0 to $1]	131 (21.7%)
($1 to $10]	261 (43.1%)
($10 to $50]	139 (23.0%)
($50 to $100]	33 (5.45%)
($100 to $500]	31 (5.12%)
($500 to $6,600]	10 (1.65%)
Total	605

NOTE: Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.
SOURCES: Westlaw, PACER, district court clerks' offices.

Table 6: The Average and Median Settlement Amounts in the 2006–2007 Federal Class Action Settlements with Ascertainable Value to the Class

Subject Matter	*Average*	*Median*
Securities ($n = 257$)	$96.4	$8.0
Labor and employment ($n = 88$)	$9.2	$1.8
Consumer ($n = 65$)	$18.8	$2.9
Employee benefits ($n = 52$)	$13.9	$5.3
Civil rights ($n = 34$)	$9.7	$2.5
Debt collection ($n = 40$)	$0.37	$0.088
Antitrust ($n = 29$)	$60.0	$22.0
Commercial ($n = 12$)	$111.7	$7.1
Other ($n = 28$)	$76.6	$6.2
All ($N = 605$)	$54.7	$5.1

NOTE: Dollar amounts are in millions. Includes only settlements with ascertainable value beyond merely fee, expense, and class-representative incentive awards.
SOURCES: Westlaw, PACER, district court clerks' offices.

with an ascertainable value beyond fee, expense, and class-representative incentive awards. The average settlement over the entire two-year period for all types of cases was almost $55 million, but the median was only $5.1 million. (With the $6.6 billion Enron settlement excluded, the average settlement for all ascertainable cases dropped to $43.8 million and, for securities cases, dropped to $71.0 million.) The average settlements varied widely by litigation area, with securities and commercial settlements at the high end of around $100

million, but the median settlements for nearly every area were bunched around a few million dollars. It should be noted that the high average for commercial cases is largely due to one settlement above $1 billion;[56] when that settlement is removed, the average for commercial cases was only $24.2 million.

Table 6 permits comparison with the two prior empirical studies of class action settlements that sought to include nonsecurities as well as securities cases in their purview. The Eisenberg-Miller study through 2002, which included both common-fund and fee-shifting cases, found that the mean class action settlement was $112 million and the median was $12.9 million, both in 2006 dollars,[57] more than double the average and median I found for all settlements in 2006 and 2007. The Eisenberg-Miller update through 2008 included only common-fund cases and found mean and median settlements in federal court of $115 million and $11.7 million (both again in 2006 dollars),[58] respectively; this is still more than double the average and median I found. This suggests that the methodology used by the Eisenberg-Miller studies—looking at district court opinions that were published in Westlaw or Lexis—oversampled larger class actions (because opinions approving larger class actions are, presumably, more likely to be published than opinions approving smaller ones). It is also possible that the exclusion of fee-shifting cases from their data through 2008 contributed to this skew, although, given that their data through 2002 included fee-shifting cases and found an almost identical mean and median as their data through 2008, the primary explanation for the much larger mean and median in their study through 2008 is probably their reliance on published opinions. Over the same years examined by Professors Eisenberg and Miller, the Class Action Reports study found a smaller average settlement than I did ($39.5 million in 2006 dollars), but a larger median ($8.48 million in 2006 dollars). It is possible that the Class Action Reports methodology also oversampled larger class actions, explaining its larger median, but that there are more "mega" class actions today than there were before 2003, explaining its smaller mean.[59]

It is interesting to ask how significant the $16 billion that was involved annually in these 350 or so federal class action settlements is in the grand scheme of U.S. litigation. Unfortunately, we do not know how much money is transferred every year in U.S. litigation. The only studies of which I am aware that attempt even a partial answer to this question are the estimates of how much money is transferred in the U.S. "tort" system every year by a financial services consulting firm, Tillinghast-Towers Perrin.[60] These studies are not directly

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[56]See Allapattah Servs. Inc. v. Exxon Corp., No. 91-0986 (S.D. Fla. Apr. 7, 2006) (approving $1,075,000,000 settlement).

[57]See Eisenberg & Miller, supra note 15, at 47.

[58]See Eisenberg & Miller II, supra note 16, at 262.

[59]There were eight class action settlements during 2006 and 2007 of more than $1 billion. See note 55 supra.

[60]Some commentators have been critical of Tillinghast's reports, typically on the ground that the reports overestimate the cost of the tort system. See M. Martin Boyer, Three Insights from the Canadian D&O Insurance Market: Inertia, Information and Insiders, 14 Conn. Ins. L.J. 75, 84 (2007); John Fabian Witt, Form and Substance in the Law of

comparable to the class action settlement numbers because, again, the number of tort class action settlements in 2006 and 2007 was very small. Nonetheless, as the tort system no doubt constitutes a large percentage of the money transferred in all litigation, these studies provide something of a point of reference to assess the significance of class action settlements. In 2006 and 2007, Tillinghast-Towers Perrin estimated that the U.S. tort system transferred $160 billion and $164 billion, respectively, to claimants and their lawyers.[61] The total amount of money involved in the 2006 and 2007 federal class action settlements reported in Table 4 was, therefore, roughly 10 percent of the Tillinghast-Towers Perrin estimate. This suggests that in merely 350 cases every year, federal class action settlements involve the same amount of wealth as 10 percent of the entire U.S. tort system. It would seem that this is a significant amount of money for so few cases.

IV. Attorney Fees in Federal Class Action Settlements, 2006 and 2007

A. Total Amount of Fees and Expenses

As I demonstrated in Section III, federal class action settlements involved a great deal of money in 2006 and 2007, some $16 billion a year. A perennial concern with class action litigation is whether class action lawyers are reaping an outsized portion of this money.[62] The 2006–2007 federal class action data suggest that these concerns may be exaggerated. Although class counsel were awarded some $5 billion in fees and expenses over this period, as shown in Table 7, only 13 percent of the settlement amount in 2006 and 20 percent of the amount in 2007 went to fee and expense awards.[63] The 2006 percentage is lower than the 2007 percentage in large part because the class action lawyers in the Enron securities settlement received less than 10 percent of the $6.6 billion corpus. In any event, the percentages in both 2006 and 2007 are far lower than the portions of settlements that contingency-fee lawyers receive in individual litigation, which are usually at least 33 percent.[64] Lawyers received less than 33 percent of settlements in fees and expenses in virtually every subject area in both years.

Counterinsurgency Damages, 41 Loy. L.A.L. Rev. 1455, 1475 n.135 (2008). If these criticisms are valid, then class action settlements would appear even more significant as compared to the tort system.

[61]See Tillinghast-Towers Perrin, U.S. Tort Costs: 2008 Update 5 (2008). The report calculates $252 billion in total tort "costs" in 2007 and $246.9 billion in 2006, id., but only 65 percent of those costs represent payments made to claimants and their lawyers (the remainder represents insurance administration costs and legal costs to defendants). See Tillinghast-Towers Perrin, U.S. Tort Costs: 2003 Update 17 (2003).

[62]See, e.g., Brian T. Fitzpatrick, Do Class Action Lawyers Make Too Little? 158 U. Pa. L. Rev. 2043, 2043–44 (2010).

[63]In some of the partial settlements, see note 29 supra, the district court awarded expenses for all the settlements at once and it was unclear what portion of the expenses was attributable to which settlement. In these instances, I assigned each settlement a pro rata portion of expenses. To the extent possible, all the fee and expense numbers in this article exclude any interest known to be awarded by the courts.

[64]See, e.g., Herbert M. Kritzer, The Wages of Risk: The Returns of Contingency Fee Legal Practice, 47 DePaul L. Rev. 267, 284–86 (1998) (reporting results of a survey of Wisconsin lawyers).

Table 7: The Total Amount of Fees and Expenses Awarded to Class Action Lawyers in Federal Class Action Settlements in 2006 and 2007

	Total Fees and Expenses Awarded in Settlements (and as Percentage of Total Settlement Amounts) in Each Subject Area	
Subject Matter	*2006 (n = 292)*	*2007 (n = 363)*
Securities	$1,899 (11%)	$1,467 (20%)
Labor and employment	$75.1 (28%)	$144.5 (26%)
Consumer	$126.4 (24%)	$65.3 (9%)
Employee benefits	$57.1 (13%)	$71.9 (26%)
Civil rights	$31.0 (12%)	$32.2 (39%)
Debt collection	$2.5 (28%)	$1.1 (19%)
Antitrust	$274.6 (26%)	$157.3 (24%)
Commercial	$347.3 (29%)	$18.2 (15%)
Other	$119.3 (8%)	$103.3 (17%)
Total	$2,932 (13%)	$2,063 (20%)

NOTE: Dollar amounts are in millions. Excludes settlements in which fees were not (or at least not yet) sought (22 settlements), settlements in which fees have not yet been awarded (two settlements), and settlements in which fees could not be ascertained due to indefinite award amounts, missing documents, or nonpublic side agreements (nine settlements).

SOURCES: Westlaw, PACER, district court clerks' offices.

It should be noted that, in some respects, the percentages in Table 7 overstate the portion of settlements that were awarded to class action attorneys because, again, many of these settlements involved indefinite cash relief or noncash relief that could not be valued.[65] If the value of all this relief could have been included, then the percentages in Table 7 would have been even lower. On the other hand, as noted above, not all the money defendants agree to pay in class action settlements is ultimately collected by the class.[66] To the extent leftover money is returned to the defendant, the percentages in Table 7 understate the portion class action lawyers received relative to their clients.

B. Method of Awarding Fees

District court judges have a great deal of discretion in how they set fee awards in class action cases. Under Rule 23, federal judges are told only that the fees they award to class counsel

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[65]Indeed, the large year-to-year variation in the percentages in labor, consumer, and employee benefits cases arose because district courts made particularly large valuations of the equitable relief in a few settlements and used the lodestar method to calculate the fees in these settlements (and thereby did not consider their large valuations in calculating the fees).

[66]See Hensler et al., supra note 7, at 427–30.

must be "reasonable."[67] Courts often exercise this discretion by choosing between two approaches: the lodestar approach or the percentage-of-the-settlement approach.[68] The lodestar approach works much the way it does in individual litigation: the court calculates the fee based on the number of hours class counsel actually worked on the case multiplied by a reasonable hourly rate and a discretionary multiplier.[69] The percentage-of-the-settlement approach bases the fee on the size of the settlement rather than on the hours class counsel actually worked: the district court picks a percentage of the settlement it thinks is reasonable based on a number of factors, one of which is often the fee lodestar (sometimes referred to as a "lodestar cross-check").[70] My 2006–2007 data set shows that the percentage-of-the-settlement approach has become much more common than the lodestar approach. In 69 percent of the settlements reported in Table 7, district court judges employed the percentage-of-the-settlement method with or without the lodestar cross-check. They employed the lodestar method in only 12 percent of settlements. In the other 20 percent of settlements, the court did not state the method it used or it used another method altogether.[71] The pure lodestar method was used most often in consumer (29 percent) and debt collection (45 percent) cases. These numbers are fairly consistent with the Eisenberg-Miller data from 2003 to 2008. They found that the lodestar method was used in only 9.6 percent of settlements.[72] Their number is no doubt lower than the 12 percent number found in my 2006–2007 data set because they excluded fee-shifting cases from their study.

C. Variation in Fees Awarded

Not only do district courts often have discretion to choose between the lodestar method and the percentage-of-the-settlement method, but each of these methods leaves district courts with a great deal of discretion in how the method is ultimately applied. The courts

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[67]Fed. R. Civ. P. 23(h).

[68]The discretion to pick between these methods is most pronounced in settlements where the underlying claim was not found in a statute that would shift attorney fees to the defendant. See, e.g., In re Thirteen Appeals Arising out of San Juan DuPont Plaza Hotel Fire Litig., 56 F.3d 295, 307 (1st Cir. 1995) (permitting either percentage or lodestar method in common-fund cases); Goldberger v. Integrated Res. Inc., 209 F.3d 43, 50 (2d Cir. 2000) (same); Rawlings v. Prudential-Bache Props., Inc., 9 F.3d 513, 516 (6th Cir. 1993) (same). By contrast, courts typically used the lodestar approach in settlements arising from fee-shifting cases.

[69]See Eisenberg & Miller, supra note 15, at 31.

[70]Id. at 31–32.

[71]These numbers are based on the fee method described in the district court's order awarding fees, unless the order was silent, in which case the method, if any, described in class counsel's motion for fees (if it could be obtained) was used. If the court explicitly justified the fee award by reference to its percentage of the settlement, I counted it as the percentage method. If the court explicitly justified the award by reference to a lodestar calculation, I counted it as the lodestar method. If the court explicitly justified the award by reference to both, I counted it as the percentage method with a lodestar cross-check. If the court calculated neither a percentage nor the fee lodestar in its order, then I counted it as an "other" method.

[72]See Eisenberg & Miller II, supra note 16, at 267.

that use the percentage-of-the-settlement method usually rely on a multifactor test[73] and, like most multifactor tests, it can plausibly yield many results. It is true that in many of these cases, judges examine the fee percentages that other courts have awarded to guide their discretion.[74] In addition, the Ninth Circuit has adopted a presumption that 25 percent is the proper fee award percentage in class action cases.[75] Moreover, in securities cases, some courts presume that the proper fee award percentage is the one class counsel agreed to when it was hired by the large shareholder that is now usually selected as the lead plaintiff in such cases.[76] Nonetheless, presumptions, of course, can be overcome and, as one court has put it, "[t]here is no hard and fast rule mandating a certain percentage . . . which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case."[77] The court added: "[i]ndividualization in the exercise of a discretionary power [for fee awards] will alone retain equity as a living system and save it from sterility."[78] It is therefore not surprising that district courts awarded fees over a broad range when they used the percentage-of-the-settlement method. Figure 4 is a graph of the distribution of fee awards as a percentage of the settlement in the 444 cases where district courts used the percentage method with or without a lodestar cross-check and the fee percentages were ascertainable. These fee awards are exclusive of awards for expenses whenever the awards could be separated by examining either the district court's order or counsel's motion for fees and expenses (which was 96 percent of the time). The awards ranged from 3 percent of the settlement to 47 percent of the settlement. The average award was 25.4 percent and the median was 25 percent. Most fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent. The Eisenberg-Miller study through 2008 found a slightly lower mean (24 percent) but the same median (25 percent) among its federal court settlements.[79]

It should be noted that in 218 of these 444 settlements (49 percent), district courts said they considered the lodestar calculation as a factor in assessing the reasonableness of the fee percentages awarded. In 204 of these settlements, the lodestar multiplier resulting

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[73]The Eleventh Circuit, for example, has identified a nonexclusive list of 15 factors that district courts might consider. See Camden I Condo. Ass'n, Inc. v. Dunkle, 946 F.2d 768, 772 n.3, 775 (11th Cir. 1991). See also In re Tyco Int'l, Ltd. Multidistrict Litig., 535 F. Supp. 2d 249, 265 (D.N.H. 2007) (five factors); Goldberger v. Integrated Res. Inc., 209 F.3d 43, 50 (2d Cir. 2000) (six factors); Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000) (seven factors); In re Royal Ahold N.V. Sec. & ERISA Litig., 461 F. Supp. 2d 383, 385 (D. Md. 2006) (13 factors); Brown v. Phillips Petroleum Co., 838 F.2d 451, 454 (10th Cir. 1988) (12 factors); In re Baan Co. Sec. Litig., 288 F. Supp. 2d 14, 17 (D.D.C. 2003) (seven factors).

[74]See Eisenberg & Miller, supra note 15, at 32.

[75]See Staton v. Boeing Co., 327 F.3d 938, 968 (9th Cir. 2003).

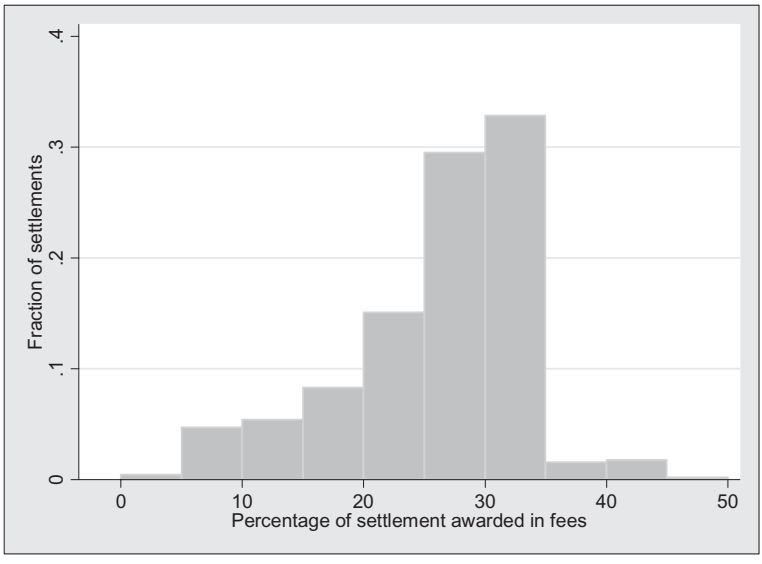
[76]See, e.g., In re Cendant Corp. Litig., 264 F.3d 201, 282 (3d Cir. 2001).

[77]*Camden I Condo. Ass'n*, 946 F.2d at 774.

[78]*Camden I Condo. Ass'n*, 946 F.2d at 774 (alterations in original and internal quotation marks omitted).

[79]See Eisenberg & Miller II, supra note 16, at 259.

Figure 4: The distribution of 2006–2007 federal class action fee awards using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

from the fee award could be ascertained. The lodestar multiplier in these cases ranged from 0.07 to 10.3, with a mean of 1.65 and a median of 1.34. Although there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration, these lodestar numbers—only one multiplier above 6.0, with the bulk of the range not much above 1.0—strike me as fairly parsimonious for the risk that goes into any piece of litigation and cast doubt on the notion that the percentage-of-the-settlement method results in windfalls to class counsel.[80]

Table 8 shows the mean and median fee percentages awarded in each litigation subject area. The fee percentages did not appear to vary greatly across litigation subject areas, with most mean and median awards between 25 percent and 30 percent. As I report later in this section, however, after controlling for other variables, there were statistically significant differences in the fee percentages awarded in some subject areas compared to others. The mean and median percentages for securities cases were 24.7 percent and 25.0 percent, respectively; for all nonsecurities cases, the mean and median were 26.1 percent and 26.0 percent, respectively. The Eisenberg-Miller study through 2008 found mean awards ranging from 21–27 percent and medians from 19–25 percent,[81] a bit lower than the ranges in my

[80]It should be emphasized, of course, that these 204 settlements may not be representative of the settlements where the percentage-of-the-settlement method was used without the lodestar cross-check.

[81]See Eisenberg & Miller II, supra note 16, at 262.

Table 8: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Percentage of Settlement Awarded as Fees	
Subject Matter	*Mean*	*Median*
Securities ($n = 233$)	24.7	25.0
Labor and employment ($n = 61$)	28.0	29.0
Consumer ($n = 39$)	23.5	24.6
Employee benefits ($n = 37$)	26.0	28.0
Civil rights ($n = 20$)	29.0	30.3
Debt collection ($n = 5$)	24.2	25.0
Antitrust ($n = 23$)	25.4	25.0
Commercial ($n = 7$)	23.3	25.0
Other ($n = 19$)	24.9	26.0
All ($N = 444$)	25.7	25.0

SOURCES: Westlaw, PACER, district court clerks' offices.

2006–2007 data set, which again, may be because they oversampled larger settlements (as I show below, district courts awarded smaller fee percentages in larger cases).

In light of the fact that, as I noted above, the distribution of class action settlements among the geographic circuits does not track their civil litigation dockets generally, it is interesting to ask whether one reason for the pattern in class action cases is that circuits oversubscribed with class actions award higher fee percentages. Although this question will be taken up with more sophistication in the regression analysis below, it is worth describing here the mean and median fee percentages in each of the circuits. Those data are presented in Table 9. Contrary to the hypothesis set forth in Section III, two of the circuits most oversubscribed with class actions, the Second and the Ninth, were the only circuits in which the mean fee awards were *under* 25 percent. As I explain below, these differences are statistically significant and remain so after controlling for other variables.

The lodestar method likewise permits district courts to exercise a great deal of leeway through the application of the discretionary multiplier. Figure 5 shows the distribution of lodestar multipliers in the 71 settlements in which district courts used the lodestar method and the multiplier could be ascertained. The average multiplier was 0.98 and the median was 0.92, which suggest that courts were not terribly prone to exercise their discretion to deviate from the amount of money encompassed in the lodestar calculation. These 71

Table 9: Fee Awards in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Percentage of Settlement Awarded as Fees	
Circuit	*Mean*	*Median*
First ($n = 27$)	27.0	25.0
Second ($n = 72$)	23.8	24.5
Third ($n = 50$)	25.4	29.3
Fourth ($n = 19$)	25.2	28.0
Fifth ($n = 27$)	26.4	29.0
Sixth ($n = 25$)	26.1	28.0
Seventh ($n = 39$)	27.4	29.0
Eighth ($n = 15$)	26.1	30.0
Ninth ($n = 111$)	23.9	25.0
Tenth ($n = 18$)	25.3	25.5
Eleventh ($n = 35$)	28.1	30.0
DC ($n = 6$)	26.9	26.0

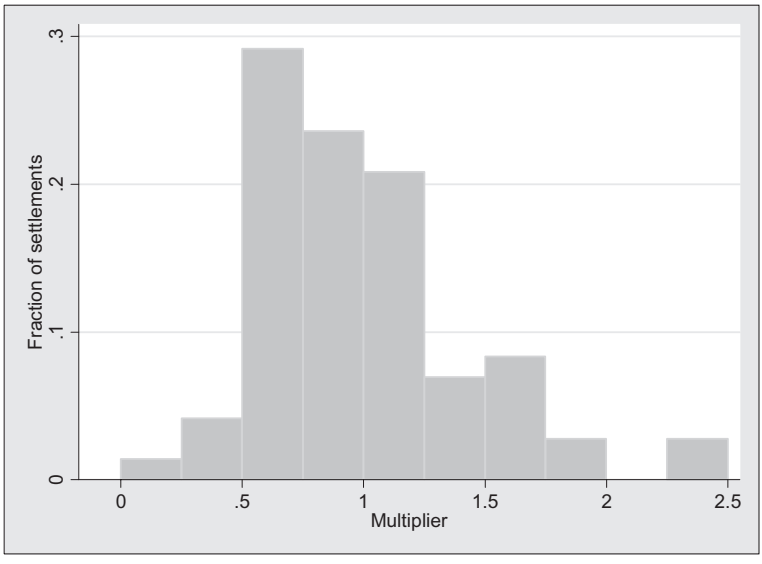
Sources: Westlaw, PACER, district court clerks' offices.

settlements were heavily concentrated within the consumer (median multiplier 1.13) and debt collection (0.66) subject areas. If cases in which district courts used the percentage-of-the-settlement method with a lodestar cross-check are combined with the lodestar cases, the average and median multipliers (in the 263 cases where the multipliers were ascertainable) were 1.45 and 1.19, respectively. Again—putting to one side the possibility that class counsel are optimistic with their timesheets—these multipliers appear fairly modest in light of the risk involved in any piece of litigation.

D. Factors Influencing Percentage Awards

Whether district courts are exercising their discretion over fee awards wisely is an important public policy question given the amount of money at stake in class action settlements. As shown above, district court judges awarded class action lawyers nearly $5 billion in fees and expenses in 2006–2007. Based on the comparison to the tort system set forth in Section III, it is not difficult to surmise that in the 350 or so settlements every year, district court judges

Figure 5: The distribution of lodestar multipliers in 2006–2007 federal class action fee awards using the lodestar method.



SOURCES: Westlaw, PACER, district court clerks' offices.

are awarding a significant portion of all the annual compensation received by contingency-fee lawyers in the United States. Moreover, contingency fees are arguably the engine that drives much of the noncriminal regulation in the United States; unlike many other nations, we regulate largely through the ex post, decentralized device of litigation.[82] To the extent district courts could have exercised their discretion to award billions more or billions less to class action lawyers, district courts have been delegated a great deal of leeway over a big chunk of our regulatory horsepower. It is therefore worth examining how district courts exercise their discretion over fees. This examination is particularly important in cases where district courts use the percentage-of-the-settlement method to award fees: not only do such cases comprise the vast majority of settlements, but they comprise the vast majority of the money awarded as fees. As such, the analysis that follows will be confined to the 444 settlements where the district courts used the percentage-of-the-settlement method.

As I noted, prior empirical studies have shown that fee percentages are strongly and inversely related to the size of the settlement both in securities fraud and other cases. As shown in Figure 6, the 2006–2007 data are consistent with prior studies. Regression analysis, set forth in more detail below, confirms that after controlling for other variables, fee percentage is strongly and inversely associated with settlement size among all cases, among securities cases, and among all nonsecurities cases.

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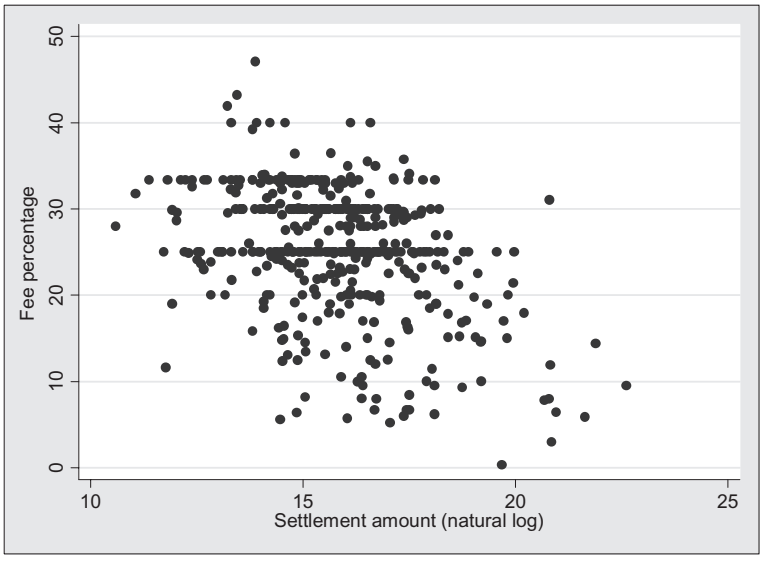
[82]See, e.g., Samuel Issacharoff, Regulating after the Fact, 56 DePaul L. Rev. 375, 377 (2007).

Figure 6: Fee awards as a function of settlement size in 2006–2007 class action cases using the percentage-of-the-settlement method with or without lodestar cross-check.



SOURCES: Westlaw, PACER, district court clerks' offices.

As noted above, courts often look to fee percentages in other cases as one factor they consider in deciding what percentage to award in a settlement at hand. In light of this practice, and in light of the fact that the size of the settlement has such a strong relationship to fee percentages, scholars have tried to help guide the practice by reporting the distribution of fee percentages across different settlement sizes.[83] In Table 10, I follow the Eisenberg-Miller studies and attempt to contribute to this guidance by setting forth the mean and median fee percentages, as well as the standard deviation, for each decile of the 2006–2007 settlements in which courts used the percentage-of-the-settlement method to award fees. The mean percentages ranged from over 28 percent in the first decile to less than 19 percent in the last decile.

It should be noted that the last decile in Table 10 covers an especially wide range of settlements, those from $72.5 million to the Enron settlement of $6.6 billion. To give more meaningful data to courts that must award fees in the largest settlements, Table 11 shows the last decile broken into additional cut points. When both Tables 10 and 11 are examined together, it appears that fee percentages tended to drift lower at a fairly slow pace until a settlement size of $100 million was reached, at which point the fee percentages plunged well below 20 percent, and by the time $500 million was reached, they plunged well below 15 percent, with most awards at that level under even 10 percent.

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[83]See Eisenberg & Miller II, supra note 16, at 265.

Table 10: Mean, Median, and Standard Deviation of Fee Awards by Settlement Size in 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Settlement Size (in Millions)	*Mean*	*Median*	SD
[$0 to $0.75] ($n = 45$)	28.8%	29.6%	6.1%
($0.75 to $1.75] ($n = 44$)	28.7%	30.0%	6.2%
($1.75 to $2.85] ($n = 45$)	26.5%	29.3%	7.9%
($2.85 to $4.45] ($n = 45$)	26.0%	27.5%	6.3%
($4.45 to $7.0] ($n = 44$)	27.4%	29.7%	5.1%
($7.0 to $10.0] ($n = 43$)	26.4%	28.0%	6.6%
($10.0 to $15.2] ($n = 45$)	24.8%	25.0%	6.4%
($15.2 to $30.0] ($n = 46$)	24.4%	25.0%	7.5%
($30.0 to $72.5] ($n = 42$)	22.3%	24.9%	8.4%
($72.5 to $6,600] ($n = 45$)	18.4%	19.0%	7.9%

SOURCES: Westlaw, PACER, district court clerks' offices.

Table 11: Mean, Median, and Standard Deviation of Fee Awards of the Largest 2006–2007 Federal Class Action Settlements Using the Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

Settlement Size (in Millions)	*Mean*	*Median*	SD
($72.5 to $100] ($n = 12$)	23.7%	24.3%	5.3%
($100 to $250] ($n = 14$)	17.9%	16.9%	5.2%
($250 to $500] ($n = 8$)	17.8%	19.5%	7.9%
($500 to $1,000] ($n = 2$)	12.9%	12.9%	7.2%
($1,000 to $6,600] ($n = 9$)	13.7%	9.5%	11%

SOURCES: Westlaw, PACER, district court clerks' offices.

Prior empirical studies have not examined whether fee awards are associated with the political affiliation of the district court judges making the awards. This is surprising because realist theories of judicial behavior would predict that political affiliation would influence fee decisions.[84] It is true that as a general matter, political affiliation may influence district court judges to a lesser degree than it does appellate judges (who have been the focus of most of the prior empirical studies of realist theories): district court judges decide more routine cases and are subject to greater oversight on appeal than appellate judges. On the other hand, class action settlements are a bit different in these regards than many other decisions made by district court judges. To begin with, class action settlements are almost never appealed, and when they are, the appeals are usually settled before the appellate court hears the case.[85] Thus, district courts have much less reason to worry about the constraint of appellate review in fashioning fee awards. Moreover, one would think the potential for political affiliation to influence judicial decision making is greatest when legal sources lead to indeterminate outcomes and when judicial decisions touch on matters that are salient in national politics. (The more salient a matter is, the more likely presidents will select judges with views on the matter and the more likely those views will diverge between Republicans and Democrats.) Fee award decisions would seem to satisfy both these criteria. The law of fee awards, as explained above, is highly discretionary, and fee award decisions are wrapped up in highly salient political issues such as tort reform and the relative power of plaintiffs' lawyers and corporations. I would expect to find that judges appointed by Democratic presidents awarded higher fees in the 2006–2007 settlements than did judges appointed by Republican presidents.

The data, however, do not appear to bear this out. Of the 444 fee awards using the percentage-of-the-settlement approach, 52 percent were approved by Republican appointees, 45 percent were approved by Democratic appointees, and 4 percent were approved by non-Article III judges (usually magistrate judges). The mean fee percentage approved by Republican appointees (25.6 percent) was slightly *greater* than the mean approved by Democratic appointees (24.9 percent). The medians (25 percent) were the same.

To examine whether the realist hypothesis fared better after controlling for other variables, I performed regression analysis of the fee percentage data for the 427 settlements approved by Article III judges. I used ordinary least squares regression with the dependent variable the percentage of the settlement that was awarded in fees.[86] The independent

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[84]See generally C.K. Rowland & Robert A. Carp, Politics and Judgment in Federal District Courts (1996). See also Max M. Schanzenbach & Emerson H. Tiller, Reviewing the Sentencing Guidelines: Judicial Politics, Empirical Evidence, and Reform, 75 U. Chi. L. Rev. 715, 724–25 (2008).

[85]See Brian T. Fitzpatrick, The End of Objector Blackmail? 62 Vand. L. Rev. 1623, 1640, 1634–38 (2009) (finding that less than 10 percent of class action settlements approved by federal courts in 2006 were appealed by class members).

[86]Professors Eisenberg and Miller used a square root transformation of the fee percentages in some of their regressions. I ran all the regressions using this transformation as well and it did not appreciably change the results. I also ran the regressions using a natural log transformation of fee percentage and with the dependent variable natural log of the fee amount (as opposed to the fee percentage). None of these models changed the results

variables were the natural log of the amount of the settlement, the natural log of the age of the case (in days), indicator variables for whether the class was certified as a settlement class, for litigation subject areas, and for circuits, as well as indicator variables for whether the judge was appointed by a Republican or Democratic president and for the judge's race and gender.[87]

The results for five regressions are in Table 12. In the first regression (Column 1), only the settlement amount, case age, and judge's political affiliation, gender, and race were included as independent variables. In the second regression (Column 2), all the independent variables were included. In the third regression (Column 3), only securities cases were analyzed, and in the fourth regression (Column 4), only nonsecurities cases were analyzed.

In none of these regressions was the political affiliation of the district court judge associated with fee percentage in a statistically significant manner.[88] One possible explanation for the lack of evidence for the realist hypothesis is that district court judges elevate other preferences above their political and ideological ones. For example, district courts of both political stripes may succumb to docket-clearing pressures and largely rubber stamp whatever fee is requested by class counsel; after all, these requests are rarely challenged by defendants. Moreover, if judges award class counsel whatever they request, class counsel will not appeal and, given that, as noted above, class members rarely appeal settlements (and when they do, often settle them before the appeal is heard),[89] judges can thereby virtually guarantee there will be no appellate review of their settlement decisions. Indeed, scholars have found that in the vast majority of cases, the fees ultimately awarded by federal judges are little different than those sought by class counsel.[90]

Another explanation for the lack of evidence for the realist hypothesis is that my data set includes both unpublished as well as published decisions. It is thought that realist theories of judicial behavior lose force in unpublished judicial decisions. This is the case because the kinds of questions for which realist theories would predict that judges have the most room to let their ideologies run are questions for which the law is ambiguous; it is

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appreciably. The regressions were also run with and without the 2006 Enron settlement because it was such an outlier ($6.6 billion); the case did not change the regression results appreciably. For every regression, the data and residuals were inspected to confirm the standard assumptions of linearity, homoscedasticity, and the normal distribution of errors.

[87]Prior studies of judicial behavior have found that the race and sex of the judge can be associated with his or her decisions. See, e.g., Adam B. Cox & Thomas J. Miles, Judging the Voting Rights Act, 108 Colum. L. Rev. 1 (2008); Donald R. Songer et al., A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals, 56 J. Pol. 425 (1994).

[88]Although these coefficients are not reported in Table 8, the gender of the district court judge was never statistically significant. The race of the judge was only occasionally significant.

[89]See Fitzpatrick, supra note 85, at 1640.

[90]See Eisenberg & Miller II, supra note 16, at 270 (finding that state and federal judges awarded the fees requested by class counsel in 72.5 percent of settlements); Eisenberg, Miller & Perino, supra note 9, at 22 ("judges take a light touch when it comes to reviewing fee requests").

Table 12: Regression of Fee Percentages in 2006–2007 Settlements Using Percentage-of-the-Settlement Method With or Without Lodestar Cross-Check

	Regression Coefficients (and Robust t *Statistics)*				
Independent Variable	*1*	*2*	*3*	*4*	*5*
Settlement amount (natural log)	−1.77	−1.76	−1.76	−1.41	−1.78
	(−5.43)**	(−8.52)**	(−7.16)**	(−4.00)**	(−8.67)**
Age of case (natural log days)	1.66	1.99	1.13	1.72	2.00
	(2.31)**	(2.71)**	(1.21)	(1.47)	(2.69)**
Judge's political affiliation (1 = Democrat)	−0.630	−0.345	0.657	−1.43	−0.232
	(−0.83)	(−0.49)	(0.76)	(−1.20)	(−0.34)
Settlement class		0.150	0.873	−1.62	0.124
		(0.19)	(0.84)	(−1.00)	(0.15)
1st Circuit		3.30	4.41	0.031	0.579
		(2.74)**	(3.32)**	(0.01)	(0.51)
2d Circuit		0.513	−0.813	2.93	−2.23
		(0.44)	(−0.61)	(1.14)	(−1.98)**
3d Circuit		2.25	4.00	−1.11	—
		(1.99)**	(3.85)**	(−0.50)	
4th Circuit		2.34	0.544	3.81	—
		(1.22)	(0.19)	(1.35)	
5th Circuit		2.98	1.09	6.11	0.230
		(1.90)*	(0.65)	(1.97)**	(0.15)
6th Circuit		2.91	0.838	4.41	—
		(2.28)**	(0.57)	(2.15)**	
7th Circuit		2.55	3.22	2.90	−0.227
		(2.23)**	(2.36)**	(1.46)	(−0.20)
8th Circuit		2.12	−0.759	3.73	−0.586
		(0.97)	(−0.24)	(1.19)	(−0.28)
9th Circuit		—	—	—	−2.73
					(−3.44)**
10th Circuit		1.45	−0.254	3.16	—
		(0.94)	(−0.13)	(1.29)	
11th Circuit		4.05	3.85	4.14	—
		(3.44)**	(3.07)**	(1.88)*	
DC Circuit		2.76	2.60	2.41	—
		(1.10)	(0.80)	(0.64)	
Securities case		—			—
Labor and employment case		2.93		—	2.85
		(3.00)**			(2.94)**
Consumer case		−1.65		−4.39	−1.62
		(−0.88)		(−2.20)**	(−0.88)
Employee benefits case		−0.306		−4.23	−0.325
		(−0.23)		(−2.55)**	(−0.26)
Civil rights case		1.85		−2.05	1.76
		(0.99)		(−0.97)	(0.95)
Debt collection case		−4.93		−7.93	−5.04
		(−1.71)*		(−2.49)**	(−1.75)*
Antitrust case		3.06		0.937	2.78
		(2.11)**		(0.47)	(1.98)**

Table 12 *Continued*

	Regression Coefficients (and Robust t *Statistics)*				
Independent Variable	*1*	*2*	*3*	*4*	*5*
Commercial case		−0.028		−2.65	0.178
		(−0.01)		(−0.73)	(0.05)
Other case		−0.340		−3.73	−0.221
		(−0.17)		(−1.65)	(−0.11)
Constant	42.1	37.2	43.0	38.2	40.1
	(7.29)**	(6.08)**	(6.72)**	(4.14)**	(7.62)**
N	427	427	232	195	427
R^2	.20	.26	.37	.26	.26
Root MSE	6.59	6.50	5.63	7.24	6.48

NOTE: **significant at the 5 percent level; *significant at the 10 percent level. Standard errors in Column 1 were clustered by circuit. Indicator variables for race and gender were included in each regression but not reported.

SOURCES: Westlaw, PACER, district court clerks' offices, Federal Judicial Center.

thought that these kinds of questions are more often answered in published opinions.[91] Indeed, most of the studies finding an association between ideological beliefs and case outcomes were based on data sets that included only published opinions.[92] On the other hand, there is a small but growing number of studies that examine unpublished opinions as well, and some of these studies have shown that ideological effects persisted.[93] Nonetheless, in light of the discretion that judges exercise with respect to fee award decisions, it hard to characterize *any* decision in this area as "unambiguous." Thus, even when unpublished, I would have expected the fee award decisions to exhibit an association with ideological beliefs. Thus, I am more persuaded by the explanation suggesting that judges are more concerned with clearing their dockets or insulating their decisions from appeal in these cases than with furthering their ideological beliefs.

In all the regressions, the size of the settlement was strongly and inversely associated with fee percentages. Whether the case was certified as a settlement class was not associated

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[91]See, e.g., Ahmed E. Taha, Data and Selection Bias: A Case Study, 75 UMKC L. Rev. 171, 179 (2006).

[92]Id. at 178–79.

[93]See, e.g., David S. Law, Strategic Judicial Lawmaking: Ideology, Publication, and Asylum Law in the Ninth Circuit, 73 U. Cin. L. Rev. 817, 843 (2005); Deborah Jones Merritt & James J. Brudney, Stalking Secret Law: What Predicts Publication in the United States Courts of Appeals, 54 Vand. L. Rev. 71, 109 (2001); Donald R. Songer, Criteria for Publication of Opinions in the U.S. Courts of Appeals: Formal Rules Versus Empirical Reality, 73 Judicature 307, 312 (1990). At the trial court level, however, the studies of civil cases have found no ideological effects. See Laura Beth Nielsen, Robert L. Nelson & Ryon Lancaster, Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States, 7 J. Empirical Legal Stud. 175, 192–93 (2010); Denise M. Keele et al., An Analysis of Ideological Effects in Published Versus Unpublished Judicial Opinions, 6 J. Empirical Legal Stud. 213, 230 (2009); Orley Ashenfelter, Theodore Eisenberg & Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257, 276–77 (1995). With respect to criminal cases, there is at least one study at the trial court level that has found ideological effects. See Schanzenbach & Tiller, supra note 81, at 734.

with fee percentages in any of the regressions. The age of the case at settlement was associated with fee percentages in the first two regressions, and when the settlement class variable was removed in regressions 3 and 4, the age variable became positively associated with fee percentages in nonsecurities cases but remained insignificant in securities cases. Professors Eisenberg and Miller likewise found that the age of the case at settlement was positively associated with fee percentages in their 1993–2002 data set,[94] and that settlement classes were not associated with fee percentages in their 2003–2008 data set.[95]

Although the structure of these regressions did not permit extensive comparisons of fee awards across different litigation subject areas, fee percentages appeared to vary somewhat depending on the type of case that settled. Securities cases were used as the baseline litigation subject area in the second and fifth regressions, permitting a comparison of fee awards in each nonsecurities area with the awards in securities cases. These regressions show that awards in a few areas, including labor/employment and antitrust, were more lucrative than those in securities cases. In the fourth regression, which included only nonsecurities cases, labor and employment cases were used as the baseline litigation subject area, permitting comparison between fee percentages in that area and the other nonsecurities areas. This regression shows that fee percentages in several areas, including consumer and employee benefits cases, were lower than the percentages in labor and employment cases.

In the fifth regression (Column 5 of Table 12), I attempted to discern whether the circuits identified in Section III as those with the most overrepresented (the First, Second, Seventh, and Ninth) and underrepresented (the Fifth and Eighth) class action dockets awarded attorney fees differently than the other circuits. That is, perhaps district court judges in the First, Second, Seventh, and Ninth Circuits award greater percentages of class action settlements as fees than do the other circuits, whereas district court judges in the Fifth and Eighth Circuits award smaller percentages. To test this hypothesis, in the fifth regression, I included indicator variables only for the six circuits with unusual dockets to measure their fee awards against the other six circuits combined. The regression showed statistically significant association with fee percentages for only two of the six unusual circuits: the Second and Ninth Circuits. In both cases, however, the direction of the association (i.e., the Second and Ninth Circuits awarded *smaller* fees than the baseline circuits) was opposite the hypothesized direction.[96]

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[94]See Eisenberg & Miller, supra note 15, at 61.

[95]See Eisenberg & Miller II, supra note 16, at 266.

[96]This relationship persisted when the regressions were rerun among the securities and nonsecurities cases separately. I do not report these results, but, even though the First, Second, and Ninth Circuits were oversubscribed with securities class action settlements and the Fifth, Sixth, and Eighth were undersubscribed, there was no association between fee percentages and any of these unusual circuits except, again, the inverse association with the Second and Ninth Circuits. In nonsecurities cases, even though the Seventh and Ninth Circuits were oversubscribed and the Fifth and the Eighth undersubscribed, there was no association between fee percentages and any of these unusual circuits except again for the inverse association with the Ninth Circuit.

The lack of the expected association with the unusual circuits might be explained by the fact that class action lawyers forum shop along dimensions other than their potential fee awards; they might, for example, put more emphasis on favorable class-certification law because there can be no fee award if the class is not certified. As noted above, it might also be the case that class action lawyers are unable to engage in forum shopping at all because defendants are able to transfer venue to the district in which they are headquartered or another district with a significant connection to the litigation.

It is unclear why the Second and Ninth Circuits were associated with lower fee awards despite their heavy class action dockets. Indeed, it should be noted that the Ninth Circuit was the baseline circuit in the second, third, and fourth regressions and, in all these regressions, district courts in the Ninth Circuit awarded smaller fees than courts in many of the other circuits. The lower fees in the Ninth Circuit may be attributable to the fact that it has adopted a presumption that the proper fee to be awarded in a class action settlement is 25 percent of the settlement.[97] This presumption may make it more difficult for district court judges to award larger fee percentages. The lower awards in the Second Circuit are more difficult to explain, but it should be noted that the difference between the Second Circuit and the baseline circuits went away when the fifth regression was rerun with only nonsecurities cases.[98] This suggests that the awards in the Second Circuit may be lower *only* in securities cases. In any event, it should be noted that the lower fee awards from the Second and Ninth Circuits contrast with the findings in the Eisenberg-Miller studies, which found no intercircuit differences in fee awards in common-fund cases in their data through 2008.[99]

V. Conclusion

This article has attempted to fill some of the gaps in our knowledge about class action litigation by reporting the results of an empirical study that attempted to collect all class action settlements approved by federal judges in 2006 and 2007. District court judges approved 688 class action settlements over this two-year period, involving more than $33 billion. Of this $33 billion, nearly $5 billion was awarded to class action lawyers, or about 15 percent of the total. District courts typically awarded fees using the highly discretionary percentage-of-the-settlement method, and fee awards varied over a wide range under this method, with a mean and median around 25 percent. Fee awards using this method were strongly and inversely associated with the size of the settlement. Fee percentages were positively associated with the age of the case at settlement. Fee percentages were not associated with whether the class action was certified as a settlement class or with the

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[97]See note 75 supra. It should be noted that none of the results from the previous regressions were affected when the Ninth Circuit settlements were excluded from the data.

[98]The Ninth Circuit's differences persisted.

[99]See Eisenberg & Miller II, supra note 16, at 260.

political affiliation of the judge who made the award. Finally, there appeared to be some variation in fee percentages depending on subject matter of the litigation and the geographic circuit in which the district court was located. Fee percentages in securities cases were lower than the percentages in some but not all of the other litigation areas, and district courts in the Ninth Circuit and in the Second Circuit (in securities cases) awarded lower fee percentages than district courts in several other circuits. The lower awards in the Ninth Circuit may be attributable to the fact that it is the only circuit that has adopted a presumptive fee percentage of 25 percent.

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Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, REPORT ON CONTINGENT FEES IN MASS TORT LITIGATION, 42 Tort Trial & Insurance Practice Law Journal 105 (2006), available at http://www.jstor.org/stable/25763828

Invited Academic Member, ABA/Tort Trial & Insurance Practice Section, Task Force on Contingent Fees, REPORT ON CONTINGENT FEES IN MEDICAL MALPRACTICE LITIGATION (2004) available at http://apps.americanbar.org/tips/contingent/MedMalReport092004DCW2.pdf; published at 25 REV. LITIG. 459 (2006).

Co-Reporter, Practical Guide for Insurance Defense Lawyers, International Association of Defense Counsel (2002) (with Ellen S. Pryor and Kent D. Syverud) (published on the IADC website in 2003 and revised and distributed to all IADC members as a supplement to the Defense Counsel J. in January 2004).

BOOKS

TO SUE IS HUMAN: MEDICAL MALPRACTICE LITIGATION IN TEXAS 1988-2010 (with Bernard Black, David Hyman, Myungho Paik, and William Sage) (in progress).

HEALTH LAW AND ECONOMICS, Edward Elgar (coedited with Ronen Avraham and David Hyman) (in progress).

Law of Class Actions and Other Aggregate Litigation, 2nd Edition, Foundation Press (2013) (with Richard Nagareda, Robert Bone, Elizabeth Burch and Patrick Woolley).

Professional Responsibilities of Insurance Defense Counsel, LexisNexis Mathew Bender (2012) (with William T. Barker); (Updated 2013); (Updated 2014).

WORKS IN PROGRESS

1. "Philosophers and Fiduciaries" (in progress) (presented at several law schools and conferences).

2. "The DOMA Sideshow" (in progress), available at http://ssrn.com/abstract=2584709.

Publications (* indicated Peer Reviewed)

Health Care Law & Policy

3. "Fix Problems Where They Arise: The Liability System Is Not To Blame For The Problems of Healthcare," Oxford Handbook of American Health Law (Glenn I. Cohen,

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Allison Hoffman, and William Sage, eds.) (forthcoming 2015) (with David A. Hyman) (invited chapter).

4. "Double, Double, Toil and Trouble: Justice-Talk and the Future of Medical Malpractice Litigation," 63 DePaul L. Rev. 574 (2014) (with David A. Hyman) (invited symposium).

5. "Five Myths of Medical Malpractice," 143:1 Chest 222-227 (January 2013) (with David A. Hyman) (peer-reviewed).

6. "Health Care Quality, Patient Safety and the Culture of Medicine: 'Denial Ain't Just A River in Egypt,'" (coauthored with David A. Hyman), 46 New England L. Rev. 101 (2012) (invited symposium).

7. "Medical Malpractice and Compensation in Global Perspective: How Does the U.S. Do It?", in Ken Oliphant & Richard W. Wright (eds.) MEDICAL MALPRACTICE AND COMPENSATION IN GLOBAL PERSPECTIVE (2013), originally published in 87 Chicago-Kent L. Rev. 163 (2012) (coauthored with David A. Hyman).

8. "Justice Has (Almost) Nothing to Do With It: Medical Malpractice and Tort Reform," in Rosamond Rhodes, Margaret P. Battin, and Anita Silvers, eds., MEDICINE AND SOCIAL JUSTICE, Oxford University Press 531-542 (2012) (with David A. Hyman) (peer reviewed).

9. "Medical Malpractice Litigation and Tort Reform: It's the Incentives, Stupid," 59 Vanderbilt L. Rev. 1085 (2006) (with David A. Hyman) (invited symposium).

10. "Medical Malpractice Reform Redux: Déjà Vu All Over Again?" XII Widener L. J. 121 (2005) (with David A. Hyman) (invited symposium).

11. "Speak Not of Error, Regulation (Spring 2005) (with David A. Hyman).

12. "The Poor State of Health Care Quality in the U.S.: Is Malpractice Liability Part of the Problem or Part of the Solution?," 90 Cornell L. Rev. 893 (2005) (with David A. Hyman).

13. "Believing Six Improbable Things: Medical Malpractice and 'Legal Fear,'" 28 Harv. J. L. and Pub. Pol. 107 (2004) (with David A. Hyman) (invited symposium).

14. "You Get What You Pay For: Result-Based Compensation for Health Care," 58 Wash. & Lee L. Rev. 1427 (2001) (with David A. Hyman).

15. "The Case for Result-Based Compensation in Health Care," 29 J. L. Med. & Ethics 170 (2001) (with David A. Hyman).

Empirical Studies of Medical Malpractice

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16. "Insurance Crisis or Liability Crisis? Medical Malpractice Claiming in Illinois, 1980-2010**,"** (with Bernard S. Black, David A. Hyman, and Mohammad H. Rahmati) (in progress), available at http://ssrn.com/abstract=2462942.

17. "Policy Limits, Payouts, and Blood Money: Another Look at Med Mal Settlements in the Shadow of Insurance," U.C. Irvine L. Rev. (forthcoming 2015) (with Bernard S. Black, David A. Hyman, and Myungho Paik) (invited symposium).

18. "Does Tort Reform Affect Physician Supply? Evidence from Texas," Int'l Rev. of L. & Econ. (2015) (with David A. Hyman, Bernard S. Black and Myungho Paik) (peer-reviewed), available at http://dx.doi.org/10.1016/j.irle.2015.02.002.

19. "How do the Elderly Fare in Medical Malpractice Litigation, Before and After Tort Reform? Evidence From Texas" (with Bernard Black, David A. Hyman, Myungho Paik, and William Sage), Amer. L. & Econ. Rev. (2012), doi: 10.1093/aler/ahs017 (peer-reviewed).

20. "Will Tort Reform Bend the Cost Curve? Evidence from Texas" (with Bernard Black, David A. Hyman, Myungho Paik), 9 J. Empirical Legal Stud. 173-216 (2012) (peer-reviewed).

21. "O'Connell Early Settlement Offers: Toward Realistic Numbers and Two-Sided Offers," 7 J. Empirical Legal Stud. 379 (2010) (with Bernard Black and David A. Hyman) (peer reviewed).

22. "The Effects of 'Early Offers' on Settlement: Evidence From Texas Medical Malpractice Cases, 6 J. Empirical Legal Stud. 723 (2009) (with David A. Hyman and Bernard S. Black) (peer-reviewed).

23. **"**Estimating the Effect of Damage Caps in Medical Malpractice Cases: Evidence from Texas," 1 J. Legal Analysis 355 (2009) (with David A. Hyman, Bernard S. Black, and William M. Sage) (inaugural issue) (peer-reviewed).

24. "The Impact of the 2003 Texas Medical Malpractice Damages Cap on Physician Supply and Insurer Payouts: Separating Facts from Rhetoric," 44 The Advocate (Texas) 25 (2008) (with David A. Hyman and Bernard Black) (invited symposium).

25. "Malpractice Payouts and Malpractice Insurance: Evidence from Texas Closed Claims, 1990-2003," 33 Geneva Papers on Risk and Insurance: Issues and Practice 177-192 (2008) (with David A. Hyman, Bernard S. Black, William M. Sage and Kathryn Zeiler) (peer-reviewed).

26. "Physicians' Insurance Limits and Malpractice Payments: Evidence from Texas Closed Claims 1990-2003," 36 J. Legal Stud. S9 (2007) (with Bernard Black, David A. Hyman, William Sage, and Kathryn Zeiler) (peer-reviewed).

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27. "Do Defendants Pay What Juries Award? Post-Verdict Haircuts in Texas Medical Malpractice Cases, 1988-2003," J. Empirical Legal Stud. 3-68 (2007) (with Bernard Black, David A. Hyman, William M. Sage, and Kathryn Zeiler) (peer-reviewed).

28. "Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002," 2 J. Empirical Legal Stud. 207–259 (July 2005) (with Bernard Black, David A. Hyman, and William S. Sage) (peer-reviewed).

Empirical Studies of the Law Firms and Legal Services

29. "The Economics of Plaintiff-Side Personal Injury Practice," U. Il. L. Rev. (forthcoming 2015) (with David A. Hyman and Bernard S. Black).

30. "Access to Justice in a World without Lawyers: Evidence from Texas Bodily Injury Claims," 37 Fordham Urb. L. J. 357 (2010) (with David A. Hyman) (invited symposium).

31. "Defense Costs and Insurer Reserves in Medical Malpractice and Other Personal Injury Cases: Evidence from Texas, 1988-2004," 10 Amer. Law & Econ. Rev. 185 (2008) (with Bernard Black, David A. Hyman, and William M. Sage) (peer-reviewed).

Attorneys' Fees—Empirical Studies and Policy Analyses

32. "Is the Price Right? An Empirical Study of Fee-Setting in Securities Class Actions," Columbia L. Rev. (forthcoming 2015) (with Lynn A. Baker and Michael A. Perino).

33. "Regulation of Fee Awards in the Fifth Circuit," 67 The Advocate (Texas) 36 (2014) (invited submission).

34. "Setting Attorneys' Fees In Securities Class Actions: An Empirical Assessment," 66 Vanderbilt L. Rev. 1677 (2013) (with Lynn A. Baker and Michael A. Perino).

35. "The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal," 63 Vanderbilt L. Rev. 107 (2010) (with Geoffrey P. Miller).

36. "Incentivizing Institutional Investors to Serve as Lead Plaintiffs in Securities Fraud Class Actions," 57 DePaul L. Rev. 471 (2008) (with Sam Dinkin) (invited symposium), reprinted in L. Padmavathi, ed., SECURITIES FRAUD: REGULATORY DIMENSIONS (2009).

37. Reasonable Attorneys' Fees in Securities Class Actions: A Reply to Mr. Schneider, 20 The NAPPA Report 7 (Aug. 2006).

38. "Dissent from Recommendation to Set Fees Ex Post," 25 Rev. of Litig. 497 (2006) (accompanied Task Force on Contingent Fees, Tort Trial and Insurance Practice Section of the American Bar Association, "Report on Contingent Fees in Class Action Litigation," 25 Rev. of Litig. 459 (2006)).

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39. "Due Process and the Lodestar Method: You Can't Get There From Here," 74 Tul. L. Rev. 1809 (2000) (invited symposium).

40. "Incoherence and Irrationality in the Law of Attorneys' Fees," 12 Tex. Rev. of Litig. 301 (1993).

41. "Unloading the Lodestar: Toward a New Fee Award Procedure," 70 Tex. L. Rev. 865 (1992).

42. "A Restitutionary Theory of Attorneys' Fees in Class Actions," 76 Cornell L. Rev. 656 (1991).

Liability Insurance and Insurance Defense Ethics

43. "The Treatment of Insurers' Defense-Related Responsibilities in the Principles of the Law of Liability Insurance: A Critique," Rutgers U. L. Rev. (forthcoming 2015) (with William T. Barker) (symposium issue).

44. "The Basic Economics of the Duty to Defend," in D. Schwarcz and P. Siegelman, eds., RESEARCH HANDBOOK IN THE LAW & ECONOMICS OF INSURANCE (forthcoming 2015) (peer-reviewed).

45. "Insurer Rights to Limit Costs of Independent Counsel," ABA/TIPS Insurance Coverage Litigation Section Newsletter 1 (Aug. 2014) (with William T. Barker).

46. "Litigation Funding Versus Liability Insurance: What's the Difference?," 63 DePaul L. Rev. 617 (2014) (invited symposium).

47. "Ethical Obligations of Independent Defense Counsel," 22:4 Insurance Coverage (July-August 2012) (with William T. Barker), available at http://apps.americanbar.org/litigation/committees/insurance/articles/julyaug2012-ethical-obligations-defense-counsel2.html.

48. "The Impact of the Duty to Settle on Settlement: Evidence From Texas," 8 J. Empirical Leg. Stud. 48-84 (2011) (with Bernard Black and David A. Hyman) (peer reviewed).

49. "When Should Government Regulate Lawyer-Client Relationships? The Campaign to Prevent Insurers from Managing Defense Costs," 44 Ariz. L. Rev. 787 (2002) (invited symposium).

50. "Defense Lawyers' Professional Responsibilities: Part II—Contested Coverage Cases," 15 G'town J. Legal Ethics 29 (2001) (with Ellen S. Pryor).

51. "Defense Lawyers' Professional Responsibilities: Part I—Excess Exposure Cases," 78 Tex. L. Rev. 599 (2000) (with Ellen S. Pryor).

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52. "Flat Fees and Staff Attorneys: Unnecessary Casualties in the Battle over the Law Governing Insurance Defense Lawyers," 4 Conn. Ins. L. J. 205 (1998) (invited symposium).

53. "The Lost World: Of Politics and Getting the Law Right," 26 Hofstra L. Rev. 773 (1998) (invited symposium).

54. "Professional Liability Insurance as Insurance and as Lawyer Regulation: A Comment on Davis, Institutional Choices in the Regulation of Lawyers," 65 Fordham L. Rev. 233 (1996) (invited symposium).

55. "All Clients are Equal, But Some are More Equal than Others: A Reply to Morgan and Wolfram," 6-3 Coverage 47 (May/June 1996) (with Michael Sean Quinn).

56. "Are Liability Carriers Second-Class Clients? No, But They May Be Soon-A Call to Arms against the Restatement of the Law Governing Lawyers," 6-2 Coverage 21 (Jan./Feb. 1996) (with Michael Sean Quinn).

57. "The Professional Responsibilities of Insurance Defense Lawyers," 45 Duke L. J. 255 (1995) (with Kent D. Syverud), reprinted in Ins. L. Anthol. (1996) and 64 Def. L. J. 1 (Spring 1997).

58. "Wrong Turns on the Three Way Street: Dispelling Nonsense About Insurance Defense Lawyers," 5-6 Coverage 1 (Nov./Dec.1995) (with Michael Sean Quinn).

59. "Introduction to the Symposium on Bad Faith in the Law of Contract and Insurance," 72 Tex. L. Rev. 1203 (1994) (with Ellen Smith Pryor).

60. "Does Insurance Defense Counsel Represent the Company or the Insured?" 72 Tex. L. Rev. 1583 (1994), reprinted in Practising Law Institute, Insurance Law: What Every Lawyer and Businessperson Needs To Know, Litigation and Administrative Practice Course Handbook Series, PLI Order No. H0-000S (1998).

61. "A Missed Misalignment of Interests: A Comment on Syverud, The Duty to Settle," 77 Va. L. Rev. 1585 (1991), reprinted in VI Ins. L. Anthol. 857-870 (1992).

Class Actions, Mass Actions, and Multi-District Litigations

62. "What Can We Learn by Studying Lawyers' Involvement in Multidistrict Litigation? A Comment on Williams, Lee, and Borden, Repeat Players in Federal Multidistrict Litigation," 5 J. of Tort L. 181 (2014), DOI: 10.1515/jtl-2014-0010 (invited symposium).

63. "The Responsibilities of Lead Lawyers and Judges in Multi-District Litigations," 79 Fordham L. Rev. 1985 (2011) (invited symposium).

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64. "The Allocation Problem in Multiple-Claimant Representations," 14 S. Ct. Econ. Rev. 95 (2006) (with Paul Edelman and Richard Nagareda) (peer-reviewed).

65. "A Rejoinder to Lester Brickman: *On the Theory Class's Theories of Asbestos Litigation,"* 32 Pepperdine L. Rev. 765 (2005).

66. "Merging Roles: Mass Tort Lawyers as Agents and Trustees," 31 Pepp. L. Rev. 301 (2004) (invited symposium).

67. "We're Scared To Death: Class Certification and Blackmail," 78 N.Y.U. L. Rev. 1357 (2003).

68. "The Aggregate Settlement Rule and Ideals of Client Service," 41 S. Tex. L. Rev. 227 (1999) (with Lynn A. Baker) (invited symposium).

69. "Representative Lawsuits & Class Actions," in Int'l Ency. Of L. & Econ., B. Bouckaert & G. De Geest, eds., (1999) (peer-reviewed).

70. "I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds," 84 Va. L. Rev. 1465 (1998) (with Lynn A. Baker) (invited symposium).

71. "Mass Lawsuits and the Aggregate Settlement Rule," 32 Wake Forest L. Rev. 733 (1997) (with Lynn A. Baker) (invited symposium).

72. "Comparing Class Actions and Consolidations," 10 Tex. Rev. of Litig. 496 (1991).

73. "Justice In Settlements," 4 Soc. Phil. & Pol. 102 (1986) (with Jules L. Coleman) (peer-reviewed).

General Legal Ethics and Civil Litigation

74. "Fiduciaries and Fees," 79 Fordham L. Rev. 1833 (2011) (with Lynn A. Baker) (invited symposium).

75. "Ethics and Innovation," 79 George Washington L. Rev. 754 (2011) (invited symposium).

76. "In Texas, Life is Cheap," 59 Vanderbilt L. Rev. 1875 (2006) (with Frank Cross) (invited symposium).

77. "Introduction: Civil Justice Fact and Fiction," 80 Tex. L. Rev. 1537 (2002) (with Lynn A. Baker).

78. "Does Civil Justice Cost Too Much?" 80 Tex. L. Rev. 2073 (2002).

79. "A Critique of *Burrow v. Arce*," 26 Wm. & Mary Envir. L. & Policy Rev. 323 (2001) (invited symposium).

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80. "What's Not To Like About Being A Lawyer?" 109 Yale L. J. 1443 (2000) (with Frank B. Cross) (review essay).

81. "Preliminary Thoughts on the Economics of Witness Preparation," 30 Tex. Tech L. Rev. 1383 (1999) (invited symposium).

82. "And Such Small Portions: Limited Performance Agreements and the Cost-Quality/Access Trade-Off," 11 G'town J. Legal Ethics 959 (1998) (with David A. Hyman) (invited symposium).

83. "Bargaining Impediments and Settlement Behavior," in Dispute Resolution: Bridging the Settlement Gap, D.A. Anderson, ed. (1996) (with Samuel Issacharoff and Kent D. Syverud).

84. "The Legal Establishment Meets the Republican Revolution," 37 S. Tex. L. Rev. 1247 (1996) (invited symposium).

85. "Do We Know Enough About Legal Norms?" in Social Rules: Origin; Character; Logic: Change, D. Braybrooke, ed. (1996).

86. "Integrating Theory and Practice into the Professional Responsibility Curriculum at the University of Texas," 58 Law and Contemporary Problems 213 (1995) (with John S. Dzienkowski, Sanford Levinson, and Amon Burton).

87. "Thoughts on Procedural Issues in Insurance Litigation," VII Ins. L. Anthol. (1994).

PRACTICE-ORIENTED PUBLICATIONS

88. "Your Role in a Law Firm: Responsibilities of Senior, Junior, and Supervisory Attorneys," in F.W. Newton, ed., A Guide to the Basics of Law Practice (3d) (Texas Center for Legal Ethics and Professionalism 1996).

89. "Getting and Keeping Clients," in F.W. Newton, ed., A Guide to the Basics of Law Practice (3d) (Texas Center for Legal Ethics and Professionalism 1996) (with James M. McCormack and Mitchel L. Winick).

90. "Advertising and Marketing Legal Services," in F.W. Newton, ed., A Guide to the Basics of Law Practice (Texas Center for Legal Ethics and Professionalism 1994).

91. "Responsibilities of Senior and Junior Attorneys," in F.W. Newton, ed., A Guide to the Basics of Law Practice (Texas Center for Legal Ethics and Professionalism 1994).

92. "A Model Retainer Agreement for Legal Services Programs: Mandatory Attorney's Fees Provisions," 28 Clearinghouse Rev. 114 (June 1994) (with Stephen Yelenosky).

LEGAL AND MORAL PHILOSOPHY

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93. "Elmer's Case: A Legal Positivist Replies to Dworkin," 6 L. & Phil. 381 (1987) (peer-reviewed).

94. "Negative Positivism and the Hard Facts of Life," 68 The Monist 347 (1985) (peer-reviewed).

95. "Utilitarian Participation," 23 Soc. Sci. Info. 701 (1984) (peer-reviewed).

MISCELLANEOUS

96. "Public Opinion and the Federal Judiciary: Crime, Punishment, and Demographic Constraints," 3 Pop. Res. & Pol. Rev. 255 (1984) (with Robert Y. Shapiro) (peer-reviewed).

NOTABLE SERVICE ACTIVITIES

Associate Reporter, American Law Institute Project on the Principles of Aggregate Litigation

Interested Party, Statistical Information Task Force, National Association of Insurance Commissioners, Model Medical Malpractice Closed Claim Reporting Law

Invited Academic Member, American Bar Association/Tort & Insurance Practice Section Task Force on the Contingent Fee

Chair, Dean Search Committee, School of Law, University of Texas at Austin

Chair, Budget Committee, School of Law, University of Texas at Austin

Coordinator, General Faculty Colloquium Series, School of Law, University of Texas at Austin

Sole Drafter, Assessment Report for the Juris Doctor Program at the School of Law, University of Texas at Austin, for the Commission on Colleges of the Southern Association of Colleges and Schools

Charles Silver holds the Roy W. and Eugenia C. McDonald Endowed Chair in Civil Procedure at the School of Law at the University of Texas at Austin. He has published widely in law reviews and peer-reviewed journals. His articles use economic theory, philosophical and doctrinal reasoning, and empirical methodologies to shed light on issues arising in the areas of civil procedure, liability insurance, and the professional regulation of attorneys. He has written about group lawsuits (including class actions and other mass proceedings), attorneys' fees (including contractual compensation arrangements, common fund fee awards, and statutory fee awards), and professional responsibility (focusing on lawyers involved in civil litigation on behalf of plaintiffs and defendants). In recent years, as Co-Director of the Center on Lawyers, Civil

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Justice and the Media at the University of Texas, he has worked with a group of empirical researchers on a series of studies of medical malpractice litigation in Texas.

Professor Silver served as Associate Reporter on the Principles of the Law of Aggregate Litigation, published by the American Law Institute in 2010. He taught as a Visiting Professor at the Harvard Law School, the University of Michigan Law School, and the Vanderbilt University Law School.

Professor Silver has given many presentations at academic conferences, including programs sponsored by the American Law and Economics Association, the Conference on Empirical Legal Studies, the Law & Society Association, RAND, and the Searle Center on Law, Regulation and Economic Growth. He has also spoken at faculty colloquia at law schools across the U.S.

Professor Silver often consults with attorneys and serves as an expert witness. He has strong ties with all segments of the litigating bar. On the plaintiffs' side, he submitted an expert report on attorneys' fees in the massive Enron settlement and served as professional responsibility advisor to the private attorneys who handled the State of Texas' lawsuit against the tobacco industry. On the defense side, he advises on the responsibilities of lawyers retained by insurance carriers to defend liability suits against policyholders. Professor Silver has also testified to legislative committees and submitted amicus curiae briefs to courts on topics ranging from class certification to lawyers' fiduciary duties to medical malpractice litigation.

In 2009, the Tort Trial & Insurance Practice Section (TIPS) of the ABA awarded Professor Silver the Robert B. McKay Law Professor Award for outstanding scholarship on tort and insurance law.

RECENT AWARDS

Distinguished Fellow, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law (2014)

Robert B. McKay Law Professor Award, Tort Trial & Insurance Practice Section, American Bar Association (2009)

Faculty Research Grants, University of Texas at Austin (various years)

MEMBERSHIPS

American Bar Foundation

Texas Bar Foundation (Life Fellow)

State Bar of Texas (admitted 1988)

Tort Trial and Insurance Practice Section, American Bar Association

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Society for Empirical Legal Studies

American Law and Economics Association

American Association for Justice

Association of American Law Schools

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, *et al*., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., *et al*., Defendants.	Case No.: 3:16-cv-00815-PPS-MGG Honorable Philip P. Simon

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

I, LUIGGY SEGURA, declare as follows:

1. I am a Director of Securities Class Actions at JND Legal Administration ("JND"). Pursuant to the Court's Opinion and Order filed May 21, 2020 (ECF No. 251) (the "Preliminary Approval Order"), JND was appointed to serve as the Claims Administrator in connection with the proposed settlement of the above-captioned action (the "Action").[1] I submit this Declaration in order to provide the Court and the parties to the Action information regarding the mailing of the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and Proof of Claim and Release (the "Claim Form," and together with the Notice, the "Notice Packet"), the publication of the Summary Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and

[1] All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed in the Stipulation and Agreement of Settlement, dated April 14, 2020 (ECF No. 246) (the "Stipulation").

(III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice"), as well as updates concerning other aspects of the settlement administration process. The following statements are based on my personal knowledge and information provided to me by other experienced JND employees, and, if called as a witness I could and would testify competently thereto.

MAILING OF NOTICE PACKET

2. Pursuant to the Preliminary Approval Order, JND was responsible for disseminating the Notice Packet to potential Settlement Class Members. A sample of the Notice Packet is attached hereto as Exhibit A.

3. On May 30, 2020, JND received from Defendants' Counsel the names and addresses of persons or entities who purchased or otherwise acquired Zimmer Biomet Holdings, Inc. ("ZBH" or the "Company) common stock ("ZBH Common Stock") and/or call options ("ZBH Call Options") and/or wrote put options ("ZBH Put Options") (collectively, "ZBH Securities") between June 7, 2016 and November 7, 2016 (the "Settlement Class Period"). These names and addresses were obtained from the Company's transfer agent. This list contained a total of 25,986 unique names. Prior to JND mailing out Notice Packets, JND verified the mailing records through the National Change of Address ("NCOA") database to ensure the most current address was being used. As a result, 1,458 addresses were updated with new addresses.

4. JND also researched filings with the U.S. Securities and Exchange Commission (the "SEC") on Form 13-F to identify additional institutions or entities who may have purchased or acquired ZBH Securities during the Settlement Class Period. As a result, JND mailed Notice Packets via First-Class mail to 1,231 potential Settlement Class Members on June 19, 2020.

5. As in most securities class actions, a large majority of Settlement Class Members are beneficial purchasers whose securities are held in "street name," *i.e.*, the securities are purchased by brokerage firms, banks, institutions or other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. JND maintains a proprietary database with the names and addresses of the most common banks and brokerage firms, nominees and known third

party filers (the "Broker Database"). JND mailed Notice Packets via First-Class mail to 4,093 banks, brokerage firms, nominees and known third party filers on June 19, 2020.

6. The Notice requested all persons who purchased or otherwise acquired ZBH Securities during the Settlement Class Period as a nominee for a beneficial owner to either (a) within (7) calendar days after receipt of the Notice Packet, request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets, forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of the Notice Packet, provide a list of the names and addresses of all such beneficial owners to JND so that we could mail the Notice Packet to the potential Settlement Class Members.

7. Based on all the sources of information, JND mailed a total of 31,310 Notice Packets via First-Class mail to potential Settlement Class Members/Nominees on or about June 19, 2020 (the "Initial Mailing").

8. JND also posted the Notice for brokers and nominees on the DTC Legal Notice System ("LENS"). This service is made available to all brokers/nominees who use the DTC. The DTC LENS is a place for legal notices to be posted pertaining to publicly traded companies. JND provided DTC LENS with the Notice for posting on June 18, 2020.

9. In a further attempt to garner broker responses, JND reached out via telephone to 50 of the largest firms from the broker/nominee and third-party filer community.

10. On July 13, 2020, JND caused reminder postcards to be mailed by First-Class mail, postage prepaid, to the nominees in the Broker Database who did not respond to the Initial Mailing. The postcard advised nominees of their obligation to facilitate notice of the Settlement to their clients who purchased or otherwise acquired ZBH Common Stock and/or ZBH Call Options" and/or wrote "ZBH Put Options" during the Settlement Class Period.

11. Following the initial mailing, JND received an additional 45,969 unique names and addresses of potential Settlement Class Members from brokers or nominees requesting JND to mail Notice Packets to such persons or entities. JND has also received requests from brokers and

other nominee holders for 77,334 copies of the Notice Packet that the nominees would forward directly to their customers.

12. As a result of the efforts described above, as of July 21, 2020, JND has mailed a total of 154,613 Notice Packets to potential Settlement Class Members, brokers, and nominee holders.

PUBLICATION OF THE SUMMARY NOTICE

13. Pursuant to the Preliminary Approval Order, JND is also responsible for publishing the Summary Notice. Accordingly, JND caused the Summary Notice to be published once in *Investor's Business Daily* on July 6, 2020, and to be transmitted once over the *PR Newswire* on July 6, 2020. Attached hereto as Exhibit B are the publications for *Investor's Business Daily* and *PR Newswire*.

ESTABLISHMENT OF CLAIMS CALL CENTER

14. Beginning on or about June 19, 2020, JND established and continues to maintain a toll-free telephone number (1-888-670-1171) for Settlement Class Members to call and obtain information about the Settlement and/or request a Notice and Claim Form. As of July 21, 2020, JND has received a total of 324 calls to the telephone helpline. JND has promptly responded to each telephone inquiry and will continue to address Settlement Class Member inquiries.

ESTABLISHMENT OF THE SETTLEMENT WEBSITE

15. To further assist potential Settlement Class Members, JND, in coordination with Lead Counsel, designed, implemented, and currently maintains a case-specific website, www.ZimmerBiometSecuritiesLitigation.com, dedicated to the Settlement (the "Settlement Website"). The Settlement Website became operational on June 18, 2020, and is accessible 24 hours a day, 7 days a week. Among other things, the Settlement Website includes general information regarding the Settlement, lists the exclusion, objection, and claim filing deadlines, as well as the date and time of the Court's Settlement Hearing. JND also posted to the Settlement Website copies of the Stipulation, Preliminary Approval Order, Notice, Claim Form, and other relevant Court documents. The Settlement Website will continue to be updated with relevant case

information and Court documents. The Settlement Website also allows Claimants to submit their Claim at the site instead of sending one in via U.S. Mail. Potential Claimants can enter all of their Claim information via the web, complete the Claim Form, and upload all pertinent documentation.

16. As of July 22, 2020, the Settlement Website has received 3,086 hits.

REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE

17. The Notice informs potential Settlement Class Members that requests for exclusion from the Class are to be addressed to *Shah et al. v. Zimmer Biomet Holdings, Inc. et al.*, EXCLUSIONS c/o JND Legal Administration, P.O. Box 91367, Seattle, WA 98111, such that they are received no later than August 13, 2020.

18. As of July 28, 2020, JND has received three (3) requests for exclusion, which are attached hereto as Exhibit C.

19. JND will submit a supplemental declaration addressing any additional requests for exclusion received after the August 13, 2020 exclusion deadline has passed.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 29, 2020.

Luiggy Segura

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, *et al*., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., *et al*., Defendants.	Case No.: 3:16-cv-00815-PPS-MGG Honorable Philip P. Simon

NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS 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")[1] pending in the United States District Court for the Northern District of Indiana (the "Court"), if, during the period between June 7, 2016 and November 7, 2016, inclusive (the "Settlement Class Period"), you purchased or otherwise acquired Zimmer Biomet Holdings, Inc. common stock ("ZBH Common Stock") and/or call options on ZBH Common Stock ("ZBH Call Options"), and/or wrote put options on ZBH Common Stock ("ZBH Put Options"), and were damaged thereby.[2]

NOTICE OF SETTLEMENT: Please also be advised that the Court-appointed Lead Plaintiffs, Rajesh M. Shah and Matt Brierly ("Lead Plaintiffs"), and additional plaintiffs UFCW Local 1500 and Steven Castillo (together with Lead Plaintiffs, "Plaintiffs"), on behalf of themselves and the Settlement Class (as defined in ¶ 27 below), have reached a proposed settlement of the Action for $50,000,000 in cash that, if approved, will resolve all claims, whether known or unknown, 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 ZBH, any other Defendants in the

[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 April 14, 2020 (the "Stipulation"), which is available at www.ZimmerBiometSecuritiesLitigation.com. Zimmer Biomet Holdings, Inc. is referred to herein as "Zimmer Biomet," "ZBH" and the "Company."

[2] ZBH Common Stock, Call Options and Put Options are collectively referred to herein as "ZBH Securities."

Action, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (*see* ¶ 95 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 alleging, among other things, that defendant ZBH, defendants David C. Dvorak, Daniel P. Florin, Robert J. Marshall Jr., Tony W. Collins (collectively the "Officer Defendants"), and defendants Christopher B. Begley, Betsy J. Bernard, Paul M. Bisaro, Gail K. Boudreaux, Michael J. Farrell, Larry Glasscock, Robert A. Hagemann, Arthur J. Higgins, Michael W. Michelson, Cecil B. Pickett, Ph.D., Jeffrey K. Rhodes (together with the Officer Defendants, "the Individual Defendants," and, together with ZBH and the Officer Defendants, the "Defendants") violated the federal securities laws by making false and misleading statements and failing to disclose material facts regarding ZBH during the Settlement Class Period. A more detailed description of the Action is set forth in paragraphs 11-26 below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class, as defined in paragraph 27 below.

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 $50,000,000 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 (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses[3] awarded by the Court, and (d) any attorneys' fees awarded by the Court) will be distributed among members of the Settlement Class in accordance with a plan of allocation that is approved by the Court. The proposed plan of allocation (the "Plan of Allocation") is set forth on pages 15-25 below.

3. **Estimate of Average Amount of Recovery Per Share:** Plaintiffs' damages expert estimates that the conduct at issue in the Action affected approximately 31.9 million shares of ZBH Common Stock[4] purchased during the Settlement Class Period. If all eligible Settlement Class Members elect to participate in the Settlement, the estimated average recovery would be approximately $1.57 per affected share of ZBH Common Stock (before the deduction of any Court-approved fees, expenses and costs as described herein). Settlement Class Members should note, however, that the foregoing average recovery per share is only an estimate. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased/acquired or sold their ZBH Common Stock, and the total number of valid Proof of Claim and Release Forms ("Claim Forms") submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* pages 15-25 below) or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share or Option:** The Parties do not agree on the average amount of damages per share or option that would be recoverable if Plaintiffs were to

[3] "Litigation Expenses" means costs and expenses incurred in connection with commencing, prosecuting and settling the Action (which may include the costs and expenses of Plaintiffs directly related to their representation of the Settlement Class), for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

[4] An affected share might have been traded more than once during the Settlement Class Period, and this average recovery would be the total for all purchasers of that share.

prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Settlement Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Plaintiffs' Counsel, which have been prosecuting the Action on a wholly contingent basis since its inception in 2016, 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, Glancy Prongay & Murray LLP, will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 33 ⅓% of the Settlement Fund. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against the Defendants, in an amount not to exceed $1,900,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. 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 maximum amounts are requested and the Court approves Lead Counsel's fee and expense application, the estimated average amount of fees and expenses, assuming claims are filed for all affected shares will be approximately $0.58 per affected share of ZBH Common Stock.

6. **Identification of Attorneys' Representatives:** Plaintiffs and the Settlement Class are represented by Kara M. Wolke, Esq. of Glancy Prongay & Murray LLP, 1925 Century Park East, Suite 2100, Los Angeles, CA 90067, 888-773-9224, settlements@glancylaw.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 OCTOBER 19, 2020.	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 (defined in ¶ 36 below) that you have against Defendants and the other Defendants' Releasees (defined in ¶ 37 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 AUGUST 13, 2020.	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 *RECEIVED* NO LATER THAN AUGUST 13, 2020.	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 SEPTEMBER 3, 2020 AT 1:00P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS *RECEIVED* NO LATER THAN AUGUST 13, 2020.	Filing a written objection and notice of intention to appear by August 13, 2020 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 acquired ZBH Common Stock or Call Options or written or sold ZBH Put Options during the Settlement 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*

paragraph 84 below for details about the Settlement Hearing, including the date and location of the hearing.

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

WHAT IS THIS CASE ABOUT?

11. ZBH designs, manufactures and markets orthopedic reconstructive products; sports medicine, biologics, extremities and trauma products; spine, bone healing, craniomaxillofacial and thoracic products; dental implants; and related surgical products. ZBH was the product of a $13.4 billion merger between cross-town medical device competitors Legacy Zimmer and Legacy Biomet. The Action arises out of alleged material misrepresentations and omissions concerning the success of the merger and ZBH's expected financial performance made during the June 7, 2016 through November 7, 2016, inclusive, Settlement Class Period.

12. On December 2, 2016, this Action was filed in the United States District Court for the Northern District of Indiana.

13. On April 3, 2017, the Court appointed Rajesh M. Shah, Matt Brierley, and Eric Levy as lead plaintiffs in the Action pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The Court also approved lead plaintiffs' selection of Glancy Prongay & Murray LLP as Lead Counsel and Katz & Korin, PC as Liaison Counsel[5] for the putative class.

14. On June 16, 2017, lead plaintiffs filed and served their Amended Class Action Complaint for Violation of the Federal Securities Laws, which was corrected on June 28, 2017 (the "CAC"). The CAC asserted claims against: (i) ZBH and the Officer Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder; (ii) the Officer Defendants under Section 20(a) of the Exchange Act; (iii) the Defendants and J.P. Morgan Securities LLC and Goldman, Sachs & Co. LLC (collectively, the "Underwriter Defendants") under Section 11 of the Securities Act of 1933 (the "Securities Act"); (iv) ZBH and the Underwriter Defendants under Section 12(a)(2) of the Securities Act; and (v) the Individual Defendants under Section 15 of the Securities Act.

15. On October 5, 2017, lead plaintiffs and plaintiff UFCW Local 1500 voluntarily dismissed the Underwriter Defendants without prejudice. On that same day, the lead plaintiffs and plaintiff UFCW Local 1500 filed and served a Second Amended Class Action Complaint for Violations of the Federal Securities Laws (the "SAC"). The SAC asserted the same claims as the CAC, excluding the claims asserted against the Underwriter Defendants, and adding claims against KKR Biomet LLC, TPG Partners IV, L.P., TPG Partners V, L.P., TPG FOF V-A, L.P., TPG FOF V-B, L.P., TPG LVB Co-Invest LLC, TPG LVB Co-Invest II LLC, GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI GmbH & Co. KG, Goldman Sachs BMET Investors, L.P., Goldman Sachs BMET Investors Offshore Holdings, L.P., PEP Bass Holdings, LLC, Private Equity Partners 2004 Direct

[5] During the course of this Action, Katz & Korin, PC changed its name to Katz Korin Cunningham, PC.

Investment Fund L.P., Private Equity Partners 2005 Direct L.P., Private Equity Partners IX Direct L.P., and GS LVB Co-Invest, L.P. (the "PE Defendants") under Section 20(A) of the Exchange Act and Section 12(a)(2) of the Securities Act.

16. On December 20, 2017, multiple motions to dismiss were filed by the Defendants and the PE Defendants; included in defendants' motion was also a request to strike portions of the SAC pursuant to Fed. R. Civ. P. 12 (f). On March 13, 2018, lead plaintiffs and plaintiff UFCW Local 1500 served their papers in opposition and, on May 18, 2018, the various defendants served their reply papers. On September 26, 2018, the Court entered its Opinion and Order that granted in part, and denied in part, the defendants' motions. Based on the Court's Order, the claims against the PE Defendants were dismissed.

17. On October 9, 2018, Defendants filed a Motion to Amend the Court's September 26, 2018 Opinion and Order to Include a Certification under 28 U.S.C. § 1292(b) and Motion to Stay Proceedings Pending Appeal (the "1292 Motion"). Lead plaintiffs and plaintiff UFCW Local 1500 opposed the 1292 Motion on October 30, 2018, and on November 13, 2018, the Defendants filed their reply. On November 27, 2018, Defendants filed a notice of supplemental authority relevant to their pending 1292 Motion, which plaintiffs responded to on the same day. On November 28, 2018, plaintiffs requested leave to file a sur-reply to the 1292 Motion, which was granted by the Court and deemed filed on November 29, 2018. Defendants filed a response to this sur-reply on December 6, 2018. On January 17, 2019, plaintiffs requested leave to file a supplemental submission on January 17, 2019. Defendants filed a response to this request on January 22, 2019. On January 28, 2019, the Court heard oral argument on the 1292 Motion, and on February 20, 2019, denied Defendants' 1292 Motion.

18. On November 12, 2018, Defendants filed and served an answer to the SAC, which was amended on November 14, 2018.

19. On March 4, 2019, plaintiffs filed an unopposed motion to add Mr. Castillo as a named plaintiff to the action. The Court granted this motion on March 14, 2019 and ordered Plaintiffs to file a "revised" version of the Second Amended Complaint reflecting the interlineation of Mr. Castillo as a named plaintiff. Plaintiffs revised the Second Amended Complaint as ordered on March 21, 2019 (the "Operative Complaint").

20. On April 11, 2019, plaintiffs moved for class certification, together with the declaration of Daniel R. Fischel regarding market efficiency. On June 7, 2019, plaintiffs filed and served an unopposed motion to relieve Mr. Levy of his duties to serve as a lead plaintiff and to withdraw his application to serve as a class representative, which the Court granted on June 13, 2019. In May and June 2019, Defendants deposed each of the Plaintiffs, Plaintiffs' market efficiency expert, as well as two third-party investment managers. On June 20, 2019, Defendants filed and served their papers in opposition to the motion for class certification, together with an expert report of Vinita Juneja, Ph.D. On August 6, 2019, Plaintiffs deposed Dr. Juneja. On August 20, 2019, Plaintiffs filed and served their reply papers in further support of their motion for class certification, together with a rebuttal declaration of Professor Fischel.

21. From October 2018 through December 2019, counsel for Plaintiffs and Defendants completed extensive fact discovery. Plaintiffs' Counsel reviewed and analyzed more than 1.2 million pages of documents produced by Defendants and third parties. At the time the settlement was reached, the Parties were nearing the completion of document discovery and preparing for fact depositions.

22. In the summer of 2019, while Plaintiffs were actively pursuing fact discovery, the Parties agreed to participate in private mediation. The Parties selected the Honorable Daniel Weinstein (Ret.) and Jed D. Melnick, Esq. to serve as mediators. The Parties exchanged extensive mediation statements and exhibits that addressed, among other things, issues related to liability and damages. The Parties participated in a full-day mediation session in New York on September 17, 2019. The session ended without an agreement to settle and the Parties continued with discovery.

23. The Parties agreed to engage in another mediation session to re-visit whether a settlement could be reached, with Judge Weinstein and Mr. Melnick again serving as mediators. The Parties exchanged detailed mediation statements and exhibits on the issues of liability and damages in advance of another full-day mediation session, which occurred on December 12, 2019. The mediation session ended with Judge Weinstein and Mr. Melnick presenting a mediators' recommendation that the Action be settled for $50,000,000. The Parties accepted the mediator's proposal.

24. Based on the investigation and mediation of the case and Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel, each of the Plaintiffs has agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of the Stipulation, after considering, among other things, (a) the substantial financial benefit that Plaintiffs and the other members of the Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

25. Defendants are entering into the Stipulation solely to eliminate the uncertainty, burden and expense of further protracted litigation. Defendants have determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation. Each of the Defendants has denied and continues to deny any wrongdoing, expressly deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever. Defendants have asserted and continue to assert that their conduct was at all times proper and in compliance with all applicable provisions of law, and believe that the evidence developed to date supports their position that they acted properly at all times and that the Action is without merit. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Action. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit. The Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Defendants' Releasees (defined in ¶ 37 below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted.

26. On May 21, 2020, 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?

27. 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 or entities who, between June 7, 2016 and November 7, 2016, inclusive, purchased or otherwise acquired ZBH Common Stock and/or Call Options, and/or wrote ZBH Put Options, and were damaged thereby.

Included in the Settlement Class are all persons or entities who purchased or otherwise acquired ZBH common stock pursuant to and/or traceable to ZBH's public offering on or around June 13, 2016 and/or ZBH's public offering on or around August 9, 2016 and were damaged thereby.

Excluded from the Settlement Class are: (i) Defendants, the PE Defendants, and the Underwriter Defendants; (ii) members of the Immediate Families of each of the Individual Defendants; (iii) the parents, subsidiaries, assigns, successors and predecessors of ZBH, the PE Defendants, and the Underwriter Defendants; (iv) any persons who served as partners, control persons, officers, and/or directors of ZBH, the PE Defendants, and the Underwriter Defendants during the Settlement Class Period and/or at any other relevant time; (v) Defendants' liability insurance carriers; (vi) any firm, trust, corporation, or other entity in which any Defendant, Underwriter Defendant or PE Defendant has or had a controlling interest; and (vii) the legal representatives, heirs, successors-in-interest or assigns of any such excluded party; *provided, however,* that any Investment Vehicle shall not be excluded from the Settlement Class. Also excluded from the Settlement Class are any persons or entities who or which 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 26 below.

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 OR SUBMITTED ONLINE NO LATER THAN OCTOBER 19, 2020.

WHAT ARE PLAINTIFFS' REASONS FOR THE SETTLEMENT?

28. Plaintiffs and Lead Counsel believe that the claims asserted against Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the remaining Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. Plaintiffs and Lead Counsel recognized that Defendants had numerous avenues of attack that could preclude a recovery as to the various alleged misrepresentations and omissions. For example, they would assert that none of the alleged misstatements were materially false and misleading and that they did not make any materially misleading omissions, let alone with the requisite state of mind to support the securities

fraud claims alleged. Additionally, Plaintiffs' motion for class certification was fully briefed and pending at the time the Settlement was reached. The Court's decision on whether to certify a class could have greatly impacted Plaintiffs' and the Settlement Class's potential recovery. Plaintiffs also face challenges with respect to establishing loss causation and class-wide damages. Plaintiffs recognize that Defendants have substantial arguments that the declines in the price of ZBH Common Stock during the Settlement Class Period were not caused by revelations concerning the alleged misconduct. Had any of these arguments been accepted in whole or part, they could have eliminated or, at a minimum, dramatically limited any potential recovery. Further, Plaintiffs would have had to prevail at several stages – motion for summary judgment and trial – and if they prevailed at those stages, they would also have to prevail at the appeals that were likely to follow. Thus, there were very significant risks attendant to the continued prosecution of the Action.

29. In light of these risks, the amount of the Settlement and the immediacy of recovery to the Settlement Class and based on their investigation, prosecution and mediation of the case, 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 $50,000,000 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, or no recovery after summary judgment, trial and appeals, possibly years in the future.

30. Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the uncertainty, burden and expense of further protracted litigation. Accordingly, the Settlement may not be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees or in any way referred to for any other reason as against any of the Defendants' Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation. In addition, the Settlement may not be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

31. 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 substantially less than the amount provided in the Settlement, or nothing at all.

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

32. 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?," below.

33. 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?," below.

34. 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?," below.

35. 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, whether or not you submit a Claim Form. If the Settlement is approved, the Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and the other Defendants' Releasees, 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 current and former heirs, executors, administrators, predecessors, successors, officers, directors, agents, parents, affiliates, subsidiaries, employees, attorneys, assignees and assigns in their capacities as such, will be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Plaintiffs' Claim (as defined in ¶ 36 below) (including Unknown Claims) against the Defendants and the other Defendants' Releasees (as defined in ¶ 37 below) whether or not such Settlement Class Member executes and delivers the Proof of Claim Form, and shall forever be barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal or administrative forum, asserting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees. This Release shall not apply to any of the Excluded Claims (as that term is defined in ¶ 36 below).

36. "Released Plaintiffs' Claims" means all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative or foreign law or any other rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Plaintiffs or any other member of the Settlement Class (i) asserted in any complaint filed in this Action including the CAC, the SAC and the Operative Complaint; or (ii) could have asserted in any forum that arise out of or are related

to any of the allegations, transactions, facts, matters, events, disclosures, statements, occurrences, representations or omissions involved, set forth, or referred to in any complaint filed in this Action including the CAC, the SAC and the Operative Complaint and that relate to, directly or indirectly, the purchase or sale or other acquisition, disposition, or holding of any ZBH Securities during the Settlement Class Period. Released Plaintiffs' Claims do not include (i) any claims relating to the enforcement of the Settlement, (ii) any claims asserted in *Green v. Begley et al.*, Case No. 2019-0455-AGB (Del. Ch.); *Detectives Endowment Association Annuity Fund v. Begley et al.*, Case No. 2019-0584-AGB (Del. Ch.); consolidated case caption *In re Zimmer Biomet Holdings, Inc. Derivatives Litigation,* Consol. C.A. No 2019-0455 (Del. Ch.); *Karp v. Begley et al.*, Case No. 1:19-cv-01855-LPS (D. Del); *DiGaudio v. Begley et al.*, Case No. 1:19-cv-01926-LPS (D. Del.); and consolidated case caption *In re Zimmer Biomet Holdings, Inc. Federal Derivative Litigation,* No. 2019-cv-01855 (D. Del.); and (iii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court (collectively, "Excluded Claims").

37. "Defendants' Releasees" means Defendants, PE Defendants, Underwriter Defendants, each of their respective parents, subsidiaries and affiliates, and each of their respective current and former employees, officers, directors, agents, parents, affiliates, subsidiaries, attorneys, advisors, members, partners, principals, controlling shareholders, accountants, auditors and insurers and reinsurers of each of the foregoing, in their capacities as such; and the successors, predecessors, assigns, assignees, estates, spouses, heirs, executors, trusts, trustees, administrators, and legal or personal representatives of the foregoing, in their capacities as such.

38. "Unknown Claims" means any Released Plaintiffs' Claims which any Lead Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant, Underwriter Defendant or PE Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its settlement and release, or might have affected his, her or its decision(s) with respect to this Settlement, including, but not limited to, whether or not to object to this Settlement or to the release of any Released Claims. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs, Defendants, Underwriter Defendants and PE 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 California Civil Code § 1542 and any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

Plaintiffs, Defendants, Underwriter Defendants and PE Defendants acknowledge that they may hereafter discover facts in addition to or different from those which he, she, it or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims, but the Plaintiffs, Defendants, Underwriter Defendants and PE Defendants shall expressly settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever settled and released any and all

Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs, Defendants, Underwriter Defendants and PE Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Plaintiffs' Claims and Released Defendants' Claims was separately bargained for and a key element of the Settlement.

39. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, Underwriter Defendants and PE Defendants, on behalf of themselves, and their respective current and former heirs, executors, administrators, predecessors, successors, officers, directors, agents, parents, affiliates, subsidiaries, employees, attorneys, assignees and assigns in their capacities as such, will be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim (as defined in ¶ 40 below) (including Unknown Claims) against Plaintiffs and the other Plaintiffs' Releasees (as defined in ¶ 41 below), and shall forever be barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal or administrative forum, asserting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees.

40. "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Defendants. Released Defendants' Claims do not include: (i) any claims relating to the enforcement of the Settlement; (ii) any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court; (iii) any claims arising out of or relating to the Underwriter Defendants' rights to indemnification by the Defendants, pursuant to any agreements between the Defendants and the Underwriter Defendants, or any Underwriter Defendants' rights pursuant to any agreements among any of the Underwriter Defendants to indemnification *inter se*; or (iv) any claims arising out of or relating to the PE Defendants' rights to the indemnification by the Defendants, pursuant to any agreements between the Defendants and the PE Defendants.

41. "Plaintiffs' Releasees" means Plaintiffs, Plaintiffs' Counsel, all other plaintiffs in the Action, their respective attorneys, and any other Settlement Class Member, and their respective current and former officers, directors, agents, parents, affiliates, subsidiaries, successors, predecessors, assigns, assignees, employees, and attorneys, in their capacities as such.

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

42. 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 or submitted online no later than October 19, 2020**. 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.ZimmerBiometSecuritiesLitigation.com, or

you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-888-670-1171. Please retain all records of your ownership of and transactions in ZBH Securities, 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?

43. 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.

44. Pursuant to the Settlement, Defendants have agreed to cause to be paid fifty million dollars ($50,000,000) 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 (a) all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (including any interest or penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority (including, but not limited to, any local, state and federal taxes) on the Settlement Fund (including any income earned by the Settlement Fund) and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the reasonable costs and expenses incurred in connection with providing notice to Settlement Class Members and administering the Settlement on behalf of Settlement Class Members; and (c) any attorneys' fees and Litigation Expenses awarded by the Court) will be distributed to Settlement Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

45. 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.

46. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court's order or judgment approving the Settlement becomes Final. Defendants' Releasees shall not have any liability, obligation or responsibility for the administration of the Settlement (including but not limited to investment and maintenance of monies deposited into the Escrow Account), determination or payment of any Taxes, the payment of attorneys' fees or Litigation Expenses, or providing notice to Settlement Class Members), the disbursement of the Net Settlement Fund or the plan of allocation.

47. 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.

48. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Claim Form **postmarked or submitted online on or before October 19, 2020** 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 ¶ 36 above) against the Defendants'

Releasees (as defined in ¶ 37 above) and will forever be barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal or administrative forum, asserting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees whether or not such Settlement Class Member submits a Claim Form.

49. Participants in and beneficiaries of a plan covered by ERISA ("ERISA Plan") should NOT include any information relating to their transactions in ZBH Securities held through the ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those shares or options that they purchased or acquired outside of the ERISA Plan. Claims based on any ERISA Plan's transactions in ZBH Securities during the Settlement Class Period may be made by the plan's trustees. To the extent any of the Defendants or any of the other persons or entities excluded from the Settlement Class are participants in the ERISA Plan, such persons or entities shall not receive, either directly or indirectly, any portion of the recovery that may be obtained from the Settlement by the ERISA Plan.

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 Form.

52. Only Settlement Class Members will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms. The only securities that are included in the Settlement are the ZBH Securities.

PROPOSED PLAN OF ALLOCATION

53. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants based on their respective alleged economic losses as a result of the alleged misstatements and omissions, as opposed to losses caused by market- or industry-wide factors, or company-specific factors unrelated to the alleged fraud. The Claims Administrator shall determine each Authorized Claimant's share of the Net Settlement Fund based upon the recognized loss formulas described below ("Recognized Loss").

54. A Recognized Loss will be calculated for each share of ZBH Common Stock and Call Option purchased or otherwise acquired during the Settlement Class Period, and each ZBH Put Option sold during the Settlement Class Period. The calculation of Recognized Loss will depend upon several factors, including when the ZBH Securities were purchased or otherwise acquired during the Settlement Class Period, and in what amounts, and whether those securities were sold, and if sold, when they were sold, and for what amounts. The Recognized Loss is not intended to estimate the amount a Settlement Class Member might have been able to recover after a trial, nor to estimate the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. The Claims Administrator will use its best efforts to administer and distribute the Net Settlement Fund to the extent that it is equitably and economically feasible.

55. The Plan of Allocation was created with the assistance of a consulting damages expert and reflects the assumption that the price of ZBH Common Stock was artificially inflated throughout

the Settlement Class Period. The estimated alleged artificial inflation in the price of ZBH Common Stock during the Settlement Class Period is reflected in Table 1 below. The computation of the estimated alleged artificial inflation in the price of ZBH Common Stock during the Settlement Class Period is based on certain misrepresentations alleged by Plaintiffs and the price change in the stock, net of market- and industry-wide factors, in reaction to the public announcements that allegedly corrected the misrepresentations alleged by Plaintiffs.

56. The U.S. federal securities laws allow investors to seek to recover losses caused by disclosures which corrected the defendants' previous misleading statements or omissions. Thus, in order to have recoverable damages, the corrective disclosure of the allegedly misrepresented information must be the cause of the decline in the price or value of the ZBH Securities. In this Action, Plaintiffs allege that Defendants made false statements and omitted material facts during the Settlement Class Period, which had the purported effect of artificially inflating the prices of ZBH Securities. Plaintiffs further allege that corrective disclosures removed artificial inflation from the price of ZBH Securities on October 31, 2016 and November 8, 2016 (the "Corrective Disclosure Dates"). Thus, in order for a Settlement Class Member to have a Recognized Loss under the Plan of Allocation, with respect to ZBH Common Stock and Call Options, the stock or call options must have been purchased or acquired during the Settlement Class Period and held through at least one of these disclosure dates; and, with respect to ZBH Put Options, those options must have been sold (written) during the Settlement Class Period and not closed prior to at least one of these disclosure dates.

Table 1
Artificial Inflation in ZBH Common Stock

From	To	Per-Share Price Inflation
June 7, 2016	October 30, 2016	$20.19
October 31, 2016	November 7, 2016	$3.10
November 8, 2016	Thereafter	$0.00

57. ZBH Common Stock purchased pursuant and/or traceable to the Company's June 2016 Offering[6] or the Company's August 2016 Offering[7] are the only securities eligible for a claim under Section 11 of the Securities Act ("Section 11"). The Recognized Loss for Common Stock with a claim under both Section 10(b) of the Exchange Act ("Section 10(b)") and Section 11 shall be the maximum of: (i) the Recognized Loss amount calculated under Section 10(b) as described below in "Calculation of Recognized Loss Per Share Under Section 10(b)"; or (ii) the Recognized Loss amount calculated under Section 11 as described below in "Calculation of Recognized Loss Per Share Under Section 11" for the respective offering. Section 11 provides for an affirmative defense of negative causation which prevents recovery for losses that Defendants prove are not attributable to misrepresentations and/or omissions alleged by Plaintiffs in the offering's

[6] In June 2016, certain selling stockholders offered 11,116,533 shares of ZBH Common Stock at a public offering price of $115.85 (the "June 2016 Offering"). The offering was completed on June 16, 2016. (*See* Zimmer Biomet, SEC Form 8-K, filed June 16, 2016.)

[7] In August 2016, certain selling stockholders offered 7,440,675 shares of ZBH Common Stock at a public offering price of $129.75 (the "August 2016 Offering"). The offering was completed on August 12, 2016. (*See* Zimmer Biomet, SEC Form 8-K, filed August 12, 2016.)

registration statement. Given Plaintiffs' Counsel's assessment of the relative risks of the Section 11 and Section 10(b) claims in this lawsuit, the Recognized Loss calculation under Section 11 assumes that the Company-specific declines in the price of ZBH Common Stock on the Corrective Disclosure Dates alleged by Plaintiffs are the only compensable losses.

58. The "90-day look back" provision of the Private Securities Litigation Reform Act of 1995 ("PSLRA") is incorporated into the calculation of the Recognized Loss for ZBH Common Stock under Section 10(b). The limitations on the calculation of the Recognized Loss imposed by the PSLRA are applied such that losses on ZBH Common Stock purchased during the Settlement Class Period and held as of the close of the 90-day period subsequent to the Settlement Class Period (the "90-Day Lookback Period") cannot exceed the difference between the purchase price paid for such stock and its average price during the 90-Day Lookback Period. The Recognized Loss on ZBH Common Stock purchased during the Settlement Class Period and sold during the 90-Day Lookback Period cannot exceed the difference between the purchase price paid for such stock and its rolling average price during the portion of the 90-Day Lookback Period elapsed as of the date of sale.

59. In the calculations below, all purchase and sale prices shall exclude any fees, taxes and commissions. If a Recognized Loss amount is calculated to be a negative number, that Recognized Loss shall be set to zero. Any transactions in ZBH Securities executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

60. With respect to shares of ZBH Common Stock and ZBH Call and Put Options, a Recognized Loss will be calculated as set forth below for each purchase or acquisition of ZBH Common Stock and Call Option contracts, and for each writing of ZBH Put Option contracts during the Settlement Class Period, that is listed in the Claim and Release Form and for which adequate documentation is provided.

CALCULATION OF RECOGNIZED LOSS AMOUNTS

Calculation of Recognized Loss Per Share Under Section 10(b)

For each share of ZBH Common Stock purchased or otherwise acquired during the Settlement Class Period (*i.e.*, June 7, 2016 through November 7, 2016, inclusive), the Recognized Loss per share under Section 10(b) shall be calculated as follows:

I. For each share of ZBH Common Stock purchased during the period June 7, 2016 through October 30, 2016, inclusive,

   a. that was sold prior to October 31, 2016, the Recognized Loss per share is $0.

   b. that was sold during the period October 31, 2016 through November 7, 2016, inclusive, the Recognized Loss per share is $17.09.

   c. that was sold during the period November 8, 2016 through February 3, 2017, inclusive (*i.e.*, the 90-Day Lookback Period), the Recognized Loss per share is *the lesser of*:

      i. $20.19; or

      ii. the purchase price *minus* the "90-Day Lookback Value" on the date of sale as provided in Table 2 below.

d. that was sold or held after February 3, 2017, the Recognized Loss per share is *the lesser of*:

i. $20.19; or

ii. the purchase price *minus* the average closing price for ZBH Common Stock during the 90-Day Lookback Period, which is $106.52.

II. For each share of ZBH Common Stock purchased during the period October 31, 2016 through November 7, 2016, inclusive,

a. that was sold prior to November 8, 2016, the Recognized Loss per share is $0.

b. that was sold during the period November 8, 2016 through February 3, 2017, inclusive (*i.e.*, the 90-Day Lookback Period), the Recognized Loss per share is *the lesser of*:

i. $3.10; or

ii. the purchase price *minus* the "90-Day Lookback Value" on the date of sale as provided in Table 2 below.

c. that was sold or held after February 3, 2017, the Recognized Loss per share is *the lesser of*:

i. $3.10; or

ii. the purchase price *minus* the average closing price for ZBH Common Stock during the 90-Day Lookback Period, which is $106.52.

III. For each share of ZBH Common Stock purchased on or after November 8, 2016, the Recognized Loss per share is $0.

Table 2

Sale / Disposition Date	90-Day Lookback Value	Sale / Disposition Date	90-Day Lookback Value	Sale / Disposition Date	90-Day Lookback Value
11/8/2016	$101.83	12/7/2016	$101.33	1/6/2017	$102.48
11/9/2016	$101.73	12/8/2016	$101.47	1/9/2017	$102.59
11/10/2016	$101.38	12/9/2016	$101.63	1/10/2017	$102.85
11/11/2016	$100.54	12/12/2016	$101.81	1/11/2017	$103.12
11/14/2016	$100.03	12/13/2016	$102.00	1/12/2017	$103.37
11/15/2016	$100.27	12/14/2016	$102.11	1/13/2017	$103.63
11/16/2016	$100.35	12/15/2016	$102.13	1/17/2017	$103.88
11/17/2016	$100.41	12/16/2016	$102.18	1/18/2017	$104.12
11/18/2016	$100.44	12/19/2016	$102.21	1/19/2017	$104.33
11/21/2016	$100.60	12/20/2016	$102.19	1/20/2017	$104.52
11/22/2016	$100.62	12/21/2016	$102.18	1/23/2017	$104.71
11/23/2016	$100.65	12/22/2016	$102.16	1/24/2017	$104.90

Table 2					
Sale / Disposition Date	**90-Day Lookback Value**	**Sale / Disposition Date**	**90-Day Lookback Value**	**Sale / Disposition Date**	**90-Day Lookback Value**
11/25/2016	$100.78	12/23/2016	$102.16	1/25/2017	$105.11
11/28/2016	$100.87	12/27/2016	$102.19	1/26/2017	$105.30
11/29/2016	$101.04	12/28/2016	$102.22	1/27/2017	$105.51
11/30/2016	$101.09	12/29/2016	$102.25	1/30/2017	$105.68
12/1/2016	$101.01	12/30/2016	$102.28	1/31/2017	$105.91
12/2/2016	$100.97	1/3/2017	$102.31	2/1/2017	$106.12
12/5/2016	$100.99	1/4/2017	$102.36	2/2/2017	$106.32
12/6/2016	$101.17	1/5/2017	$102.42	2/3/2017	$106.52

Calculation of Recognized Loss Per Share Under Section 11—June 2016 Offering

For each share of ZBH Common Stock purchased pursuant and/or traceable to the Company's June 2016 Offering, the Recognized Loss per share under Section 11 shall be calculated as follows:

I. For each share that was sold prior to October 31, 2016, the Recognized Loss per share is $0.

II. For each share that was sold during the period October 31, 2016 through November 7, 2016, inclusive, the Recognized Loss per share is *the lesser of*:

   a. $17.09; or

   b. $115.85 (*i.e.*, the offering price) *minus* the sale price.

III. For each share that was sold during the period November 8, 2016 through June 15, 2017,[8] inclusive, the Recognized Loss per share is *the lesser of*:

   a. $20.19; or

   b. $115.85 (*i.e.*, the offering price) *minus* the sale price.

IV. For each share that was sold or held after June 15, 2017, the Recognized Loss per share is $0.

Calculation of Recognized Loss Per Share Under Section 11—August 2016 Offering

For each share of ZBH Common Stock purchased pursuant and/or traceable to the Company's August 2016 Offering, the Recognized Loss per share under Section 11 shall be calculated as follows:

I. For each share that was sold prior to October 31, 2016, the Recognized Loss per share is $0.

[8] June 16, 2017 is the date of the first complaint filed in this action that states a claim under Section 11 for the June 2016 Offering and the August 2016 Offering. The closing price for ZBH Common Stock that day was $125.92.

II. For each share that was sold during the period October 31, 2016 through November 7, 2016, inclusive, the Recognized Loss per share is *the lesser of*:

a. $17.09; or

b. $129.75 (*i.e.*, the offering price) *minus* the sale price.

III. For each share that was sold during the period November 8, 2016 through June 15, 2017, inclusive, the Recognized Loss per share is *the lesser of*:

a. $20.19; or

b. $129.75 (*i.e.*, the offering price) *minus* the sale price.

IV. For each share that was sold or held after June 15, 2017, the Recognized Loss per share is $3.83.[9]

ZBH Call Option Recognized Loss Calculations[10]

For each ZBH Call Option purchased or otherwise acquired during the Settlement Class Period, the Recognized Loss per Call Option shall be calculated as follows:

I. For each Call Option not held at the opening of trading on at least one of the Corrective Disclosure Dates as defined above, the Recognized Loss per Call Option is $0.00.

II. For each Call Option held at the opening of trading on one or more of the Corrective Disclosure Dates as defined above,

a. that was subsequently sold during the Settlement Class Period, the Recognized Loss per Call Option is the purchase price *minus* the sale price.

b. that was subsequently exercised during the Settlement Class Period, the Recognized Loss per Call Option is the purchase price *minus* the intrinsic value of the option on the date of exercise, where the intrinsic value shall be *the greater of*: (i) $0.00 or (ii) the closing price of ZBH Common Stock on the date of exercise *minus* the strike price of the option.

c. that expired unexercised during the Settlement Class Period, the Recognized Loss per Call Option is equal to the purchase price.

d. that was still held as of the opening of trading November 8, 2016, the Recognized Loss per Call Option is the purchase price *minus* the intrinsic value of the option as of the close of trading on November 8, 2016, where the intrinsic value shall be *the greater of*: (i) $0.00 or (ii) $101.83[11] *minus* the strike price of the option.

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[9] $3.83 is the difference between the offering price and the closing price of ZBH Common Stock on June 16, 2017 (*i.e.*, $129.75 minus $125.92).

[10] Exchange-traded options are traded in units called "contracts," which entitle the holder to buy (in the case of a call) or sell (in the case of a put) 100 shares of the underlying security, which in this case is ZBH Common Stock.

[11] $101.83 is the closing price of ZBH Common Stock on November 8, 2016.

No Recognized Loss shall be calculated based upon purchase or acquisition of any ZBH Call Option that had been previously sold or written.

ZBH Put Option Recognized Loss Calculations

For each ZBH Put Option sold during the Settlement Class Period, the Recognized Loss per Put Option shall be calculated as follows:

I. For each Put Option not open (*i.e.*, not outstanding) at the opening of trading on at least one of the Corrective Disclosure Dates as defined above, the Recognized Loss per Put Option is $0.00.

II. For each Put Option open (*i.e.*, outstanding) at the opening of trading on one or more of the Corrective Disclosure Dates as defined above,

   a. that was subsequently purchased during the Settlement Class Period, the Recognized Loss per Put Option is the purchase price *minus* the sale price.

   b. that was subsequently exercised (*i.e.*, assigned) during the Settlement Class Period, the Recognized Loss per Put Option is the intrinsic value of the Put Option on the date of exercise *minus* the sale price, where the intrinsic value shall be *the greater of*: (i) $0.00 or (ii) the strike price of the option *minus* the closing price of ZBH Common Stock on the date of exercise.

   c. that expired unexercised during the Settlement Class Period, the Recognized Loss per Put Option $0.00.

   d. that was still open (*i.e.*, outstanding) as of the opening of trading November 8, 2016, the Recognized Loss per Put Option is the intrinsic value of the option as of the close of trading on November 8, 2016 *minus* the sale price, where the intrinsic value shall be *the greater of*: (i) $0.00 or (ii) the strike price of the option *minus* $101.83.

No Recognized Loss shall be calculated based upon the sale or writing of any ZBH Put Option that had been previously purchased or acquired.

61. **Maximum Recovery for Options:** The Settlement proceeds available for ZBH Call Options purchased during the Settlement Class Period and ZBH Put Options sold (written) during the Settlement Class Period shall be limited to a total amount equal to 0.5% of the Net Settlement Fund.[12] Thus, if the cumulative Recognized Loss amounts for Call and Put Option claims exceeds 0.5% of all Recognized Losses, then the Recognized Loss for Call and Put Option claims will be reduced proportionately until they collectively equal 0.5% of all Recognized Losses. In the unlikely event that the Net Settlement Fund, allocated as such, is sufficient to pay 100% of the Common Stock claims, any excess amount will be used to pay the balance on the remaining Call and Put Option claims. Likewise, if the Net Settlement Fund, allocated as such, is sufficient to pay 100% of the Call Option and Put Option claims, any excess amount will be used to pay the balance on the remaining Common Stock claims.

[12] ZBH Call and Put Option trading accounted for less than 0.5% of total dollar trading volume for ZBH Securities during the Settlement Class Period. As such, claims for ZBH Call and Put Option transactions are allotted 0.5% of the Settlement pursuant to the Plan of Allocation.

ADDITIONAL PROVISIONS

62. **Calculation of Claimant's "Recognized Claim":** A Claimant's "Recognized Claim" under the Plan of Allocation will be the sum of his, her or its Recognized Loss amounts as calculated above with respect to all ZBH Securities.

63. **FIFO Matching**: If a Settlement Class Member made more than one purchase/acquisition or sale of any ZBH Security during the Settlement Class Period, all purchases/acquisitions and sales of the like security shall be matched on a First In, First Out ("FIFO") basis. With respect to ZBH Common Stock and Call Options, Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Settlement Class Period. For ZBH Put Options, Settlement Class Period purchases will be matched first to close out positions open at the beginning of the Settlement Class Period, and then against ZBH Put Options sold (written) during the Settlement Class Period in chronological order.

64. **"Purchase/Sale" Dates:** Purchases or acquisitions and sales of ZBH Securities shall 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 ZBH Securities during the Settlement Class Period shall not be deemed a purchase, acquisition or sale of these ZBH Securities for the calculation of a Claimant's Recognized Loss, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such ZBH Securities unless (i) the donor or decedent purchased or otherwise acquired such ZBH Securities during the Settlement Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such ZBH Securities.

65. **Short Sales:** With respect to ZBH Common Stock, the date of covering a "short sale" is deemed to be the date of purchase or acquisition of the stock. The date of a "short sale" is deemed to be the date of sale of the ZBH Common Stock. In accordance with the Plan of Allocation, however, the Recognized Loss on "short sales" is zero.

66. In the event that a Claimant has an opening short position in ZBH Common Stock, the earliest purchases or acquisitions of ZBH Common Stock during the Settlement Class Period shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

67. If a Settlement Class Member has "written" ZBH Call Options, thereby having a short position in the Call Options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the Call Option. The date on which the ZBH Call Option was written is deemed to be the date of sale of the Call Option. In accordance with the Plan of Allocation, however, the Recognized Loss on "written" ZBH Call Options is zero. In the event that a Claimant has an opening written position in ZBH Call Options, the earliest purchases or acquisitions of like Call Options during the Settlement Class Period shall be matched against such opening written position, and not be entitled to a recovery, until that written position is fully covered.

68. If a Settlement Class Member has purchased or acquired ZBH Put Options, thereby having a long position in the Put Options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the Put Option. The date on which the ZBH Put Option was sold,

exercised, or expired is deemed to be the date of sale of the Put Option. In accordance with the Plan of Allocation, however, the Recognized Loss on purchased/acquired Put Options is zero. In the event that a Claimant has an opening long position in ZBH Put Options, the earliest sales or dispositions of like Put Options during the Settlement Class Period shall be matched against such opening position, and not be entitled to a recovery, until that long position is fully covered.

69. **Common Stock Purchased/Sold Through the Exercise of Options:** With respect to ZBH Common Stock purchased or sold through the exercise of an option, the purchase/sale date of the stock is the exercise date of the option and the purchase/sale price of the stock is the closing price of ZBH Common Stock on the exercise date. Any Recognized Loss arising from purchases of ZBH Common Stock acquired during the Settlement Class Period through the exercise of an option on ZBH Common Stock shall be computed as provided for other purchases of ZBH Common Stock in the Plan of Allocation.

70. **Market Gains and Losses:** With respect to all ZBH Common Stock and Call Options purchased or acquired or ZBH Put Options sold during the Settlement Class Period, 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 during the Settlement Class Period in those shares and options. For purposes of making this calculation, with respect to ZBH Common Stock and Call Options, the Claims Administrator shall determine the difference between (i) the Claimant's Total Purchase Amount[13] and (ii) the sum of the Claimant's Sales Proceeds[14] and the Claimant's Holding Value.[15] For ZBH Common Stock and Call Options, if the Claimant's Total Purchase Amount ***minus*** the sum of the Claimant's Sales Proceeds and the Holding Value is a positive number, that number will be the Claimant's Market Loss; if the number is a negative number or zero, that number will be the Claimant's Market Gain. With respect to ZBH Put Options, the Claims Administrator shall determine the difference between (i) the sum of the Claimant's Total Purchase Amount[16] and the

[13] For ZBH Common Stock and Call Options, the "Total Purchase Amount" is the total amount the Claimant paid (excluding all fees, taxes and commissions) for all such ZBH securities purchased or acquired during the Settlement Class Period.

[14] For ZBH Common Stock and Call Options, the Claims Administrator shall match any sales of such ZBH securities during the Settlement Class Period first against the Claimant's opening position in the like ZBH securities (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received for sales of the remaining like ZBH securities sold during the Settlement Class Period is the "Sales Proceeds."

[15] The Claims Administrator shall ascribe a "Holding Value" of $101.83 to each share of ZBH Common Stock purchased or acquired during the Settlement Class Period that was still held as of the close of trading on November 7, 2016. For each ZBH Call Option purchased or acquired during the Settlement Class Period that was still held as of the close of trading on November 7, 2016, the Claims Administrator shall ascribe a "Holding Value" for that option which shall be *the greater of*: (i) $0.00 or (ii) $101.83 minus the strike price of the option.

[16] For ZBH Put Options, the Claims Administrator shall match any purchases during the Settlement Class Period to close out positions in ZBH Put Options first against the Claimant's opening position in ZBH Put Options (the total amount paid with respect to those purchases will not be considered for purposes of calculating market gains or losses). The total amount paid for the remaining purchases during the Settlement Class Period to close out positions in Put Options is the "Total Purchase Amount."

Claimant's Holding Value;[17] and (ii) the Claimant's Sale Proceeds.[18] For ZBH Put Options, if the sum of the Claimant's Total Purchase Amount and the Claimant's Holding Value ***minus*** the Claimant's Sales Proceeds 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.

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

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

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

74. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is $10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than $10.00, it will not be included in the calculation (*i.e.*, the Recognized Claim will be deemed to be zero) and no distribution will be made to that Authorized Claimant. Any prorated amounts of less than $10.00 will be included in the pool distributed to those whose prorated payments are $10.00 or greater.

75. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least $10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least $10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the

[17] For each ZBH Put Option sold (written) during the Settlement Class Period that was still outstanding as of the close of trading on November 7, 2016, the Claims Administrator shall ascribe a "Holding Value" for that option which shall be *the greater of*: (i) $0.00 or (ii) the strike price of the option *minus* $101.83.

[18] For ZBH Put Options, the total amount received for put options sold (written) during the Settlement Class Period is the "Sales Proceeds."

deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court.

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

77. The Plan of Allocation set forth herein 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 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.ZimmerBiometSecuritiesLitigation.com.

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

78. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the 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 33 ⅓% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses in an amount not to exceed $1,900,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. 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?

79. Each Settlement Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *Shah et al. v. Zimmer Biomet Holdings, Inc. et al.*, EXCLUSIONS, c/o JND Legal Administration, P.O. Box 91367, Seattle, WA

98111. The exclusion request must be ***received*** **no later than August 13, 2020**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must (a) 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; (b) state that such person or entity "requests exclusion from the Settlement Class in *Shah et al. v. Zimmer Biomet Holdings, Inc. et al.*, Case No. 3:16-CV-00815"; (c) identify and state the number of shares of ZBH Common Stock, Call Options, and/or ZBH Put Options that the person or entity requesting exclusion purchased/acquired and/or sold during the Settlement Class Period (*i.e.*, between June 7, 2016 and November 7, 2016, inclusive), as well as the dates and prices of each such purchase/acquisition and sale; and (d) 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.

80. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Defendants' Releasees.

81. 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.

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

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

83. **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**.

84. The Settlement Hearing will be held on **September 3, 2020 at 1:00 p.m.**, before the Honorable Philip P. Simon at the United States District Court for the Northern District of Indiana, United States Courthouse, Courtroom 4, 5400 Federal Plaza, Hammond, IN 46320. 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.

85. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Northern District of Indiana at the address set forth below on or before August 13, 2020. You must also serve the papers on Lead

Counsel and on Defendants' Counsel at the addresses set forth below so that the papers are ***received*** **on or before August 13, 2020**.

Clerk's Office	Lead Counsel	Defendants' Counsel
United States District Court Northern District of Indiana Clerk of the Court United States Courthouse 5400 Federal Plaza Suite 4400 Hammond, IN 46320	**Glancy Prongay & Murray LLP** Kara M. Wolke, Esq. 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 Email: kwolke@glancylaw.com	**Morgan Lewis & Bockius LLP** Troy S. Brown, Esq. 1701 Market Street Philadelphia, PA 19103 Email: troy.brown@morganlewis.com

86. Any objection:

(a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector;

(b) must clearly identify the case name and number (*Shah et al. v. Zimmer Biomet Holdings, Inc. et al.*, Case No. 3:16-CV-00815);

(c) 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

(d) must include documents sufficient to prove the objector's membership in the Settlement Class, including the number of shares of ZBH Common Stock, Call Options, and/or Put Options that the objecting Settlement Class Member purchased, acquired and sold during the Settlement Class Period (*i.e.*, between June 7, 2016 and November 7, 2016, inclusive), as well as the dates and prices of each such purchase/acquisition and sale.

87. 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.

88. If you object to the Settlement or the request for attorneys' fees and/or reimbursement of Litigation Expenses, you subject yourself to the jurisdiction of the District Court in this matter and consent to being deposed in your district of residence and producing in advance of a deposition any responsive documents to a discovery request prior to the Settlement Hearing.

89. 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 and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

90. 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 and serve a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth above so that it is ***received*** **on or before August 13, 2020**. 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.

91. 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 file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 85 above so that the notice is ***received*** **on or before August 13, 2020**.

92. The Settlement Hearing may be adjourned by the Court, or held telephonically, without further written notice to the Settlement Class. If you intend to attend the Settlement Hearing, you should confirm the date, time and location on the settlement website, www.ZimmerBiometSecuritiesLitigation.com, given potential changes as a result of the COVID-19 pandemic.

93. **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 SHARES ON SOMEONE ELSE'S BEHALF?

94. If you purchased or otherwise acquired any of the ZBH Securities between June 7, 2016 and November 7, 2016, inclusive, for the beneficial interest of persons or organizations other than yourself, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice and Claim Form (the "Notice Packet") to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,* c/o JND Legal Administration, P.O. Box 91367, Seattle, WA 98111. If you choose the second option, the Claims Administrator will send a copy of the Notice and the Claim Form to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, up to a maximum of $0.50 per Notice Packet mailed; $0.05 per Notice Packet transmitted by email; or $0.10 per name, mailing address, and email address (to the extent available) provided to the Claims Administrator, 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.ZimmerBiometSecuritiesLitigation.com, or by calling the Claims Administrator toll-free at 1-888-670-1171.

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

95. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Northern District of Indiana, United States Courthouse, 5400 Federal Plaza, Hammond, IN 46320. Please visit the Court's website at https://www.innd.uscourts.gov/ or call the Clerk's Office at (260) 423-3000 to determine whether the Court is open due to the exigent circumstances created by COVID-19 and Related Coronavirus. 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.ZimmerBiometSecuritiesLitigation.com.

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

Shah et al. v.
Zimmer Biomet Holdings, Inc. et al.
c/o JND Legal Administration
P.O. Box 91367
Seattle, WA 98111
888-670-1171
www.ZimmerBiometSecuritiesLitigation.com

and/or

Kara M. Wolke, Esq.
GLANCY PRONGAY & MURRAY LLP
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
(888) 773-9224
settlements@glancylaw.com

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

Dated: May 21, 2020

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

PROOF OF CLAIM AND RELEASE

Shah, et al. v. Zimmer Biomet Holdings, Inc., et al.
c/o JND Legal Administration
P.O. Box 91367
Seattle, WA 98111
Toll Free Number: (888) 670-1171
Settlement Website: www.ZimmerBiometSecuritiesLitigation.com
Email: info@ZimmerBiometSecuritiesLitigation.com

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must be a Class Member and 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 October 19, 2020.**

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 Settlement.

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

CONTENTS

PART I – CLAIMANT INFORMATION

(Please read General Instructions below before completing this page.)

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 Name

Co-Beneficial Owner's Name

Entity Name (if Beneficial Owner is not an individual)

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

Address1 (street name and number)

Address2 (apartment, unit, or box number)

City | State | Zip Code

Foreign Country (only if not USA)

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (Home) — —

Telephone Number (Work) — —

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

Account Number (account(s) through which the 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 the same legal entity traded through more than one account you may write "multiple." Please see paragraph 12 of the General Instructions for more information on when to file separate Claim Forms for multiple accounts, *i.e.*, when you are filing on behalf of distinct legal entities.

PART II – 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 Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Settlement Notice") that accompanies this Claim Form, including the Plan of Allocation of the Net Settlement Fund set forth in the Settlement Notice. The Settlement 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 Settlement 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 Settlement Notice, including the terms of the releases described therein and provided for herein.

2. This Claim Form is directed to all persons or entities who between June 7, 2016, and November 7, 2016, inclusive (the "Settlement Class Period"), purchased or otherwise acquired (1) Zimmer Biomet common stock ("ZBH Common Stock"), or (2) call options on ZBH Common Stock ("ZBH Call Options"), and/or (3) sold or wrote put options on ZBH Common Stock ("ZBH Put Options") (together, the "Settlement Class"). Included in the Settlement Class are all persons or entities who purchased or otherwise acquired ZBH common stock pursuant to and/or traceable to ZBH's public offering on or around June 13, 2016 and/or ZBH's public offering on or around August 9, 2016 and were damaged thereby. ZBH Common Stock, Call Options, and Put Options are referred to collectively as "ZBH Securities." All persons and entities that are members of the Settlement Class are referred to as "Settlement Class Members."

3. Excluded from the Settlement Class are: (i) Defendants, the PE Defendants, and the Underwriter Defendants; (ii) members of the Immediate Families of each of the Individual Defendants; (iii) the parents, subsidiaries, assigns, successors and predecessors of ZBH, the PE Defendants, and the Underwriter Defendants; (iv) any persons who served as partners, control persons, officers, and/or directors of ZBH, the PE Defendants, and the Underwriter Defendants during the Settlement Class Period and/or at any other relevant time; (v) Defendants' liability insurance carriers; (vi) any firm, trust, corporation, or other entity in which any Defendant, Underwriter Defendant or PE Defendant has or had a controlling interest; and (vii) the legal representatives, heirs, successors-in-interest or assigns of any such excluded party; *provided, however,* that any Investment Vehicle shall not be excluded from the Settlement Class. Also excluded from the Class are any persons and entities who or that submit a request for exclusion that is accepted by the Court.

4. If you are not a Settlement Class Member do not submit a Claim Form. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A SETTLEMENT CLASS MEMBER. THUS, IF YOU ARE EXCLUDED FROM THE CLASS (AS SET FORTH IN PARAGRAPH 3 ABOVE), ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.

5. If you are a Settlement Class Member, you will be bound by the terms of any judgments or orders entered in the Action WHETHER OR NOT YOU SUBMIT A CLAIM FORM, unless you submit a request for exclusion from the Class. Thus, if you are a Class Member, the Judgment will release, and you will be barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal or administrative forum, asserting each and every Released Plaintiffs' Claims (including Unknown Claims) against the Defendants' Releasees.

6. You are eligible to participate in the distribution of the Net Settlement Fund only if you are a member of the Settlement Class and if you complete and return this form as specified below. If you fail to submit a timely, properly addressed, and completed Claim Form with the required documentation, your claim may be rejected and you may be precluded from receiving any distribution from the Net Settlement Fund.

7. 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 Settlement Notice, if it is approved by the Court, or by such other plan of allocation approved by the Court.

8. Use the Schedules of Transactions in Parts III–V of this Claim Form to supply all required details of your transaction(s) (including free transfers) in and holdings of the applicable ZBH Securities. On

the Schedules of Transactions, please provide all of the requested information with respect to your holdings, purchases, acquisitions and sales of the applicable ZBH Securities, whether such transactions resulted in a profit or a loss. Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.

9. Please note: Only ZBH Common Stock and ZBH Call Options purchased/acquired, and ZBH Put Options sold or written during the Settlement Class Period (*i.e.*, from June 7, 2016, through November 7, 2016, inclusive) are eligible under the Settlement. However, because the PSLRA provides for a "90-day look-back period" (described in the Plan of Allocation set forth in the Settlement Notice), and because of certain provisions under Section 11 of the Securities Act of 1933, you must provide documentation related to your purchases and sales of ZBH Common Stock during the period from November 8, 2016, through and including June 15, 2017 (the day before the first complaint in the Action was filed) in order for the Claims Administrator to calculate your Recognized Loss under the Plan of Allocation and process your claim.

10. You are required to submit genuine and sufficient documentation for all of your transactions and holdings of the applicable ZBH Securities set forth in the Schedules of Transactions in Parts III–V 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 ZBH Securities. IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OR EQUIVALENT CONTEMPORANEOUS 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, please do not highlight any portion of the Claim Form or any supporting documents.**

11. ZBH Call Options and ZBH Put Options are identified by strike price, expiration date and Option Class Symbols.

12. Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions through an account that is in the name of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made through an account 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).

13. All joint beneficial owners must sign this Claim Form. If you purchased or otherwise acquired ZBH Common Stock or ZBH Call Options, or sold or wrote ZBH Put Options, during the Settlement Class Period and held the securities in your name, you are the beneficial owner as well as the record owner and you must sign this Claim Form to participate in the Settlement. If, however, you purchased or otherwise acquired ZBH Common Stock or ZBH Call Options, or sold or wrote ZBH Put Options, during the Settlement 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.

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

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

(b) identify the name, account number, Social Security Number (or taxpayer identification number), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the ZBH Securities; 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 stock in another person's accounts.)

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

(a) own(ed) the ZBH Securities you have listed in the Claim Form; or

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

16. 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.

17. 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 the completion of all claims processing. This could take substantial time. Please be patient.

18. 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, however, calculates to less than $10.00, it will not be included in the calculation and no distribution will be made to that Authorized Claimant.

19. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Settlement Notice, you may contact the Claims Administrator, JND Legal Administration at P.O. Box 91367, Seattle, WA 98111 by email at info@ZimmerBiometSecuritiesLitigation.com, or by toll-free phone at (888) 670-1171, or you may download the documents from the Settlement website, www.ZimmerBiometSecuritiesLitigation.com.

20. 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.ZimmerBiometSecuritiesLitigation.com or you may email the Claims Administrator's electronic filing department at ZIMSecurities@JNDLA.com. Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at ZIMSecurities@JNDLA..com to inquire about your file and confirm it was received and acceptable.

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, PLEASE CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT (888) 670-1171.

PART III – SCHEDULE OF TRANSACTIONS IN ZBH COMMON STOCK

Complete this Part III if and only if you purchased/acquired ZBH Common Stock during the period from June 7, 2016, through November 7, 2016, inclusive. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 10, above. Do not include information in this section regarding securities other than ZBH Common Stock.

1. **BEGINNING HOLDINGS –** State the total number of shares of ZBH Common Stock held as of the opening of trading on June 7, 2016. (Must be documented.) If none, write "zero" or "0."

2. **PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD –** Separately list each and every purchase/acquisition (including free receipts) of ZBH Common Stock from after the opening of trading on June 7, 2016, through and including the close of trading on November 7, 2016. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/ Acquired	Purchase/ Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Part of June 2016 Offering ($115.85)	Part of August 2016 Offering ($129.75)
/ /		$	$	☐	☐
/ /		$	$	☐	☐
/ /		$	$	☐	☐
/ /		$	$	☐	☐

3. **PURCHASES/ACQUISITIONS DURING THE 90-DAY LOOK-BACK PERIOD THROUGH JUNE 15, 2017 –** State the total number of shares of ZBH Common Stock purchased/acquired (including free receipts) from after the opening of trading on November 8, 2016, through and including the close of trading on June 15, 2017. If none, write "zero" or "0."[2]

[2] **Please note**: Information requested with respect to your purchases/acquisitions of ZBH Common Stock from after the opening of trading on November 8, 2016, through and including June 15, 2017, is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Loss pursuant to the Plan of Allocation.

4. SALES DURING THE SETTLEMENT CLASS PERIOD THROUGH JUNE 15, 2017 – Separately list each and every sale/disposition (including free deliveries) of ZBH Common Stock from after the opening of trading on June 7, 2016, through and including the close of trading on June 15, 2017. (Must be documented.)

IF NONE, CHECK HERE ☐

Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (excluding taxes, commissions, and fees)
/ /		$	$
/ /		$	$
/ /		$	$
/ /		$	$

5. ENDING HOLDINGS – State the total number of shares of ZBH Common Stock held as of the close of trading on June 15, 2017. (Must be documented.) If none, write "zero" or "0."

☐ **IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX.**

IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED.

PART IV – SCHEDULE OF TRANSACTIONS IN ZBH CALL OPTIONS

Complete this Part IV if and only if you purchased/acquired ZBH Call Options during the period from June 7, 2016, through November 7, 2016, inclusive. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 10, above. Do not include information in this section regarding securities other than ZBH Call Options.

1. **BEGINNING HOLDINGS** – Separately list all positions in ZBH Call Option contracts in which you had an open interest as of the opening of trading on June 7, 2016. (Must be documented.)	**IF NONE, CHECK HERE** ☐

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Option Class Symbol	Number of Call Option Contracts in Which You Had an Open Interest
$	/ /		
$	/ /		
$	/ /		
$	/ /		

2. PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD – Separately list each and every purchase/acquisition (including free receipts) of ZBH Call Option contracts from after the opening of trading on June 7, 2016, through and including the close of trading on November 7, 2016. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Option Class Symbol	Number of Call Option Contracts Purchased/ Acquired	Purchase/ Acquisition Price Per Call Option Contract	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Insert an "E" if Exercised Insert an "A" if Assigned Insert an "X" if Expired	Exercise Date (Month/Day/Year)
/ /	$	/ /			$	$		/ /
/ /	$	/ /			$	$		/ /
/ /	$	/ /			$	$		/ /
/ /	$	/ /			$	$		/ /

3. SALES DURING THE SETTLEMENT CLASS PERIOD – Separately list each and every sale/disposition (including free deliveries) of ZBH Call Options from after the opening of trading on June 7, 2016, through and including the close of trading on November 7, 2016. (Must be documented.)

IF NONE, CHECK HERE ☐

Date of Sale (List Chronologically) (Month/Day/Year)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Option Class Symbol	Number of Call Option Contracts Sold	Sale Price Per Call Option Contract	Total Sale Price (excluding taxes, commissions, and fees)
/ /	$	/ /			$	$
/ /	$	/ /			$	$
/ /	$	/ /			$	$
/ /	$	/ /			$	$

4. ENDING HOLDINGS – Separately list all positions in ZBH Call Option contracts in which you had an open interest as of the close of trading on November 7, 2016. (Must be documented.)

IF NONE, CHECK HERE ☐

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Option Class Symbol	Number of Call Option Contracts in Which You Had an Open Interest
$	/ /		
$	/ /		
$	/ /		
$	/ /		

☐ **IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX.**

IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED.

PART V – SCHEDULE OF TRANSACTIONS IN ZBH PUT OPTIONS

Complete this Part V if and only if you sold (wrote) ZBH Put Options during the period from June 7, 2016, through November 7, 2016, inclusive. Please include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 10, above. Do not include information in this section regarding securities other than ZBH Put Options.

1. BEGINNING HOLDINGS – Separately list all positions in ZBH Put Option contracts in which you had an open interest as of the opening of trading on June 7, 2016. (Must be documented.)	**IF NONE, CHECK HERE** ☐

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Option Class Symbol	Number of Put Option Contracts in Which You Had an Open Interest
$	/ /		
$	/ /		
$	/ /		
$	/ /		

2. SALES (WRITING) DURING THE SETTLEMENT CLASS PERIOD – Separately list each and every sale (writing) (including free deliveries) of ZBH Put Option contracts from after the opening of trading on June 7, 2016, through and including the close of trading on November 8, 2016. (Must be documented.)

Date of Sale (Writing) (List Chronologically) (Month/Day/Year)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Option Class Symbol	Number of Put Option Contracts Sold (Written)	Sale Price Per Put Option Contract	Total Sale Price (excluding taxes, commissions, and fees)	Insert an "A" if Assigned Insert an "E" if Exercised Insert an "X" if Expired	Exercise Date (Month/Day/Year)
/ /	$	/ /			$	$		/ /
/ /	$	/ /			$	$		/ /
/ /	$	/ /			$	$		/ /
/ /	$	/ /			$	$		/ /

3. PURCHASES/ACQUISITIONS DURING THE SETTLEMENT CLASS PERIOD – Separately list each and every purchase/acquisition (including free receipts) of ZBH Put Option contracts from after the opening of trading on June 7, 2016, through and including the close of trading on November 7, 2016. (Must be documented.)

IF NONE, CHECK HERE ☐

Date of Purchase/ Acquisition (List Chronologically) (MM/DD/YY)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Option Class Symbol	Number of Put Option Contracts Purchased/ Acquired	Purchase/ Acquisition Price Per Put Option Contract	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)
/ /	$	/ /			$	$
/ /	$	/ /			$	$
/ /	$	/ /			$	$
/ /	$	/ /			$	$

4. ENDING HOLDINGS – Separately list all positions in ZBH Put Option contracts in which you had an open interest as of the close of trading on November 7, 2016. (Must be documented.)

IF NONE, CHECK HERE ☐

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Option Class Symbol	Number of Put Option Contracts in Which You Had an Open Interest
$	/ /		
$	/ /		
$	/ /		
$	/ /		

☐ **IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST PHOTOCOPY THIS PAGE AND CHECK THIS BOX.**

IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED.

PART VI – RELEASE OF CLAIMS AND SIGNATURE

YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 13 OF THIS CLAIM FORM.

I (we) hereby acknowledge that as of the Effective Date of the Settlement, pursuant to the terms set forth in the Stipulation, I (we), on behalf of myself (ourselves) and my (our) heirs, executors, administrators, predecessors, successors, officers, directors, agents, parents, affiliates, subsidiaries, employees, attorneys, assignees and assigns, 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, discharged and dismissed each and every Released Plaintiffs' Claim (as defined in the Stipulation and in the Settlement Notice) against the Defendants' Releasees (as defined in the Stipulation and in the Settlement Notice) and shall forever be barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal or administrative forum asserting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

CERTIFICATION

By signing and submitting this Claim Form, the Claimant(s) or the person(s) who represent(s) the Claimant(s) certifies (certify), as follows:

1. that I (we) have read and understand the contents of the Settlement 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 Settlement Notice and in paragraph 2 on page 3 of this Claim Form, and is (are) not excluded from the Class by definition or pursuant to request as set forth in the Settlement Notice and in paragraph 3 on page 3 of this Claim Form;

3. that I (we) own(ed) the ZBH Common Stock and ZBH Call Options and had an interest in the ZBH Put Options identified in the Claim Form and have not assigned the claim against 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;

4. that the Claimant(s) has (have) not submitted any other claim covering the same purchases/acquisitions of ZBH Common Stock or ZBH Call Options, or sales of ZBH Put Options, and knows (know) of no other person having done so on the Claimant's (Claimants') behalf;

5. 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;

6. 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;

7. that the Claimant(s) waive(s) the right to trial by jury, to the extent it exists, and agree(s) to the Court's summary disposition of the determination of the validity or amount of the claim made by this Claim Form;

8. 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

9. 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 or 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

Print your name here

Signature of joint Claimant, if any | Date

Print your name here

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

Signature of person signing on behalf of Claimant | Date

Print your name 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 14 ON PAGE 4 OF THIS CLAIM FORM.)

REMINDER CHECKLIST

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

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

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

4. Do not send original security certificates or documentation. These items cannot be returned to you by the Claims Administrator.

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

6. 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 (888) 670-1171.**

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

8. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at info@ZimmerBiometSecuritiesLitigation.com, or toll-free at (888) 670-1171 or visit www.ZimmerBiometSecuritiesLitigation.com. Please DO NOT call ZBH or any of the other 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 OCTOBER 19, 2020**, ADDRESSED AS FOLLOWS:

Shah, et al. v. Zimmer Biomet Holdings, Inc., et al.
c/o JND Legal Administration
P.O. Box 91367
Seattle, WA 98111

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before October 19, 2020 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

LEGAL NOTICE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, *et al.*, Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., *et al.*, Defendants.	Case No.: 3:16-cv-00815-PPS-MGG Honorable Philip P. Simon

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

TO: **All persons or entities who, between June 7, 2016 and November 7, 2016, inclusive, purchased or otherwise acquired Zimmer Biomet Holdings, Inc. ("ZBH") Common Stock and/or Call Options, and/or wrote ZBH Put Options, and were damaged thereby (the "Settlement Class"):**

THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of Indiana, that the above-captioned litigation (the "Action") has been 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 set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness 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 $50,000,000 in cash (the "Settlement"), that, if approved, will resolve all claims, both known and unknown, in the Action.

A hearing will be held on September 3, 2020 at 1:00 p.m., before the Honorable Philip P. Simon at the United States District Court for the Northern District of Indiana, United States Courthouse, Courtroom 4, 5400 Federal Plaza, Hammond, IN 46320 (the "Settlement Fairness Hearing"), 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 April 14, 2020 (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. Please note that, in light of the COVID-19 pandemic, the Court may hold the Settlement Fairness Hearing telephonically, or change the date, time or location of the hearing. Please check the settlement website, www.ZimmerBiometSecuritiesLitigation.com, for information concerning any such changes.

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 Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *Shah et al. v. Zimmer Biomet Holdings, Inc. et al.*, c/o JND Legal Administration, P.O. Box 91367, Seattle, WA 98111, (888) 670-1171. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.ZimmerBiometSecuritiesLitigation.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 or submitted online* no later than **October 19, 2020**. 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 **August 13, 2020**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are *received* no later than **August 13, 2020**, in accordance with the instructions set forth in the Notice.

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

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

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.
c/o JND Legal Administration
P.O. Box 91367
Seattle, WA 98111
(888) 670-1171
www.ZimmerBiometSecuritiesLitigation.com

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

GLANCY PRONGAY & MURRAY LLP
Kara M. Wolke, Esq.
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
(888) 773-9224
settlements@glancylaw.com

By Order of the Court

Quarterly Leaders

Diversified Growth Funds

Fund (For the quarter ended June 30)	Symbol	Q2 % Rtrn	1 yr % Rtrn	36 mo Perf Rtg	Fund (For the year ended June 30)	Symbol	1 yr % Rtrn	Q2 % Rtrn	36 mo Perf Rtg
Hodges RetailFund	HDPMX	+54	-15	E	Fidelity GrowthCo	FDGRX	+40	+41	A+
Baron Retail Partners	BPTRX	+49	+37	A+	Amer Cent Inv FocusedInv	ACFOX	+38	+37	A+
BNY Mellon SmMdCpGrl	SDSCX	+45	+33	A+	Baron Retail Partners	BPTRX	+37	+49	A+
Buffalo Funds SmallCap	BUFSX	+44	+25	A+	Needham SmlCapGw	NEAGX	+33	+35	A
UBS Pace P USSmlGrP	BISCX	+41	+10	A	BNY Mellon SmMdCpGrl	SDSCX	+33	+45	A+
AMG Funds FrntSmCpGr	MSSYX	+41	+6	A	Fidelity BluChpGro	FBGRX	+32	+38	A+
Tocqueville Oppty	TOPPX	+41	+27	A+	ProFunds Inv Nasdaq100	OTPIX	+30	+29	A+
Buffalo Funds EmrgOpp	BUFOX	+41	+13	A	Vanguard GrowthInv	VWUSX	+30	+36	A+
Hodges HodgesSmCp	HDPSX	+41	-17	E	Tocqueville Oppty	TOPPX	+27	+41	A+
Lord Abbett A DvlpGrowth	LAGWX	+41	+11	A+	EdgeWood GrwthInstl	EGFIX	+26	+30	A+
Fidelity GrowthCo	FDGRX	+41	+40	A+	Thrivent Funds A GrowthA	AAAGX	+25	+29	A+
ClearBridge Inv SmallCapGrA	SASMX	+39	+10	A	Buffalo Funds SmallCap	BUFSX	+25	+44	A+
PrncplFnds MidCapGroJ	PMGJX	+38	+15	A	Vanguard Index GrowthInvst	VIGRX	+25	+29	A+
Fidelity BluChpGro	FBGRX	+38	+32	A+	Alger InvestingA	SPEGX	+24	+28	A+
Permanent Port AggressGr	PAGRX	+37	+10	B+	Gabelli AAA GrowthAAA	GABGX	+24	+27	A+
LKCM Funds SmCapEqInst	LKSCX	+37	-2	B-	PgimInvest GrowthA	TBDAX	+22	+31	A+
Amer Cent Inv FocusedInv	ACFOX	+37	+38	A+	Alger Spectra	SPECX	+22	+30	A+
Delaware Instl SmlCpGrow	OISGX	+37	+11	A	BNY Mellon GrowthZ	DREQX	+22	+31	A+
Vanguard GrowthInv	VWUSX	+36	+30	A+	PrncplFnds GrowthIInst	PLGIX	+22	+28	A+
Victory SmCpEqA	GPSCX	+36	+8	A	Victory LargeCapGrA	VFGAX	+22	+32	A
Needham SmlCapGw	NEAGX	+35	+33	A	GoldmnSachs A GrowthA	GGRAX	+21	+28	A+
AMG Funds SmlCpGr	TSCIX	+35	+3	A-	Sit Funds LgCpGr	SNIGX	+21	+28	A
Nuveen Cl I SmCapGrOpp	FIMPX	+35	+15	A	Guinness Atkinson GlobalnnInv	IWIRX	+21	+27	A-
HSBC Investor Opportunity	RESCX	+34	+11	A-	BNY Mellon LgCapGrowI	DAPIX	+21	+27	A
Alger MidCapGr	ALMRX	+34	+15	A	Virtus Funds I LargeGrI	STCAX	+21	+27	A+
Royce ValuePlsSer	RYVPX	+34	+4	B-	Needham GrwRetail	NEEGX	+20	+31	A-
PrncplFnds GrowthIInst	PGRTX	+34	+8	A	BlackRock Instl LrgeCapInst	CMVIX	+20	+27	A+
PgimInvest SmallCo	PGOAX	+34	-8	E	MFS Funds A GrowthA	MFEGX	+20	+25	A+
Asstmgmt BMOMidGrl	MRMIX	+33	+8	A	Delaware Instl USGrowth	DEUIX	+20	+30	A
Putnam A Sustainable	PMVAX	+33	+19	A	Wilshire Funds LrgCoGrowth	DTLGX	+20	+27	A
Meridian Funds GrowthLgcy	MERDX	+33	-1	B	PriceFds InstlLgCore	TPLGX	+19	+28	A+
Kinetics CrpRestInst	LSHUX	+33	-15	D+	Guidestone EqInvestor	GGEZX	+19	+26	A+
Carillon Family EglMidCpGrA	HAGAX	+33	+12	A	InvstHouse InvGrowth	TIHGX	+19	+31	A
AMG Funds SpclEqN	MGSEX	+33	+3	A-	Federated A MDTLrgGr	QALGX	+19	+30	A+
Nuveen Cl I MidCapGrOpI	FISGX	+32	+13	A	Carillon Family CapitalAppA	HRCPX	+19	+27	A
Oberweis Funds MicroCap	OBMCX	+32	-12	D	Pioneer A GrowthA	PINDX	+19	+25	A
Emerald Funds GrowthA	HSPGX	+32	+4	B+	PriceFds GrowthStk	PRGFX	+19	+28	A
Victory LargeCapGrA	VFGAX	+32	+22	A	Putnam A Sustainable	PMVAX	+19	+33	A
Delaware A SelectGrow	DVEAX	+32	+14	A	Fidelity Contrafund	FCNTX	+18	+27	A
GUGGENH MidCapGrA	SECUX	+32	+7	A-	Reynolds Funds BlueChip	RBCGX	+17	+28	A
BNY Mellon GrowthZ	DREQX	+31	+22	A+	Eaton Vance A TaxMgdMulti	EACPX	+17	+28	A
Rydex Dyn RydxFdsH	RYWAX	+31	-10	E	Schwab LrgGrowth	SWLSX	+17	+26	A
Vanguard Index ExtndMkt	VEXMX	+31	+1	B	AMG Funds GrowthN	MCGFX	+17	+25	A
BlackRock Instl CapGrInstl	PSGIX	+31	+6	A-	Optimum Instl LrgCpGrow	OILGX	+17	+27	A
EmpiricFnds 2500A	EMCAX	+31	-2	B-	Fidelity Magellan	FMAGX	+17	+24	A
PgimInvest GrowthA	TBDAX	+31	+22	A+	LrgCapGw GrwthInvstr	CIAOX	+17	+23	A
PriceFds DiverMidCap	PRDMX	+31	+11	A	PriceFds TaxEfficEq	PREFX	+16	+30	A+
WesMark Funds SmlCoGr	WMKSX	+31	+7	C+	Commerce ComGrowth	CFGRX	+16	+24	A
Oberweis Funds SmallCap	OBSOX	+31	+1	B+	Amana GrowthInv	AMAGX	+16	+23	A+
Needham GrwRetail	NEEGX	+31	+20	A-					

Sector Funds

Fund	Symbol	Q2 % Rtrn	1 yr % Rtrn	36 mo Perf Rtg	Fund	Symbol	1 yr % Rtrn	Q2 % Rtrn	36 mo Perf Rtg
US Glob Inv WldPreMnrl	UNWPX	+79	+39	E	Gabelli AAA GoldAAA	GOLDX	+49	+58	A
Midas Midas	MIDSX	+70	+21	A-	US Glob Inv GoldMtls	USERX	+43	+66	A+
US Glob Inv GoldMtls	USERX	+66	+43	A+	US Glob Inv WldPreMnrl	UNWPX	+39	+79	E
Gabelli AAA GoldAAA	GOLDX	+58	+49	A	Berkshire Focus	BFOCX	+38	+42	A+
Jacob Funds JacobIntnt	JAMFX	+58	+22	A+	Fidelity Sel BioTech	FBIOX	+31	+34	A
Berkshire Focus	BFOCX	+42	+38	A+	Columbia A SelGlbTch	SHGTX	+30	+32	A+
USAA Sci&Tech	USSCX	+41	+28	A+	Columbia A SelCom&Inf	SLMCX	+29	+31	A+
Rydex Investor Internet	RYIIX	+40	+26	A+	Fidelity Sel Wireless	FWRLX	+28	+24	A
PgimInvest NatlRsrc	PGNAX	+38	-22	E	USAA Sci&Tech	USSCX	+28	+41	A+
US Glob Inv GlobRes	PSPFX	+38	-8	E	Invesco Funds TechInvest	FTCHX	+28	+33	A+
Vanguard Admiral CoDilxAd	VCDAX	+38	+13	A	PriceFds ScienceTech	PRSCX	+27	+31	A+
Rydex Dyn EnrgInv	RYEIX	+36	-42	E	Rydex Investor Technology	RYTIX	+26	+33	A+
ICON EnergyS	ICENX	+36	-37	E	Rydex Investor Internet	RYIIX	+26	+40	A+
Fidelity NatResPort	FNARX	+35	-29	E	Franklin Temp BiotchDscA	FBDIX	+23	+29	A-
Fidelity Sel BioTech	FBIOX	+34	+31	A	Jacob Funds JacobIntnt	JAMFX	+22	+58	A+
Vanguard Admiral EnrIndAdm	VENAX	+33	-38	E	Oak Associates EmrgTech	BOGSX	+22	+28	A
Van Eck GlbHrdAstA	GHAAX	+33	-21	E	Fidelity Sel Computers	FDCPX	+21	+18	A
Fidelity Adv A ConsmrDisc	FCNAX	+33	+10	A	Hartford HLS IA Healthcare	HIAHX	+21	+21	A-
Rydex Investor Technology	RYTIX	+33	+26	A+	Hartford A Healthcare	HGHAX	+21	+21	A-
Invesco Funds TechInvest	FTCHX	+33	+28	A+	Midas Midas	MIDSX	+21	+70	A-
Fidelity Sel ConsmrDisc	FSCPX	+32	+9	A	Rydex Dyn BiotechInv	RYOIX	+20	+28	A-
Columbia A SelGlbTch	SHGTX	+32	+30	A+	Vanguard HlthCareInv	VGHCX	+19	+16	B+
Columbia A SelCom&Inf	SLMCX	+31	+29	A+	Putnam A HealthCareA	PHSTX	+19	+15	A-
PriceFds ScienceTech	PRSCX	+31	+27	A+	Oak Associates RedOakTech	ROGSX	+18	+25	A+
PgimInvest HealthSciA	PHLAX	+30	+14	A-	ICON InfoTechS	ICTEX	+18	+29	A
Rydex Dyn BasicMat	RYBIX	+30	-4	E	Ivy Sci&TechA	WSTAX	+18	+26	A+
Franklin Temp BiotchDscA	FBDIX	+29	+23	A-	PriceFds HealthSci	PRHSX	+17	+23	A
ICON InfoTechS	ICTEX	+29	+18	A	BlackRock A OppsInvA	SHSAX	+17	+17	A
Oak Associates EmrgTech	BOGSX	+28	+22	A	Janus Henderson GlbLifeSci	JAGLX	+16	+21	A
Rydex Dyn BiotechInv	RYOIX	+28	+20	A-	PgimInvest HealthSciA	PHLAX	+14	+30	A-
Invesco Funds A EnergyA	IENAX	+28	-40	E	DWS Funds S WellnessS	SCHLX	+13	+17	A-
ProFunds Inv ConUltra	CNPIX	+27	+5	D-	Eaton Vance A HealthSciA	ETHSX	+13	+14	A-
BNY Mellon ResourcesA	DNLAX	+27	-16	E	Vanguard Admiral CoDilxAd	VCDAX	+13	+38	A
Ivy GlbNatResA	IGNAX	+26	-23	E	Vanguard Admiral HlthcareIdx	VHCIX	+12	+16	A-
Fidelity Sel Chemicals	FSCHX	+26	-12	E	Schwab HealthCare	SWHFX	+11	+15	B+
Ivy Sci&TechA	WSTAX	+26	+18	A+	Rydex Investor HealthCare	RYHIX	+11	+19	A-
Oak Associates RedOakTech	ROGSX	+25	+18	A+	Kinetics Medical	MEDRX	+11	+11	B-
Fidelity ConsumerFin	FSVLX	+24	-22	E	DWS Funds A Commun	TISHX	+11	+21	B
Fidelity Sel Wireless	FWRLX	+24	+28	A	Oak Associates LivOkHlthSc	LOGSX	+11	+10	D
Fidelity Sel Materials	FSDPX	+24	-8	E	Fidelity Adv A ConsmrDisc	FCNAX	+10	+33	A
Fidelity MaterialsA	FMFAX	+24	-9	E	Fidelity Sel ConsmrDisc	FSCPX	+9	+32	A
World RealEstVal	HLRRX	+24	-14	E	Vanguard Admiral SvcAdmiral	VTCAX	+9	+22	D-
BlackRock A NatResInv	MDGRX	+24	-16	E	ICON HealthS	ICHCX	+8	+16	C+
PriceFds HealthSci	PRHSX	+23	+17	A	ProFunds Inv ConUltra	CNPIX	+5	+27	D-
PgimInvest JnsnFinlSrv	PFSAX	+23	-8	D-	Vanguard Admiral ConsStpIdx	VCSAX	+3	+9	C
Vanguard Admiral SvcAdmiral	VTCAX	+22	+9	D-	PgimInvest UtilityA	PRUAX	+1	+8	B+
DWS Funds A Commun	TISHX	+21	+11	B	Fidelity Adv A CnsmrStpl	FDAGX	+1	+11	E
ICON NatResS	ICBMX	+21	-13	E	Rydex Investor Telecomm	RYMIX	+0	+12	D+
PriceFds NewEra	PRNEX	+21	-20	E	TIAA-CREF FUNDS RealEstate	TRRPX	-1	+13	B

Bond Funds

Fund	Symbol	Q2 % Rtrn	1 yr % Rtrn	36 mo Perf Rtg	Fund	Symbol	1 yr % Rtrn	Q2 % Rtrn	36 mo Perf Rtg
Permanent Port VersatileBd	PRVBX	+14	+4	C	Carillon Family CoreBondI	SCCIX	+15	+7	B+
Hartford A StratIncA	HSNAX	+12	+6	C+	Guidestone ExtDurBdInv	GEDZX	+12	+6	B
Payden Funds HighIncome	PYHRX	+12	0	D+	Janus Henderson FlexibleBd	JAFLX	+10	+7	C+
Alliance Brnstn I LTDurHiInc	ALIHX	+12	-2	D-	Aberdeen TotRetrnA	BJBGX	+10	+6	C+
Natixis HighIncA	NEFHX	+12	-2	D-	Dimensional ExtndQltyI	DFTEX	+10	+9	B-
Virtus Funds A HiYield	PHCHX	+11	-1	D-	Morgan Stan Ins InvGrdFxInl	MPFDX	+10	+10	B-
Diamond Hill Funds CorpCre	DHSTX	+11	+3	C	Baird AggrBndInst	BAGIX	+9	+5	B-
Federated Funds HiYldSv	FHYTX	+11	-2	D-	TCW CoreFxdIncI	TGCFX	+9	+4	C+
Loomis Syls Inv InstlHiInc	LSHIX	+11	-7	E	TCW TotRetBdI	TGLMX	+9	+3	C+
Legg Mason I HighYieldI	WAHYX	+11	-1	D	Wells Fargo Ad CoreBdAdm	MNTRX	+9	+4	C+
Legg Mason A WAHiIncA	SHIAX	+11	-3	D-	Baird CorPlsBdIns	BCOIX	+9	+6	B-
Hartford HLS IA HighYield	HIAYX	+10	0	D	Parnassus FixedInc	PRFIX	+9	+3	C+
USAA HiInc	USHYX	+10	-5	E	Madison Funds CoreBondA	MBOAX	+9	+4	C
Hartford A HighYield	HAHAX	+10	0	D	Harbor BondInstl	HABDX	+8	+4	C+
Calamos HighIncA	CHYDX	+10	-3	E	Dodge&Cox Income	DODIX	+8	+6	C+
PriceFds HighYld	PRHYX	+10	-1	D-	Pace Funds P IntmdFixed	PCIFX	+8	+4	C
Morgan Stan Ins InvGrdFxInl	MPFDX	+10	+10	B-	JP Morgan Selct CoreBond	WOBDX	+8	+3	C+
Buffalo Funds HighYield	BUFHX	+10	0	D-	Mainstay I MacTtlRtBnd	MTMIX	+8	+6	C
Neubg Brm Inv HiIncBond	NHINX	+10	-1	D-	Manning & Napier CoreBond	EXCRX	+8	+4	C
Putnam A HighYieldA	PHYIX	+10	-1	D	Praxis ImpactBondA	MIIAX	+8	+4	C
Delaware A HiYldOpps	DHOAX	+10	0	D	Amer Cent Inv DiversBd	ADFIX	+8	+4	C-
Victory HighYldA	GUHYX	+9	-1	C-	SegalBryt PlusBondRet	WTIBX	+8	+5	C+
MainStay A HighYldCp	MHCAX	+9	-1	D	Victory MunderY	MUCYX	+8	+4	C
Federated A HiIncBond	FHIIX	+9	0	D	Optimum Instl FixedInc	OIFIX	+8	+5	C
Harbor HiYldInstl	HYFAX	+9	0	D	Touchstone ActiveBdA	TOBAX	+8	+8	C
Transamerica A HighYield	IHIYX	+9	-4	E	Baird IntmBdInst	BIMIX	+7	+4	C
Pioneer Y BondY	PICYX	+9	+5	D+	Federated A RetrnBDA	RRFAX	+7	+4	C
SEI Port HighYldBd	SHYAX	+9	-5	E	Old Westbury FixedInc	OWFIX	+7	+2	C-
TCW HiYieldBd	TGHYX	+9	+5	C+	Legg Mason I InflPlBdI	WAIIX	+7	+5	C
Frank/Tmp Fr A HighInc	FHAIX	+9	0	D	Cavanal Hill Funds BondInv	APBDX	+7	+3	C-
Dimensional ExtndQltyI	DFTEX	+9	+10	B-	USAA IntmTrmBd	USIBX	+7	+8	C+
Touchstone HighYieldA	THYAX	+9	-3	D-	Northern FixedIncome	NOFIX	+7	+5	C
DWS Funds A HighIncome	KHYAX	+9	0	D	Metro West IntmdBondI	MWIIX	+7	+4	C-
Integrity Mutual HiIncA	IHFAX	+8	-1	D	Value Line CoreBond	VAGIX	+7	+4	C-
Touchstone FlexIncY	MXIIX	+8	+3	D	North Country Fds IntermedBon	NCBDX	+7	+4	C-
Ivy HighIncC	WRHIX	+8	-7	E	USAA Income	USAIX	+7	+7	C
Thrivent Funds A HighYield	LBHYX	+8	-3	D-	Hartford A StratIncA	HSNAX	+6	+12	C+
Madison Funds HighIncA	MHNAX	+8	-3	E	Payden Funds CoreBond	PYCBX	+6	+5	C-
Northeast Inv Trust	NTHEX	+8	-8	E	Brown Advisory IncomeInv	BIAIX	+6	+6	D+
USAA IntmTrmBd	USIBX	+8	+7	C+	Price GNMA	PRGMX	+5	+1	D
JP Morgan Selct HighYield	OHYFX	+8	-3	D-	Payden Funds GNMA	PYGNX	+5	+1	D+
Lazard Instl CorpIncInst	LZHYX	+8	+1	D	Vanguard Instl STCorpBdIdx	VSTBX	+5	+6	D+
Fidelity Adv C FloatRtHiIn	FFRCX	+8	-6	E	Pioneer Y BondY	PICYX	+5	+9	D+
Wells Fargo A HighYldBd	EKHAX	+8	+1	D-	TCW HiYieldBd	TGHYX	+5	+9	C+
Touchstone ActiveBdA	TOBAX	+8	+8	C	Amer Cent Inv GinnieMae	BGNMX	+5	+1	D
Osterweis Capital StratInc	OSTIX	+7	0	D-	Columbia A LtdDurCrd	ALDAX	+5	+7	D+
Franklin Temp TotlRetrnA	FKBAX	+7	+5	D+	Lord Abbett F TotlRetrn	LTRFX	+5	+4	D+
Mass Mutl Prem HighYieldS	MPHSX	+7	-3	D-	DWS Funds S IncomeGNMA	SGINX	+5	+1	D
USAA Income	USAIX	+7	+7	C	LKCM Funds FixedIncome	LKFIX	+5	+4	D+
Transamerica A TranBond	IDITX	+7	+5	C-	Franklin Temp TotlRetrnA	FKBAX	+5	+7	D+

Notice of Proposed Class Action and Proposed Settlement Involving All Persons or Entities who Purchased or Otherwise Acquired Zimmer Biomet Holdings, Inc. Common Stock, Call Options and/or Wrote Put Options

NEWS PROVIDED BY
JND Legal Administration →
Jul 06, 2020, 09:06 ET

SEATTLE, July 6, 2020 /PRNewswire/ --

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Case No.: 3:16-cv-00815-PPS-MGG

RAJESH M. SHAH, *et al.*,

Plaintiffs,

v.

ZIMMER BIOMET HOLDINGS, INC., *et al.*,

Defendants.

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

This notice is for all persons or entities who, between June 7, 2016 and November 7, 2016, inclusive, purchased or otherwise acquired Zimmer Biomet Holdings, Inc. ("ZBH") Common Stock and/or Call Options, and/or wrote ZBH Put Options, and were damaged thereby (the "Settlement Class"):

THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of Indiana, that the above-captioned litigation (the "Action") has been 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 set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness 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 $50,000,000 in cash (the "Settlement"), that, if approved, will resolve all claims, both known and unknown, in the Action.

A hearing will be held on September 3, 2020 at 1:00 p.m., before the Honorable Philip P. Simon at the United States District Court for the Northern District of Indiana, United States Courthouse, Courtroom 4, 5400 Federal Plaza, Hammond, IN 46320 (the "Settlement Fairness Hearing"), 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 April 14, 2020 (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. Please note that, in light of the COVID-19 pandemic, the Court may hold the Settlement Fairness Hearing telephonically, or change the date, time or location of the hearing. Please check the settlement website, www.ZimmerBiometSecuritiesLitigation.com, for information concerning any such changes.

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 Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *Shah et al. v. Zimmer Biomet Holdings, Inc. et al.*, c/o JND Legal Administration, P.O. Box 91367, Seattle, WA 98111, (888) 670-1171. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.ZimmerBiometSecuritiesLitigation.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 or submitted online* no later than **October 19, 2020**. 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 **August 13, 2020**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and Defendants' Counsel such that they are *received* no later than **August 13, 2020**, in accordance with the instructions set forth in the Notice.

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

Requests for the Notice and Claim Form should be made to:	Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:
Shah et al. v. Zimmer Biomet Holdings, Inc. et al. c/o JND Legal Administration P.O. Box 91367 Seattle, WA 98111 (888) 670-1171 www.ZimmerBiometSecuritiesLitigation.com	GLANCY PRONGAY & MURRAY LLP Kara M. Wolke, Esq. 1925 Century Park East, Suite 2100 Los Angeles, CA 90067 (888) 773-9224 settlements@glancylaw.com

By Order of the Court

SOURCE JND Legal Administration

EXHIBIT C

JUL 07 2020

7/2/20

I, Matt Uhelhor of Evansville, IN 477[illegible]20 phone # requests exclusion from the settlement class in Shahet al. v Zimmer Biomet Holdings, INC. et al., Case No. 3:16-CV-00815

7/29/16	0.435 shares	purchased for 59.24
9/8/16	0.274 shares	sold for 20.41

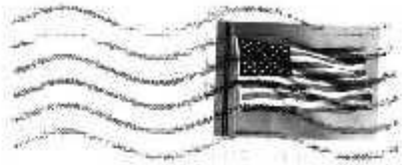
Thanks,

Matthew A Uhelhor

Matthew A Uhelhor

Matthew Thalhgr
Evansville, IN 47720

EVANSVILLE IN 405
02 JUL 2020 PM 3 L



JUL 07 2020

Shah et al. v Zimmer Biomet Holdings Inc et al
Exclusions, c/o JND Legal Administration
PO Box 91367
Seattle WA 98111

JUL 07 2020

98111-008067

Toronto, ON

M5S 1V8

CANADA

July 16, 2020

Shah et al v. Zimmer Biomet Holdings, Inc. et al, EXCLUSIONS

C/O JND Legal Administration

P.O. Box 91367

Seattle, WA 98111

USA

Dear Sir:

RE: 100 shares of Zimmer Biomet Holdings Inc. purchased Nov. 3, 2016

By

Jane S. Davies

Toronto, ON

M5S 1V8 (please note recent change to last digit of postal code)

CANADA

PH:

I purchased 100 shares of Zimmer Biomet Holdings through TD Direct Investing (in Toronto) on Oct. 31, 2016, for settlement on Nov. 3, 2016. I paid $105.69 US per share for a total of $10,569 US plus commission of $43 US. Copy of purchase confirmation enclosed.

At no time have I considered that I was in any way harmed by this purchase and thus feel that I have no case against Zimmer Biomet Holdings through this action so I wish to be excluded from it.

Please contact me at the address or telephone number above if you require any further information regarding this matter.

Thank you.

Yours truly,

Jane Davies

Jane Davies

TD Direct Investing
3500 STEELES AVE E
TOWER 2, 2ND FLOOR
MARKHAM ON L3R 0X1

TD Direct Investing

Transaction Confirmation

JTA0790986 E D 04074

MRS. JANE S DAVIES

TORONTO ON M5S 1V0 *

NOTE! POSTAL CODE HAS SINCE BEEN CHANGED TO M5S 1V8 =
TORONTO, ON, CANADA

Account number and type
Cash Account - US

Questions?
Contact an Investment Representative
Toll Free 1 (800) 668-1972

Transaction on October 31, 2016

- **For settlement on:** November 03, 2016
- **Processed on:** ~~October 31, 2016~~

Transaction	Security Description	Quantity	Price ($)	Amount ($)
You bought	ZIMMER BIOMET HLDGS INC NX-012032	100	105.69	

	Gross transaction amount	USD 10,569.00
Plus	Commission	43.00
Equals	**Net transaction amount**	**USD $10,612.00**

As agent, TD Direct Investing confirms the above purchase on a US listed marketplace for settlement in your account.

Ticker symbol: ZBH
Security number: 749466
CUSIP ID: 98956P102
Trade number: 006912
Trade processed by: C7GJ

Nov 3, 2016
Cdn/US exchange rate:
NOON 1 Cdn $ = .7470 US

Important information

Please review the information in this Transaction Confirmation carefully and let us know within 10 calendar days if there are any discrepancies.

Clients' accounts are protected by the Canadian Investor Protection Fund within specified limits. A brochure describing the nature and limits of coverage is available upon request.

Abbreviations used in the security descriptions
RS = Restricted shares
NVS = Non–voting shares
RVS = Restricted voting shares
SVS = Subordinate voting shares
MVS = Multiple voting shares
/D = DSC (Deferred Sales Charge)
/NL = No Load

Disclosure of sources of revenue
TD Direct Investing and/or parties related to us may earn revenue in addition to commission from the following sources: currency conversion charges on certain trades and mutual fund transactions, fees paid by issuers and others in connection with corporate actions and new issues, the sale of fixed income products, trailer fees paid by mutual fund companies, and remuneration paid by U.S. market makers and exchanges in connection with U.S. trades. For more information, see the TD Waterhouse Canada Inc. Account and Service Agreements and Disclosure Documents booklet. It is also available online at tddirectinvesting.ca.

The name of the salesperson, dealer and/or market in this transaction will be provided upon request.

TD Direct Investing is a division of TD Waterhouse Canada Inc., a subsidiary of The Toronto-Dominion Bank.

Thank you for choosing TD Direct Investing.

J. DAVIES

Toronto, ON
M5S 1V8
CANADA

Personnel soignant, merci

Thanks, healthcare workers

M4L 3B9

Shah et al v. Zimmer Biomet Holdings, Inc. et al,
EXCLUSIONS
c/o JND Legal Administration
P.O. Box 91367
Seattle, WA 98111
USA

JUL 29 2020

July 22, 2020

Denver, CO 80231

Shah et al versus Zimmer-Biomet Holdings

Seattle, WA 98111

RE: ZIM DJ54HAS89C

I request exclusion from Settlement Case Shah et al versus Zimmer-Biomet Holdings Case #3: 16-CV-00815. I purchased fractional shares of Zimmer-Biomet Holdings during the Settlement Class Period through the Zimmer-Biomet Dividend Reinvestment Plan on 7/29/16 and 10/28/16 with quarterly dividends. Since the share purchase during this period was $59.23 for a total of .448 share, and based on reimbursement of $1.57 per share, this amounts to .70, less than the Net Settlement Fund's pro-rated payment of $10.00 or greater.

Nancy A. Conway

Nancy A. Conway

INVESTMENT STATEMENT

PO BOX 922
WALL STREET STATION
NEW YORK, NY 10269-0560
INTERNET WEBSITE:
WWW.AMSTOCK.COM
TELEPHONE NUMBER:
888-552-8493

ZIMMER BIOMET HOLDINGS INC

NANCY A CONWAY ZIM DL54HAS89C

DENVER CO 80231-2655

	RECORD DATE CERTIFICATE(S)	RECORD DATE BOOK SHARES	RECORD DATE PLAN SHARES
SHARES	.000	120.000	3.495
DOLLARS	.00	28.80	.84

CURRENT DIVIDEND INFORMATION	
ACCOUNT NUMBER	
RECORD DATE	09/23/2016
PAYABLE DATE	10/28/2016
DIVIDEND RATE	.240000
GROSS DIVIDEND AMOUNT	29.64
TAX WITHHELD	.00
NET DIVIDEND AMOUNT	29.64

YEAR-TO-DATE TRANSACTIONS

TRANSACTION DATE	* TYPE	TRANSACTION AMOUNT	** SERVICE CHARGE	PRICE PER SHARE	TRANSACTION SHARES	SHARES HELD BY US IN PLAN ACCOUNT
01/02/2016	BALANCE FORWARD →					2.767
01/29/2016	60	27.01	1.11	98.5091	0.263	3.030
04/29/2016	60	29.53	1.20	114.5668	0.247	3.277
07/29/2016	60	29.59	1.20	130.5108	0.218	3.495
10/28/2016	60	29.64	1.21	123.5845	0.230	3.725

* TRANSACTION TYPE

51 Prior share balance
60 Shares purchased with dividend
61 Shares purchased with dividend discount
62 Shares purchased with optional cash
63 Shares purchased with optional cash discount
64 Shares received - STOCK DIVIDEND
66 Shares received - STOCK SPLIT
66 Shares DEPOSITED for safekeeping
67 Shares DEPOSITED by NAIC or Temper of the Times
68 Shares TRANSFERRED IN
69 Shares CREDIT adjustment
70 PARTIAL WITHDRAWAL - certificate issued for whole shares
71 PARTIAL WITHDRAWAL - whole shares sold
72 PARTIAL WITHDRAWAL - certificate issued for whole shares; fraction sold
73 PARTIAL WITHDRAWAL - shares sold; shareholder remains in plan
80 PLAN TERMINATION - certificate issued for whole shares; fraction sold
81 PLAN TERMINATION - all shares sold
88 Shares TRANSFERRED OUT
89 Shares DEBIT adjustment

DENVER CO 802

JUL 29 2020

Shah et al Vs Zimmer Biomet Holdings, Inc.
c/o JND Legal Administration, EXCLUSIONS
P.O. Box 91367
Seattle, WA 98111

98111-008067

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG

DECLARATION OF RAJESH M. SHAH IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Rajesh M. Shah, hereby declare as follows:

1. I am one of the Court-appointed Lead Plaintiffs in the above-captioned securities class action (the "Action").[1] I submit this declaration 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, including approval of my request to recover the reasonable costs, including lost wages, I incurred in connection with my representation of the Settlement Class in the prosecution of this Action.

2. 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 ("PSLRA"), 15 U.S.C. §§ 77z-1, 78u-4, and I have discharged those duties to the best of my ability. I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

I. LEAD PLAINTIFF'S OVERSIGHT OF THE LITIGATION

3. I have been actively involved in the prosecution of this case since I initiated the Action on December 2, 2016. On January 31, 2017, I moved to serve as a Lead Plaintiff in the Action, and on April 3, 2017, the Court appointed me to serve as one of the Lead Plaintiffs.

4. In fulfillment of my responsibilities as Lead Plaintiff on behalf of all Settlement Class Members in this Action, I have worked closely with Lead Counsel, Glancy Prongay & Murray LLP ("GPM"), to obtain an excellent result in this case.

[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 14, 2020. ECF No. 246-1.

5. Throughout the litigation, I received periodic status reports from GPM on case developments, and participated in regular discussions concerning the prosecution of the Action, the strengths and weaknesses of the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) regularly communicated with my attorneys regarding the posture and progress of the case as well as litigation strategy; (b) reviewed significant pleadings and briefs filed in the Action; (c) reviewed Court orders and discussed them with my attorneys; (d) responded to discovery requests from, and produced documents to, Defendants; (e) communicated with GPM regarding the preparation and execution of a declaration in support of the reply memorandum in support of Plaintiffs' motion for class certification; (f) consulted with GPM attorneys regarding the mediations and settlement negotiations; (g) evaluated the Settlement Amount, conferred with counsel, and ultimately approved the Settlement; and (h) communicated with counsel regarding the process of finalizing the Settlement.

6. More specifically, with respect to discovery, I actively participated in the process by: (a) consulting with counsel, meeting in person with counsel to discuss my written discovery responses, providing information for written discovery responses, and, with GPM's guidance, searching for and collecting responsive documents to fulfill my discovery obligations; (b) meeting with counsel on April 30, 2019 to prepare for my deposition; and (c) sitting for my deposition on May 1, 2019.

II. APPROVAL OF THE SETTLEMENT

7. As detailed in the paragraphs above, through my active participation, I was both well-informed of the status and progress of the litigation, and was kept informed of the progress of the settlement negotiations in this Action.

8. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action, I believe that the Settlement provides a fair, reasonable, and adequate

recovery for the Settlement Class, particularly in light of the risks of continued litigation, and I endorse approval of the Settlement by the Court.

III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

A. Attorneys' Fees And Litigation Expenses

9. I believe that Lead Counsel's request for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund is fair and reasonable in light of the work Plaintiffs' Counsel performed on behalf of the Settlement Class.

10. I have evaluated Lead Counsel's fee request by considering the quality and amount of the work performed, the recovery obtained for the Settlement Class, and the risks Plaintiffs' Counsel bore in prosecuting this Action on behalf of myself, the other Plaintiffs, and the Settlement Class on a fully contingent basis in which Plaintiffs' Counsel were not paid during the pendency of this Action and fronted all expenses, which were approximately $1,600,000. Accordingly, I have authorized this fee request for the Court's ultimate determination.

11. I further believe that the litigation expenses being requested for reimbursement to Plaintiffs' Counsel 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 my obligation to the Settlement Class to obtain the best result in the most cost efficient manner, I fully support Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

B. Lead Plaintiff's Litigation Related Costs And Expenses

12. I understand that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. §§ 77z-1(a)(4); 78u-4(a)(4). For this reason, in connection with Lead Counsel's request for reimbursement of litigation expenses, I am

respectfully requesting reimbursement for the costs, including lost wages, that I incurred directly relating to my representation of the Settlement Class in the Action, as detailed above.

13. The time that I devoted to the representation of the Settlement Class in this Action was time that I otherwise could have dedicated to my job as an analytical chemist or to other activities and, thus, represented a cost to me. I respectfully request reimbursement in the amount of $15,000 for the time I devoted to participating in this Action. It is my belief that this request for reimbursement is fair and reasonable and that the time and effort I devoted to this litigation was necessary to help achieve an excellent result for the Settlement Class.

IV. CONCLUSION

14. As set forth herein, I was actively involved in the prosecution and settlement of the claims in this Action, I strongly endorse the Settlement as fair, reasonable, and adequate, and I believe the Settlement represents a significant recovery for the Settlement Class. Accordingly, I respectfully request that the Court approve: (a) Plaintiffs' motion for final approval of the proposed Settlement and the Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) my request for reimbursement of the reasonable costs (including lost wages) 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.

Executed this 23 day of July, 2020, at Mount Tabor, New Jersey.

DocuSigned by:
RAJESH MANUBHAI SHAH
D3B98E6311F9475...

Rajesh M. Shah

EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG

DECLARATION OF MATTHEW T. BRIERLEY IN SUPPORT OF: (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Matthew T. Brierley, hereby declare as follows:

1. I am one of the Court-appointed Lead Plaintiffs in the above-captioned securities class action (the "Action").[1] I submit this declaration 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, including approval of my request to recover the reasonable costs I incurred in connection with my representation of the Settlement Class in the prosecution of this Action.

2. 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 ("PSLRA"), 15 U.S.C. §§ 77z-1, 78u-4, and I have discharged those duties to the best of my ability. I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

I. LEAD PLAINTIFF'S OVERSIGHT OF THE LITIGATION

3. I have been actively involved in the prosecution of this case since I moved to serve as a Lead Plaintiff in the Action on January 31, 2017. On April 3, 2017, the Court appointed me to serve as one of the Lead Plaintiffs.

4. In fulfillment of my responsibilities as Lead Plaintiff on behalf of all Settlement Class Members in this Action, I have worked closely with Lead Counsel, Glancy Prongay & Murray LLP ("GPM"), to obtain an excellent result in this case.

[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 14, 2020. ECF No. 246-1.

5. Throughout the litigation, I received periodic status reports from GPM on case developments, and participated in regular discussions concerning the prosecution of the Action, the strengths and weaknesses of the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) regularly communicated with my attorneys regarding the posture and progress of the case as well as litigation strategy; (b) reviewed significant pleadings and briefs filed in the Action; (c) reviewed Court orders and discussed them with my attorneys; (d) responded to discovery requests from, and produced documents to, Defendants; (e) communicated with GPM regarding the preparation and execution of a declaration in support of the reply memorandum in support of Plaintiffs' motion for class certification; (f) prepared for the mediation sessions by, among other things, discussing with my counsel the mediation statements and mediation strategy; (g) consulted with GPM attorneys regarding the mediations and settlement negotiations; (h) evaluated the Settlement Amount, conferred with counsel, and ultimately approved the Settlement; and (i) communicated with counsel regarding the process of finalizing the Settlement.

6. More specifically, with respect to discovery, I actively participated in the process by: (a) consulting with counsel, meeting in person with counsel to discuss my written discovery responses, providing information for written discovery responses, and, with GPM's guidance, searching for and collecting responsive documents to fulfill my discovery obligations; (b) driving approximately 100 miles from my home to Toronto, Ontario, Canada to attend a meeting with counsel on May 2, 2019 to prepare for my deposition; and (c) sitting for my deposition on May 3, 2019 in Toronto.

II. APPROVAL OF THE SETTLEMENT

7. As detailed in the paragraphs above, through my active participation, I was both well-informed of the status and progress of the litigation, and was kept informed of the progress of the settlement negotiations in this Action.

8. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action, I believe that the Settlement provides a fair, reasonable, and adequate recovery for the Settlement Class, particularly in light of the risks of continued litigation, and I endorse approval of the Settlement by the Court.

III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

A. Attorneys' Fees And Litigation Expenses

9. I believe that Lead Counsel's request for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund is fair and reasonable in light of the work Plaintiffs' Counsel performed on behalf of the Settlement Class.

10. I have evaluated Lead Counsel's fee request by considering the quality and amount of the work performed, the recovery obtained for the Settlement Class, and the risks Plaintiffs' Counsel bore in prosecuting this Action on behalf of myself, the other Plaintiffs, and the Settlement Class on a fully contingent basis in which Plaintiffs' Counsel was not paid during the pendency of this Action and fronted all expenses, which were approximately $1,600,000. I have authorized this fee request for the Court's ultimate determination.

11. I further believe that the litigation expenses being requested for reimbursement to Plaintiffs' Counsel 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 my obligation to the Settlement Class to obtain the best result in the most cost efficient manner, I fully support Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

B. Lead Plaintiff's Litigation Related Costs And Expenses

12. I understand that reimbursement of a class representative's reasonable costs and

expenses is authorized under the PSLRA, 15 U.S.C. §§ 77z-1(a)(4); 78u-4(a)(4). For this reason, in connection with Lead Counsel's request for reimbursement of litigation expenses, I am respectfully requesting reimbursement for the costs that I incurred directly relating to my representation of the Settlement Class in the Action, as detailed above.

13. The time that I devoted to the representation of the Settlement Class in this Action was time that I otherwise could have dedicated to other activities, including my investment activities and, thus, represented a cost to me. I respectfully request reimbursement in the amount of $15,000 for the time I devoted to participating in this Action. It is my belief that this request for reimbursement is fair and reasonable and that the time and effort I devoted to this litigation was necessary to help achieve an excellent result for the Settlement Class.

IV. CONCLUSION

14. As set forth herein, I was actively involved in the prosecution and settlement of the claims in this Action, I strongly endorse the Settlement as fair, reasonable, and adequate, and I believe the Settlement represents a significant recovery for the Settlement Class. Accordingly, I respectfully request that the Court approve: (a) Plaintiffs' motion for final approval of the proposed Settlement and the Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) my request for reimbursement of the reasonable costs 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.

Executed this 23rd day of July, 2020, at Coldwater, Ontario, Canada.

DocuSigned by:
Matt Brierley
93A45E97FA3F44D...

Matthew T. Brierley

EXHIBIT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG

DECLARATION OF ANTHONY G. SPEELMAN ON BEHALF OF UFCW LOCAL 1500 IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Anthony G. Speelman, hereby declare as follows:

1. I am the former President of UFCW Local 1500 and current Senior Advisor to the President of UFCW Local 1500 and the Plan Manager for the UFCW Local 1500 Pension Fund .

2. UFCW Local 1500 (or "the Fund") is a named plaintiff and proposed class representative in the above-captioned securities class action (the "Action").[1] I submit this declaration 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, including approval of my request to recover reasonable costs that UFCW Local 1500 incurred in connection with its representation of the Settlement Class in the prosecution of this Action.

3. 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 ("PSLRA"), 15 U.S.C. § 77z-1 and 15 U.S.C. § 78u-4, and I, on behalf of UFCW Local 1500, have discharged those duties to the best of my ability. I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, on behalf of UFCW Local 1500 and I could and would testify competently to these matters.

4. In fulfillment of UFCW Local 1500's responsibilities as a named plaintiff and proposed class representative, UFCW Local 1500 worked closely with the other plaintiffs, and

[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 14, 2020. ECF No. 246-1.

through its counsel Kirby McInerney LLP ("KM"), with court-appointed Lead Counsel Glancy Prongay & Murray LLP ("GPM"), to obtain an excellent result in this case.

I. PLAINTIFF'S OVERSIGHT OF THE LITIGATION

5. UFCW Local 1500 first became actively involved in the prosecution of this case in approximately May 2017, following the appointment of the Lead Plaintiffs and Lead Counsel. UFCW Local 1500 purchased shares pursuant to the June 2016 and August 2016 secondary offerings, unlike the other named plaintiffs. Accordingly, UFCW Local 1500 had standing to assert claims arising under the Securities Act of 1933, which were subject to a different pleading standard than the previously asserted securities fraud claims arising under the Exchange Act of 1934. On June 16, 2017, UFCW Local 1500 was included as an additional named plaintiff in the Amended Class Action Complaint (ECF No. 30). This was the first complaint filed in this litigation to assert claims arising under the Securities Act of 1933.

6. Throughout the litigation, UFCW Local 1500 received periodic status reports from KM on case developments, and participated in regular discussions concerning the prosecution of the Action, the strengths and weaknesses of the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) regularly communicated with my attorneys regarding the posture and progress of the case as well as litigation strategy; (b) reviewed significant pleadings and briefs filed in the Action; (c) reviewed Court orders and discussed them with my attorneys; (d) responded to discovery requests from, and produced documents to, Defendants; (e) prepared for the mediation sessions by, among other things, discussing with my counsel the mediation statements and mediation strategy; (f) consulted with KM attorneys regarding the mediations and settlement negotiations; (g) evaluated the Settlement Amount, conferred with counsel, and ultimately approved the Settlement; and (h) communicated with counsel regarding the process of finalizing the Settlement. My oversight of UFCW Local 1500's participation in the litigation was

assisted by other union staff, including, *inter alia*, Robert W. Newell Jr. (former Vice President and current President), Joseph Waddy (Vice President), and Martin Vasilko (IT Director) as well as administrative staff.

7. More specifically, with respect to discovery, UFCW Local 1500 actively participated in the process by: (a) consulting with counsel, providing information for written discovery responses, and, with KM's guidance, searching for and collecting responsive documents to fulfill UFCW Local 1500's discovery obligations; (b) coordinating the collection of documents from UFCW Local 1500's investment custodian and third-party advisors; (b) meeting with counsel from KM and GPM on May 13, 2019 to prepare for my deposition; and (c) sitting for my deposition on May 14, 2019 in New York, New York.

II. APPROVAL OF THE SETTLEMENT

8. As detailed in the paragraphs above, through UFCW Local 1500's active participation, UFCW Local 1500 was both well-informed of the status and progress of the litigation, and kept informed of the progress of the settlement negotiations in this Action.

9. Based on UFCW Local 1500's involvement throughout the prosecution and resolution of the claims asserted in the Action, UFCW Local 1500 believes that the Settlement provides a fair, reasonable, and adequate recovery for the Settlement Class, particularly in light of the risks of continued litigation, and UFCW Local 1500 endorses approval of the Settlement by the Court.

III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

A. Attorneys' Fees And Litigation Expenses

10. UFCW Local 1500 believes that Lead Counsel's request for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund is fair and reasonable in light of the work Plaintiffs' Counsel performed on behalf of the Settlement Class.

11. UFCW Local 1500 has evaluated Lead Counsel's fee request by considering the quality and amount of the work performed, the recovery obtained for the Settlement Class, and the risks Plaintiffs' Counsel bore in prosecuting this Action on behalf of UFCW Local 1500, the other Plaintiffs, and the Settlement Class on a fully contingent basis in which Plaintiffs' Counsel was not paid during the pendency of this Action and fronted all expenses, which totaled approximately $1,600,000. UFCW Local 1500 has authorized this fee request for the Court's ultimate determination.

12. UFCW Local 1500 further believes that the litigation expenses being requested for reimbursement to Plaintiffs' Counsel 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 UFCW Local 1500's obligation to the Settlement Class to obtain the best result in the most cost efficient manner, UFCW Local 1500 fully supports Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

B. Plaintiff's Litigation-Related Costs And Expenses

13. I understand that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 77z-1(a)(4) and 15 U.S.C. § 78u-4(a)(4). For this reason, in connection with Lead Counsel's request for reimbursement of litigation expenses, I am respectfully requesting reimbursement for the costs that UFCW Local 1500

incurred directly relating to its representation of the Settlement Class in the Action, as described in detail above.

14. The time that my colleagues and I devoted to the representation of the Settlement Class in this Action was time that we otherwise would have spent on other union activities, and thus, represented a cost to UFCW Local 1500. UFCW Local 1500 respectfully requests reimbursement in the amount of $15,000 for the time UFCW Local 1500 officials devoted to participating in this Action. It is my belief that this request for reimbursement is fair and reasonable and that the time and effort UFCW Local 1500 devoted to this litigation was necessary to help achieve an excellent result for the Settlement Class.

IV. CONCLUSION

15. As set forth herein, UFCW Local 1500 was actively involved in the prosecution and settlement of the claims in this Action, UFCW Local 1500 strongly endorses the Settlement as fair, reasonable, and adequate, and I believe the Settlement represents a significant recovery for the Settlement Class. Accordingly, UFCW Local 1500 respectfully requests that the Court approve: (a) Plaintiffs' motion for final approval of the proposed Settlement and the Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) my request for reimbursement of the reasonable costs (including lost wages) 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.

Executed: July 29, 2020
Westbury, New York.

Anthony G. Speelman
Plan Manager, UFCW Local 1500

EXHIBIT 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG

DECLARATION OF STEVEN CASTILLO IN SUPPORT OF: (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

I, Steven Castillo, hereby declare as follows:

1. I am a named plaintiff in the above-captioned securities class action (the "Action").[1] I submit this declaration 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, including approval of my request to recover the reasonable costs, including lost wages, I incurred in connection with my representation of the Settlement Class in the prosecution of this Action.

2. 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 ("PSLRA"), 15 U.S.C. §§ 77z-1, 78u-4, and I have discharged those duties to the best of my ability. I have personal knowledge of the matters set forth in this Declaration, as I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement, and I could and would testify competently to these matters.

I. PLAINTIFF'S OVERSIGHT OF THE LITIGATION

3. I have been actively involved in the prosecution of this case since approximately February 2019. On March 4, 2019, a motion was filed to add me as a named plaintiff to the Action, which the Court granted on March 14, 2019.

4. In fulfillment of my responsibilities as a named plaintiff on behalf of all Settlement Class Members in this Action, I have worked closely with Lead Counsel, Glancy Prongay & Murray LLP ("GPM"), to obtain an excellent result in this case.

[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 14, 2020. ECF No. 246-1.

5. Throughout the litigation, I received periodic status reports from GPM on case developments, and participated in regular discussions concerning the prosecution of the Action, the strengths and weaknesses of the claims, and potential settlement. In particular, throughout the course of this Action, I: (a) regularly communicated with my attorneys regarding the posture and progress of the case as well as litigation strategy; (b) reviewed significant pleadings and briefs filed in the Action; (c) reviewed Court orders and discussed them with my attorneys; (d) responded to discovery requests from, and produced documents to, Defendants; (e) prepared for the mediation sessions by, among other things, discussing with my counsel the mediation statements and mediation strategy; (f) consulted with GPM attorneys regarding the mediations and settlement negotiations; (g) evaluated the Settlement Amount, conferred with counsel, and ultimately approved the Settlement; and (h) communicated with counsel regarding the process of finalizing the Settlement.

6. More specifically, with respect to discovery, I actively participated in the process by: (a) consulting with counsel, providing information for written discovery responses, and, with GPM's guidance, searching for and collecting responsive documents to fulfill my discovery obligations; (b) traveling from Bend, Oregon to Los Angeles, California to attend a meeting with counsel on June 6, 2019 to prepare for my deposition; and (c) sitting for my deposition on June 7, 2019 in Los Angeles, California.

II. APPROVAL OF THE SETTLEMENT

7. As detailed in the paragraphs above, through my active participation, I was both well-informed of the status and progress of the litigation, and was kept informed of the progress of the settlement negotiations in this Action.

8. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action, I believe that the Settlement provides a fair, reasonable, and adequate

recovery for the Settlement Class, particularly in light of the risks of continued litigation, and I endorse approval of the Settlement by the Court.

III. LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

A. Attorneys' Fees And Litigation Expenses

9. I believe that Lead Counsel's request for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund is fair and reasonable in light of the work Plaintiffs' Counsel performed on behalf of the Settlement Class.

10. I have evaluated Lead Counsel's fee request by considering the quality and amount of the work performed, the recovery obtained for the Settlement Class, and the risks Plaintiffs' Counsel bore in prosecuting this Action on behalf of myself, the other Plaintiffs, and the Settlement Class on a fully contingent basis in which Plaintiffs' Counsel were not paid during the pendency of this Action and fronted all expenses, which were approximately $1,600,000. Accordingly, I have authorized this fee request for the Court's ultimate determination.

11. I further believe that the litigation expenses being requested for reimbursement to Plaintiffs' Counsel 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 my obligation to the Settlement Class to obtain the best result in the most cost efficient manner, I fully support Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses.

B. Plaintiff's Litigation Related Costs And Expenses

12. I understand that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. §§ 77z-1(a)(4); 78u-4(a)(4). For this reason, in connection with Lead Counsel's request for reimbursement of litigation expenses, I am

respectfully requesting reimbursement for the costs, including lost wages, that I incurred directly relating to my representation of the Settlement Class in the Action, as detailed above.

13. The time that I devoted to the representation of the Settlement Class in this Action was time that I otherwise could have dedicated to my job as a forester or to other activities and, thus, represented a cost to me. I respectfully request reimbursement in the amount of $15,000 for the time I devoted to participating in this Action. It is my belief that this request for reimbursement is fair and reasonable and that the time and effort I devoted to this litigation was necessary to help achieve an excellent result for the Settlement Class.

IV. CONCLUSION

14. As set forth herein, I was actively involved in the prosecution and settlement of the claims in this Action, I strongly endorse the Settlement as fair, reasonable, and adequate, and I believe the Settlement represents a significant recovery for the Settlement Class. Accordingly, I respectfully request that the Court approve: (a) Plaintiffs' motion for final approval of the proposed Settlement and the Plan of Allocation; (b) Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses; and (c) my request for reimbursement of the reasonable costs (including lost wages) 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.

Executed this ____ day of July, 2020, at Bend, Oregon.

7/25/2020

DocuSigned by:
Steven Castillo
639D0DED32564D0...

Steven Castillo

EXHIBIT 8

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Settlements

2019 Review and Analysis

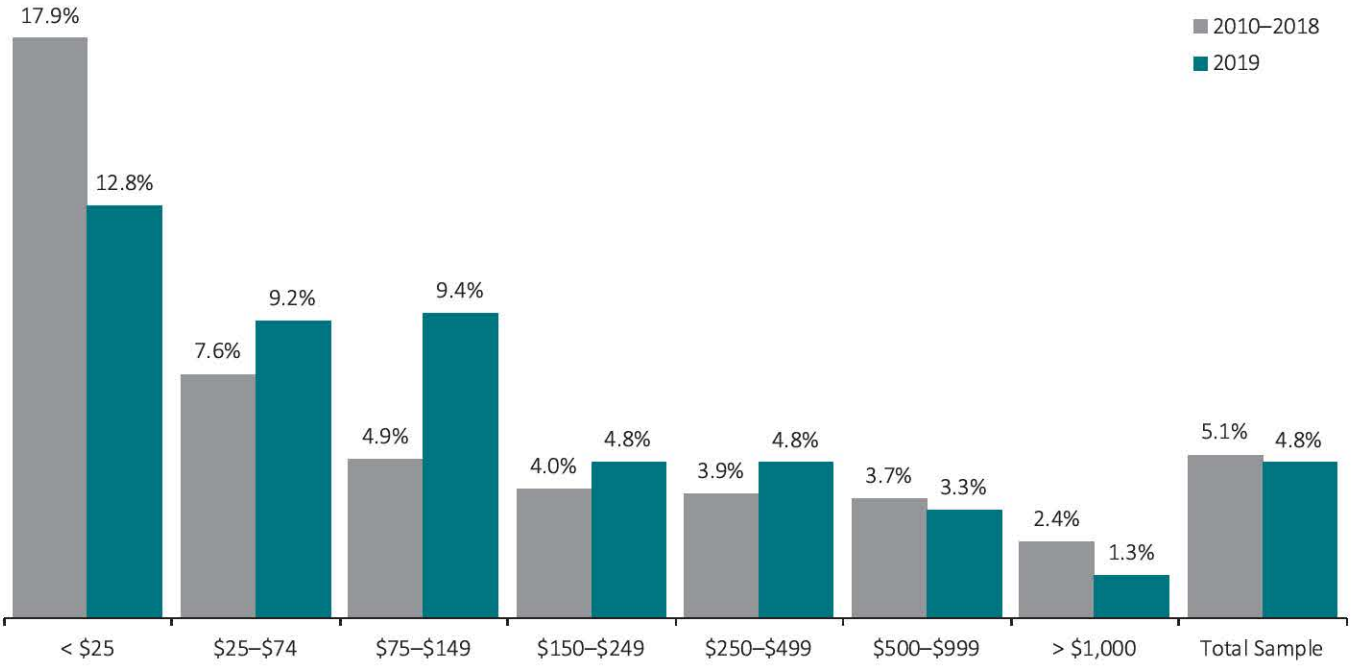
- Larger cases, as measured by "simplified tiered damages," typically settle for a smaller percentage of damages.
- Smaller cases (less than $25 million in "simplified tiered damages") are less likely to include factors such as institutional lead plaintiffs and/or related actions by the Securities and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

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

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

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

(Dollars in millions)



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

About the Authors

Laarni T. Bulan
Ph.D., Columbia University; M.Phil., Columbia University; B.S., University of the Philippines

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.

Laura E. Simmons
Ph.D., University of North Carolina at Chapel Hill; M.B.A., University of Houston; B.B.A., University of Texas at Austin

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

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

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

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

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

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EXHIBIT 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG Honorable Philip P. Simon

DECLARATION OF KARA M. WOLKE, ESQ. IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF GLANCY PRONGAY & MURRAY LLP

I, Kara M. Wolke, declare as follows:

1. I am a partner at the law firm Glancy Prongay & Murray LLP ("GPM" or "Lead Counsel"), counsel of record for Lead Plaintiffs Rajesh M. Shah and Matt Brierley and additional representative plaintiffs UFCW Local 1500 and Steven Castillo (collectively "Plaintiffs") 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 in connection with services rendered in the Action, as well as for reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 14, 2020 (ECF No. 246-1).

2. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including July 22, 2020, billed twenty (20) or more hours to the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

3. I personally performed work in the Action, and am familiar with the work my firm conducted in connection with the Action. I reviewed the daily time records of all timekeepers who did work on the Action in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the records as well as the necessity for, and reasonableness of, the time committed to the litigation. As a result of this review, I made reductions to certain of my firm's time entries such that the time included in Exhibit 1 reflect that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of the thirty-two (32) attorneys and staff reflected in Exhibit 1 was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the application for fees and reimbursement of expenses has been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are consistent with the rates approved by courts in other securities or shareholder litigation. These rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

5. The total number of hours reflected in Exhibit 1 is 25,957.70 hours. The total lodestar reflected in Exhibit 1 is $12,903,598.00, consisting of $12,771,246.00 for attorneys' time and $132,352.00 for professional support staff time.

6. As detailed in Exhibit 2, my firm is seeking reimbursement of a total of $1,508,037.52 in expenses incurred in connection with the prosecution of this Action.

7. The litigation expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense reports, check records, and other source materials and are an accurate record of the expenses incurred. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm.

8. Attached hereto as Exhibit 3 is a copy of GPM's firm resume, including the attorneys who were involved in the Action.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed this 30th day of July, 2020 in Los Angeles, California.

Kara M. Wolke

EXHIBIT 1

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,
Case No. 3:16-cv-00815-PPS-MGG

GLANCY PRONGAY & MURRAY LLP

LODESTAR REPORT
FROM INCEPTION THROUGH JULY 22, 2020

TIMEKEEPER/CASE	STATUS	HOURS	RATE	LODESTAR
ATTORNEYS:				
Robert Prongay	Partner	2,341.70	775.00	1,814,817.50
Joseph Cohen	Partner	96.40	945.00	91,098.00
Kevin F. Ruf	Partner	160.40	945.00	151,578.00
Kara Wolke	Partner	271.60	795.00	215,922.00
Jason Krajcer	Partner	1,212.20	795.00	963,699.00
Leanne Heine	Partner	1,019.00	650.00	662,350.00
Lesley Portnoy	Partner	20.80	650.00	13,520.00
Peter A. Binkow	Of Counsel	216.00	895.00	193,320.00
Christopher Fallon	Associate	2,975.60	575.00	1,710,970.00
Melissa Wright	Associate	125.20	550.00	68,860.00
Vahe Mesropyan	Associate	639.40	450.00	287,730.00
Natalie S. Pang	Associate	223.00	450.00	100,350.00
Graham Clegg	Associate	1,404.00	410.00	575,640.00
Mehrdaud Jafarnia	Associate	1,294.00	410.00	530,540.00
Dana K. Vincent	Associate	1,003.00	410.00	411,230.00
Noreen R. Scott	Associate	960.80	410.00	393,928.00
Lisa Holman	Project Attorney	1,380.00	395.00	545,100.00
Sandra Hung	Project Attorney	968.80	395.00	382,676.00
Holly A. Heath	Project Attorney	569.90	395.00	225,110.50
Erin K. Burke	Project Attorney	1,476.50	395.00	583,217.50
Cami Daigle	Project Attorney	1,451.30	395.00	573,263.50
Richard Urisko	Project Attorney	1,432.00	395.00	565,640.00
Peter Rabinov	Project Attorney	1,426.80	395.00	563,586.00
Nilla Watkins	Project Attorney	1,338.00	395.00	528,510.00
Diarra Porter	Project Attorney	590.00	395.00	233,050.00
Christopher Del Valle	Project Attorney	413.60	395.00	163,372.00
Merlyne Jean-Louis	Project Attorney	265.70	380.00	100,966.00
TOTAL ATTORNEY	**TOTAL**	**25,275.70**		**12,650,044.00**
PARALEGALS:				
Harry Kharadjian	Senior Paralegal	143.70	295.00	42,391.50
Paul Harrigan	Senior Paralegal	42.90	290.00	12,441.00

Jack Ligman	Research Analyst	77.80	310.00	24,118.00
Erin Krikorian	Research Analyst	80.30	310.00	24,893.00
Michaela Ligman	Research Analyst	73.60	310.00	22,816.00
TOTAL PARALEGAL	**TOTAL**	**418.30**		**126,659.50**
TOTAL LODESTAR	**TOTAL**	**25,694.00**		**12,776,703.50**

EXHIBIT 2

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,
Case No. 3:16-cv-00815-PPS-MGG

GLANCY PRONGAY & MURRAY LLP

EXPENSE REPORT
FROM INCEPTION THROUGH JULY 22, 2020

ITEM	AMOUNT
COURIER & SPECIAL POSTAGE	1,435.79
COURT FILING FEES	1,107.40
DOCUMENT MANAGEMENT	61,002.18
EXPERTS	1,237,009.78
INVESTIGATIONS	66,446.45
MEDIATION	37,250.76
ONLINE RESEARCH	37,050.87
OTHER RESEARCH	870.75
PHOTOIMAGING	554.98
PRESS RELEASES	145.00
SERVICE OF PROCESS	6,407.94
TELEPHONE	53.80
TRANSCRIPTS	11,446.68
TRAVEL AIRFARE	15,475.12
TRAVEL AUTO	3,908.33
TRAVEL HOTEL	23,389.50
TRAVEL MEALS	3,510.14
TRAVEL PARKING	972.05
GRAND TOTAL	**1,508,037.52**

EXHIBIT 3

GLANCY PRONGAY & MURRAY LLP

FIRM RESUME

GPM Glancy Prongay & Murray LLP
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
T: 310.201.9150

FIRM RESUME

Glancy Prongay & Murray LLP (the "Firm") has represented investors, consumers and employees for over 25 years. Based in Los Angeles, with offices in New York City and Berkeley, the Firm has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. As Lead Counsel, Co-Lead Counsel, or as a member of Plaintiffs' Counsel Executive Committees, the Firm's attorneys have recovered billions of dollars for parties wronged by corporate fraud, antitrust violations and malfeasance. Indeed, the Institutional Shareholder Services unit of RiskMetrics Group has recognized the Firm as one of the top plaintiffs' law firms in the United States in its Securities Class Action Services report for every year since the inception of the report in 2003. The Firm's efforts have been publicized in major newspapers such as the *Wall Street Journal*, the *New York Times*, and the *Los Angeles Times*.

Glancy Prongay & Murray's commitment to high quality and excellent personalized services has boosted its national reputation, and we are now recognized as one of the premier plaintiffs' firms in the country. The Firm works tenaciously on behalf of clients to produce significant results and generate lasting corporate reform.

The Firm's integrity and success originate from our attorneys, who are among the brightest and most experienced in the field. Our distinguished litigators have an unparalleled track record of investigating and prosecuting corporate wrongdoing. The Firm is respected for both the zealous advocacy with which we represent our clients' interests as well as the highly-professional and ethical manner by which we achieve results. We are ideally positioned to pursue securities, antitrust, consumer, and derivative litigation on behalf of our clients. The Firm's outstanding accomplishments are the direct result of the exceptional talents of our attorneys and employees.

SECURITIES CLASS ACTION SETTLEMENTS

Appointed as Lead or Co-Lead Counsel by judges throughout the United States, Glancy Prongay & Murray has achieved significant recoveries for class members in numerous securities class actions, including:

In re Mercury Interactive Corporation Securities Litigation, USDC Northern District of California, Case No. 05-3395-JF, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over $117 million.

In re Real Estate Associates Limited Partnership Litigation, USDC Central District of California, Case No. 98-7035-DDP, in which the Firm served as local counsel and plaintiffs achieved a $184 million jury verdict after a complex six week trial in Los Angeles, California and later settled the case for $83 million.

In Re Yahoo! Inc. Securities Litigation, USDC Northern District of California, Case No. 5:17-cv-00373-LHK, in which the Firm served as Co-Lead Counsel and achieved an $80 million settlement.

The City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A., USDC District of Minnesota, Case No. 10-cv-04372-DWF/JJG, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at $62.5 million.

Schleicher v. Wendt, (Conseco Securities Litigation), USDC Southern District of Indiana, Case No. 02-1332-SEB, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of over $41 million.

Robb v. Fitbit, Inc., USDC Northern District of California, Case No. 3:16-cv-00151, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of $33 million.

Yaldo v. Airtouch Communications, State of Michigan, Wayne County, Case No. 99-909694-CP, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over $32 million for defrauded consumers.

Lapin v. Goldman Sachs, USDC Southern District of New York, Case No. 03-0850-KJD, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of $29 million.

In re Heritage Bond Litigation, USDC Central District of California, Case No. 02-ML-1475-DT, where as Co-Lead Counsel, the Firm recovered in excess of $28 million for defrauded investors and continues to pursue additional defendants.

In re Livent, Inc. Noteholders Litigation, USDC Southern District of New York, Case No. 99 Civ 9425-VM, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over $27 million.

In re ECI Telecom Ltd. Securities Litigation, USDC Eastern District of Virginia, Case No. 01-913-A, in which the Firm served as sole Lead Counsel and recovered almost $22 million for defrauded ECI investors.

Senn v. Sealed Air Corporation, USDC New Jersey, Case No. 03-cv-4372-DMC, a securities fraud class action, in which the Firm acted as co-lead counsel for the Class and achieved a settlement of $20 million.

In re Gilat Satellite Networks, Ltd. Securities Litigation, USDC Eastern District of New York, Case No. 02-1510-CPS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of $20 million.

In re Lumenis, Ltd. Securities Litigation, USDC Southern District of New York, Case No.02-CV-1989-DAB, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over $20 million.

In re Infonet Services Corporation Securities Litigation, USDC Central District of California, Case No. CV 01-10456-NM, in which as Co-Lead Counsel, the Firm achieved a settlement of $18 million.

In re ESC Medical Systems, Ltd. Securities Litigation, USDC Southern District of New York, Case No. 98 Civ. 7530-NRB, a securities fraud class action in which the Firm served as sole Lead Counsel for the Class and achieved a settlement valued in excess of $17 million.

In re Musicmaker.com Securities Litigation, USDC Central District of California, Case No. 00-02018-CAS, a securities fraud class action in which the Firm was sole Lead Counsel for the Class and recovered in excess of $13 million.

In re Lason, Inc. Securities Litigation, USDC Eastern District of Michigan, Case No. 99 76079-AJT, in which the Firm was Co-Lead Counsel and recovered almost $13 million for defrauded Lason stockholders.

In re Inso Corp. Securities Litigation, USDC District of Massachusetts, Case No. 99 10193-WGY, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of $12 million.

In re National TechTeam Securities Litigation, USDC Eastern District of Michigan, Case No. 97-74587-AC, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of $11 million.

Taft v. Ackermans (KPNQwest Securities Litigation), USDC Southern District of New York, Case No. 02-CV-07951-PKL, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement worth $11 million.

Jenson v. First Trust Corporation, USDC Central District of California, Case No. 05-cv-3124-ABC, in which the Firm was appointed sole lead counsel and achieved an $8.5 million settlement in a very difficult case involving a trustee's potential liability for losses incurred by investors in a Ponzi scheme. Kevin Ruf of the Firm also successfully defended in the 9th Circuit Court of Appeals the trial court's granting of class certification in this case.

In re Ramp Networks, Inc. Securities Litigation, USDC Northern District of California, Case No. C-00-3645-JCS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of nearly $7 million.

Capri v. Comerica, Inc., USDC Eastern District of Michigan, Case No. 02-CV-60211-MOB, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of $6.0 million.

Plumbing Solutions Inc. v. Plug Power, Inc., USDC Eastern District of New York, Case No. CV 00 5553-ERK, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over $5 million.

Ree v. Procom Technologies, Inc., USDC Southern District of New York, Case No. 02-CV-7613-JGK, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of $2.7 million.

Tatz v. Nanophase Technologies Corp., USDC Northern District of Illinois, Case No. 01-C-8440-MCA, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of $2.5 million.

In re F & M Distributors Securities Litigation, USDC Eastern District of Michigan, Case No. 95 CV 71778-DT, a securities fraud class action in which the Firm served on the Executive Committee and helped secure a $20.25 million settlement.

ANTITRUST PRACTICE GROUP AND ACHIEVEMENTS

Glancy Prongay & Murray's Antitrust Practice Group focuses on representing individuals and entities that have been victimized by unlawful monopolization, price-fixing, market allocation, and other anti-competitive conduct. The Firm has prosecuted significant antitrust cases and has helped individuals and businesses recover billions of dollars. Prosecuting civil antitrust cases under federal and state laws throughout the country, the Firm's Antitrust Practice Group represents consumers, businesses, and Health and Welfare Funds and seeks injunctive relief and damages for violations of antitrust and commodities laws. The Firm has served, or is currently serving, as Lead Counsel, Co-Lead Counsel or Class Counsel in a substantial number of antitrust class actions, including:

In re Nasdaq Market-Makers Antitrust Litigation, USDC Southern District of New York, Case No. 94 C 3996-RWS, MDL Docket No. 1023, a landmark antitrust lawsuit in which the Firm filed the first complaint against all of the major NASDAQ market makers and served on Plaintiffs' Counsel's Executive Committee in a case that recovered $900 million for investors.

Sullivan v. DB Investments, USDC District of New Jersey, Case No. No. 04-cv-2819, where the Firm served as Co-Lead Settlement Counsel in an antitrust case against DeBeers relate to the pricing of diamonds that settled for $295 million.

In re Korean Air Lines Antitrust Litig., USDC Central District of California, Master File No. CV 07-05107 SJO(AGRx), MDL No. 07-0189, where the Firm served as Co-Lead Counsel in a case related to fixing of prices for airline tickets to Korea that settled for $86 million.

In re Urethane Chemical Antitrust Litig., USDC District of Kansas, Case No. MDL 1616, where the Firm served as Co-Lead counsel in an antitrust price fixing case that settled $33 million.

In re Western States Wholesale Natural Gas Litig., USDC District of Nevada, Case No. MDL 1566, where the Firm served as Class Counsel in an antitrust price fixing case that settled $25 million.

In re Aggrenox Antitrust Litig., USDC District of Connecticut, Case No. 14-cv-2516, where the Firm played a major role in achieving a settlement of $54,000,000.

In re Solodyn Antitrust Litig., USDC District of Massachusetts, Case No. MDL 2503, where the Firm played a major role in achieving a settlement of $43,000,000.

In re Generic Pharmaceuticals Pricing Antitrust Litig., USDC Eastern District of Pennsylvania, Case No. 16-md-2427, where the Firm is representing a major Health and Welfare Fund in a case against a number of generic drug manufacturers for price fixing generic drugs.

In re Actos End Payor Antitrust Litig., USDC Southern District of New York, Case No. 13-cv-9244, where the Firm is serving on Plaintiffs' Executive Committee.

In re Heating Control Panel Direct Purchaser Action, USDC Eastern District of Michigan, Case No. 12-md-02311, representing a recreational vehicle manufacturer in a price-fixing class action involving direct purchasers of heating control panels.

In re Instrument Panel Clusters Direct Purchaser Action, USDC Eastern District of Michigan, Case No. 12-md-02311, representing a recreational vehicle manufacturer in a price-fixing class action involving direct purchasers of instrument panel clusters.

In addition, the Firm is currently involved in the prosecution of many market manipulation cases relating to violations of antitrust and commodities laws, including *Sullivan v. Barclays PLC* (manipulation of Euribor rate), *In re Foreign Exchange Benchmark Rates Antitrust Litig*., *In re LIBOR-Based Financial Instruments Antitrust Litig*., *In re Gold Futures & Options Trading Litig*., *In re Platinum & Palladium Antitrust Litig*., *Sonterra Cap. Master Fund v. Credit Suisse Group AG* (Swiss Libor rate manipulation), *Twin City Iron Pension Fund v. Bank of Nova Scotia* (manipulation of treasury securities), and *Ploss v. Kraft Foods Group* (manipulation of wheat prices).

Glancy Prongay & Murray has been responsible for obtaining favorable appellate opinions which have broken new ground in the class action or securities fields, or which have promoted shareholder rights in prosecuting these actions. The Firm successfully argued the appeals in a number of cases:

In *Smith v. L'Oreal*, 39 Cal.4th 77 (2006), Firm partner Kevin Ruf established ground-breaking law when the California Supreme Court agreed with the Firm's position that waiting penalties under the California Labor Code are available to *any* employee after termination of employment, regardless of the reason for that termination.

OTHER NOTABLE ACHIEVEMENTS

Other notable Firm cases are: *Silber v. Mabon I*, 957 F.2d 697 (9th Cir. 1992) and *Silber v. Mabon II*, 18 F.3d 1449 (9th Cir. 1994), which are the leading decisions in the Ninth Circuit regarding the rights of opt-outs in class action settlements. In *Rothman v. Gregor*, 220 F.3d 81 (2d Cir. 2000), the Firm won a seminal victory for investors before the Second Circuit Court of Appeals, which adopted a more favorable pleading standard for investors in reversing the District Court's dismissal of the investors' complaint. After this successful appeal, the Firm then recovered millions of dollars for defrauded investors of the GT Interactive Corporation. The Firm also argued *Falkowski v. Imation Corp.*, 309 F.3d 1123 (9th Cir. 2002), *as amended*, 320 F.3d 905 (9th Cir. 2003), and favorably obtained the substantial reversal of a lower court's dismissal of a cutting edge, complex class action initiated to seek redress for a group of employees whose stock options were improperly forfeited by a giant corporation in the course of its sale of the subsidiary at which they worked.

The Firm is also involved in the representation of individual investors in court proceedings throughout the United States and in arbitrations before the American Arbitration Association, National Association of Securities Dealers, New York Stock Exchange, and Pacific Stock Exchange. Mr. Glancy has successfully represented litigants in proceedings against such major securities firms and insurance companies as A.G. Edwards & Sons, Bear Stearns, Merrill Lynch & Co., Morgan Stanley, PaineWebber, Prudential, and Shearson Lehman Brothers.

One of the Firm's unique skills is the use of "group litigation" - the representation of groups of individuals who have been collectively victimized or defrauded by large institutions. This type of litigation brought on behalf of individuals who have been similarly damaged often provides an efficient and effective economic remedy that frequently has advantages over the class action or individual action devices. The Firm has successfully achieved results for groups of individuals in cases against major corporations such as Metropolitan Life Insurance Company, and Occidental Petroleum Corporation.

Glancy Prongay & Murray LLP currently consists of the following attorneys:

PARTNERS

LEE ALBERT, a partner, was admitted to the bars of the Commonwealth of Pennsylvania, the State of New Jersey, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey in 1986. He received his B.S. and M.S. degrees from Temple University and Arcadia University in 1975 and 1980, respectively, and received his J.D. degree from Widener University School of Law in 1986. Upon graduation from law school, Mr. Albert spent several years working as a civil litigator in Philadelphia, PA. Mr. Albert has extensive litigation and appellate practice experience having argued before the Supreme and Superior Courts of Pennsylvania and has over fifteen years of trial experience in both jury and non-jury cases and arbitrations. Mr. Albert has represented a national health care provider at trial obtaining

injunctive relief in federal court to enforce a five-year contract not to compete on behalf of a national health care provider and injunctive relief on behalf of an undergraduate university.

Currently, Mr. Albert represents clients in all types of complex litigation including matters concerning violations of federal and state antitrust and securities laws, mass tort/product liability and unfair and deceptive trade practices. Some of Mr. Albert's current major cases include *In Re Automotive Wire Harness Systems Antitrust Litigation* (E.D. Mich.*); In Re Heater Control Panels Antitrust Litigation* (E.D. Mich.); *Kleen Products, et al. v. Packaging Corp. of America* (N.D. Ill.); *and In re Class 8 Transmission Indirect Purchaser Antitrust Litigation* (D. Del.). Previously, Mr. Albert had a significant role in *Marine Products Antitrust Litigation* (C.D. Cal.); *Baby Products Antitrust Litigation* (E.D. Pa.); *In re ATM Fee Litigation* (N.D. Cal.); *In re Canadian Car Antitrust Litigation* (D. Me.); *In re Broadcom Securities Litigation* (C.D. Cal.); and has worked on *In re Avandia Marketing, Sales Practices and Products Liability Litigation* (E.D. Pa.); *In re Ortho Evra Birth Control Patch Litigation* (N.J. Super. Ct., Middlesex County); *In re AOL Time Warner, Inc. Securities Litigation* (S.D.N.Y.); *In re WorldCom, Inc. Securities Litigation* (S.D.N.Y.); and *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct.).

JOSEPH D. COHEN has extensive complex civil litigation experience, and currently oversees the firm's settlement department, negotiating, documenting and obtaining court approval of the firm's securities, merger and derivative settlements.

Prior to joining the firm, Mr. Cohen successfully prosecuted numerous securities fraud, consumer fraud, antitrust and constitutional law cases in federal and state courts throughout the country. Cases in which Mr. Cohen took a lead role include: *Jordan v. California Dep't of Motor Vehicles*, 100 Cal. App. 4th 431 (2002) (complex action in which the California Court of Appeal held that California's Non-Resident Vehicle $300 Smog Impact Fee violated the Commerce Clause of the United States Constitution, paving the way for the creation of a $665 million fund and full refunds, with interest, to 1.7 million motorists); *In re Geodyne Res., Inc. Sec. Litig.* (Harris Cty. Tex.) (settlement of securities fraud class action, including related litigation, totaling over $200 million); *In re Cmty. Psychiatric Centers Sec. Litig.* (C.D. Cal.) (settlement of $55.5 million was obtained from the company and its auditors, Ernst & Young, LLP); *In re McLeodUSA Inc., Sec. Litig.* (N.D. Iowa) ($30 million settlement); *In re Arakis Energy Corp. Sec. Litig.* (E.D.N.Y.) ($24 million settlement); *In re Metris Cos., Inc., Sec. Litig.* (D. Minn.) ($7.5 million settlement); *In re Landry's Seafood Rest., Inc. Sec. Litig.* (S.D. Tex.) ($6 million settlement); and *Freedman v. Maspeth Fed. Loan and Savings Ass'n*, (E.D.N.Y) (favorable resolution of issue of first impression under RESPA resulting in full recovery of improperly assessed late fees).

Mr. Cohen was also a member of the teams that obtained substantial recoveries in the following cases: *In re: Foreign Exchange Benchmark Rates Antitrust Litig.* (S.D.N.Y.) (partial settlements of approximately $2 billion); *In re Washington Mutual Mortgage-Backed Sec. Litig.* (W.D. Wash.) (settlement of $26 million); *Mylan Pharm., Inc. v. Warner Chilcott Public Ltd. Co.* (E.D. Pa.) ($8 million recovery in antitrust action on behalf of class

of indirect purchasers of the prescription drug Doryx); *City of Omaha Police and Fire Ret. Sys. v. LHC Group, Inc.* (W.D. La.) (securities class action settlement of $7.85 million); and *In re Pacific Biosciences of Cal., Inc. Sec. Litig.* (Cal. Super. Ct.) ($7.6 million recovery).

In addition, Mr. Cohen was previously the head of the settlement department at Bernstein Litowitz Berger & Grossmann LLP. While at BLB&G, Mr. Cohen had primary responsibility for overseeing the team working on the following settlements, among others: *In Re Merck & Co., Inc. Sec., Deriv. & "ERISA" Litig.* (D.N.J.) ($1.062 billion securities class action settlement); *New York State Teachers' Ret. Sys. v. General Motors Co.* (E.D. Mich.) ($300 million securities class action settlement); *In re JPMorgan Chase & Co. Sec. Litig.* (S.D.N.Y.) ($150 million settlement); *Dep't of the Treasury of the State of New Jersey and its Division of Inv. v. Cliffs Natural Res. Inc., et al.* (N.D. Ohio) ($84 million securities class action settlement); *In re Penn West Petroleum Ltd. Sec. Litig.* (S.D.N.Y.) ($19.76 million settlement); and *In re BioScrip, Inc. Sec. Litig.* ($10.9 million settlement).

JOSHUA L. CROWELL, a partner in the firm's Los Angeles office, concentrates his practice on prosecuting complex securities cases on behalf of investors.

Recently, he was co-lead counsel in *In re Yahoo! Inc. Securities Litigation*, No. 17-CV-00373-LHK (N.D. Cal.), which resulted in an $80 million settlement for the class. He also led the prosecution of *In re Akorn, Inc. Securities Litigation*, No. 1:15-cv-01944 (N.D. Ill.), achieving a $24 million class settlement.

Prior to joining Glancy Prongay & Murray LLP, Joshua was an Associate at Labaton Sucharow LLP in New York, where he substantially contributed to some of the firm's biggest successes. There he helped secure several large federal securities class settlements, including:

- *In re Countrywide Financial Corp. Securities Litigation*, No. CV 07-05295 MRP (MANx) (C.D. Cal.) – $624 million
- *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, No. 08-397 (DMC) (JAD) (D.N.J.) – $473 million
- *In re Broadcom Corp. Class Action Litigation*, No. CV-06-5036-R (CWx) (C.D. Cal.) – $173.5 million
- *In re Fannie Mae 2008 Securities Litigation*, No. 08-civ-7831-PAC (S.D.N.Y.) – $170 million
- *Oppenheimer Champion Fund* and *Core Bond Fund* actions, Nos. 09-cv-525-JLK-KMT and 09-cv-1186-JLK-KMT (D. Colo.) – $100 million combined

He began his legal career as an Associate at Paul, Hastings, Janofsky & Walker LLP in New York, primarily representing financial services clients in commercial litigation.

Super Lawyers has selected Joshua as a Rising Star in the area of Securities Litigation from 2015 through 2017.

Prior to attending law school, Joshua was a Senior Economics Consultant at Ernst & Young LLP, where he priced intercompany transactions and calculated the value of intellectual property. Joshua received a J.D., cum laude, from The George Washington University Law School. During law school, he was a member of The George Washington Law Review and the Mock Trial Board. He was also a law intern for Chief Judge Edward J. Damich of the United States Court of Federal Claims. Joshua earned a B.A. in International Relations from Carleton College.

LIONEL Z. GLANCY, a graduate of University of Michigan Law School, is the founding partner of the Firm. After serving as a law clerk for United States District Judge Howard McKibben, he began his career as an associate at a New York law firm concentrating in securities litigation. Thereafter, he started a boutique law firm specializing in securities litigation, and other complex litigation, from the Plaintiff's perspective. Mr. Glancy has established a distinguished career in the field of securities litigation over the last thirty years, having appeared and been appointed lead counsel on behalf of aggrieved investors in securities class action cases throughout the country. He has appeared and argued before dozens of district courts and a number of appellate courts. His efforts have resulted in the recovery of hundreds of millions of dollars in settlement proceeds for huge classes of shareholders. Well known in securities law, he has lectured on its developments and practice, including having lectured before Continuing Legal Education seminars and law schools.

Mr. Glancy was born in Windsor, Canada, on April 4, 1962. Mr. Glancy earned his undergraduate degree in political science in 1984 and his Juris Doctor degree in 1986, both from the University of Michigan. He was admitted to practice in California in 1988, and in Nevada and before the U.S. Court of Appeals, Ninth Circuit, in 1989.

MARC L. GODINO has extensive experience successfully litigating complex, class action lawsuits as a plaintiffs' lawyer. Since joining the firm in 2005, Mr. Godino has played a primary role in cases resulting in settlements of more than $100 million. He has prosecuted securities, derivative, merger & acquisition, and consumer cases throughout the country in both state and federal court, as well as represented defrauded investors at FINRA arbitrations. Mr. Godino manages the Firm's consumer class action department.

While a senior associate with Stull Stull & Brody, Mr. Godino was one of the two primary attorneys involved in *Small v. Fritz Co.*, 30 Cal. 4th 167 (April 7, 2003), in which the California Supreme Court created new law in the State of California for shareholders that held shares in detrimental reliance on false statements made by corporate officers. The decision was widely covered by national media including *The National Law Journal*, the *Los Angeles Times*, the *New York Times*, and the *New York Law Journal*, among others, and was heralded as a significant victory for shareholders.

Mr. Godino's successes with Glancy Prongay & Murray LLP include: *Good Morning To You Productions Corp., et al., v. Warner/Chappell Music, Inc., et al.*, Case No. 13-04460 (C.D. Cal.) (In this highly publicized case that attracted world-wide attention, Plaintiffs prevailed on their claim that the song "Happy Birthday" should be in the public domain and achieved a $14,000,000 settlement to class members who paid a licensing fee for

the song); *Ord v. First National Bank of Pennsylvania,* Case No. 12-766 (W. D. Pa.) ($3,000,000 settlement plus injunctive relief); *Pappas v. Naked Juice Co. of Glendora, Inc.,* Case No. 11-08276 (C.D. Cal.) ($9,000,000 settlement plus injunctive relief);*Astiana v. Kashi Company,* Case No. 11-1967 (S.D. Cal.) ($5,000,000 settlement); *In re Magma Design Automation, Inc. Securities Litigation*, Case No. 05-2394 (N.D. Cal.) ($13,500,000 settlement); *In re Hovnanian Enterprises, Inc. Securities Litigation*, Case No. 08-cv-0099 (D.N.J.) ($4,000,000 settlement); *In re Skilled Healthcare Group, Inc. Securities Litigation*, Case No. 09-5416 (C.D. Cal.) ($3,000,000 settlement); *Kelly v. Phiten USA, Inc.*, Case No. 11-67 (S.D. Iowa) ($3,200,000 settlement plus injunctive relief); (*Shin et al., v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (after defeating a motion to dismiss, the case settled on very favorable terms for class members including free replacement of cracked wheels); *Payday Advance Plus, Inc. v. MIVA, Inc.*, Case No. 06-1923 (S.D.N.Y.) ($3,936,812 settlement); *Esslinger, et al. v. HSBC Bank Nevada, N.A.*, Case No. 10-03213 (E.D. Pa.) ($23,500,000 settlement); *In re Discover Payment Protection Plan Marketing and Sales Practices Litigation*, Case No. 10-06994 ($10,500,000 settlement); *In Re: Bank of America Credit Protection Marketing and Sales Practices Litigation,* Case No. 11-md-02269 (N.D. Cal.) ($20,000,000 settlement).

Mr. Godino was also the principal attorney in the following published decisions: *In re Zappos.com, Inc., Customer Data Sec. Breach Litigation*, 714 Fed Appx. 761 (9th Cir. 2018) (reversing order dismissing class action complaint); *Small et al., v. University Medical Center of Southern Nevada, et al.*, 2017 WL 3461364 (D. Nev. Aug. 10, 2017) (denying motion to dismiss); *Sciortino v. Pepsico, Inc.*, 108 F.Supp. 3d 780 (N.D. Cal.. June 5, 2015) (motion to dismiss denied); *Peterson v. CJ America, Inc.*, 2015 WL 11582832 (S.D. Cal. May 15, 2015) (motion to dismiss denied); *Lilly v. Jamba Juice Company*, 2014 WL 4652283 (N. D. Cal. Sep 18, 2014) (class certification granted in part); *Kramer v. Toyota Motor Corp.,* 705 F. 3d 1122 (9th Cir. 2013) (affirming denial of Defendant's motion to compel arbitration); *Sateriale, et al. v. R.J. Reynolds Tobacco Co.*, 697 F. 3d 777 (9th Cir. 2012) (reversing order dismissing class action complaint); *Shin v. BMW of North America*, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (motion to dismiss denied); *In re 2TheMart.com Securities Litigation*, 114 F. Supp. 2d 955 (C.D. Cal. 2002) (motion to dismiss denied); *In re Irvine Sensors Securities Litigation*, 2003 U.S. Dist. LEXIS 18397 (C.D. Cal. 2003) (motion to dismiss denied).

The following represent just a few of the cases Mr. Godino is currently litigating in a leadership position: *Small v. University Medical Center of Southern Nevada*, Case No. 13-00298 (D. Nev.); *Courtright, et al., v. O'Reilly Automotive Stores, Inc., et al.*, Case No. 14-334 (W.D. Mo); *Keskinen v. Edgewell Personal Care Co., et al.*, Case No. 17-07721 (C.D. CA); *Ryan v. Rodan & Fields, LLC*, Case No. 18-02505 (N.D. Cal)

MATTHEW M. HOUSTON, a partner in the firm's New York office, graduated from Boston University School of Law in 1988. Mr. Houston is an active member of the Bar of the State of New York and an inactive member of the bar for the Commonwealth of Massachusetts. Mr. Houston is also admitted to the United States District Courts for the Southern and Eastern Districts of New York and the District of Massachusetts, and the Second, Seventh, Ninth, and Eleventh Circuit Court of Appeals of the United States. Mr. Houston repeatedly has been selected as a New York Metro Super Lawyer.

Mr. Houston has substantial courtroom experience involving complex actions in federal and state courts throughout the country. Mr. Houston was co-lead trial counsel in one the few ERISA class action cases taken to trial asserting breach of fiduciary duty claims against plan fiduciaries, *Brieger et al. v. Tellabs, Inc.*, No. 06-CV-01882 (N.D. Ill.), and has successfully prosecuted many ERISA actions, including *In re Royal Ahold N.V. Securities and ERISA Litigation*, Civil Action No. 1:03-md-01539. Mr. Houston has been one of the principal attorneys litigating claims in multi-district litigation concerning employment classification of pickup and delivery drivers and primarily responsible for prosecuting ERISA class claims resulting in a $242,000,000 settlement; *In re FedEx Ground Package Inc. Employment Practices Litigation*, No. 3:05-MD-527 (MDL 1700). Mr. Houston recently presented argument before the Eleventh Circuit Court of Appeals on behalf of a class of Florida pickup and delivery drivers obtaining a reversal of the lower court's grant of summary judgment. Mr. Houston represented the interests of Nevada and Arkansas drivers employed by FedEx Ground obtaining significant recoveries on their behalf. Mr. Houston also served as lead counsel in multi-district class litigation seeking to modify insurance claims handling practices; *In re UnumProvident Corp. ERISA Benefits Denial Actions*, No. 1:03-cv-1000 (MDL 1552).

Mr. Houston has played a principal role in numerous derivative and class actions wherein substantial benefits were conferred upon plaintiffs*: In re: Groupon Derivative Litigation*, No. 12-cv-5300 (N.D. Ill. 2012) (settlement of consolidated derivative action resulting in sweeping corporate governance reform estimated at $159 million) *Bangari v. Lesnik, et al.*, No. 11 CH 41973 (Illinois Circuit Court, County of Cook) (settlement of claim resulting in payment of $20 million to Career Education Corporation and implementation of extensive corporate governance reform); *In re Diamond Foods, Inc. Shareholder Litigation*, No. CGC-11-515895 (California Superior Court, County of San Francisco) ($10.4 million in monetary relief including a $5.4 million clawback of executive compensation and significant corporate governance reform); *Pace American Shareholder Litigation*, 94-92 TUC-RMB (securities fraud class action settlement resulting in a recovery of $3.75 million); *In re Bay Financial Securities Litigation*, Master File No. 89-2377-DPW, (D. Mass.) (J. Woodlock) (settlement of action based upon federal securities law claims resulting in class recovery in excess of $3.9 million); *Goldsmith v. Technology Solutions Company*, 92 C 4374 (N.D. Ill. 1992) (J. Manning) (recovery of $4.6 million as a result of action alleging false and misleading statements regarding revenue recognition).

In addition to numerous employment and derivative cases, Mr. Houston has litigated actions asserting breach of fiduciary duty in the context of mergers and acquisitions. Mr. Houston has been responsible for securing millions of dollars in additional compensation and structural benefits for shareholders of target companies: *In re Instinet Group, Inc. Shareholders Litigation*, C.A. No. 1289 (Delaware Court of Chancery); *Jasinover v. The Rouse Company*, Case No. 13-C-04-59594 (Maryland Circuit Court); *McLaughlin v. Household International, Inc.*, Case No. 02 CH 20683 (Illinois Circuit Court); *Sebesta v. The Quizno's Corporation*, Case No. 2001 CV 6281 (Colorado District Court); *Crandon Capital Partners v. Sanford M. Kimmel*, C.A. No. 14998 (Del. Ch.); and *Crandon Capital Partners v. Kimmel*, C.A. No. 14998 (Del. Ch. 1996) (J. Chandler) (settlement of an action

on behalf of shareholders of Transnational Reinsurance Co. whereby acquiring company provided an additional $10.4 million in merger consideration).

JASON L. KRAJCER is a partner in the firm's Los Angeles office. He specializes in complex securities cases and has extensive experience in all phases of litigation (fact investigation, pre-trial motion practice, discovery, trial, appeal).

Prior to joining Glancy Prongay & Murray LLP, Mr. Krajcer was an Associate at Goodwin Procter LLP where he represented issuers, officers and directors in multi-hundred million and billion dollar securities cases. He began his legal career at Orrick, Herrington & Sutcliffe LLP, where he represented issuers, officers and directors in securities class actions, shareholder derivative actions, and matters before the U.S. Securities & Exchange Commission.

Mr. Krajcer is admitted to the State Bar of California, the Bar of the District of Columbia, the United States Supreme Court, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central and Southern Districts of California.

SUSAN G. KUPFER is the founding partner of the Firm's Berkeley office. Ms Kupfer joined the Firm in 2003. She is a native of New York City, and received her A.B. degree from Mount Holyoke College in 1969 and her Juris Doctor degree from Boston University School of Law in 1973. She did graduate work at Harvard Law School and, in 1977, was named Assistant Dean and Director of Clinical Programs at Harvard, supervising and teaching in that program of legal practice and related academic components.

For much of her legal career, Ms. Kupfer has been a professor of law. Her areas of academic expertise are Civil Procedure, Federal Courts, Conflict of Laws, Constitutional Law, Legal Ethics, and Jurisprudence. She has taught at Harvard Law School, Hastings College of the Law, Boston University School of Law, Golden Gate University School of Law, and Northeastern University School of Law. From 1991 through 2002, she was a lecturer on law at the University of California, Berkeley, Boalt Hall, teaching Civil Procedure and Conflict of Laws. Her publications include articles on federal civil rights litigation, legal ethics, and jurisprudence. She has also taught various aspects of practical legal and ethical training, including trial advocacy, negotiation and legal ethics, to both law students and practicing attorneys.

Ms. Kupfer previously served as corporate counsel to The Architects Collaborative in Cambridge and San Francisco, and was the Executive Director of the Massachusetts Commission on Judicial Conduct. She returned to the practice of law in San Francisco with Morgenstein & Jubelirer and Berman DeValerio LLP before joining the Firm.

Ms. Kupfer's practice is concentrated in complex antitrust litigation. She currently serves, or has served, as Co-Lead Counsel in several multidistrict antitrust cases: *In re Photochromic Lens Antitrust Litig.* (MDL 2173, M.D. Fla. 2010); *In re Fresh and Process Potatoes Antitrust Litig.* (D. ID. 2011); *In re Korean Air Lines Antitrust Litig.* (MDL No. 1891, C.D. Cal. 2007); *In re Urethane Antitrust Litigation* (MDL 1616, D. Kan. 2004); *In re Western States Wholesale Natural Gas Litigation* (MDL 1566, D. Nev. 2005); and *Sullivan*

et al v. DB Investments et al (D. N.J. 2004). She has been a member of the lead counsel teams that achieved significant settlements in: *In re Sorbates Antitrust Litigation* ($96.5 million settlement); *In re Pillar Point Partners Antitrust Litigation* ($50 million settlement); and *In re Critical Path Securities Litigation* ($17.5 million settlement).

Ms. Kupfer is a member of the bar of Massachusetts and California, and is admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California, the District of Massachusetts, the Courts of Appeals for the First and Ninth Circuits, and the U.S. Supreme Court.

GREGORY B. LINKH works out of the New York office, where he litigates antitrust, securities, shareholder derivative, and consumer cases. Greg graduated from the State University of New York at Binghamton in 1996 and from the University of Michigan Law School in 1999. While in law school, Greg externed with United States District Judge Gerald E. Rosen of the Eastern District of Michigan. Greg was previously associated with the law firms Dewey Ballantine LLP, Pomerantz Haudek Block Grossman & Gross LLP, and Murray Frank LLP.

Previously, Greg had significant roles in *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation* (settled for $125 million); *In re Crompton Corp. Securities Litigation* (settled $11 million); *Lowry v. Andrx Corp.* (settled for $8 million); *In re Xybernaut Corp. Securities MDL Litigation* (settled for $6.3 million); and *In re EIS Int'l Inc. Securities Litigation* (settled for $3.8 million). Greg also represented the West Virginia Investment Management Board ("WVIMB") in *WVIMB v. Residential Accredited Loans, Inc., et al*., relating to the WVIMB's investment in residential mortgage-backed securities.

Currently, Greg is litigating various antitrust and securities cases, including *In re Korean Ramen Antitrust Litigation*, *In re Automotive Parts Antitrust Litigation*, and *In re Horsehead Holding Corp. Securities Litigation*.

Greg is the co-author of Inherent Risk In Securities Cases In The Second Circuit, NEW YORK LAW JOURNAL (Aug. 26, 2004); and Staying Derivative Action Pursuant to PSLRA and SLUSA, NEW YORK LAW JOURNAL, P. 4, COL. 4 (Oct. 21, 2005).

BRIAN MURRAY is the managing partner of the Firm's New York Park Avenue office and the head of the Firm's Antitrust Practice Group. He received Bachelor of Arts and Master of Arts degrees from the University of Notre Dame in 1983 and 1986, respectively. He received a Juris Doctor degree, *cum laude,* from St. John's University School of Law in 1990. At St. John's, he was the Articles Editor of the ST. JOHN'S LAW REVIEW. Mr. Murray co-wrote: *Jurisdição Estrangeira Tem Papel Relevante Na De Fiesa De Investidores Brasileiros,* ESPAÇA JURÍDICO BOVESPA (August 2008); *The Proportionate Trading Model: Real Science or Junk Science?,* 52 CLEVELAND ST. L. REV. 391 (2004-05); *The Accident of Efficiency: Foreign Exchanges, American Depository Receipts, and Space Arbitrage,* 51 BUFFALO L. REV. 383 (2003); *You Shouldn't Be Required To Plead More Than You Have To Prove,* 53 BAYLOR L. REV. 783 (2001); *He Lies, You Die: Criminal Trials, Truth, Perjury, and Fairness,* 27 NEW ENGLAND J. ON CIVIL AND CRIMINAL CONFINEMENT 1 (2001); *Subject Matter Jurisdiction Under the Federal Securities Laws: The State of Affairs After Itoba,* 20

MARYLAND J. OF INT'L L. AND TRADE 235 (1996); *Determining Excessive Trading in Option Accounts: A Synthetic Valuation Approach,* 23 U. DAYTON L. REV. 316 (1997); *Loss Causation Pleading Standard,* NEW YORK LAW JOURNAL (Feb. 25, 2005); *The PSLRA 'Automatic Stay' of Discovery,* NEW YORK LAW JOURNAL (March 3, 2003); and *Inherent Risk In Securities Cases In The Second Circuit,* NEW YORK LAW JOURNAL (Aug. 26, 2004). He also authored *Protecting The Rights of International Clients in U.S. Securities Class Action Litigation,* INTERNATIONAL LITIGATION NEWS (Sept. 2007); Lifting the PSLRA "Automatic Stay" of Discovery, 80 N. DAK. L. REV. 405 (2004); *Aftermarket Purchaser Standing Under § 11 of the Securities Act of 1933,* 73 ST. JOHN'S L. REV.633 (1999); *Recent Rulings Allow Section 11 Suits By Aftermarket Securities Purchasers,* NEW YORK LAW JOURNAL (Sept. 24, 1998); and *Comment, Weissmann v. Freeman: The Second Circuit Errs in its Analysis of Derivative Copy-rights by Joint Authors,* 63 ST. JOHN'S L. REV. 771 (1989).

Mr. Murray was on the trial team that prosecuted a securities fraud case under Section 10(b) of the Securities Exchange Act of 1934 against Microdyne Corporation in the Eastern District of Virginia and he was also on the trial team that presented a claim under Section 14 of the Securities Exchange Act of 1934 against Artek Systems Corporation and Dynatach Group which settled midway through the trial.

Mr. Murray's major cases include *In re Horsehead Holding Corp. Sec. Litig*., No. 16-cv-292, 2018 WL 4838234 (D. Del. Oct. 4, 2018) (recommending denial of motion to dismiss securities fraud claims where company's generic cautionary statements failed to adequately warn of known problems); *In re Deutsche Bank Sec. Litig*., --- F.R.D. ---, 2018 WL 4771525 (S.D.N.Y. Oct. 2, 2018) (granting class certification for Securities Act claims and rejecting defendants' argument that class representatives' trading profits made them atypical class members); *Robb v. Fitbit Inc.*, 216 F. Supp. 3d 1017 (N.D. Cal. 2016) (denying motion to dismiss securities fraud claims where confidential witness statements sufficiently established scienter); *In re Eagle Bldg. Tech. Sec. Litig.,* 221 F.R.D. 582 (S.D. Fla. 2004), 319 F. Supp. 2d 1318 (S.D. Fla. 2004) (complaint against auditor sustained due to magnitude and nature of fraud; no allegations of a "tip-off" were necessary); *In re Turkcell Iletisim A.S. Sec. Litig.,* 209 F.R.D. 353 (S.D.N.Y. 2002) (defining standards by which investment advisors have standing to sue); *In re Turkcell Iletisim A.S. Sec. Litig*., 202 F. Supp. 2d 8 (S.D.N.Y. 2001) (liability found for false statements in prospectus concerning churn rates); *Feiner v. SS&C Tech., Inc.,* 11 F. Supp. 2d 204 (D. Conn. 1998) (qualified independent underwriters held liable for pricing of offering); *Malone v. Microdyne Corp.*, 26 F.3d 471 (4th Cir. 1994) (reversal of directed verdict for defendants); and *Adair v. Bristol Tech. Systems, Inc.,* 179 F.R.D. 126 (S.D.N.Y. 1998) (aftermarket purchasers have standing under section 11 of the Securities Act of 1933). Mr. Murray also prevailed on an issue of first impression in the Superior Court of Massachusetts, in Cambridge Biotech Corp. v. Deloitte and Touche LLP, in which the court applied the doctrine of continuous representation for statute of limitations purposes to accountants for the first time in Massachusetts. 6 Mass. L. Rptr. 367 (Mass. Super. Jan. 28, 1997). In addition, in *Adair v. Microfield Graphics, Inc.* (D. Or.), Mr. Murray settled the case for 47% of estimated damages. *In the Qiao Xing Universal Telephone* case, claimants received 120% of their recognized losses.

Among his current cases, Mr. Murray represents a class of investors in a securities litigation involving preferred shares of Deutsche Bank and is lead counsel in a securities class action against Horsehead Holdings, Inc. in the District of Delaware.

Mr. Murray served as a Trustee of the Incorporated Village of Garden City (2000-2002); Commissioner of Police for Garden City (2000-2001); Co-Chairman, Derivative Suits Subcommittee, American Bar Association Class Action and Derivative Suits Committee, (2007-2010); Member, Sports Law Committee, Association of the Bar for the City of New York, 1994-1997; Member, Litigation Committee, Association of the Bar for the City of New York, 2003-2007; Member, New York State Bar Association Committee on Federal Constitution and Legislation, 2005-2008; Member, Federal Bar Council, Second Circuit Committee, 2007-present.

Mr. Murray has been a panelist at CLEs sponsored by the Federal Bar Council and the Institute for Law and Economic Policy, at the German-American Lawyers Association Annual Meeting in Frankfurt, Germany, and is a frequent lecturer before institutional investors in Europe and South America on the topic of class actions.

LESLEY F. PORTNOY represents domestic and international clients in securities litigation and class actions. Mr. Portnoy focuses his practice on recovering losses suffered by investors resulting corporate fraud and other wrongdoing.

Mr. Portnoy has extensive experience litigating complex cases in state and federal courts nationwide, and previously served as counsel to investors in the Bernard L. Madoff securities, assisting the SIPC trustee Irving Picard in recovering assets on behalf of defrauded investors. During law school, he worked in the New York Supreme Court Commercial Division, the Second Circuit Court of Appeals, and the New York City Law Department. Mr. Portnoy has represented pro bono clients in New York and California.

ROBERT V. PRONGAY is a partner in the Firm's Los Angeles office where he focuses on the investigation, initiation, and prosecution of complex securities cases on behalf of institutional and individual investors. Mr. Prongay's practice concentrates on actions to recover investment losses resulting from violations of the federal securities laws and various actions to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Mr. Prongay has extensive experience litigating complex cases in state and federal courts nationwide. Since joining the Firm, Mr. Prongay has successfully recovered millions of dollars for investors victimized by securities fraud and has negotiated the implementation of significant corporate governance reforms aimed at preventing the recurrence of corporate wrongdoing.

Mr. Prongay was recently recognized as one of thirty lawyers included in the Daily Journal's list of Top Plaintiffs Lawyers in California for 2017. Several of Mr. Prongay's cases have received national and regional press coverage. Mr. Prongay has been interviewed by journalists and writers for national and industry publications, ranging from *The Wall Street Journal* to the *Los Angeles Daily Journal*. Mr. Prongay has appeared as

a guest on Bloomberg Television where he was interviewed about the securities litigation stemming from the high-profile initial public offering of Facebook, Inc.

Mr. Prongay received his Bachelor of Arts degree in Economics from the University of Southern California and his Juris Doctor degree from Seton Hall University School of Law. Mr. Prongay is also an alumnus of the Lawrenceville School.

DANIELLA QUITT, a partner in the firm's New York office, graduated from Fordham University School of Law in 1988, is a member of the Bar of the State of New York, and is also admitted to the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Fifth, and Ninth Circuits, and the United States Supreme Court.

Ms. Quitt has extensive experience in successfully litigating complex class actions from inception to trial and has played a significant role in numerous actions wherein substantial benefits were conferred upon plaintiff shareholders, such as *In re Safety-Kleen Corp. Stockholders Litigation*, (D.S.C.) (settlement fund of $44.5 million); *In re Laidlaw Stockholders Litigation*, (D.S.C.) (settlement fund of $24 million); *In re UNUMProvident Corp. Securities Litigation*, (D. Me.) (settlement fund of $45 million); *In re Harnischfeger Industries* (E.D. Wisc.) (settlement fund of $10.1 million); *In re Oxford Health Plans, Inc. Derivative Litigation*, (S.D.N.Y.) (settlement benefit of $13.7 million and corporate therapeutics); *In re JWP Inc. Securities Litigation*, (S.D.N.Y.) (settlement fund of $37 million); *In re Home Shopping Network, Inc., Derivative Litigation*, (S.D. Fla.) (settlement benefit in excess of $20 million); *In re Graham-Field Health Products, Inc. Securities* Litigation, (S.D.N.Y.) (settlement fund of $5.65 million); *Benjamin v. Carusona*, (E.D.N.Y.) (prosecuted action on behalf of minority shareholders which resulted in a change of control from majority-controlled management at Gurney's Inn Resort & Spa Ltd.); *In re Rexel Shareholder Litigation*, (Sup. Ct. N.Y. County) (settlement benefit in excess of $38 million); and *Croyden Assoc. v. Tesoro Petroleum Corp., et al.*, (Del. Ch.) (settlement benefit of $19.2 million).

In connection with the settlement of *Alessi v. Beracha*, (Del. Ch.), a class action brought on behalf of the former minority shareholders of Earthgrains, Chancellor Chandler commented: "I give credit where credit is due, Ms. Quitt. You did a good job and got a good result, and you should be proud of it."

Ms. Quitt has focused her practice on shareholder rights and ERISA class actions but also handles general commercial and consumer litigation. Ms. Quitt serves as a member of the S.D.N.Y. ADR Panel and has been consistently selected as a New York Metro Super Lawyer.

JONATHAN M. ROTTER leads the Firm's intellectual property litigation practice and has extensive experience in class action litigation, including in the fields of data privacy, digital content, securities, consumer protection, and antitrust. His cases often involve technical and scientific issues, and he excels at the critical skill of understanding and organizing complex subject matter in a way helpful to judges, juries, and ultimately, the firm's clients. Since joining the firm, he has played a key role in cases recovering over $100 million. He

handles cases on contingency, partial contingency, and hourly bases, and works collaboratively with other lawyers and law firms across the country.

Before joining the firm, Mr. Rotter served for three years as the first Patent Pilot Program Law Clerk at the United States District Court for the Central District of California, both in Los Angeles and Orange County. There, he assisted the Honorable S. James Otero, Andrew J. Guilford, George H. Wu, John A. Kronstadt, and Beverly Reid O'Connell with hundreds of patent cases in every major field of technology, from complaint to post-trial motions, advised on case management strategy, and organized and provided judicial education. Mr. Rotter also served as a law clerk for the Honorable Milan D. Smith, Jr. on the United States Court of Appeals for the Ninth Circuit, working on the full range of matters handled by the Circuit.

Before his service to the courts, Mr. Rotter practiced at an international law firm, where he argued appeals at the Federal Circuit, Ninth Circuit, and California Court of Appeal, tried cases, argued motions, and managed all aspects of complex litigation. He also served as a volunteer criminal prosecutor for the Los Angeles City Attorney's Office.

Mr. Rotter graduated with honors from Harvard Law School in 2004. He served as an editor of the Harvard Journal of Law & Technology, was a Fellow in Law and Economics at the John M. Olin Center for Law, Economics, and Business at Harvard Law School, and a Fellow in Justice, Welfare, and Economics at the Harvard University Weatherhead Center For International Affairs. He graduated with honors from the University of California, San Diego in 2000 with a B.S. in molecular biology and a B.A. in music.

Mr. Rotter serves on the Merit Selection Panel for Magistrate Judges in the Central District of California, and served on the Model Patent Jury Instructions and Model Patent Local Rules subcommittees of the American Intellectual Property Law Association. He has written extensively on intellectual property issues, and has been honored for his work with legal service organizations. He is admitted to practice in California and before the United States Courts of Appeals for the First, Second, Ninth and Federal Circuits, the United States District Courts for the Northern, Central, and Southern Districts of California, and the United States Patent & Trademark Office.

KEVIN F. RUF graduated from the University of California at Berkeley with a Bachelor of Arts in Economics and earned his Juris Doctor degree from the University of Michigan. He was an associate at the Los Angeles firm Manatt Phelps and Phillips from 1988 until 1992, where he specialized in commercial litigation. In 1993, he joined the firm Corbin & Fitzgerald (with future federal district court Judge Michael Fitzgerald) specializing in white collar criminal defense work. Kevin joined the Glancy firm in 2001 and is the head of the firm's Labor practice.

Kevin has successfully argued a number of important appeals, including in the 9th Circuit Court of Appeals. He has twice argued cases before the California Supreme Court – winning both. In *Smith v. L'Oreal* (2006), the California Supreme Court established a fundamental right of all California workers to immediate payment of all earnings at the conclusion of their employment. The second California Supreme Court case, *Lee v.*

Dynamex (2018), has been called a "blockbuster" and "bombshell" as it altered 30 years of California law and established a new definition of employment that brings more workers within the protections of California's Labor Code.

Kevin has been named one of California's "Top 75 Employment Lawyers" by the Daily Journal. He has consistently been named a "Super Lawyer."

Since 2014, Kevin has been an elected member of the Ojai Unified School District Board of Trustees. Kevin was also a Main Company Member of the world-famous Groundlings improv and sketch comedy troupe – "where everyone else got famous."

BENJAMIN I. SACHS-MICHAELS, a partner in the firm's New York office, graduated from Benjamin N. Cardozo School of Law in 2011. His practice focuses on shareholder derivative litigation and class actions on behalf of shareholders and consumers.

While in law school, Mr. Sachs-Michaels served as a judicial intern to Senior United States District Judge Thomas J. McAvoy in the United States District Court for the Northern District of New York and was a member of the Cardozo Journal of Conflict Resolution.

Mr. Sachs-Michaels is a member of the Bar of the State of New York. He is also admitted to the United States District Courts for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit.

CASEY E. SADLER is a native of New York, New York. After graduating from the University of Southern California, Gould School of Law, Mr. Sadler joined the Firm in 2010. While attending law school, Mr. Sadler externed for the Enforcement Division of the Securities and Exchange Commission, spent a summer working for P.H. Parekh & Co. – one of the leading appellate law firms in New Delhi, India – and was a member of USC's Hale Moot Court Honors Program.

Mr. Sadler's practice focuses on securities and consumer litigation. A partner in the Firm's Los Angeles office, Mr. Sadler is admitted to the State Bar of California and the United States District Courts for the Northern, Southern, and Central Districts of California.

EX KANO S. SAMS II EX KANO S. SAMS II earned his Bachelor of Arts degree in Political Science from the University of California Los Angeles. Mr. Sams earned his Juris Doctor degree from the University of California Los Angeles School of Law, where he served as a member of the *UCLA Law Review*. After law school, Mr. Sams practiced class action civil rights litigation on behalf of plaintiffs. Subsequently, Mr. Sams was a partner at Coughlin Stoia Geller Rudman & Robbins LLP (currently Robbins Geller Rudman & Dowd LLP), where his practice focused on securities and consumer class actions on behalf of investors and consumers.

During his career, Mr. Sams has served as lead counsel in dozens of securities class actions and complex-litigation cases, and has worked on cases at all levels of the state and federal court systems throughout the United States. Mr. Sams was one of the counsel for respondents in *Cyan, Inc. v. Beaver Cty. Employees Ret. Fund*, 138 S. Ct. 1061

(2018), in which the United States Supreme Court ruled unanimously in favor of respondents, holding that: (1) the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") does not strip state courts of jurisdiction over class actions alleging violations of only the Securities Act of 1933; and (2) SLUSA does not empower defendants to remove such actions from state to federal court. Mr. Sams also participated in a successful appeal before a Fifth Circuit panel that included former United States Supreme Court Justice Sandra Day O'Connor sitting by designation, in which the court unanimously vacated the lower court's denial of class certification, reversed the lower court's grant of summary judgment, and issued an important decision on the issue of loss causation in securities litigation: *Alaska Electrical Pension Fund v. Flowserve Corp.*, 572 F.3d 221 (5th Cir. 2009). The case settled for $55 million.

Mr. Sams has also obtained other significant results. Notable examples include: *Beezley v. Fenix Parts, Inc.*, No. 1:17-CV-7896, 2018 WL 3454490 (N.D. Ill. July 13, 2018) (denying motion to dismiss); *In re Flowers Foods, Inc. Sec. Litig.*, No. 7:16-CV-222 (WLS), 2018 WL 1558558 (M.D. Ga. Mar. 23, 2018) (largely denying motion to dismiss; case settled for $21 million); *In re King Digital Entm't plc S'holder Litig.*, No. CGC-15-544770 (San Francisco Superior Court) (case settled for $18.5 million); *In re Castlight Health, Inc. S'holder Litig.*, Lead Case No. CIV533203 (California Superior Court, County of San Mateo) (case settled for $9.5 million); *Wiley v. Envivio, Inc.*, Master File No. CIV517185 (California Superior Court, County of San Mateo) (case settled for $8.5 million); *In re CafePress Inc. S'holder Litig.*, Master File No. CIV522744 (California Superior Court, County of San Mateo) (case settled for $8 million); *Estate of Gardner v. Continental Casualty Co.*, No. 3:13-cv-1918 (JBA), 2016 WL 806823 (D. Conn. Mar. 1, 2016) (granting class certification); *Forbush v. Goodale*, No. 33538/2011, 2013 WL 582255 (N.Y. Sup. Feb. 4, 2013) (denying motions to dismiss); *Curry v. Hansen Med., Inc.*, No. C 09-5094 CW, 2012 WL 3242447 (N.D. Cal. Aug. 10, 2012) (upholding complaint; case settled for $8.5 million); *Wilkof v. Caraco Pharm. Labs., Ltd.*, 280 F.R.D. 332 (E.D. Mich. 2012) (granting class certification); *Puskala v. Koss Corp.*, 799 F. Supp. 2d 941 (E.D. Wis. 2011) (upholding complaint); *Mishkin v. Zynex Inc.*, Civil Action No. 09-cv-00780-REB-KLM, 2011 WL 1158715 (D. Colo. Mar. 30, 2011) (denying motion to dismiss); and *Tsirekidze v. Syntax-Brillian Corp.*, No. CV-07-02204-PHX-FJM, 2009 WL 2151838 (D. Ariz. July 17, 2009) (granting class certification; case settled for $10 million).

Additionally, Mr. Sams has successfully represented consumers in class action litigation. Mr. Sams worked on nationwide litigation and a trial against major tobacco companies, and in statewide tobacco litigation that resulted in a $12.5 billion recovery for California cities and counties in a landmark settlement. He also was a principal attorney in a consumer class action against one of the largest banks in the country that resulted in a substantial recovery and a change in the company's business practices. Mr. Sams also participated in settlement negotiations on behalf of environmental organizations along with the United States Department of Justice and the Ohio Attorney General's Office that resulted in a consent decree requiring a company to perform remediation measures to address the effects of air and water pollution. Additionally, Mr. Sams has been an author or co-author of several articles in major legal publications, including "9th Circuit Decision Clarifies Securities Fraud Loss Causation Rule" published in the February 8, 2018 issue

of the *Daily Journal*, and "Market Efficiency in the World of High-Frequency Trading" published in the December 26, 2017 issue of the *Daily Journal*.

LEANNE HEINE SOLISH is a partner in GPM's Los Angeles office. Her practice focuses on complex securities litigation.

Ms. Solish has extensive experience litigating complex cases in federal courts nationwide. Since joining GPM in 2012, Ms. Solish has helped secure several large class action settlements for injured investors, including: *The City of Farmington Hills Employees Retirement System v. Wells Fargo Bank*, Case No. 10-4372--DWF/JJG (D. Minn.) ($62.5 million settlement on behalf of participants in Wells Fargo's securities lending program. The settlement was reached on the eve of trial and ranked among the largest recoveries achieved in a securities lending class action stemming from the 2008 financial crisis.); *Mild v. PPG Industries, Inc. et al.*, Case No. 2:18-cv-04231 (C.D. Cal.) ($25 million settlement); *In re Penn West Petroleum Ltd. Securities Litigation*, Case No. 1:14-cv-06046-JGK (S.D.N.Y.) ($19 million settlement for the U.S. shareholder class as part of a $39 million global settlement); *In re ITT Educational Services, Inc. Securities Litigation (Indiana)*, Case No. 1:14-cv-01599-TWP-DML ($12.5375 million settlement); *In re Doral Financial Corporation Securities Litigation*, Case No. 3:14-cv-01393-GAG (D.P.R.) ($7 million settlement); *Larson v. Insys Therapeutics Incorporated, et al.*, Lead Case No. 14-cv-01043-PHX-GMS (D. Ariz.) ($6.125 million settlement); *In re Unilife Corporation Securities Litigation*, Case No. 1:16-cv-03976-RA ($4.4 million settlement); and *In re K12 Inc. Securities Litigation*, Case No. 4:16-cv-04069-PJH (N.D. Cal.) ($3.5 million settlement).

Super Lawyers Magazine has selected Ms. Solish as a "Rising Star" in the area of Securities Litigation for the past four consecutive years, 2016 through 2019.

Ms. Solish graduated *summa cum laude* with a B.S.M. in Accounting and Finance from Tulane University, where she was a member of the Beta Alpha Psi honors accounting organization and was inducted into the Beta Gamma Sigma Business Honors Society. Ms. Solish subsequently earned her J.D. from the University of Texas School of Law.

Ms. Solish is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Northern, and Southern Districts of California. Ms. Solish is also a Registered Certified Public Accountant in Illinois.

KARA M. WOLKE is a partner in the firm's Los Angeles office. Ms. Wolke specializes in complex litigation, including the prosecution of securities fraud, derivative, consumer, and wage and hour class actions. She has extensive experience in written appellate advocacy in both State and Federal Circuit Courts of Appeals, and has successfully argued before the Court of Appeals for the State of California.

With over a decade of experience in financial class action litigation, Ms. Wolke has helped to recover hundreds of millions of dollars for injured investors, consumers, and employees. Notable cases include: *Farmington Hills Employees' Retirement System v. Wells Fargo Bank*, Case No. 10-4372 (D. Minn.) ($62.5 million settlement on behalf of

participants in Wells Fargo's securities lending program. The settlement was reached on the eve of trial and ranked among the largest recoveries achieved in a securities lending class action stemming from the 2008 financial crisis.); *Schleicher, et al. v. Wendt, et al.* (Conseco), Case No. 02-cv-1332 (S.D. Ind.) ($41.5 million securities class action settlement); *Lapin v. Goldman Sachs*, Case No. 03-850 (S.D.N.Y.) ($29 million securities class action settlement); *In Re: Mannkind Corporation Securities Litigation*, Case No. 11-929 (C.D. Cal) (approximately $22 million settlement - $16 million in cash plus stock); *Jenson v. First Trust Corp.*, Case No. 05-3124 (C.D. Cal.) ($8.5 million settlement of action alleging breach of fiduciary duty and breach of contract against trust company on behalf of a class of elderly investors); and *Pappas v. Naked Juice Co.*, Case No. 11-08276 (C.D. Cal.) ($9 million settlement in consumer class action alleging misleading labeling of juice products as "All Natural").

With a background in intellectual property, Ms. Wolke was a part of the team of lawyers who successfully challenged the claim of copyright ownership to the song "Happy Birthday to You" on behalf of artists and filmmakers who had been forced to pay hefty licensing fees to publicly sing the world's most famous song. In the resolution of that action, the defendant music publishing company funded a settlement of $14 million and, significantly, agreed to relinquish the song to the public domain. Previously, Ms. Wolke penned an article regarding the failure of U.S. Copyright Law to provide an important public performance right in sound recordings, 7 Vand. J. Ent. L. & Prac. 411, which was nationally recognized and received an award by the American Bar Association and the Grammy® Foundation.

Committed to the provision of legal services to the poor, disadvantaged, and other vulnerable or disenfranchised individuals and groups, Ms. Wolke also oversees the Firm's pro bono practice. Ms. Wolke currently serves as a volunteer attorney for KIND (Kids In Need of Defense), representing unaccompanied immigrant and refugee children in custody and deportation proceedings, and helping them to secure legal permanent residency status in the U.S.

Ms. Wolke graduated summa cum laude with a Bachelor of Science in Economics from The Ohio State University in 2001. She subsequently earned her J.D. (with honors) from Ohio State, where she was active in Moot Court and received the Dean's Award for Excellence during each of her three years.

Ms. Wolke is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, as well as the United States District Courts for the Northern, Southern, and Central Districts of California. She lives with her husband and two sons in Los Angeles.

OF COUNSEL

PETER A. BINKOW has prosecuted lawsuits on behalf of consumers and investors in state and federal courts throughout the United States. He served as Lead or Co-Lead Counsel in many class action cases, including: *In re Mercury Interactive Securities Litigation* ($117.5 million recovery); *The City of Farmington Hills Retirement System v Wells Fargo* ($62.5 million recovery); *Schleicher v Wendt* (Conseco Securities litigation -

$41.5 million recovery); *Lapin v Goldman Sachs* ($29 million recovery); *In re Heritage Bond Litigation* ($28 million recovery); *In re National Techteam Securities Litigation* ($11 million recovery for investors); *In re Lason Inc. Securities Litigation* ($12.68 million recovery), *In re ESC Medical Systems, Ltd. Securities Litigation* ($17 million recovery); and many others. In *Schleicher v Wendt*, Mr. Binkow successfully argued the seminal Seventh Circuit case on class certification, in an opinion authored by Chief Judge Frank Easterbrook. He has argued and/or prepared appeals before the Ninth Circuit, Seventh Circuit, Sixth Circuit and Second Circuit Courts of Appeals.

Mr. Binkow joined the Firm in 1994. He was born on August 16, 1965 in Detroit, Michigan. Mr. Binkow obtained a Bachelor of Arts degree from the University of Michigan in 1988 and a Juris Doctor degree from the University of Southern California in 1994.

BRIAN D. BROOKS joined the New York office of Glancy Prongay & Murray LLP in 2019, specializing in antitrust, consumer, and securities litigation. His current cases include *In re Zetia Antitrust Litigation*, No. 18-md-2836 (E.D. Va.); *Staley, et al. v. Gilead Sciences, Inc., et al.*, No. 3:19-cv-02573-EMC (N.D. Cal.); and *In re: Seroquel XR (Extended Release Quetiapine Fumarate) Litigation*, No. 1:19-cv-08296-CM (S.D.N.Y.).

Prior to joining the firm, Mr. Brooks was an associate at Murray, Frank & Sailer, LLP in New York, where his practice was focused on antitrust, consumer, and securities matters, and later a partner at Smith, Segura & Raphael, LLP, in New York and Louisiana. During his tenure at Smith Segura & Raphael, LLP, Mr. Brooks represented direct purchasers in numerous antitrust matters, including *In re: Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation*, No. 2:13-md-02445 (E.D. Pa.), *In re: Niaspan Antitrust Litigation*, No. 2:13-md-02460 (E.D. Pa.), and *In re: Novartis & Par Antitrust Litigation (Exforge)*, No. 18-cv-4361 (S.D.N.Y.), and was an active member of the trial team for the class in *In re: Nexium (Esomeprazole) Antitrust Litigation*, No. 12-md-2409 (D. Mass.), the first post-*Actavis* reverse-payment case to be tried to verdict. He was also an active member of the litigation teams in the *King Drug Company of Florence, Inc. et al. v. Cephalon, Inc., et al. (Provigil)*, No. 2:06-cv-1797 (E.D. Pa.); *In re: Prograf Antitrust Litigation*, No. 1:11-md-2242 (D. Mass.) and *In re: Miralax* antitrust matters, which collectively settled for more than $600 million, and a member of the litigation teams in *In re: Relafen Antitrust Litigation*, No. 01-cv-12239 (D. Mass.); *In re: Buspirone Antitrust Litigaiton*, MDL Dkt. No. 1410 (S.D.N.Y.); *In re: Remeron Antitrust Litigation,* No. 02-2007 (D.N.J.); *In re: Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.); and *In re K-Dur Antitrust Litigation*, No. 10-cv-1652 (D.N.J.).

Mr. Brooks received his B.A. from Northwestern State University of Louisiana in 1998 and his J.D. from Washington and Lee School of Law in 2002, where he was a staff writer for the Environmental Law Digest and clerked for the Alderson Legal Assistance Program, handling legal matters for inmates of the Federal Detention Center in Alderson, West Virginia. He is admitted to practice in all state courts in New York and Louisiana, as well as the United States District Courts for the Southern and Eastern Districts of New York and the Eastern and Western Districts of Louisiana.

MARK S. GREENSTONE specializes in consumer, financial fraud and employment-related class actions. Possessing significant law and motion and trial experience, Mr. Greenstone has represented clients in multi-million dollar disputes in California state and federal courts, as well as the Court of Federal Claims in Washington, D.C.

Mr. Greenstone received his training as an associate at Sheppard, Mullin, Richter & Hampton LLP where he specialized in complex business litigation relating to investment management, government contracts and real estate. Upon leaving Sheppard Mullin, Mr. Greenstone founded an internet-based company offering retail items on multiple platforms nationwide. He thereafter returned to law bringing a combination of business and legal skills to his practice.

Mr. Greenstone graduated Order of the Coif from the UCLA School of Law. He also received his undergraduate degree in Political Science from UCLA, where he graduated Magna Cum Laude and was inducted into the Phi Beta Kappa honor society.

Mr. Greenstone is a member of the Consumer Attorneys Association of Los Angeles, the Santa Monica Bar Association and the Beverly Hills Bar Association. He is admitted to practice in state and federal courts throughout California.

ROBERT I. HARWOOD, Of Counsel to the firm, graduated from William and Mary Law School in 1971, and has specialized in securities law and securities litigation since beginning his career in 1972 at the Enforcement Division of the New York Stock Exchange. Mr. Harwood was a founding member of Harwood Feffer LLP. He has prosecuted numerous securities, class, derivative, and ERISA actions. He is a member of the Trial Lawyers' Section of the New York State Bar Association and has served as a guest lecturer at trial advocacy programs sponsored by the Practicing Law Institute. In a statewide survey of his legal peers published by Super Lawyers Magazine, Mr. Harwood has been consistently selected as a "New York Metro Super Lawyer." Super Lawyers are the top five percent of attorneys in New York, as chosen by their peers and through the independent research. He is also a Member of the Board of Directors of the MFY Legal Services Inc., which provides free legal representation in civil matters to the poor and the mentally ill in New York City. Since 1999, Mr. Harwood has also served as a Village Justice for the Village of Dobbs Ferry, New York.

Commenting on Mr. Harwood's abilities, in *In re Royal Dutch/Shell Transport ERISA Litigation*, (D.N.J.), Judge Bissell stated:

> the Court knows the attorneys in the firms involved in this matter and they are highly experienced and highly skilled in matters of this kind. Moreover, in this case it showed. Those efforts were vigorous, imaginative and prompt in reaching the settlement of this matter with a minimal amount of discovery . . . . So both skill and efficiency were brought to the table here by counsel, no doubt about that.

Likewise, Judge Hurley stated in connection with *In re Olsten Corporation Securities Litigation*, No. 97 CV-5056 (E.D.N.Y. Aug. 31, 2001), wherein a settlement fund of $24.1

million was created: "The quality of representation here I think has been excellent." Mr. Harwood was lead attorney in *Meritt v. Eckerd*, No. 86 Civ. 1222 (E.D.N.Y. May 30, 1986), where then Chief Judge Weinstein observed that counsel conducted the litigation with "speed and skill" resulting in a settlement having a value "in the order of $20 Million Dollars." Mr. Harwood prosecuted the *Hoeniger v. Aylsworth* class action litigation in the United States District Court for the Western District of Texas (No. SA-86-CA-939), which resulted in a settlement fund of $18 million and received favorable comment in the August 14, 1989 edition of *The Wall Street Journal* ("*Prospector Fund Finds Golden Touch in Class Action Suit" p*. 18, col. 1). Mr. Harwood served as co-lead counsel in *In Re Interco Incorporated Shareholders Litigation*, Consolidated C.A. No. 10111 (Delaware Chancery Court) (May 25, 1990), resulting in a settlement of $18.5 million, where V.C. Berger found, "This is a case that has an extensive record that establishes it was very hard fought. There were intense efforts made by plaintiffs' attorneys and those efforts bore very significant fruit in the face of serious questions as to ultimate success on the merits."

Mr. Harwood served as lead counsel in *Morse v. McWhorter* (Columbia/HCA Healthcare Securities Litigation), (M.D. Tenn.), in which a settlement fund of $49.5 million was created for the benefit of the Class, as well as *In re Bank One Securities Litigation*, (N.D. Ill.), which resulted in the creation of a $45 million settlement fund. Mr. Harwood also served as co-lead counsel in *In re Safety-Kleen Corp. Stockholders Litigation*, (D.S.C.), which resulted in a settlement fund of $44.5 million; *In re Laidlaw Stockholders Litigation*, (D.S.C.), which resulted in a settlement fund of $24 million; *In re AIG ERISA Litigation*, (S.D.N.Y.), which resulted in a settlement fund of $24.2 million*; In re JWP Inc. Securities Litigation*, (S.D.N.Y.), which resulted in a $37 million settlement fund; *In re Oxford Health Plans, Inc. Derivative Litigation*, (S.D.N.Y.), which resulted in a settlement benefit of $13.7 million and corporate therapeutics; and *In re UNUMProvident Corp. Securities Litigation*, (D. Me.), which resulted in the creation of settlement fund of $45 million. Mr. Harwood has also been one of the lead attorneys in litigating claims in *In re FedEx Ground Package Inc. Employment Practices Litigation*, No. 3:05-MD-527 (MDL 1700), a multi-district litigation concerning employment classification of pickup and delivery drivers which resulted in a $242,000,000 settlement.

ASSOCIATES

GRAHAM CLEGG received his LLB in 1988 from the Manchester University School of Law in England, with Honors. He was admitted to the New York State Bar in 2002. Mr. Clegg has significant experience in the prosecution of class claims, including *In re Bristol-Myers Squibb Securities Litigation,* which settled for $185 million.

CHRISTOPHER FALLON focuses on securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Fallon was a contract attorney with O'Melveny & Myers LLP working on anti-trust and business litigation disputes. He is a Certified E-Discovery Specialist through the Association of Certified E-Discovery Specialists (ACEDS).

Mr. Fallon earned his J.D. and a Certificate in Dispute Resolution from Pepperdine Law School in 2004. While attending law school, Christopher worked at the Pepperdine

Special Education Advocacy Clinic and interned with the Rhode Island Office of the Attorney General. Prior to attending law school, he graduated from Boston College with a Bachelor of Arts in Economics and a minor in Irish Studies, then served as Deputy Campaign Finance Director on a U.S. Senate campaign.

MEHRDAUD JAFARNIA received his J.D. in 2001 from Southwestern University School of Law, having earlier earned a B.A. in Political Science/International Relations from the University of California at Los Angeles (UC Regents Merit Scholarship Award and the Vance Burch Scholarship). Mr. Jafarnia served as a Staff Attorney for the 9th Circuit Court of Appeals and has represented financial institutions in adversary and evidentiary proceedings in the Bankruptcy Courts.

THOMAS J. KENNEDY works out of the New York office, where he focuses on securities, antitrust, mass torts, and consumer litigation. He received a Juris Doctor degree from St. John's University School of Law in 1995. At St. John's, he was a member of the ST. JOHN'S JOURNAL OF LEGAL COMMENTARY. Mr. Kennedy graduated from Miami University in 1992 with a Bachelor of Science degree in Accounting and has passed the CPA exam. Mr. Kennedy was previously associated with the law firm Murray Frank LLP.

JENNIFER M. LEINBACH served for nearly five years as a judicial law clerk for a number of judges in the Central District of California. As a judicial law clerk, Ms. Leinbach was responsible for assisting these judges with case management, preparing for hearings and trial, and drafting rulings. Ms. Leinbach worked on a variety of different cases, including cases involving financial fraud, insolvency and complex civil litigation. Ms. Leinbach was also responsible for assisting those judges, sitting by designation, on appellate cases.

Ms. Leinbach graduated magna cum laude from Vermont Law School and was a member of Vermont Law Review, where she focused on environmental law issues. During law school, Ms. Leinbach served as a judicial extern in the District of Vermont. She obtained her undergraduate degree cum laude from Pepperdine University.

CHARLES H. LINEHAN graduated summa cum laude from the University of California, Los Angeles with a Bachelor of Arts degree in Philosophy and a minor in Mathematics. Mr. Linehan received his Juris Doctor degree from the UCLA School of Law, where he was a member of the UCLA Moot Court Honors Board. While attending law school, Mr. Linehan participated in the school's First Amendment Amicus Brief Clinic (now the Scott & Cyan Banister First Amendment Clinic) where he worked with nationally recognized scholars and civil rights organizations to draft amicus briefs on various Free Speech issues.

DANIELLE L. MANNING is a litigation associate in the firm's Los Angeles office. Ms. Manning specializes in prosecuting complex class action lawsuits in state and federal courts nationwide, including consumer and securities fraud class actions. She has particular experience litigating automobile defect and Telephone Consumer Protection Act ("TCPA") cases and excels at managing multiple significant matters at once. Ms. Manning has experience in all phases of pre-trial litigation, including conducting fact investigation, drafting pleadings, researching and drafting briefs in the context of law and

motion practice, drafting and responding to discovery requests, assisting with deposition preparation, and preparing for and negotiating settlements. Ms. Manning is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, United States District Courts for the Central and Northern Districts of California, and the Eastern District of Michigan.

A few of the matters Ms. Manning is currently taking an active role in are: *Gann et. al. v. Nissan North America*, Case No. 3:18-cv-00966 (M.D. Tenn.) (preliminary approval granted July 16, 2019); *Salcedo v. Häagen-Dazs Shoppe Company Inc.*, Case No. 5:17-cv-03504 (N.D. Cal.); *Andre Damico et. al. v. Hyundai Motor America Inc*., Case No. 30-2018-01008552-CU-BC-CXC (Cal. Super. Ct.) (demurrer overruled); *Elaine Hall et al. v. General Motors LLC*, Case No. 4:19-cv-10186 (E.D. Mich.) (motion to dismiss pending); *Mark Mina v. Red Robin International Inc*., *et al*., Case No. 2:18-cv-09472 (C.D. Cal.)(motion to dismiss pending) and *Kohna et al. v. Subaru of America Inc*., Case No. 1:19-cv-09323 (D.N.J).

Ms. Manning received her Juris Doctor degree from the University of California Los Angeles School of Law, where she served as Chief Managing Editor of the *Journal of Environmental Law and Policy*. While attending law school, Ms. Manning externed for the Honorable Laurie D. Zelon in the California Court of Appeal and interned for the California Department of Justice, Office of the Attorney General. Ms. Manning received her Bachelor of Arts degree with honors in Environmental Analysis from Claremont McKenna College.

VAHE MESROPYAN joined the firm in 2018 and focuses his practice on litigating securities class actions. Immediately prior to joining the firm, Mr. Mesropyan served as a judicial law clerk for multiple judges in the U.S. District Court for the Central District of California. Prior to his clerkship, Mr. Mesropyan was an associate at Crowell & Moring LLP, where he represented Fortune 500 companies in complex antitrust matters.

Mr. Mesropyan received his J.D. from the University of California, Irvine School of Law as a Dean's Merit Scholarship recipient. While in law school, he clerked for the Federal Trade Commission, Consumer Protection Unit and served as an extern for the Internal Revenue Service, Office of Chief Counsel.

NATALIE S. PANG is an associate in the firm's Los Angeles office. Ms. Pang has advocated on behalf of thousands of consumers during her career. Ms. Pang has extensive experience in case management and all facets of litigation: from a case's inception through the discovery process--including taking and defending depositions and preparing witnesses for depositions and trial--mediation and settlement negotiations, pretrial motion work, trial and post-trial motion work.

Prior to joining the firm, Ms. Pang lead the mass torts department of her last firm, where she managed the cases of over two thousand individual clients. There, Ms. Pang worked on a wide variety of complex state and federal matters which included cases involving pharmaceutical drugs, medical devices, auto defects, toxic torts, false advertising, and uninhabitable conditions. Ms. Pang was also trial counsel in the notable case, *Celestino Acosta et al. v. City of Long Beach et al.* (BC591412) which was brought on behalf of

residents of a mobile home park built on a former trash dump and resulted in a $39.5 million verdict after an eleven-week jury trial in Los Angeles Superior Court.

Ms. Pang received her J.D. from Loyola Law School. While in law school, Ms. Pang received a Top 10 Brief Award as a Scott Moot Court competitor, was chosen to be a member of the Scott Moot Court Honor's Board, and competed as a member of the National Moot Court Team. Ms. Pang was also a Staffer and subsequently an Editor for Loyola's Entertainment Law Review as well as a Loyola Writing Tutor. During law school, Ms. Pang served as an extern for: the Hon. Rolf Treu (Los Angeles Superior Court), the Los Angeles City Attorney's Office, and the Federal Public Defender's Office. Ms. Pang obtained her undergraduate degree from the University of Southern California and worked in the healthcare industry prior to pursuing her career in law.

JARED F. PITT focuses on securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Pitt was an associate at Willoughby Doyle LLP and was a senior financial statement auditor for KMPG LLP where he earned his CPA license.

Mr. Pitt earned his J.D. from Loyola Law School in 2010. Prior to attending law school he graduated with honors from both the University of Michigan's Ross School of Business and USC's Marshall School of Business where he received a Masters of Accounting.

PAVITHRA RAJESH is a litigation associate in the firm's Los Angeles office. She specializes in fact discovery, including pre-litigation investigation, and develops legal theories in securities, derivative, and privacy-related matters.

Ms. Rajesh has unique writing experience from her judicial externship for the Patent Pilot Program in the United States District Court for the Central District of California, where she worked closely with the Clerk and judges in the program on patent cases. Drawing from this experience, Ms. Rajesh is passionate about expanding the firm's Intellectual Property practice, and she engages with experts to understand complex technology in a wide range of patents, including network security and videogame electronics.

Ms. Rajesh graduated from University of California, Santa Barbara with a Bachelor of Science degree in Mathematics and a Bachelor of Arts degree in Psychology. She received her Juris Doctor degree from UCLA School of Law. While in law school, Ms. Rajesh was an Associate Editor for the UCLA Law Review.

NOREEN R. SCOTT received her J.D. in 2002 from Tulane Law School and earned a B.A. in Economics from Emory University in 1999. She served as a law clerk to the Hon. Charles R. Jones on the Louisiana State Court of Appeal, and has extensive experience prosecuting complex class action cases.

GARTH A. SPENCER is based in the New York office. His work includes securities, antitrust, and consumer litigation. Mr. Spencer also works on whistleblower matters.

Mr. Spencer received his B.A. in Mathematics from Grinnell College in 2006. He received his J.D. in 2011 from Duke University School of Law, where he was a staff editor on the Duke Law Journal. From 2011 until 2014 he worked in the tax group of a large,

international law firm. Since 2014 he has worked on tax whistleblower matters. Mr. Spencer received his LL.M. in Taxation from New York University in 2016 immediately prior to joining the firm.

DANA K. VINCENT received her J.D. in 2002 from Georgetown University Law Center in Washington D.C. and her B.A. cum laude from Spellman College in 1995. Dana also earned an M.A. in Economics from the New School in 1999, where she was the Aaron Diamond Fellow. Ms. Vincent has served as a Law Clerk to the Hon. Sterling Johnson, Jr. of Brooklyn, NY, and has significant experience in the New York Office of the Attorney General where she served as an Assistant Attorney General from 2003-2006. She was a consultant to the Marshall Project, an online journalism organization focusing on U.S. Criminal Justice issues.

MELISSA WRIGHT is a litigation associate in the firm's Los Angeles office. Ms. Wright specializes in complex litigation, including the prosecution of securities fraud and consumer class actions. She has particular expertise in all aspects of the discovery phase of litigation, including drafting and responding to discovery requests, negotiating protocols for the production of Electronically Stored Information (ESI) and all facets of ESI discovery, and assisting in deposition preparation. She has managed multiple document production and review projects, including the development of ESI search terms, overseeing numerous attorneys reviewing large document productions, drafting meet and confer correspondence and motions to compel where necessary, and coordinating the analysis of information procured during the discovery phase for utilization in substantive motions or settlement negotiations.

Ms. Wright received her J.D. from the UC Davis School of Law in 2012, where she was a board member of Tax Law Society and externed for the California Board of Equalization's Tax Appeals Assistance Program focusing on consumer use tax issues. Ms. Wright also graduated from NYU School of Law, where she received her LL.M. in Taxation in 2013.

EXHIBIT 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al.,

Plaintiffs,

v.

ZIMMER BIOMET HOLDINGS, INC., et. al.

Defendants.

Case No. 3:16-cv-00815-PPS-MGG

Honorable Philip P. Simon

DECLARATION OF THOMAS W. ELROD, ESQ. IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF KIRBY MCINERNEY LLP

I, Thomas W. Elrod, declare as follows:

1. I am a partner at the law firm Kirby McInerney LLP ("Kirby McInerney"), counsel for UFCW Local 1500 and one of 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 in connection with services rendered in the Action, as well as for reimbursement of litigation expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. As one of the counsel for Plaintiffs in this Action, the work Kirby McInerney performed for the benefit of the class included, among other things: (a) researching and

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 14, 2020 (ECF No. 246-1).

investigating the claims and defenses; (b) participating in the drafting of the Complaint and Plaintiffs' opposition to the motion to dismiss the Complaint as well as Defendants' subsequent 1292(b) motion; (c) participating in the drafting of Plaintiffs' class certification motion and reply memorandum; (d) assisting in party and third-party discovery; (e) reviewing and analyzing document productions; (f) participating in the depositions of two of UFCW Local 1500's investment advisors; (g) participating in numerous conferences with Lead Counsel; (h) drafting sections of the mediation statements and participating in the mediation sessions; and (i) drafting Plaintiffs' motion and memorandum in support of final approval of the class action settlement and plan of allocation. Other services provided by my firm with respect to UFCW Local 1500 and the Settlement Class, included: (a) consulting, communicating, and strategizing with UFCW Local 1500 via telephone, email, and in-person meetings concerning the Action; (b) analyzing UFCW Local 1500's potential losses; (c) coordinating with UFCW Local 1500 and its third-party advisors regarding discovery requests directed to UFCW Local 1500; (d) advising UFCW Local 1500 with respect to its deposition in the Action; and (e) advising and obtaining UFCW Local 1500's authority on issues related to the settlement of the Action.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through and including July 24, 2020, billed ten (10) or more hours to the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

4. I am the partner who oversaw or conducted the day-to-day activities in the Action and I reviewed these daily time records in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the records, as well as the necessity for, and reasonableness of, the time committed to the litigation. As a result of this review, I made reductions to certain of my firm's time entries such that the time included in Exhibit 1 reflect that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of the seventeen (17) attorneys and staff reflected in Exhibit 1 was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the application for fees and reimbursement of expenses has been included.

5. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are consistent with the rates approved by courts in other securities or shareholder litigation.

6. The total number of hours reflected in Exhibit 1 is 3,279.55 hours. The total lodestar reflected in Exhibit 1 is $1,724,355.00 consisting of $1,659,680.00 for attorneys' time and $64,675.00 for professional support staff time.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. As detailed in Exhibit 2, my firm is seeking reimbursement of a total of $26,626.61 in expenses incurred in connection with the prosecution of this Action.

9. The litigation expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. All air

travel was at the economy or premium economy level, and meals were capped at $50 per person. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm.

10. Attached hereto as Exhibit 3 is a copy of Kirby McInerney's firm resume, which includes a description of the firm and current attorneys.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed this 29th day of July, 2020 in New York, New York.

Thomas W. Elrod

EXHIBIT 1

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,
Case No. 3:16-cv-00815-PPS-MGG

KIRBY McINERNEY LLP

LODESTAR REPORT

TIMEKEEPER/CASE	STATUS	HOURS	RATE	LODESTAR
ATTORNEYS:				
David Bishop	Partner	25.75	$950	$24,462.50
Daniel Hume	Partner	42.75	$995	$42,536.25
Thomas Elrod	Partner	888.10	$800	$710,480.00
Andrew McNeela	Partner	55.50	$950	$52,725.00
Ira Press	Partner	95.00	$995	$94,525.00
Beverly Mirza	Of Counsel	36.00	$700	$25,200.00
Peter Brueggen	Of Counsel	952.30	$350	$333,305.00
Angela Farren	Associate	71.00	$375	$26,625.00
Emily Finestone	Associate	291.10	$475	$138,272.50
Anthony Maneiro	Associate	46.85	$475	$22,253.75
Belden Nago	Associate	522.25	$350	$182,787.50
Nicole Veno	Associate	13.70	$475	$6,507.50
TOTAL ATTORNEY		**3,040.30**		**$1,659,680.00**
PARALEGALS & ADMINISTRATIVE CLERKS:				
Elizabeth Ortiz	Senior Paralegal	22.00	$300	$6,600.00
Jesse Claflin	Senior Paralegal	123.75	$300	$37,125.00
Chloe Chung	Paralegal	50.00	$250	$12,500.00
Sarah Lynch	Paralegal	19.25	$250	$4,812.50
Ricardo Wright	Administrative Clerk	24.25	$150	$3,637.50
TOTAL PARALEGALS & ADMINISTRATIVE CLERKS		**239.25**		**$64,675.00**
TOTAL LODESTAR		**3,279.55**		**$1,724,355.00**

EXHIBIT 2

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,
Case No. 3:16-cv-00815-PPS-MGG

KIRBY McINERNEY LLP

EXPENSE REPORT
FROM INCEPTION THROUGH JULY 24, 2020

ITEM	AMOUNT
Courier & Special Postage	$182.13
Court Filing Fees	$469.00
Document Management	$7,738.30
Legal Research	$35.00
Online Research	$3,521.38
Process Servers	$4,216.56
Airfare	$2,199.87
Automotive Transportation	$810.40
Hotels	$3,273.28
Telephone & Data Services	$337.25
Travel Meals	$605.38
Transcripts	$3,238.06
GRAND TOTAL	**$26,626.61**

EXHIBIT 3

KIRBY McINERNEY LLP

FIRM RESUME

KM KIRBY McINERNEY

Kirby McInerney LLP is a specialist plaintiffs' litigation firm with expertise in securities, antitrust, commodities, structured finance, whistleblower, health care, consumer, and other fraud litigation.

KM brings experience, intelligence, creativity and dedication to bear in defending our clients' interests against losses, generally in cases of corporate malfeasance. We utilize cutting edge strategies that bring high – and have even brought unprecedented – recoveries for our clients: institutional and other types of investors. We have achieved and are pursuing landmark results in the fields of securities fraud, corporate governance, commodities fraud, consumer, antitrust, health care and ERISA litigation, representing our clients in class actions or, if appropriate, individual litigation.

KM has been a pioneer in securities class action law, and is one of the oldest firms in the field, with over 70 years of experience. Throughout the history of our firm, we have procured ground-breaking victories for our clients. From our victory in *Schneider v. Lazard Freres*, No. 38899, M-6679 (N.Y. App. Div. 1st Dept. 1990), which set the precedent that investment banks have direct duties to the shareholders of the companies they advise, to our procurement of the first-ever appellate reversal of a lower court's dismissal of a class action suit pursuant to the PSLRA in *In re GT Interactive Securities Litigation*, No. 98-cv-0095 (S.D.N.Y. 2000), to our recovery of an unprecedented 100 cents on the dollar for our clients in *In re Cendant Corp. PRIDES Litigation*, No. 98-cv-2819 (D. N.J. 2000), KM has helped to chart the nuances of the U.S. securities laws, and has procured superior results in the process. KM has recovered billions of dollars for our clients, and the average recoveries that we procure in each individual case are among the very best in the field.

Today, our attorneys are leading some of the largest and most significant securities litigations related to the subprime fallout of 2008 on behalf of investors such as the New York State Common Retirement Fund and the New York City Pension Funds. The firm settled one of the largest of all of the subprime cases – *In re Citigroup Inc. Securities Litigation*, No. 07-cv-9901 (S.D.N.Y.) – for $590 million. We also obtained a $168 million recovery for the class in *In re National City Corporation Securities, Derivative & ERISA Litigation*, No. 08-cv-70004 (N.D.Oh), a case related to the alleged misrepresentation of the nature and quality of many of National City's loans, the company's designation of unsellable loans as "held for sale," and their alleged understatement of the loan loss reserves, amongst other offenses. Finally, we also procured a $75 million settlement for the class in *In re Wachovia Equity Securities Litigation*, No. 08-cv-6171 (S.D.N.Y.), a similar subprime-related lawsuit.

Some of our other notable securities work includes:

- *In re BISYS Securities Litigation*, No. 04-cv-3480 (S.D.N.Y. 2007). We were co-lead counsel to the Police and Fire Retirement System for the City of Detroit and to a class of investors in connection with securities class action litigation against BISYS and Dennis Sheehan, BISYS President and Chief Operating Officer. The claim alleged that BISYS and Sheehan violated 10(b) of the Securities Exchange

Act of 1934 and Rule 10-5 thereunder by disseminating false and misleading information in press releases and SEC filings throughout the class period. Plaintiffs alleged that as a result of the misleading statements including inaccurate financial reporting, the price of BISYS common stock was inflated and investors who purchased stock at this time were damaged. Our work in this case included: drafting and oversight of pleadings and briefs; motions for *inter alia*, lead plaintiff appointment, dismissal, class certification; propounding and responding to discovery requests; review of document production; taking and defending of depositions; and filing and taking of appeals. This securities class action resulted in a total recovery of $66 million for the class.

- *In re Adelphia Communications Corp. Securities & Derivative Litigation*, No. 03 MDL 1529 (S.D.N.Y. 2007). We were co-lead counsel to Argent Classic Convertible Arbitrage Fund L.P., Argent Classic Convertible Arbitrage Fund, Ltd., Argent Lowlev Convertible Arbitrage Fund, Ltd., and a class of investors in *In re Adelphia Communications Corp. Securities & Deriv. Litig.*, one of the largest cases of improper self-dealing by insiders in corporate history. Our work on this case included drafting and oversight of pleadings and briefs relating to lead plaintiff appointment, motions to dismiss, and collateral litigation concerning, *inter alia*, the issuer's bankruptcy. Our work also included review of document production, consultation with experts, negotiations in settlement mediation, settlement, and advocacy of the proposed settlement in district court and on appeal. This securities class action resulted in a total recovery of $478 million for the class.
- *In re AT&T Wireless Tracking Stock Securities Litigation*, No. 00-cv-8754 (S.D.N.Y. 2006). We acted as sole lead counsel to the Soft Drink & Brewery Workers Local 812 Retirement Fund, a Taft-Hartley pension fund, and a class of investors in connection with *In re AT&T Corp. Securities Litigation*. The class was comprised of investors who purchased AT&T Wireless tracking stock in an April 26, 2000 initial public offering and through May 1, 2000 on the open market. The action asserted that the prospectus and registration statement used for the IPO misled investors about AT&T's prospects and recent results. Our work in this case included: drafting and oversight of pleadings and briefs; arguing motions for *inter alia*, lead plaintiff appointment, dismissal, class certification, expert and evidence disqualifications, and assorted motions relating to discovery disputes; propounding and responding to discovery requests; review of document production; and taking and defending of over one hundred depositions. KM succeeded in procuring a settlement of $150 million for the class on the eve of trial, following extensive trial preparation.
- *Rite Aid Corp.* (E.D. Pa. 2005). We represented a group of investment funds that lost more than $10 million in Rite Aid common stock and debt transactions in connection with an individual action, *Argent Classic v. Rite Aid*. Although an investor class action was already underway, KM filed the individual action on the belief that our clients could realize greater *pro rata* recovery on their multi-million dollar losses through an individual action than through a class action, where classwide damages were in the billions of dollars (and likely exceeded the ability of Rite Aid to pay). KM's clients were able to assert claims under Section 18 of the 1934 Act, which many courts hold cannot be asserted on a classwide basis. The class action eventually settled for less than 10¢ on the dollar. Thereafter, with the stay lifted, KM defeated defendants' motion to dismiss the individual action, and the parties agreed to mediate the claims. KM ultimately settled the claims of their institutional clients. Although confidentiality agreements entered in connection with the settlement prevent disclosure of terms, the settlement provided our clients with a percentage recovery which the clients found very satisfactory and which vindicated the decision to pursue an individual claim.

Roger W. Kirby is Of Counsel to the firm. He has written several articles on litigation, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence that have been published by various reporters and journals and has been on the board of editors of Class Action Reports. He has also lectured on aspects of securities litigation to various professional organizations in the United States and abroad.

Mr. Kirby has enjoyed considerable success as a trial attorney, and some of his cases have produced landmark decisions in the fields of securities law, corporate governance, and deceptive advertising.

Mr. Kirby's relevant experience includes:

- Representation of a putative class of initial public offerors in *Cordes & Company Financial Services v A.G. Edwards & Sons, Inc.* On appeal to the Court of Appeals for the Second Circuit, the court reversed the district court's decision, and held that assignees may be class representatives. The opinion also clarified the meaning of antitrust injury.
- Representation of an objector to the settlement in *Reynolds v. Beneficial National Bank* in the United States District Court for the Northern District of Illinois. Mr. Kirby and the firm successfully persuaded the U.S. Court of Appeals for the Seventh Circuit and the district court to overturn the settlement in question. Mr. Kirby and the firm were then appointed co-lead counsel to the class and were lauded by the presiding judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."
- Lead counsel for a class of investors in *Gerber v. Computer Associates International, Inc.*, a securities class action that resulted in a multimillion-dollar recovery jury verdict that was upheld on appeal.
- Lead counsel for a certified class of purchasers of PRIDES securities in connection with the Cendant Corporation accounting fraud in *In re Cendant Corporation PRIDES Litigation*. Mr. Kirby was instrumental in securing an approximate $350 million settlement for the certified class - an unprecedented 100 percent recovery.

Mr. Kirby was law clerk to the late Honorable Hugh H. Bownes, United States District Court for New Hampshire, and the United States Court of Appeals for the First Circuit. He is the author of *Access to United States Courts By Purchasers Of Foreign Listed Securities In The Aftermath of Morrison v. National Australia Bank Ltd.*, 7 Hastings Bus. L.J. 223 (Summer 2011). Mr. Kirby is a Visiting Law Fellow at the University of Oxford, St. Hilda's College, Oxford, U.K.

Mr. Kirby is AV Peer Rated by Martindale Hubbell and has been perennially listed as one of New York's Super Lawyers in securities litigation. He is conversant in French and Italian.

Mr. Kirby is admitted to the New York State Bar, the U.S. Supreme Court, the U.S Courts of Appeals for the First, Second, Third, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits, the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. District Court for the District of Connecticut. He graduated from Stanford University & Columbia College (B.A.), Columbia University School of Law (J.D.), where he was an International Fellow, and the Hague Academy of International Law (Cert. D'Att.).

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Alice McInerney is Of Counsel to the firm and practices out of our New York office.

She concentrates on antitrust and consumer matters, and also handles securities class actions. Ms. McInerney joined the firm in 1995 and has over 30 years of experience as an attorney.

Prior to joining KM, Ms. McInerney was Chief of the Investor Protection Bureau and Deputy Chief of the Antitrust Bureau of the New York Attorney General's office. While there, she chaired the Enforcement Section of the North American Securities Administrators Association and also chaired the Multi-State Task Force on Investigations for the National Association of Attorneys General. Alice is also a member of the National Association of Public Pension Attorneys (NAPPA).

Some of Ms. McInerney's relevant work includes:

- Lead counsel for consumer classes in antitrust cases against Microsoft. These litigations resulted in settlements totaling over $1 billion dollars for consumers in Florida, New York, Tennessee, West Virginia and Minnesota.
- Representation of a class of retailers in *In re Visa Check/MasterMoney Antitrust Litigation*, an antitrust case which resulted in a settlement of over $3 billion for the class.
- Representation of public entities in connection with ongoing Medicaid fraud and False Claims Act litigations arising from health expenditures of these state and local governmental entities.
- Representation of California homeowners in litigation arising from mortgage repayment irregularities. This litigation resulted in settlements that afforded millions of California homeowners clear title to their property. The cases resulted in the notable decision *Bartold v. Glendale Federal Bank*.

Ms. McInerney is admitted to the New York State Bar, the U.S. Supreme Court, the U.S. Court of Appeals for the Second Circuit, and the U.S. District Courts for the Eastern, Northern, Southern, and Western Districts of New York. She graduated from Smith College (B.A., 1970) and Hofstra School of Law (J.D., 1976).

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David A. Bishop is a partner practicing out of our New York office, where he coordinates domestic client and government relations. Mr. Bishop joined the firm in 2006 following a distinguished career in local government. Mr. Bishop was elected to the Suffolk County Legislature in 1993 while still attending Fordham Law School. He served in several leadership capacities, including Democratic Party Leader, Chairman of Public Safety and Chairman of Environment. His legislative record earned him recognition from the Nature Conservancy, the Child Care Council and the Long Island Federation of Labor.

As an attorney in private practice, Mr. Bishop has litigated numerous NASD arbitrations on behalf of claimants.

Some of Mr. Bishop's relevant experience includes:

- Representation in a shareholder derivative lawsuit against the English bank HSBC alleging that the bank ran money laundering operations out of New York City. Mr. Bishop and KM achieved a precedent-setting victory in New York's 2nd Department permitting the lawsuit to go forward.
- Representation in a class action on behalf of homeowners in minority neighborhoods in Nassau County concerning the County's unfair assessment practices.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage-related losses. During the class period, the company's stock fell from approximately $37 to $6. This case resulted in a settlement of $168 million.
- Lead counsel for classes of consumers harmed by price fixing in the LCD flat panel and SRAM markets.
- Co-lead counsel for a class of investors in Goldman Sachs common stock in a securities class action, *Lapin v. Goldman Sachs Group, Inc.*, pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. This litigation resulted in a recovery of $29 million for the class.

Mr. Bishop is a member of the Public Investors Arbitration Bar Association and of the New York City Bar Association. He is admitted to the New York State Bar and U.S. District Court for the Southern and Eastern Districts of New York. Mr. Bishop graduated from American University (B.A., 1987) and Fordham University Law School (J.D., 1993).

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Thomas W. Elrod is a partner based in our New York office focusing on securities, commodities, and antitrust litigation. From 2015-2019, Mr. Elrod was named a Top Rated Securities Litigation "Rising Star" Attorney by Super Lawyers. Mr. Elrod joined the firm in 2011.

Some of Mr. Elrod's relevant securities experience includes:

- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million.
- Representation of the proposed class of investors in *Shah v. Zimmer Biomet Holdings*, a securities class action alleging that a medical device company did not disclose systemic quality issues at its manufacturing facility.
- Lead counsel in *In re Hi-Crush Partners L.P. Securities Litigation*, a class action alleging that fracking sand producer Hi-Crush Partners misled shareholders regarding a major customer relationship. This case resulted in a $3.8 million settlement while class certification was pending.

- Co-lead counsel in *In re Resonant Inc. Securities Litigation*, a securities class action alleging that a mobile phone component company misled investors concerning its ability to meet the terms of a development agreement. The case resulted in a $2.75 million settlement.
- Representation of municipal issuers, including governmental entities and hospital systems, in FINRA arbitrations alleging misrepresentations by underwriters in connection with Auction Rate Securities issuances.

Some of Mr. Elrod's relevant antitrust experience includes:

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than $2.3 billion.
- Lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation in *In re North Sea Brent Crude Oil Futures Litigation*.
- Representation of exchange-based investors in *Shak v. JP Morgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws.

Some of Mr. Elrod's other relevant experience includes:

- Representation of a nationwide class of residential mortgage loan borrowers in *Rothstein v. GMAC Mortgage LLC*, a class action alleging violations of the Racketeer Influence and Corrupt Organizations Act. This litigation resulted in a $13 million settlement against GMAC Mortgage.
- Representation of SEC, CFTC, and FCA whistleblowers who claim that their companies have violated federal law or defrauded the United States Government.

Mr. Elrod is admitted to the New York State Bar, New Jersey State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, U.S. District Court for the District of New Jersey, and U.S. Courts of Appeals for the 2nd, 7th, and 9th Circuits. He graduated from the University of Chicago (B.A., 2005) and Boston University School of Law (J.D., 2009).

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Randall M. Fox is a partner in our New York office, focusing on whistleblower and qui tam matters in False Claims Act cases and before the IRS Whistleblower Office, the SEC Whistleblower Office and CFTC Whistleblower Office. Mr. Fox's cases generally concern claims of tax fraud, healthcare fraud (such as Medicaid, Medicare and Tricare fraud), procurement fraud, and investment fraud. Mr. Fox writes and speaks frequently about whistleblower issues and has served on the Editorial Advisory Board for the Law360 Government Contracts newsletter.

Mr. Fox joined the firm in 2014 after having served as the founding Bureau Chief of New York Attorney General's Taxpayer Protection Bureau. While at the Bureau, Mr. Fox handled claims about frauds committed against the government and taxpayer funds. Prior to being promoted to Bureau Chief at the Attorney General's office, Mr. Fox was a Special Assistant Attorney General in the New York Attorney General's Medicaid Fraud Control Unit, where he handled cases involving healthcare fraud.

Mr. Fox's cases focus on a wide range of industries and services, and have included matters involving banking organizations, hedge funds, medical providers, large pharmaceutical companies, telecommunications companies, technology companies, various government contractors and large-scale taxpayers.

Some of Mr. Fox's relevant whistleblower work includes:

- Representation in multiple healthcare fraud whistleblower cases against pharmaceutical companies and various medical providers based on claims that they fraudulently billed government healthcare programs for products and services that were tainted by illegal kickbacks, services that were not performed and medically unnecessary services.
- Representation in multiple tax fraud whistleblower cases, including claims against financial and services organizations and against wealthy individuals alleged to have falsified tax returns and related materials.

While working for the Office of the Attorney General, Mr. Fox handled or supervised several ground-breaking False Claims Act cases, including the following:

- He filed the first government-initiated New York False Claims Act case against Merck & Co., which resulted in a $980 million nationwide settlement, with $60 million for New York State.
- He led the government's investigation and intervention in a tax whistleblower's claims against cell phone company Sprint Corporation concerning its failure to collect and pay over $100 million in state and local sales taxes. The case subsequently settled for $330 million.
- He supervised several investigations into food services companies involved in school lunch programs that had kept monies they were required to rebate to local governments, resulting in recoveries of over $38 million.
- He co-led a multi-state team in pursuing whistleblower claims against technology company CA, Inc., which was claimed to have overcharged governmental customers for service plans. The case settled for $11 million.
- He supervised the first tax-related case to settle under New York's False Claims Act, which was brought by a whistleblower against Mohan's Custom Tailors. The case settled for $5.5 million and the company's owner pled guilty to tax fraud felonies and served jail time.

Before joining the New York Attorney General's Office in 2007, Mr. Fox was a partner at the law firm of LeBoeuf, Lamb, Greene & MacRae, LLP, where his practice focused on defending clients in class actions, commercial disputes, and securities and consumer fraud actions.

Mr. Fox is admitted to the New York State Bar, all U.S. District Courts for the State of New York, U.S. Court of Appeals for the Second, Third, Eighth, and Ninth Circuits, and U.S. Tax Court. He graduated from Williams College (B.A., 1988) and New York University (J.D., 1991).

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Robert J. Gralewski, Jr. is a partner based in our California office. Mr. Gralewski focuses on antitrust and consumer litigation and has been involved in the fields of complex litigation and class actions for over 15 years. Throughout the course of his career, Mr. Gralewski has prosecuted a wide variety of federal and state court price-fixing, monopoly and unfair business practice actions against multinational companies, major corporations, large banks, and credit card companies.

Some of Mr. Gralewski's relevant work includes:

- Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. Mr. Gralewski was a member of the trial teams in the Minnesota and Iowa actions (the only two Microsoft class actions to go to trial) which both settled in plaintiffs' favor after months of hard-fought jury trials. The Microsoft cases in which Mr. Gralewski was involved ultimately settled for more than $2 billion in the aggregate.
- Representation of businesses and consumers in an indirect purchaser class action against various manufacturers of SRAM, alleging that defendants engaged in a conspiracy to fix prices in the SRAM market.
- Representation of indirect purchasers in *In re Cathode Ray Tube (CRT) Antitrust Litigation*, a price fixing antitrust case alleging that defendant entities conspired to control prices of television and monitor components.

Mr. Gralewski is admitted to the California State Bar, all of the U.S. District Courts for the State of California, and U.S. District Court for the District of Colorado. He graduated from Princeton University (B.A., 1991) and California Western School of Law (J.D., *cum laude*, 1997).

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Daniel Hume leverages more than 25 years of experience to help institutional investors, financial institutions, and individuals recover losses and achieve favorable outcomes in class action and direct securities litigation. Additionally, he has prosecuted antitrust class actions and obtained significant monetary relief for consumers. Mr. Hume is a partner in our New York office and a member of the firm's management committee.

Some of Mr. Hume's relevant securities work includes:

- Lead counsel for the investor class in *In re AT&T Wireless Tracking Stock Securities Litigation*, a securities class action which resulted in recovery of $150 million for the class.
- Lead counsel for a group of Singapore-based investors in a securities class action, *Dandong v. Pinnacle Performance Ltd*, against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. This litigation resulted in a $20 million recovery.
- Lead counsel for the investor class in *In re MOL Global, Inc. Securities Litigation*, a securities class action lawsuit alleging that e-payment enabler MOL Global misled shareholders prior to its initial public offering. This litigation resulted in a $8.5 million recovery.
- Representation of foreign financial institutions in individual lawsuits against Morgan Stanley, Credit Agricole Corporate and Investment Bank, UBS, Deutsche Bank, Credit Suisse, Goldman Sachs, JP Morgan, and Barclays pertaining to a number of fraudulent structured investment vehicles and asset-backed collateralized debt obligations.

Some of Mr. Hume's relevant antitrust work includes:

- Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. These litigations have resulted in settlements totaling over $1 billion for consumers in Canada, Florida, New York, Tennessee, West Virginia and Minnesota, where the litigation proceeded to trial.
- Representation of a class of retailers in *In re Visa Check/Master Money Antitrust Litigation*, an antitrust case which resulted in a settlement of over $3 billion for the class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than $2.3 billion.

Mr. Hume is admitted to the New York State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Eighth, and Ninth Circuits, The Appellate Division of the Supreme Court of the State of New York, First Judicial Department, and The United States Supreme Court. He graduated from State University of New York at Albany (B.A., *magna cum laude*, 1988) and Columbia Law School (J.D., 1991).

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David E. Kovel is a managing partner based in our New York office focusing on commodities, antitrust, whistleblower, securities and corporate governance matters. Mr. Kovel has been recognized as an expert on antitrust and commodities litigation and is a frequent commentator on these matters. He has an active appellate practice having argued significant commodities, antitrust and whistleblower matters before various appeals courts. Mr. Kovel also has an active pro bono practice. His work is more fully described below.

Mr. Kovel is admitted to the New York State Bar, the Connecticut State Bar, the U.S. District Courts for the Southern, Eastern, and Western Districts of New York, the U.S. Court of Appeals for the First Circuit, Second Circuit, and D.C. Circuit. He has been a member of the New York City Bar Association Committee on Futures and Derivatives Regulation, and is a former member of the New York City Bar Association Antitrust Committee. He graduated from Yale University (B.A.), Columbia University School of Law (J.D.) and Columbia University Graduate School of Business (M.B.A.).

Mr. Kovel traded commodities for several years before attending business and law school. Prior to joining KM, Mr. Kovel practiced at Simpson Thacher & Bartlett LLP. He is fluent in Spanish and at one time played professional soccer in Nicaragua.

Appellate Experience

- *Wacker v. JP Morgan Chase & Co.* (No. 16-2482) (2d Circuit) (achieved reversal under antitrust pleading standards and on behalf of traders of silver futures, alleged victims of market manipulation)
- *Doe v. United States Securities and Exchange Commission* (No. 17-4161) (2d Circuit) (Appeal of a whistleblower award under the Dodd Frank whistleblowers provisions of the Securities Exchange Act)
- *Anonymous v. Anonymous, et al.* (No. 103997/2012) (First Department) (responded to Moody's appeal in seminal tax case under the New York False Claims Act)
- *In re Libor-Based Financial Instruments Antitrust Litigation* including *Gelboim v. Credit Suisse Group AG*, (No. 17-1989) (2d Circuit) (involved in various appeals on pleading standards, jurisdiction, class certification and other matters stemming from this complex class action)
- *In re North Sea Brent Crude Oil Futures Litig.*, 13-md-02475-ALC (2d Circuit) (engaged in appeal on first impression issues related to extraterritoriality under the Commodity Exchange Act)
- *United States of America Ex Rel. Lawton v. Takeda Pharmaceutical Company, et al.*, (No. 16-1382) (1st Circuit) (argued appeal of whistleblower alleging violations of federal and state False Claims Acts for off-labeling marketing)
- *Anastasio v. Total Gas & Power North America*, (No. 17-1199) (2d Circuit) (argued appeal on behalf of natural gas futures traders alleging market manipulation)

Commodities Cases

- *In re Libor-Based Financial Instruments Antitrust Litigation,* 1:11-md-02262-NRB; *FTC Capital GMBH et al. v. Credit Suisse Group AG et al.,* 1:11-cv-02613-NRB (S.D.N.Y.) (Buchwald, J.). Court appointed co-liaison counsel for all class actions in the multi-district litigation and co-lead counsel for exchange-based class alleging the fixing of prices of a benchmark interest rate. Obtained over $150 million settlement with several of 16 defendants.

- *In re North Sea Brent Crude Oil Futures Litig.*, 13-md-02475-ALC (S.D.N.Y.). Sole lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation.
- *Shak et al. v. JP Morgan Chase & Co. et al.*, 15-cv-922 (PAE) (and related cases). Represents silver futures trading alleging manipulation of silver futures spread.
- *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*, 05-cv-01671 (C.D. Cal) (2005). Co-lead counsel in an antitrust class action pertaining to Unocal's alleged manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which plaintiffs claim caused inflated retail prices. Obtained a $48 million settlement for indirect purchasers.
- *In re BP Propane Indirect Purchaser Antitrust Litigation*, 06-CV- 3541 (N.D.Ill. 2010). Co-lead counsel for propane purchaser class. Secured a $15 million settlement.
- *In re Potash Antitrust Litigation*, 1:08-cv-06910 (N.D.Ill. 2008). In leadership group which secured a $13 million settlement for a class of potash purchasers.
- *CFTC v. Shak*, 1:14-cv-01632-EGS (D.D.C.). Represented defendant in case brought by the CFTC under the Commodity Exchange Act's newest provisions for violations of an administrative order in the gold futures market.
- *Supreme Auto Transport LLC v. Arcelor Mittal et al.*, 1:08-cv-05468 (N.D. Ill. 2008). In the leadership group on behalf of a proposed class of steel purchaser alleging price fixing.
- *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, 14-md-02548 (S.D.N.Y.). Counsel for plaintiff on behalf of gold purchasers in a market manipulation case.
- *In re Exide Technologies*, 13-11482 (KJC) (Bankr. D. Del.). Expert for bankrupt debtor, a purchaser of metals, opining on the dynamics of plaintiffs' side representation in antitrust and commodities market cases.

Other Antitrust Cases

- *In re Ductile Iron Pipe Fittings Antitrust Litigation*, MDL No. 2347 (D. NJ. 2012). Co-lead counsel on behalf of a proposed class of purchasers of iron pipe fittings for water projects. Class representatives include Wayne County, Michigan. Case pending.
- *Microsoft antitrust cases*: Lead counsel to various classes of indirect purchasers in connection with antitrust proceedings against Microsoft. The litigations resulted in settlement totaling nearly a billion dollars for consumers in the states of New York, Florida, Tennessee, West Virginia, and Minnesota (where the litigation proceeded to trial).
- *The City of New York v. GlaxoSmithKline PLC and SmithKline Beecham Corporation*, 04-CV-2134-JP (D.Pa. 2004). Represented City of New York in pharmaceutical drug monopolization case. Private settlement.

Corporate Governance

- *In re Pfizer Inc. Shareholder Derivative Litigation*, 09-CV-7822 (S.D.N.Y.). Counsel for lead plaintiff in a shareholder derivative action. Obtained a $75 million award and groundbreaking changes to the Board of Director's oversight of regulatory matters

Public Whistleblower Cases

- *Anonymous, Et Ano v. Moody's Corporation, et al.* (No. 103997/2012) (New York County)

- *The State of New York Ex Rel. Vinod Khurana et al v. Spherion Corp.*, 1:15-cv-06605-JFK-AJP (S.D.N.Y.)
- *United States of America Ex Rel. Lawton v. Takeda Pharmaceutical Company, et al.* (D. Mass.)
- *Doe v. United States Securities and Exchange Commission* (No. 17-4161) (D.C. Circuit)

Confidential Whistleblower Cases Ongoing and Resolved

- Commodities.
- Securities.
- Procurement fraud.
- Medical Device/Pharmaceutical fraud.

Pro Bono

- Mr. Kovel also has an active pro bono practice, having represented, among others, clients in need of housing referred through the office of *pro se* litigation in the Southern District of New York, whistleblowers various governmental settings, clients in foreclosure matters, and a Latino soccer association in its efforts organize and obtain a fair proportion of field time from a municipality.

Frequent commentator on commodities, finance and whistleblower matters

- *Bloomberg* (television and print), *New York Times*, *Wall Street Journal*, *Reuters*, *Financial Times*, *Forbes*
- Representative comments include the following articles:
    - "Market fixing inquiry gathers pace," http://www.ft.com/intl/cms/s/0/0a589512-4589-11e4-9b71-00144feabdc0.html#axzz3MebHU1a2
    - "Brent Crude Traders Claim Proof BFOE Boys Rigged Market," http://www.bloomberg.com/news/2013-11-06/brent-crude-traders-claim-proof-bfoe-boys-rigged-market.html
    - "Haunted by Inflation, He Snapped Up Silver at $2, Made a Fortune and Lost It," http://www.bloomberg.com/news/2014-10-23/hunt-s-death-revives-memory-of-fortune-lost-on-silver-bet.html
    - "Regulators Try to Beat Clock in Rate Probe". http://www.wsj.com/news/articles/SB10000872396390443890304578006573853603846?mod=_newsreel_3
    - "The Coming New Age Of Whistleblower Lawsuits". http://www.forbes.com/2010/11/05/whistleblower-dodd-frank-fraud-leadership-managing-corruption.html
    - "Proposed IRS Whistleblower Rules Could Undermine FATCA, Critics Argue". http://blogs.wsj.com/corruption-currents/2013/02/12/proposed-irs-whistleblower-rules-could-undermine-fatca-critics-argue/
    - "Arrests Mount In Libor Manipulation Probe". http://www.bloomberg.com/video/arrests-mount-in-libor-manipulation-probe-TPKf_kj6QE2OCkwfJgyqbQ.html

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Karen M. Lerner is a partner in our New York office focused on antitrust, commodities and healthcare litigation. Ms. Lerner joined the firm in 2015.

Some of Ms. Lerner's recent work includes:

- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than $2.3 billion.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements of over $180 million.
- Counsel in the benchmark rate antitrust litigation *Sullivan v. Barclays PLC* on behalf of a putative class of investors who traded futures and options contracts on the NYSE LIFFE exchange against global financial institutions responsible for setting the Euro Interbank Offered Rate ("Euribor"). The case has already resulted in partial settlements of more than $300 million.
- Court appointed Discovery Committee Co-Chair in *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, Defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.
- Representation of a whistleblower in *State of New York v. Moody's Corp.*, alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions.

Prior to joining KM, Ms. Lerner was of counsel at McDonough, Korn & Eichhorn, where she handled cases involving professional liability, negligence, insurance coverage, and products liability. Ms. Lerner also advises individuals, corporations and non-profits regarding business practices and governance, and has served as a member of the Board of Directors for several charitable organizations.

Ms. Lerner is a frequent commentator on commodities, finance, and whistleblower matters. Representative articles include:

- "Market manipulation lawsuit against Bitfinex, Tether has been revised and refiled," https://www.theblockcrypto.com/post/52634/market-manipulation-lawsuit-against-bitfinex-tether-has-been-revised-and-refiled
- "Kirby McInerney, Radice Law Vie For Co-Lead In Bitfinex Case," https://www.law360.com/fintech/articles/1234251/kirby-mcinerney-radice-law-vie-for-co-lead-in-bitfinex-case
- "The Race to Lead 3 Class-Action Suits Against Bitfinex Over 2017 BTC Bull Run Is On," https://cointelegraph.com/news/the-race-to-lead-3-class-action-suits-against-ifinex-over-2017-btc-bull-run-is-on
- "Moody's settles captive fraud case," https://www.captiveinternational.com/news/moody-s-settles-captive-fraud-case-3242

Ms. Lerner is admitted to the New York State Bar, New Jersey State Bar, District of Columbia Bar, United States Supreme Court, U.S. Court of Appeals for the Second and Third Circuits, U.S. Court of Appeals for the District of Columbia, U.S. District Court for the Southern and Eastern Districts of New York, and U.S. District Court for the District of New Jersey. She graduated from University of Albany SUNY (B.A., 1988, *summa cum laude, Phi Beta Kappa*) and University of Pennsylvania School of Law (J.D., 1991).

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Peter S. Linden is a partner in our New York office and is a member of the firm's management committee. Mr. Linden's practice concentrates on securities, commercial, and healthcare fraud litigation. He joined the firm in 1990 and provides litigation, arbitration and advisory services to his clients, which include: government pension funds and other institutional investors, as well as to corporate and individual consumers. He has been appointed a Special Assistant Attorney General for the State of Michigan and is a member of the National Association of Public Pension Plan Attorneys.

Mr. Linden has obtained numerous outstanding recoveries for investors and consumers during his career. His advocacy has also resulted in many notable decisions, including in *In re Matsushita Securities Litigation*, which granted partial summary judgment under Section 14(d)(7) of the Securities Exchange Act, and *In re Ebay Inc. Shareholders Litigation*, which found that investment banking advisors could be held liable for aiding and abetting insiders' acceptance of IPO allocations through "spinning."

Some of Mr. Linden's relevant experience includes:

- Representation of municipal issuers of Auction Rate Securities in FINRA arbitrations alleging misrepresentations by underwriters.
- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million.
- Representation of the State of Michigan in a lawsuit filed in Michigan State Court against McKesson Corporation, Hearst Corporation, and First DataBank, a case arising out of the defendants fraudulent scheme to increase the Average Wholesale Prices of hundreds of brand name drugs, thereby causing false claims to be submitted to the Michigan Medicaid program, and the overpayment of Medicaid pharmacy claims for such drugs and their generic counterparts.
- Representation of the City of New York and 43 New York counties in federal Medicaid fraud actions. KM has settled or reached agreements in principle with all defendants in these matters. We have recovered over $225 million for the New York and Iowa Medicaid programs.
- Representation, as lead counsel, of two major insurance companies and a bondholders class in *In re Laidlaw Bondholder Litigation*, a securities class action resulting in a $42.275 million recovery.
- Chairman of the Plaintiffs' Steering Committee in *In re MCI Non-Subscriber Litigation*, a consumer class action resulting in an approximately $90 million recovery for the class.
- Co-lead counsel in *Reynolds v. Beneficial National Bank*. In this case, Mr. Linden and KM successfully persuaded the 7th Circuit U.S. Court of Appeals and ultimately the district court to overturn a questionable

settlement, and were then appointed co-lead counsel to the class. Mr. Linden and KM were lauded by the district judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."

Prior to joining KM, Mr. Linden worked as an assistant district attorney in the Kings County District Attorney's Office from 1984 through October 1990 where he served as a supervising attorney of the Office's Economic Crimes Bureau. He is admitted to the New York State Bar, U.S. District Courts for the Eastern and Southern Districts of New York, U.S. District Court for the Eastern District of Michigan, U.S. District Court for the Eastern District of Wisconsin, U.S. District Court for the District of Colorado, U.S. Courts of Appeals for the Second, Third, Sixth, Seventh, Eighth, Ninth and Tenth Circuits, and U.S. Court of Appeal for the District of Columbia Circuit. He graduated from State University of New York at Stony Brook (B.A., 1980) and Boston University School of Law (J.D., 1984).

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Andrew M. McNeela is a partner in our New York office focusing on securities, antitrust, commodities, and structured finance litigation. Mr. McNeela joined the firm in 2008.

Prior to joining KM, Mr. McNeela served as an Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the Southern District of New York. In this capacity, he represented the United States in a wide array of civil litigation. Mr. McNeela has argued over twenty cases before the United States Court of Appeals for the Second Circuit. In 2013, he was named one of the top attorneys under 40 by Law360's Rising Stars.

Some of Mr. McNeela's relevant work includes:

- Lead counsel in a seven-day bench trial in the S.D.N.Y., representing mutual fund investors who alleged that their advisor, Calamos Advisors LLC, charged excessive fees (decision under submission). At the conclusion of trial, the judge praised counsel for "an extraordinarily well-tried case."
- Representation of a Japanese bank that asserted fraud in connection with its purchase of synthetic CDOs from several prominent New York City-based financial institutions, which resulted in favorable confidential settlements.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of $75 million.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of $168 million.
- Lead counsel in *Dandong v. Pinnacle Performance Limited*, a class action lawsuit against Morgan Stanley pertaining to $154.7 million of notes issued by Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley engineered the Pinnacle notes, which it marketed as a safe investment, to fail, investing money

into collateralized debt obligations linked to risky companies, while actively shorting the same assets and betting against their clients. This case settled for $20 million.

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.
- Lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation in *In re North Sea Brent Crude Oil Futures Litigation*.
- Lead counsel in the securities class action *In re Herley Industries Inc. Securities Litigation* on behalf of investors. This litigation resulted in a recovery of $10 million for the class.
- Co-lead counsel for a class of investors in Goldman Sachs common stock in a securities class action, *Lapin v. Goldman Sachs Group, Inc.*, pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. This litigation resulted in a recovery of $29 million for the class.

Mr. McNeela is admitted to the New York State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, and U.S. Court of Appeals for the Second Circuit. He graduated from Washington University (B.A., 1995) and Hofstra University School of Law (J.D., *cum laude*, 1998), where he was a member of the Law Review.

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Ira M. Press is a partner in our New York office and is a member of the firm's management committee. Mr. Press's practice focuses on securities and consumer litigation. He joined the firm in 1993, and currently leads the firm's institutional investor monitoring program. In this capacity, he has provided advisory services to numerous government pension funds and other institutional investors. He has authored articles on securities law topics and has lectured to audiences of attorneys, experts and institutional investor fiduciaries.

Mr. Press's advocacy has resulted in several landmark appellate decisions, including *Rothman v. Gregor*, the first ever appellate reversal of a lower court's dismissal of a securities class action suit pursuant to the 1995 Private Securities Litigation Reform Act.

Some of Mr. Press's relevant experience includes:

- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. During the class period, the company's stock fell from approximately $37 to $6. This case resulted a settlement of $168 million.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of $75 million.

- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million.
- Co-lead counsel for a class of investors in Goldman Sachs common stock in a securities class action, *Lapin v. Goldman Sachs Group, Inc.*, pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. This litigation resulted in a recovery of $29 million for the class.

Prior to joining KM, Mr. Press practiced at Warshaw Burstein Cohen Schlesinger & Kuh, LLP, where he focused on commercial litigation. Mr. Press is admitted to the New York State Bar, U.S. District Courts for the Eastern, Northern and Southern Districts of New York, U.S. District Court for the District of Colorado, and the U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits. He graduated from Yeshiva University (B.A., *magna cum laude*, 1986) and New York University Law School (J.D., 1989).

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Mark A. Strauss is a partner in our New York office focusing on whistleblower, securities, and consumer fraud litigation. Having joined the firm in 2001, Mr. Strauss has substantial appellate, trial, and arbitration experience, and his advocacy has resulted in many notable decisions, including *Reading Health Sys. v. Bear Stearns & Co.* (3d Cir. 2018), which held that banks cannot require institutional clients to waive FINRA arbitration rights. Mr. Strauss has a growing practice representing hedge funds and other large investors in individual securities opt-out litigation. He has also successfully litigated consumer fraud class actions under the Racketeer Influenced and Corrupt Organizations Act (RICO), represented victims of Ponzi schemes and investment frauds, and developed a track record representing whistleblowers in federal *qui tam* cases involving the wrongful evasion of import duties.

Some of Mr. Strauss's relevant experience includes:

- Representation of *qui tam* whistleblowers in federal False Claims Act cases involving import duty fraud. Successfully obtained a significant 20% whistleblower award for our client in *U.S. ex rel Dickhudt v. Winds Enters*., and a 19% award in *U.S. ex rel Karlin v. Noble Jewelry Co.*
- Lead Counsel for mortgage borrowers in RICO class actions involving undisclosed kickbacks resulting in overcharges for Lender-Placed Insurance, including *Rothstein v. GMAC Mortg*., where we obtained a $13 million recovery, and *Parker v. AHMSI Ins. Agency*.
- Representation of a family trust in individual securities opt-out litigation against Credit Suisse involving the collapse of the volatility-linked VelocityShares Daily Inverse VIX Short-Term Exchange-Traded Note (XIV).
- Representation of municipal issuers of auction rate securities in FINRA arbitrations alleging misrepresentations and market manipulation by underwriters.
- Lead Counsel in *In re Citigroup Inc. Securities Litigation*, a securities class action involving Citigroup's nondisclosure of exposure to toxic mortgage-backed securities. This case resulted in $590 million settlement.

- Co-Lead Counsel in *In re Adelphia Commc'n Corp. Securities Litigation*, a securities class action involving the nondisclosure of massive liabilities and self-dealing by what was then the fifth largest cable television company in the United States. This case resulted in $460 million in settlements.
- Co-Lead Counsel in *Cromer Fin. v. Berger*, a class action involving a hedge fund that was operated as a Ponzi scheme in which we recovered $65 million for victims.
- Class Counsel in *Serino v. Lipper*, which involved the overvaluation of a hedge fund's investment portfolio and in which we recovered $29.9 million for the class.
- Co-Lead Counsel in *Lapin v. Goldman Sachs Group, Inc.*, a securities class action alleging that a major investment bank omitted to disclose conflicts of interest that impaired the objectivity and independence of its securities analysts. This case resulted in a $29 million settlement.
- Lead Counsel in *Argent Classic v. Amazon.com*, a bondholder securities class action. This case resulted in a $20 million settlement.
- Co-Lead Counsel in *John Hancock Life v. Goldman Sachs & Co.*, a bondholder securities class action involving a fiberglass manufacturer's asbestos liabilities. This case resulted in a $19.25 million settlement.

Prior to joining KM, Mr. Strauss practiced at Christy & Viener LLP and Cahill Gordon & Reindel LLP where he defended corporate clients in complex litigation and class actions. Mr. Strauss is admitted to the New York State Bar, California State Bar, U.S. District Courts for the Eastern and Southern Districts of New York, and U.S. District Courts for the Northern, Southern, and Central Districts of California. He graduated from Cornell University (B.A., 1987) and Fordham University School of Law (J.D., 1993), where he was Associate Editor of the Law Review.

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Meghan Summers is a partner based in our New York office focusing on securities, structured finance, and antitrust litigation. In 2019, she was named a Top Rated Securities & Corporate Finance "Rising Star" attorney by SuperLawyers. Ms. Summers began working at the firm in 2008 as a paralegal and law clerk before becoming an associate in 2012.

Ms. Summers' relevant securities and structured finance work includes:

- Lead counsel in *Dandong v. Pinnacle Performance Limited*, a class action lawsuit against Morgan Stanley pertaining to $154.7 million of notes issued by Pinnacle Performance Ltd. Plaintiffs alleged that Morgan Stanley engineered the Pinnacle notes, which it marketed as a safe investment, to fail, investing money into collateralized debt obligations linked to risky companies, while actively shorting the same assets and betting against their clients. This litigation resulted in a $20 million settlement.
- Representation of foreign financial institutions in individual lawsuits against Morgan Stanley, Credit Agricole Corporate and Investment Bank, UBS, Deutsche Bank, Credit Suisse, Goldman Sachs, JP Morgan, and Barclays pertaining to a number of fraudulent structured investment vehicles and asset-backed collateralized debt obligations.

- Lead counsel in *In re MOL Global, Inc. Securities Litigation*, a class action lawsuit alleging that e-payment enabler MOL Global misled shareholders prior to its initial public offering. This litigation resulted in a $8.5 million settlement.
- Lead counsel in *Rudman v. CHC Group, Ltd.*, a securities class action alleging that CHC Group had misled investors by failing to disclose that one of its two largest customers had stopped making payments on its contracts prior to the company's initial public offering. This litigation resulted in a $3.85 million settlement.
- Representation in individual securities fraud actions against Merck and Schering-Plough related to the commercial viability of the companies' anti-cholesterol medication, Vytorin, and the subsequent drop in Merck's and Schering-Plough's share price.
- Representation in individual securities fraud actions against Merck related to the safety and commercial viability of its medication, Vioxx, and the subsequent drop in Merck's share price.
- Representation in an individual securities fraud action against BP plc related to the Deepwater Horizon explosion on April 20, 2010, and the subsequent drop in BP's share price.
- Representation in an individual securities fraud action alleging that, in marketing their auto-loan ABS securitizations to investors, TCF Bank and Gateway One materially misrepresented the key metric used by investors to evaluate and price the securitizations' certificates.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City.

Ms. Summers' relevant antitrust work includes:

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the foreign exchange market. This litigation has already resulted in partial settlements of more than $2.3 billion.
- Representation in individual lawsuits against Citibank, JPMorgan, Goldman Sachs, and Barclays, alleging that the banks colluded to prevent a patented method for structuring airline special facility revenue bonds from entering the airline municipal bond market in violation of New York's Donnelly Act.
- Consulting and advisory counsel to Canadian lead counsel in an antitrust case against Microsoft. This litigation resulted in a settlement of $395 million.

As a law clerk, Ms. Summers worked on a variety of matters, including *In re Citigroup Inc. Securities Litigation*, *In re Wachovia Corporation*, *In re Libor-Based Financial Instruments Antitrust Litigation*, *In re AT&T Wireless Tracking Stock Securities Litigation*, *Dandong v. Pinnacle Performance Limited*, and private antitrust proceedings against Microsoft in the United States and Canada.

- Ms. Summers is admitted to the New York State Bar, U.S. District Court for the Southern and Eastern Districts of New York, U.S. District Court for the District of Colorado, U.S. Court of Appeals for the Second and Third Circuits. She graduated from Cornell University (B.S., *summa cum laude*, 2008), where she was ranked first in her major, Pace University School of Law (J.D., *summa cum laude*, 2012), where she was Salutatorian

and Articles Editor for the *Pace Law Review*, and King's College, London (Postgraduate Diploma with Merit, EU Competition Law, 2019).

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Randall K. Berger is Of Counsel to the firm and practices out of our New York office. He joined the firm in 1994. Mr. Berger's practice focuses on commercial arbitration, antitrust, whistleblower and unclaimed property litigation. In whistleblower cases, Mr. Berger has helped expose fraud against federal and state governments by representing persons having unique knowledge of the circumstances surrounding the fraud. These cases are generally litigated under seal and the whistleblowers are often compensated from any recovery in the case.

Mr. Berger is also a certified arbitrator for FINRA (the Financial Industry Regulatory Authority). The arbitration panels on which Mr. Berger serves are used to resolve disputes between investors and broker dealers or registered representatives and to resolve intra-industry conflicts.

Some of Mr. Berger's relevant work includes:

- Representation of municipal issuers of Auction Rate Securities in FINRA arbitrations alleging misrepresentations by underwriters.
- Representation of State Treasurers in litigation against the federal government to recover unclaimed U.S. savings bond proceeds.
- Representation in antitrust litigation against the 27 largest investment banks in the United States in connection with alleged price fixing in the market for the underwriting of initial public stock offerings.
- Co-lead counsel for investors in Ponzi scheme instruments issued by the now-bankrupt Bennett Funding Group in a class action which resulted in a recovery of $169.5 million for the class.

Prior to attending law school, Mr. Berger was a management consultant with Arthur Andersen & Co. where he did information systems design and programming. Upon graduation from law school and before joining KM, Mr. Berger was an associate with the law firm Winston & Strawn.

He is admitted to the New York State Bar, the U.S. Courts of Appeals for the Federal and Third Circuits, the U.S. District Courts for the Southern, Eastern, and Northern Districts of New York, and the U.S. District Court of Colorado. He graduated from Iowa State University (B.S., 1985) and the University of Chicago Law School (J.D., 1992).

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Peter W. Brueggen is Of Counsel to the firm and is based in our New York office. Mr. Brueggen joined the firm in 2014 and focuses on securities and antitrust litigation.

Mr. Brueggen's relevant experience includes:

- Representation of municipal issuers of Auction Rate Securities in FINRA arbitrations alleging misrepresentations by underwriters.
- Representation of investors in a mutual fund in an action brought under Section 36(b) of the Investment Company Act against the fund's advisor, alleging breach of fiduciary duty with respect to excessive fees.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than $2.3 billion.
- Representation of a whistleblower in *State of New York v. Moody's Corp.*, alleging millions of dollars of tax fraud for over a decade regarding domestic and international transactions through the use of a sham captive insurance company.
- Representation of a whistleblower in a *qui tam* action, *State of New York v. Covanta Hempstead Company*, alleging that a waste-energy company used improper ash disposal techniques, violative of environmental law.

Mr. Brueggen is admitted to the New York and New Jersey State Bars. He graduated from New York University (B.A., 1987) and Albany Law School (J.D., 1996).

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Karina Kosharskyy is Of Counsel to the firm. She is based in our New York office and focuses on securities and antitrust litigation. Ms. Kosharskyy joined the firm in 2005.

Some of Ms. Kosharskyy's relevant work includes:

- Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. These litigations have resulted in settlements totaling over $1 billion for consumers in Canada, Florida, New York, Tennessee, West Virginia and Minnesota, where the litigation proceeded to trial.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than $2.3 billion.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.

- Representation of indirect purchasers in *In re Cathode Ray Tube (CRT) Antitrust Litigation*, a price fixing anti-trust case wherein it is alleged that defendant entities conspired to control prices of television and monitor components resulting in a settlement of $576 million.

Ms. Kosharskyy is fluent in Russian. She is admitted to the New York and New Jersey State Bars, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. District Court for the District of New Jersey. Ms. Kosharskyy graduated from Boston University (B.A., 2000) and the New York Law School (J.D., 2007).

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John Low-Beer is Of Counsel to the firm and focuses on whistleblower litigation. Mr. Low-Beer formerly was Assistant Corporation Counsel, Affirmative Litigation with the NYC Law Department (1987-2000, 2003-2013), and was the lead attorney on complex and highly publicized matters, including:

- Litigation against BNY Mellon concerning FX trading for City pension funds.
- Litigation concerning City taxation of consular and U.N. mission staff housing.
- A successful challenge to New York State's misallocation of $750 million in federal stimulus funding.
- A lawsuit forcing the Governor to implement State takeover of $2.5 billion in City debt.
- Cases against more than 40 pharmaceutical companies recovering $240 million (with Kirby McInerney).

Some of Mr. Low-Beer's recent work with KM includes:

- *Anonymous v. Anonymous*, Index No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.) (responded to Moody's appeal in seminal tax case under the New York False Claims Act).
- *United States of America Ex Rel. Lawton v. Takeda Pharmaceutical Company*, No. 16-1382 (1st Circuit) (argued appeal of whistleblower alleging violations of federal and state False Claims Acts for off-labeling marketing).

In addition, Mr. Low-Beer has a robust pro bono and low bono practice, representing plaintiffs in immigration, urban land use, guardianship, and whistleblower cases. Recent wins include *Peyton v. New York City Board of Standards and Appeals*, 2018 N.Y. Slip Op. 06870 (1st Dept. 2018) (holding that the rooftop garden of a luxury building in Manhattan could not be counted as "open space" within the meaning of the Zoning Resolution), *Avella v. City of New York*, 29 N.Y.3d 967 (2017) (invalidating a plan to build a shopping mall on parkland in Queens), and *Matter of Daniel B.*, 22 N.Y.S.3d 553 (2d Dept. 2015) (upholding a judgment in a guardianship/turnover proceeding).

Prior to joining the NYC Law Department, Mr. Low-Beer was law clerk to Hon. Leonard Garth, U.S. Court of Appeals for the Third Circuit, and Associate Professor at York College, CUNY, and Assistant Professor at Yale School of Management and Department of Sociology. He is the author of a book, Protest and Participation (Cambridge U.P. 1978) and a prize-winning note in the Yale L.J., "The Constitutional Imperative of Proportional Representation," among other publications.

Mr. Low-Beer is admitted to the New York State Bar, the U.S. Supreme Court, and the U.S. District Court for the Southern District of New York. He graduated from Brown University (B.A., *magna cum laude*, 1966), Harvard University (Ph.D. in Sociology), and Yale Law School, (J.D., 1985), where he was a Senior Editor at the Yale Law Journal.

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Beverly Mirza is Of Counsel to the firm and practices out of our New York office, concentrating on antitrust and securities litigation. Ms. Mirza joined the firm in 2004.

Ms. Mirza's relevant experience includes:

- Representation of a class of consumers in connection with *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*. This case involves Unocal's manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which increased retail prices of reformulated gasoline. This litigation resulted in a $48 million recovery for the class.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.
- Representation, as one of the firms with primary responsibility for the case, of a class of purchasers of computers containing Intel's microprocessor chips in Coordination *Proceedings Special Title, Intel x86 Microprocessor Cases*.
- Representation, as executive committee member, of a class of retailers in *In re Chocolate Confectionary Antitrust Litigation*, alleging price fixing claims against a group of chocolate manufacturers in the United States and abroad.
- Representation of a class of sellers in *In re Ebay Seller Antitrust Litigation*, alleging monopolization claims against Ebay.
- Representation of an objector to the settlement in *Reynolds v. Beneficial National Bank* in the United States Northern District Court for the District of Illinois. Ms. Mirza and KM were lauded by the presiding judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."

Ms. Mirza is admitted to the California State Bar and the U.S. District Courts for the Northern and Central Districts of California. She graduated from California State University of Los Angeles (B.S., *magna cum laude*, 2000) and California Western School of Law (J.D., 2004).

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Sawa Nagano is Of Counsel to the firm. She focuses on the representation of clients in relation to price-fixing litigation under the Sherman Antitrust Act and other federal and state laws to recover overcharges caused by international price-fixing cartels. Ms. Nagano joined the firm in 2013.

Recent cases on which Ms. Nagano has worked include:

Representation of an end-user class of businesses and consumers in connection with *In re Cathode Ray Tube (CRT) Antitrust Litigation*. In this case, the manufacturers of cathode ray tubes conspired to fix, raise, maintain and/or stabilize prices. Because of Defendants' alleged unlawful conduct, Plaintiffs and other Class Members paid artificially inflated prices for CRT

- Products and have suffered financial harm.

Prior to joining KM, Ms. Nagano worked with the law firms of both Orrick, Herrington, and Sutcliffe LLP and Crowell and Morning LLP, where she assisted in the investigation of conspiracies to engage in price-fixing and anticompetitive practices by manufacturers and multinational conglomerates, and she represented cable operators on matters arising before the Federal Communications Commission as well as in their relations with local and state franchising authorities. She also worked for the New York bureau of a major Japanese television network. Additionally, she interned with the Office of Commissioner Furchtgott-Roth at the Federal Communications Commission and worked as a student counsel at the Art, Sports and Entertainment Law Clinic of the Dickinson School of Law of the Pennsylvania State University.

Ms. Nagano is fluent in Japanese. She is admitted to the New York and New Jersey State Bars, the Bar for the District of Columbia, the U.S. District Court for the Southern District of New York, and the U.S. District Court for the District of New Jersey. Ms. Nagano graduated from Sophia University, Tokyo, Japan (B.A., 1989), New York University (M.A., 1992), and The Dickinson School of Law of the Pennsylvania State University (J.D., 2000).

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TL Popejoy is Of Counsel to the firm and practices out of our New York office. Mr. Popejoy joined the firm in 2020. He focuses on antitrust, whistleblower, derivative, and securities litigation involving complex financial products.

Prior to joining KM, Mr. Popejoy practiced as an attorney at Quinn Emanuel Urquhart & Sullivan, LLP and a startup litigation boutique, where he worked on high-profile cases involving complex financial products in large antitrust class actions, contract disputes, and numerous FINRA and SEC investigations. Some of Mr. Popejoy's past case experience includes: *In re European Government Bonds Antitrust Litigation*; *In re Chicago Board Options Exchange Volatility Index Manipulation Antitrust Litigation*, a class action concerning settlement of the VIX "fear index;" *Iowa Public Employees' Retirement System v. Bank of America Corporation*, a class action concerning collusive behavior in the stock loan industry; *In re Interest Rate Swaps Antitrust Litigation*; *Alaska Electrical Pension Fund v. Bank Of America Corporation*, a class action concerning price manipulation of the ISDAfix benchmark; *In re Treasury Securities Auction Antitrust Litigation*; *Scott v. AT&T Inc.*, involving the sale of customer "geolocation" information; and *Williams v. AT&T Mobility LLC*, representing a victim of "SIM

swapping" in a case involving cryptocurrency. Mr. Popejoy has also represented *pro bono* low-income tenants in New York City, as well as New York City public school students in suspension hearings.

Before law school, Mr. Popejoy was a Director in algorithmic trading at Credit Suisse and RBC Capital Markets. He is co-inventor of a patent with the founders of the IEX stock exchange that protects institutional investors from high frequency trading arbitrage, and he has argued successfully before the U.S. Patent and Trademark Office.

Mr. Popejoy is a member of the International Air & Transportation Safety Bar Association, the Lawyer-Pilots Bar Association, New York City Bar Aeronautics Committee, and is an instrument-rated pilot. His cybersecurity background includes a CISSP certification (Certified Information Systems Security Professional) and computer security architecture.

Mr. Popejoy has also been the recipient of the following awards:

- Individual plaque for *Outstanding Antitrust Litigation Achievement in Private Law Practice*, American Antitrust Institute
- The Legal Aid Society's *Pro Bono Publico* award for outstanding service to The Legal Aid Society and its clients

Mr. Popejoy is admitted to the New York State Bar and the U.S. District Court for the Southern and Eastern Districts of New York. He graduated from Amherst College (B.A., *summa cum laude*), Johns Hopkins University (M.A., Ph.D.), and City University of New York School of Law (J.D.).

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Henry Telias is Of Counsel to the firm and practices out of our New York office, specializing in accountants' liability and securities litigation. Mr. Telias joined the firm in 1997.

In addition to his legal work, Mr. Telias is also the firm's chief forensic accountant. He holds the CFF credential (Certified in Financial Forensics) and the PFS credential (Personal Financial Specialist) from the American Institute of Certified Public Accountants. He received his CPA license from New York State in 1982. Prior to practicing as an attorney, he practiced exclusively as a certified public accountant from 1982 to 1989, including 3 years in the audit and tax departments of Deloitte Haskins & Sells' New York office.

Some of Mr. Telias's relevant experience includes:

- Lead counsel in *In re Citigroup Inc. Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case recently settled for $590 million.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National

City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of $168 million.

- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of $75 million.
- Lead counsel for a certified class of purchasers of PRIDES securities in connection with the Cendant Corporation accounting fraud in *In re Cendant Corporation PRIDES Litigation*. This litigation resulted in an approximate $350 million settlement for the certified class – an unprecedented 100 percent recovery.

Mr. Telias is admitted to the New York State Bar and the U.S. District Court for the Southern District of New York. He graduated from Brooklyn College (B.S., *cum laude*, 1980) and Hofstra University School of Law (J.D., 1989).

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Edward M. Varga, III is Of Counsel to the firm and practices out of our New York office. Mr. Varga joined the firm in 2006 and concentrates on securities and antitrust litigation.

Mr. Varga's relevant experience includes:

- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for $590 million.
- Representation, as counsel for lead plaintiff and other shareholders, in a derivative action brought against members of the Board of Directors and senior executives of Pfizer, Inc. Plaintiffs made a breach of fiduciary duty claim because defendants allegedly allowed unlawful promotion of drugs to continue even after receiving numerous "red flags" that the improper drug marketing was systemic. Pfizer agreed to pay a proposed settlement of $75 million and to make groundbreaking changes to the Board's oversight of regulatory matters.
- Lead counsel for a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. This case settled for $20 million.
- Representation of companies that offered IPO securities in antitrust litigation against the 27 largest investment banks in the United States. Plaintiffs allege that the banks conspired to price fix underwriting fees in the mid-sized IPO market.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case settled for $168 million.

Mr. Varga is admitted to the New York State Bar. He graduated from Cornell University (B.S., 2000) and New York University Law School (J.D. 2006).

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Samantha Greenberg is an associate based in our California office concentrating on antitrust matters. Ms. Greenberg joined the firm in 2018.

Some of Ms. Greenberg's relevant work includes:

- Representation of indirect purchasers in *In re Broiler Chicken Antitrust Litigation*, a price fixing antitrust case alleging that defendants engaged in a conspiracy to restrain broiler production and raise broiler prices.
- Representation of former Chipotle employees in *Turner v. Chipotle*, a collective action alleging that Chipotle made employees work "off the clock" without paying them.

Ms. Greenberg assists senior attorneys with drafting briefs and motions, legal memoranda and research. She has also been the recipient of the following awards:

- Casa Cornelia Law Center 2019 Special Recognition award for providing pro bono legal services to asylum seekers
- Wiley W. Manuel Pro Bono Services certificate (September 2019)

Ms. Greenberg is admitted to the California and New York State Bars. She graduated from S.I. Newhouse School of Communications at Syracuse University (B.S., 2014) and University of San Diego School of Law (J.D., 2018).

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Anthony E. Maneiro is an associate based in our New York office who concentrates on securities, commodities, and antitrust matters. Mr. Maneiro has been named a "Rising Star" attorney by Super Lawyers for 2019. Mr. Maneiro joined the firm in 2016.

Mr. Maneiro's relevant work includes:

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.
- Representation of exchange-based investors in *Shak v. JP Morgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws.
- Court appointed Discovery Committee Co-Chair in *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended release venlafaxine

hydrochloride capsules against drug manufacturers. Among the claims, Defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.

- Representation of exchange-based investors in U.S. treasury futures and options in *In re Treasury Securities Auction Antitrust Litigation*, alleging that defendants colluded to manipulate the price of Treasury Securities prior to Treasury Auctions.
- Representation of a whistleblower in *State of New York v. Moody's Corp.*, alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions.
- Representation of exchange-based investors in *Anastasio v. Total Gas & Power North America, Inc.*, alleging price manipulation of physical natural gas as well as price manipulation of natural gas futures and other derivative natural gas contracts.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City.

Mr. Maneiro assists senior attorneys with drafting briefs and motions, legal memoranda and research. In addition, Mr. Maneiro is a member of the Hispanic National Bar Association and the New York City Bar Association, where he serves on the Antitrust and Trade Regulation Committee. He is admitted to the Massachusetts, Illinois and New York State Bars, the U.S. District Court for the District of Massachusetts, the U.S. District Courts for the Eastern and Southern Districts of New York, and the U.S. District Court for the Northern District of Illinois. Mr. Maneiro graduated from Grove City College (B.A. 2010, *magna cum laude*), the London School of Economics and Political Science (M.Sc. 2011), and the Boston University School of Law (J.D. LL.M. 2016).

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Belden Nago is an associate based in our New York office. Mr. Nago joined the firm in 2011 and focuses on securities litigation.

Some of Mr. Nago's relevant experience includes:

- Representation of municipal issuers, including governmental entities and hospital systems, in FINRA arbitrations alleging misrepresentations by underwriters in connection with Auction Rate Securities issuances.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.
- Representation of a whistleblower in *State of New York v. Moody's Corp.*, alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions.
- Representation of the proposed class of investors in *Shah v. Zimmer Biomet Holdings*, a securities class action alleging that a medical device company did not disclose systemic quality issues at its manufacturing facility.

Prior to joining KM, Mr. Nago was an associate in the Structured Finance department at Orrick, Herrington & Sutcliffe LLP. He is admitted to the New York State Bar and the U.S. Patent and Trademark Office. Mr. Nago

graduated from Northwestern University (B.S., 1997), the Massachusetts Institute of Technology (M.Eng., 1998), and Columbia Law School (J.D., 2003).

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Marko Radisavljevic is an associate practicing out of our California office. Mr. Radisavljevic joined the firm in 2016 and concentrates on class action and antitrust matters.

Some of Mr. Radisavljevic's relevant work includes:

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in a partial settlement of over $180 million.
- Representation of former Chipotle employees in Arbitration matters for unpaid wages, and wrongful terminations.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than $2.3 billion.
- Representation of a whistleblower in *State of New York v. Spherion Corp.*, alleging a quality assurance company's liability in the largest known fraud against New York City and State, amounting to almost $1 billion.
- Court appointed Discovery Committee Co-Chair in *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.

In addition, Mr. Radisavljevic assists senior attorneys with drafting briefs and motions, legal memoranda and research. He is admitted to the California State Bar. He graduated from the University of San Diego (B.A. *Biology with minors in Chemistry and Philosophy*, 2005) and the California Western School of Law (J.D. 2015).

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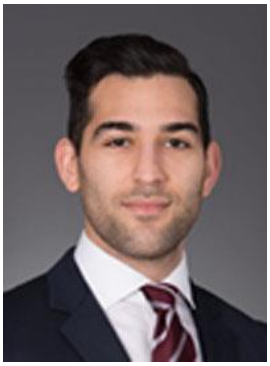

Seth M. Shapiro is an associate based in our New York office who concentrates on appellate, class action, commercial, financial services, shareholder, and white-collar matters in federal and state courts. Prior to joining KM in 2016, Mr. Shapiro practiced commercial litigation and worked as a compliance officer in securities sales and trading at Credit Suisse.

Mr. Shapiro's recent work includes:

- Representation of noteholders in *In re Peabody Energy Corp.*, alleging contract, business tort, and Bankruptcy Code claims regarding the disparate treatment of noteholders in bankruptcy. This litigation resulted in a settlement just one month after filing the complaint.

- Representation of a whistleblower in *State of New York v. Moody's Corp.*, alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions.
- Representation of a whistleblower in *State of New York v. Spherion Corp.*, alleging a quality assurance company's liability in the largest known fraud against New York City and State, amounting to almost $1 billion.
- Representation of a hedge fund and the trustee of its pension trust for conversion and unjust enrichment in *Rudman Capital Management LLC v. Cavataio*.
- Representation of homeowners in a class action against Nassau County and two of its administrative agencies in *Hall v. Nassau County*, alleging civil rights violations arising from the implementation of a racially discriminatory and irrational property tax system.

In addition, Mr. Shapiro assists partners with other matters, drafts briefs, pleadings, motions, legal memoranda, and discovery, negotiates discovery, assists with court conferences, depositions, and hearings, and advises on litigation strategy. Mr. Shapiro is fluent in Spanish. He graduated from Brandeis University (B.A. 2009) and Fordham University School of Law (J.D. 2014), where he was the Senior Articles Editor of the Fordham Journal of Corporate & Financial Law, Brendan Moore Trial Advocacy Center. Mr. Shapiro is admitted to the New York State bar, the U.S. District Court for the Eastern and Southern Districts of New York, and the U.S. Court of Appeals for the District of Columbia.

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Nicole Veno is an associate practicing out of our New York office. Ms. Veno joined the firm in 2019 and focuses on antitrust, consumer fraud, and whistleblower litigation.

Some of Ms. Veno's relevant experience includes:

- Representation of a whistleblower in a *qui tam* action, *State of New York v. Covanta Hempstead Company*, alleging that a waste-energy company used improper ash disposal techniques, violative of environmental law.
- Representation of former Chipotle employees in Arbitration matters for unpaid wages, and wrongful terminations.

Ms. Veno began her career as an attorney at Izard Nobel LLP (now Izard Kindall & Raabe LLP) where she focused on class action consumer protection, antitrust, and ERISA matters. Prior to joining KM, she had her own practice focusing on commercial and consumer collection litigation and related probate and bankruptcy proceedings. Her prior work in the consumer class action field focused on cosmetics products that were falsely advertised as being "natural," and resulted in two favorable appellate-level court decisions and a number of class action settlements: *Langan v. Johnson & Johnson Consumer Cos. Inc*., 897 F.3d 88 (2d Cir. 2018) (holding that a class action plaintiff has Article III standing to represent out of state consumers); *Balser v. Hain Celestial Grp., Inc*., 640 F. App'x 694, 695 (9th Cir. 2016) (clarifying pleading standards in a consumer fraud case); *Morales v. Conopco, Inc. dba Unilever*, No. 13-cv-02213 (E.D. Cal.) ($3.25 million settlement); *Langan v. Johnson & Johnson Consumer Cos. Inc*., No. 13-cv-01471 (D. Conn.) ($2.4 million settlement); and *Stephenson v. Neutrogena Corp*., No. 12-cv-00426 (C.D. Cal.) ($1.8 million settlement).

Ms. Veno is a member of the American Bar Association, Antitrust Law Section and the New York Junior League. She is also the author of *Class Action Securities Lawsuits Should Survive the Death of a Named Defendant: Why* Baillargeon v. Sewell *Was Wrongly Decided*, 25 Quinnipiac Prob. L.J. 408 (2012). She is admitted to the New York, New Jersey and Connecticut State Bars, the U.S. Court of Appeals for the Second and Ninth Districts, the U.S. District Court for the District of Connecticut, the U.S. District Court for the District of New Jersey, and the U.S. District Courts for the Eastern and Southern Districts of New York. Ms. Veno graduated from Southern Methodist University (B.A., 2009) and Quinnipiac University School of Law (J.D., 2012), where she was an Associate Editor for the Quinnipiac Probate Law Journal.

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Client & Adversary Recognition

KM received the highest available commendations tarom the City of NY four years in a row for its work on the AWP Litigation. In each of those four years, KM's efforts on the City's behalf received the overall rating of "excellent". The City elaborated, "*Kirby did a truly excellent job and the results reflect that"*.

"The case has been in front of the Supreme Court of the United States once, and in front of the Ninth Circuit no fewer than three times. Throughout, [KM] has . . . brought a considerable degree of success . . . and thwarted attempts by other counsel who sought to settle . . . and destroy a potential billion dollars of class rights."

Plaintiff / client,
Epstein v. MCA, Inc.

"[The KM firm] proved to be a highly able and articulate advocate. Single-handedly, [KM] was able to demonstrate not only that [KM's] client had a good case but that many of the suspicions and objections held by the Nigerian Government were ill-founded."

English adversary in The Nigerian Cement Scandal

"[KM] represented us diligently and successfully. Throughout [KM's] representation of our firm, [KM's] commitment and attention to client concerns were unimpeachable."

European institutional defendant /client
involved in a multi-million dollar NASD arbitration

"Against long odds, [KM] was able to obtain a jury verdict against one of the larger, more prestigious New York law firms."

Plaintiff / client,
Vladimir v. U.S. Banknote Corporation

"[KM] represented our investors with probity, skill, and diligence. There is too much money involved in these situations to leave selection of class counsel to strangers or even to other institutions whose interests may not coincide."

Plaintiff / institutional client,
In re Cendant Corporation PRIDES Litigation

Notables

The firm has repeatedly demonstrated its ability in the field of class litigation and our success has been widely recognized. For example:

Rothstein v. GMAC Mortgage LLC, No. 12-cv-3412 (S.D.N.Y.). Lead counsel. $13 million settlement against GMAC Mortgage LLC in *In re Residential Capital, LLC, et al*., No. 12-12020 (Bankr. S.D.N.Y. 2016).

Globis Capital Partners, L.P., et al. v. The Cash Store Financial Services Inc., et al., No. 13-cv-3385 (S.D.N.Y. 2015): Co-lead counsel. CAD $13,779,167 cash settlement, representing roughly 50% of total class-wide stock losses.

Dandong v. Pinnacle Performance Ltd., No. 10-cv-08086 (S.D.N.Y. 2015). Lead counsel. $20 million settlement. *In re Hi-Crush Partners L.P. Securities Litigation*, No. 12-cv-8557 (S.D.N.Y. 2015). Lead counsel. $3.8 million settlement while class certification was pending.

In re Citigroup Inc. Securities Litigation, No. 07-cv-9901 (S.D.N.Y. 2013). Lead counsel. $590 million settlement.

Barfuss v. DGSE Companies, Inc., No. 12-cv-3664 (N.D. Tex. 2013). Lead Counsel. $1.7 million settlement.

In re National City Corporation Securities, Derivative & ERISA Litigation, No. 08-cv-70004 (N.D. Ohio 2012). Lead counsel. $168 million settlement.

In re Wachovia Equity Securities Litigation, No. 08-cv-6171 (S.D.N.Y. 2012). Lead counsel. $75 million settlement.

In re BP Propane Indirect Purchaser Antitrust Litigation, No. 06-cv-3541 (N.D.Ill. 2010). Co-lead counsel. $15 million settlement on behalf of propane purchasers.

In re J.P. Morgan Chase Cash Balance Litigation, No. 06-cv-732 (S.D.N.Y. 2010). Co-lead counsel.

> "Plaintiff's counsel operated with a strong, genuine belief that they were litigating on behalf of a group of employees who had been injured and who needed representation and a voice, and, at great expense to [themselves], made Herculean efforts on behalf of the class over years…they're to be commended for their fight on behalf of people that they believed had been victimized."

In re Pfizer Inc. Shareholder Derivative Litigation, No. 09-cv-7822 (S.D.N.Y.). Pfizer agreed to pay a proposed settlement of $75 million and to make groundbreaking changes to the Board's oversight of regulatory matters.

In re Pharmaceutical Industry Average Wholesale Price Litigation, MDL No. 1456; *City of New York, et al. v. Abbott Laboratories, et al.*, No. 01 Civ. 12257 (D. Mass). KM represented the State of Iowa, the City of New York, and forty-two New York State counties in a lawsuit against forty defendant drug manufacturers asserting

that they manipulated their average wholesale price data to inflate prices charged to government drug benefits payers. Recovery of over $225 million for the plaintiffs.

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions, No. 05-cv-01671 (C.D. Cal). Lead counsel. $48 million settlement for indirect purchasers.

In re BISYS Securities Litigation, No. 04-cv-3840 (S.D.N.Y. 2007). Co-lead counsel. $66 million settlement.

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

Cox v. Microsoft Corporation, Index No. 105193/00, Part 3 (N.Y. Sup. Ct.). Lead counsel. $350 million settlement.

In re AT&T Corp. Securities Litigation, No. 00-cv-8754 (S.D.N.Y. 2006). Lead counsel. $150 million settlement.

In re Adelphia Communications, Inc. Securities Litigation, No. 04-cv-05759 (S.D.N.Y. 2006). Co-lead counsel. $478 million settlement.

> "[T]hat the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."

Lapin v. Goldman Sachs & Co., No. 04-cv-2236 (S.D.N.Y.). Co-lead counsel. $29 million settlement.

Montoya v. Herley Industries, Inc., No. 06-cv-2596 (E.D. Pa). Lead counsel. $10 million settlement.

Carnegie v. Household International Inc., et al., No. 98-cv-2178 (N.D.Ill. 2006). Co-lead counsel. $39 million settlement.

> "Since counsel took over the representation of this case . . ., they have pursued this case, conducting discovery, hiring experts, preparing for trial, filing motions where necessary, opposing many motions, and representing the class with intelligence and hard work. They have obtained an excellent result for the class."

Dutton v. Harris Stratex Networks Inc. et al., No. 08-cv-00755 (D.Del). Lead counsel. $8.9 million settlement.

In re Isologen Inc. Securities Litigation, No. 05-cv-4983 (E.D. Pa.). Lead counsel. $4.4 million settlement.

In re Textron, Inc. Securities Litigation, No. 02-cv-0190 (D.R.I.). Co-lead counsel. $7 million settlement.

Argent Convertible Classic Arbitrage Fund, L.P. v. Amazon.com, Inc. et al., No. 01-cv-0640L (W.D. Wash. 2005). Lead counsel. $20 million settlement for class of convertible euro-denominated bond purchasers.

Muzinich & Co., Inc. et al. v. Raytheon Company et al., No. 01-cv-0284 (D. Idaho 2005). Co-lead counsel. $39 million settlement.

Gordon v. Microsoft Corporation, No. 00-cv-5994 (Minn. Dist. Ct., Henn. Cnty. 2004). Co-lead counsel. $175 million settlement following two months of trial.

In re Visa Check/MasterMoney Antitrust Litigation, No. 96-cv-5238 (E.D.N.Y. 2003). $3 billion monetary settlement and injunctive relief.

In re Florida Microsoft Antitrust Litigation, No. 99-cv-27340 (Fl. Cir. Ct. 11th Cir., Miami/Dade Cnty. 2003). Co-lead counsel. $200 million settlement of antitrust claims.

In re Churchill Securities, Inc. (SIPA Proceeding), No. 99 B 5346A (Bankr. S.D.N.Y. 2003). Lead counsel. Over $9 million recovery for 500+ victims of pyramid scheme perpetrated by defunct brokerage firm.

In re Laidlaw Bondholder Securities Litigation, No. 00-cv-2518-17 (D. S.C. 2002). Lead counsel. $42.8 million settlement.

Cromer Finance v. Berger et al. (*In re Manhattan Fund Securities Litigatio*n), No. 00-cv-2284 (S.D.N.Y. 2002). Co-lead counsel. $65 million settlement in total.

In re Boeing Securities Litigation, No. 97-cv-715 (W.D. Wash. 2001). $92.5 million settlement.

In re MCI Non-Subscriber Telephone Rates Litigation, MDL No. 1275 (S.D. Ill. 2001). Chairman of steering committee. $88 million settlement.

In re General Instrument Corp. Securities Litigation, No. 01-cv-1351 (E.D. Pa. 2001). Co-lead counsel. $48 million settlement.

In re Bergen Brunswig/Bergen Capital Trust Securities Litigation, 99-cv-1305 and 99-cv-1462 (C.D. Cal. 2001). Co-lead counsel. $42 million settlement.

Steiner v. Aurora Foods, No. 00-cv-602 (N.D. Cal. 2000). Co-lead counsel. $36 million settlement.

Gerber v. Computer Associates International, Inc., No. 91-cv-3610 (E.D.N.Y. 2000). Multi-million dollar jury verdict in securities class action.

Rothman v. Gregor, 220 F.3d 81 (2d Cir. 2000). Principal counsel of record in appeal that resulted in first ever appellate reversal of the dismissal of a securities fraud class action under the Securities Reform Act of 1995.

Bartold v. Glendale Federal Bank, 81 Cal.App.4th 816 (2000). Ruling on behalf of hundreds of thousands of California homeowners establishing banks' duties regarding title reconveyance.

In re Cendant Corporation PRIDES Litigation, 51 F. Supp. 2d 537, 542 (D. N.J. 1999). Lead counsel. $340 million settlement.

> "[R]esolution of this matter was greatly accelerated by the creative dynamism of counsel." * * * "We have seen the gifted execution of responsibilities by a lead counsel."

In re Waste Management, Inc. Securities Litigation, No. 97C 7709 (N.D. Ill. 1999). Co-lead counsel. $220 million settlement.

> "...[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases... in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here... I would say this has been the best representation that I have seen."

In re Bennett Funding Group, Inc. Securities Litigation, No. 96-cv-2583 (S.D.N.Y. 1999). Co-lead counsel. $140 million settlement ($125 million recovered from Generali U.S. Branch, insurer of Ponzi scheme instruments issued by Bennett Funding Group; $14 million settlement with Mahoney Cohen, Bennett's auditor).

In re MedPartners Securities Litigation, No. 98-cv-06364 (Ala. June 1999). Co-lead counsel. $56 million settlement.

In re MTC Electronic Technologies Shareholder Litigation, No. 93-cv-0876 (E.D.N.Y. 1998). Co-lead counsel. Settlement in excess of $70 million.

Skouras v. Creditanstalt International Advisers, Inc., et al., NASD Arb., No. 96-05847 (1998). Following an approximately one month hearing, successfully defeated multi-million dollar claim against major European institution.

In re Woolworth Corp. Securities Class Action Litigation, No. 94-cv-2217 (S.D.N.Y. 1997). Co-lead counsel. $20 million settlement.

In re Archer Daniels Midland Inc. Securities Litigation, No. 95-cv-2877 (C.D. Ill. 1997). Co-lead counsel. $30 million settlement.

Vladimir v. U.S. Banknote Corp., No. 94-cv-0255 (S.D.N.Y. 1997). Multi-million dollar jury verdict in § 10(b) action.

In re Archer Daniels Midland Inc. Securities Litigation, No. 95-cv-2877 (C. D. Ill. 1997). Co-lead counsel. $30 million settlement.

Epstein et al. v. MCA, Inc., et al., 50 F.3d 644 (9th Cir. 1995), *rev'd and remanded on other grounds, Matsushita Electric Industrial Co., Ltd. et al. v. Epstein et al.*, No. 94-1809, 116 S. Ct. 873 (February 27, 1996). Lead counsel. Appeal resulted in landmark decision concerning liability of tender offeror under section 14(d)(7) of the Williams

Act, SEC Rule 14d-10 and preclusive effect of a release in a state court proceeding. In its decision granting partial summary judgment to plaintiffs, the court of appeals for the Ninth Circuit stated:

> "The record shows that the performance of the Epstein plaintiffs and their counsel in pursuing this litigation has been exemplary."

In re Abbott Laboratories Shareholder Litigation, No. 92-cv-3869 (N.D. Ill. 1995). Co-lead counsel. $32.5 million settlement.

> "The record here amply demonstrates the superior quality of plaintiffs' counsel's preparation, work product, and general ability before the court."

In re Morrison Knudsen Securities Litigation, No. 94-cv-334 (D. Id. 1995). Co-lead counsel. $68 million settlement.

In re T2 Medical Inc. Securities Litigation, No. 94-cv-744 (N.D. Ga. 1995). Co-lead counsel. $50 million settlement.

Gelb v. AT&T, No. 90-cv-7212 (S.D.N.Y. 1994). Landmark decision regarding filed rate doctrine leading to injunctive relief.

In re International Technology Corporation Securities Litigation, No. 88-cv-40 (C.D. Cal. 1993). Co-lead counsel. $13 million settlement.

Colaprico v. Sun Microsystems, No. 90-cv-20710 (N.D. Cal. 1993). Co-lead counsel. $5 million settlement.

Steinfink v. Pitney Bowes, Inc., No. B90-340 (JAC) (D. Conn. 1993). Lead counsel. $4 million settlement.

In re Jackpot Securities Enterprises, Inc. Securities Litigation, No. CV-S-89-05-LDG (D. Nev. 1993). Lead counsel. $3 million settlement.

In re Nordstrom Inc. Securities Litigation, No. C90-295C (W.D. Wa. 1991). Co-lead counsel. $7.5 million settlement.

United Artists Litigation, No. CA 980 (Sup. Ct., L.A., Cal.). Trial counsel. $35 million settlement.

In re A.L. Williams Corp. Shareholders Litigation, C.A. No. 10881 (Delaware Ch. 1990). Lead counsel. Benefits in excess of $11 million.

In re Triangle Inds., Inc., Shareholders' Litigation, C.A. No. 10466 (Delaware Ch. 1990). Co-lead counsel. Recovery in excess of $70 million.

Schneider v. Lazard Freres, No. 38899, M-6679 (N.Y. App. Div. 1st Dept. 1990). Co-lead counsel. Landmark decision concerning liability of investment bankers in corporate buyouts. $55 million settlement.

Rothenberg v. A.L. Williams, C.A. No. 10060 (Delaware. Ch. 1989). Lead counsel. Benefits of at least $25 million to the class.

Kantor v. Zondervan Corporation, No. 88-cv-C5425 (W.D. Mich. 1989). Lead counsel. Recovery of $3.75 million.

King v. Advanced Systems, Inc., No. 84-cv-C10917 (N.D. Ill. E.D. 1988). Lead counsel. Recovery of $3.9 million (representing 90% of damages).

Straetz v. Cordis, No. 85-cv-343 (S.D. Fla. 1988). Lead counsel.

> "I want to commend counsel and each one of you for the diligence with which you've pursued the case and for the results that have been produced on both sides. I think that you have displayed the absolute optimum in the method and manner by which you have represented your respective clients, and you are indeed a credit to the legal profession, and I'm very proud to have had the opportunity to have you appear before the Court in this matter."

In re Flexi-Van Corporation, Inc. Shareholders Litigation, C.A. No. 9672 (Delaware. Ch. 1988). Co-lead counsel. $18.4 million settlement.

Entezed, Inc. v. Republic of Nigeria, I.C.C. Arb. (London 1987). Multi-million dollar award for client.

In re Carnation Company Securities Litigation, No. 84-cv-6913 (C.D. Cal. 1987). Co-lead counsel. $13 million settlement.

In re Data Switch Securities Litigation, B84 585 (RCZ) (D. Conn. 1985). Co-lead counsel. $7.5 million settlement.

Stern v. Steans, No. 80-cv-3903. The court characterized the result for the class obtained during trial to jury as "unusually successful" and "incredible" (Jun 1, 1984).

In re Datapoint Securities Litigation, No. 82-cv-338 (W.D. Tex.). Lead counsel for a Sub-Class. $22.5 million aggregate settlement.

Malchman, et al. v. Davis, et al., No. 77-cv-5151 (S.D.N.Y. 1984):

> "It is difficult to overstate the far-reaching results of this litigation and the settlement. Few class actions have ever succeeded in altering commercial relationships of such magnitude. Few class action settlements have even approached the results achieved herein.... In the present case, the attorneys representing the class have acted with outstanding vigor and dedication . . . Although the lawyers in this litigation have appeared considerably more in the state courts than in the federal court, they have appeared in the federal court sufficiently for me to attest as to the high professional character of their work. Every issue which has come to this court has been presented by both sides with a thoroughness and zeal which is outstanding .... In sum, plaintiffs and their attorneys undertook a very large and difficult litigation in both the state and federal courts, where the stakes were enormous. This litigation was hard fought over a period of four years. Plaintiffs achieved a settlement which altered commercial relationships involving literally hundreds of millions of dollars."

EXHIBIT 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RAJESH M. SHAH, et. al., Plaintiffs, v. ZIMMER BIOMET HOLDINGS, INC., et. al. Defendants.	Case No. 3:16-cv-00815-PPS-MGG Honorable Philip P. Simon

DECLARATION OF OFFER KORIN, ESQ. IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF KATZ KORIN CUNNINGHAM PC

I, Offer Korin, declare as follows:

1. I am a shareholder at the law firm Katz Korin Cunningham PC ("KKC"), Court-appointed Liaison Counsel for Plaintiffs 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 in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred in connection with the Action. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm served as Liaison Counsel in the Action. In this capacity, KKC, among other things, reviewed and commented on draft pleadings, facilitated filings with the Court, attended court hearings, and ensured that Lead Counsel complied with local rules, customs, and practices.

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 14, 2020 (ECF No. 246-1).

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of KKC who, from inception of the Action through and including July 24, 2020, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm.

4. I am the shareholder who oversaw or conducted the day-to-day activities in the Action and I reviewed these daily time records in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the records as well as the necessity for, and reasonableness of, the time committed to the litigation. As a result of this review, I made reductions to certain of my firm's time entries such that the time included in Exhibit 1 reflect that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of the attorneys and staff reflected in Exhibit 1 was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the application for fees and reimbursement of expenses has been included.

5. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are consistent with the rates approved by courts in other securities or shareholder litigation or paid by private clients in complex litigation matters.

6. The total number of hours reflected in Exhibit 1 is 303.35 hours. The total lodestar reflected in Exhibit 1 is $174,157.50.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. As detailed in Exhibit 2, my firm is seeking reimbursement of a total of $738.81 in expenses incurred in connection with the prosecution of this Action.

9. The Litigation Expenses incurred in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm.

10. Attached hereto as Exhibit 3 is a brief biography of KKC, including the attorneys who were involved in the Action.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed this 29th day of July, 2020 in Indianapolis, Indiana.

Offer Korin, Attorney for Plaintiffs

EXHIBIT 1

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,
Case No. 3:16-cv-00815-PPS-MGG

KATZ KORIN CUNNINGHAM PC

LODESTAR REPORT
FROM INCEPTION THROUGH JULY 24, 2020

TIMEKEEPER/CASE	STATUS	HOURS	RATE	LODESTAR
ATTORNEYS:				
Offer Korin	Shareholder	268.45	600	161,070.00
Robyn G. Pauker	Associate	34.90	375	13,087.50
TOTAL LODESTAR		**303.35**		**174,157.50**

EXHIBIT 2

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,
Case No. 3:16-cv-00815-PPS-MGG

KATZ KORIN CUNNINGHAM PC

EXPENSE REPORT
FROM INCEPTION THROUGH JULY 24, 2020

ITEM	AMOUNT
COURT FILING FEES	400.00
AUTOMOTIVE TRANSPORTATION	186.76
HOTELS	152.05
GRAND TOTAL	**738.81**

EXHIBIT 3

KATZ KORIN CUNNINGHAM PC

FIRM RESUME

For the past twenty years, the lawyers of Katz Korin Cunningham, PC ("KKC") have successfully represented clients in commercial and complex civil litigation in Federal and State courts in Indiana and throughout the United States. KKC's depth of experience is relied upon by individuals, small and family owned businesses, large corporations and Fortune 500 companies.

A sample of our lawyers' representation includes acting as lead counsel in the Commonwealth of Kentucky in *McGaren v. Revenue Cabinet* (Jefferson Circuit Court) Cause No. 99 CI 01392, one of counsel in *Department of Revenue in Finance Admin. Cabinet v. Davis*, 553 US 28, 128 S.Ct. 1801 (2008), *Rink v. College Retirement Equities Fund* (Jefferson Circuit Court), Cause No. 04 CI 10761, and *Finney v. Stewart Title Guaranty Co.*, Cause No. 03 CI 10090.

With its office in Indianapolis, KKC has been appointed liaison counsel in the Southern District of Indiana on behalf of the defense in *In re: 2005 United States Grand Prix*, Master Docket No.: 1:05-cv-00914-SEB-VSS and on behalf of the plaintiffs in *In Re: Biglari Holdings, Inc. Shareholder Derivative Litigation*, Case No. 1:13-cv-0891-SEB-MJD; *In Re: ITT Educational Services, Inc. Securities Litigation (Indiana),* Case No. 1:14-cv-01599-TWP-DML; and, in the Northern District of Indiana *Rajesh Shah et al. v. Zimmer Biomet Holdings, Inc.*, Case No. 3:16-cv-00815-PPS-MGG.

OFFER KORIN, a co-founding partner of KKC, heads the firm's litigation practice, concentrating on complex business disputes.

He represents clients in all Indiana state and federal courts, the United States District Court for the Northern District of Illinois, U.S. Fourth Circuit, U.S. Seventh Circuit and the United States Supreme Court, as well as other jurisdictions on a *pro hac vice* basis. Mr. Korin is extensively involved in KKC's business planning practice and represents management, as well as employees, in a variety of employment relations cases.

Mr. Korin received a B.A. degree from Indiana University in 1985, followed by his J.D. degree from the Indiana University Robert H. McKinney School of Law in 1988.

EXHIBIT 12

Plaintiffs' Firm Name	Case Name	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
Pomerantz LLP	Pirnik v. Fiat Chrysler et al., No. 1:15-cv-07199	(S.D.N.Y.) (Sept. 2019) (Dkt. No. 361)	$450 - $600	$750 - $950
	In Re Yahoo! Inc. Securities Litigation, No. 17-cv-00373-LHK	(N.D. Cal.) (Aug. 2018) (Dkt. No. 108)	$350 - $705	$725 - $925
	In re Petrobras Securities Litigation, No. 14-cv-9662 (JSR)	(S.D.N.Y.) (Apr. 2018) (Dkt. No. 789-16)	$300 - $765	$700 - $1,000
Robbins Geller Rudman & Dowd LLP	David N. Zimmerman vs. Diplomat Pharmacy, Inc., et al., No. 2:16-cv-14005-AC-SDD	(E.D. Mich.) (July 2019) (Dkt. No. 70)	$400 - $1,030	$800 - $1,250
Keker, Van Nest & Peters LLP	OpenGov, Inc. v. GTY Technology Holdings Inc. et al, No. 3:18-cv-07198-JSC	(N.D. Cal.) (Mar. 2019) (Dkt. No. 40-1)	$775 - $1,075 ("Of Counsel" rates)	$700 - $1,500
	Osuegbu v. AMN Healthcare, Inc., et al., No. 3:16-cv-02816-JCS	(N.D. Cal.) (Feb. 2019) (Dkt. No. 162-4)	$340 - $500 ("2017 Rates")	$525 - $975 ("2017 Rates")
	(PC) Jewett v. California Forensic Medical Group et al., No. 2:13-cv-00882-MCE-AC	(E.D. Cal.) (Apr. 2018) (Dkt. No. 135-1)	$500 - $600	$875 (Same rate listed for two partners)
Motley Rice LLC	In re Investment Technology Group, Inc. Securities Litigation, No. 15-cv-06369	(S.D.N.Y.) (Jan. 2019) (Dkt. No. 119)	$300 - $750	$775 - $1,050
Cohen Milstein Sellers & Toll, PLLC	In re Ability, Inc. Securities Litigation, No. 1:16-cv-03893-VM	(S.D.N.Y.) (Aug. 2018) (Dkt. No. 89-4)	$530 (Only one rate listed)	$630 - $900
	In re ITT Educational Services, Inc. Securities Litigation, No. 1:13-cv-01620-JPO-JLC	(S.D.N.Y.) (Feb. 2016) (Dkt. No. 88)	$420 - $550	$530 - $915
Bernstein Litowitz Berger & Grossman LLP	In re Allergan, Inc. Proxy Violation Securities Litigation, No. 8:14-cv-02004-DOC-KESx	(C.D. Cal.) (Apr. 2018) (Dkt. No. 619-4)	$340 - $750	$750 - $1,250

*Listed in order of filing date.

Plaintiffs' Firm Name	Case Name	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
Kessler Topaz Meltzer & Check, LLP	In re Allergan, Inc. Proxy Violation Securities Litigation, No. 8:14-cv-02004-DOC-KESx	(C.D. Cal.) (Apr. 2018) (Dkt. No. 619-5)	$350 - $675	$550 - $850
	In re JPMorgan Chase & Co. Securities Litigation, 1:12-cv-03852-GBD	(S.D.N.Y.) (Apr. 2016) (Dkt. No. 206-8)	$350 - $650	$675 - $850
Grant & Eisenhofer P.A.	In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-cv-07789-LGS	(S.D.N.Y.) (Jan. 2018) (Dkt. No. 939-17)	$325 - $720	$850 - $925
Hausfeld LLP	In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-cv-07789-LGS	(S.D.N.Y.) (Jan. 2018) (Dkt. No. 939-3)	$350 - $500	$630 - $1,375
Labaton Sucharow LLP	In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-cv-07789-LGS	(S.D.N.Y.) (Jan. 2018) (Dkt. No. 939-6)	$335 - $775	$875 - $950
Scott+Scott, Attorneys at Law, LLP	In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-cv-07789-LGS	(S.D.N.Y.) (Jan. 2018) (Dkt. No. 939-2)	$400 - $710	$775 - $995
Boies, Schiller & Flexner LLP	Erica P John Fund Inc et al v. Halliburton Company et al, No. 3:02-cv-01152-M	(N.D. Tex.) (July 2017) (Dkt. No. 819)	$170 - $870	$350 - $1,650
Lieff Cabraser Heimann & Bernstein, LLP	In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, No. 15-md-02672	(N.D. Cal.) (Nov. 2016) (Dkt. No. 2175-1)	$150 - $790	$275 - $1,600
Bleichmar Fonti & Auld LLP	In re Genworth Financial, Inc. Securities Litigation, No. 14-cv-00682-JAG-RCY	(E.D. Va.) (Jun. 2016) (Dkt. No. 208-1)	$335 - $640	$740 - $880
Quinn Emanuel Urquhart & Sullivan, LLP	In re Credit Default Swaps Antitrust Litigation, No. 13-md-2476 (DLC)	(S.D.N.Y.) (Jan. 2016) (Dkt. No. 482)	$411 - $714	$834 - $1,125
Capstone Law APC	Irene Fernandez v. Home Depot USA Inc, 13-cv-00648-DOC-RNB	(C.D. Cal.) (Oct. 2015) (Dkt. No. 50-1)	$370 - $695	N/A

*Listed in order of filing date.

Defense Firm Name	Case Name	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
Sidley Austin LLP	In re Boy Scouts of America and Delaware BSA, LLC, Debtors, No. 20-10343 (LSS)	(Bankr. D. Del.) (Jun. 2020) (Dkt. No. 760)	Counsel: $925 - $1,000 Associates: $570 - $955 ($550 for Associate pending Admission)	$1,100 - $1,375
	In re Borden Dairy Company, *et al.,* Debtors, No. 20-10010 (CSS)	(Bankr. D. Del.) (Feb. 2020) (Dkt. No. 264)	Senior Counsel and Counsel: $775 - $1,750 Associates: $570 - $960 Paraprofessionals: $250 - $470	$1,000 - $1,800
Akin Gump Strauss Hauer & Feld LLP	In re True Religion Apparel Inc., *et al.* , Debtors, No. 20-10941 (CSS)	(Bankr. D. Del.) (May 2020) (Dkt. No. 216)	Senior Counsel & Counsel: $735 - $1,510 Associates: $535 - $960	$995 - $1,995
	In re Purdue Pharma L.P., *et al.,* Debtors, No. 19-23649 (RDD)	(Bankr. S.D.N.Y.) (Mar. 2020) (Dkt. No. 947)	Senior Counsel & Counsel: $850 - $1,110 Associates: $535 - $810 Staff Attorneys & Paraprofessional: $205 - $625 ("2020 Rate")	$1,075 - $1,655 ("2020 Rate")

*Listed in order of filing date.

Defense Firm Name	Case Name	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
Vinson & Elkins LLP	In re Cloud Peak Energy Inc., *et al.,* Debtors, No. 19-11047 (KG)	(Bankr. D. Del.) (Sept. 2019) (Dkt. No. 663)	Counsel: $1,010 - $1,070 Associates: $525 - $1,065	$1,070 - $1,550
	In re Taco Bueno Restaurants, Inc., *et al.,* Reorganized Debtors, No. 18-33678	(Bankr. N.D. Tex.) (Feb. 2019) (Dkt. No. 308)	Counsel*: $830 - $915 Associates*: $450 - $945 *10% discount later applied	$945 - $1,280* *10% discount later applied
	In re HGIM Holdings, LLC, *et al.,* Reorganized Debtors, No. 18-31080 (DRJ)	(Bankr. S.D. Tex.) (Aug. 2018) (Dkt. No. 257)	$490 - $875	$1,070 - $1,150
Ropes & Gray LLP	In re Weatherford International plc, *et al.,* Debtors, No. 19-33694 (DRJ)	(Bankr. S.D. Tex.) (Aug. 2019) (Dkt. No. 276)	$580 - $1,050	$1,150 - $1,520
Jones Day	In re Bestwall LLC, Debtor, No. 17-31795 (LTB)	(Bankr. W.D.N.C.) (July 2019) (Dkt. No. 903)	$450 - $950	$1,025 - $1,200
	In re Caesars Entertainment Operating Company, Inc., et al., Debtors, No. 15-01145 (ABG)	(Bankr. N.D. Ill.) (Nov. 2017) (Dkt. No. 7625-4)	Of Counsel*: $700 - $1,000 Associates*: $325 - $850 *not including "adjustments"	$800 - $1,125* *not including "adjustments"
Paul, Weiss, Rifkind, Wharton & Garrison LLP	In re Hexion Topco, LLC, Reorganized Debtors, No. 19-10684 (KG)	(Bankr. D. Del.) (July 2019) (Dkt. No. 1093)	$640 - $1,125	$1,165 - $1,560
	In re Sears Holdings Corporation, *et al.,* Debtors, No. 18-23538 (RDD)	(Bankr. S.D.N.Y.) (Apr. 2019) (Dkt. No. 3207)	$640 - $1,160 (associates and counsel)	$1,165 - $1,560

*Listed in order of filing date.

Defense Firm Name	Case Name	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
Milbank LLP	In re PG&E Corporation and Pacific Gas and Electric Company, Debtors, No. 19-30088 (DM)	(N.D. Cal.) (July 2019) (Dkt. No. 3117)	$843 - $1,076 (Blended Associate - Counsel rates, billed Feb - May 2019)	$1,479 (Blended Partner rate, billed Feb - May 2019)
	In re Gymboree Group, Inc., *et al.,* Debtors, No. 19-30258 (KLP)	(Bankr. E.D. Va.) (Jan. 2019) (Dkt. No. 163)	$450 - $1,315 (Milbank U.S. "standard" range)	$1,155 - $1,540 (Milbank U.S. "standard" range)
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.	In re Anderson News, LLC, Debtor, No. 09-10695 (CSS)	(Bankr. D. Del.) (Apr. 2019) (Dkt. No. 2625)	$660 (Only one rate listed)	$775 - $1,100
	In re Magnesium Corporation of America, *et al.,* Debtors, No. 01-14312 (MKV)	(Bankr. S.D.N.Y.) (Sept. 2016) (Dkt. No. 756-2)	$360 - $595 (Associates) $350 (Staff Attorneys)	$630 - $1,100
Simpson Thacher & Bartlett LLP	In re Arsenal Energy Holdings LLC, Reorganized Debtor, No. 19-10226 (BLS)	(Bankr. D. Del.) (Feb. 2019) (Dkt. No. 77)	$590* - $1,220 ($590/ hr for pending bar admission; starting at $840 for a 1st year associate)	$1,425 - $1,535
	In re FR Dixie Acquisition Sub Corp., Reorganized Debtor, No. 18-12476 (KG)	(Bankr. D. Del.) (Feb. 2019) (Dkt. No. 26)	$540 - $1,170	$1,350 - $1,550
	In re 21st Century Oncology Holdings, Inc., *et al.,* Reorganized Debtors, No. 17-22770 (RDD)	(Bankr. S.D.N.Y.) (Mar. 2018) (Dkt. No. 1013)	$740 - $1,115	$950 (Only one rate listed)
Wilson Sonsini Goodrich & Rosati	In re Tintri, Inc., Debtor, No. 18-11625 (KJC)	(Bankr. D. Del.) (Nov. 2018) (Dkt. No. 291)	$510 - $715	$950 - $1,350* *Listed as "Member" rates
Weil, Gotshal & Manges LLP	In re Sears Holdings Corporation, *et al.,* Debtors, No. 18-23538 (RDD)	(Bankr. S.D.N.Y.) (Oct. 2018) (Dkt. No. 344)	$560 - $995	$1,075 - $1,600
Shearman & Sterling LLP	In re Hodyon, Inc., Reorganized Debtor, No. 18-10386 (MFW)	(Bankr. D. Del.) (Aug. 2018) (Dkt. No. 26)	$495 - $1,295* *5-10% discount applied to some	$1,165 - $1,325* *5-10% discount applied to some

*Listed in order of filing date.

Defense Firm Name	Case Name	Citation	Non-Partner Attorneys' Fee Range	Partners' Fee Range
Mayer Brown LLP	In re Scottish Holdings, Inc., *et al.,* Debtors, No. 18-10160 (LSS)	(Bankr. D. Del.) (Mar. 2018) (Dkt. No. 193)	$605 - $895	$960 - $1130
Skadden, Arps, Slate, Meagher & Flom LLP	In re Indymac Bancorp, Inc., Debtor, No. 08-bk-21752-BB	(Bankr. C.D. Cal.) (Feb. 2018) (Dkt. No. 1041)	$420 - $710	$895 - $1350
Kirkland & Ellis, LLP	In re rue21, inc., *et al.,* Debtors, No. 17-22045-GLT	(W.D. Pa.) (Nov. 2017) (Dkt. No. 1308-6)	$555 - $965	$965 - $1625
	In re Caesars Entertainment Operating Company, Inc., *et al.,* Debtors, No. 15-01145 (ABG)	(Bankr. N.D. Ill.) (Nov. 2017) (Dkt. No. 7620-6)	$480 - $1395	$645 - $1625
Dechert LLP	In re Thru, Inc., Debtor, No. 17-31034	(N.D. Tex.) (Aug. 2017) (Dkt. No. 148)	$725 - $785	$1,095 (Only one rate listed)
O'Melveny & Myers LLP	US Airways, Inc. v. Sabre Holdings Corporation, *et al.,* No. 11-cv-02725 (LGS)	(S.D.N.Y.) (Mar. 2017) (Dkt. No. 859)	$463 - $815	$839 - $1,096
Boies, Schiller & Flexner LLP	In re Molycorp, Inc., *et al,* Debtors, No. 15-11357 (CSS)	(D. Del.) (Sept. 2016) (Dkt. No. 1994)	$490 - $1,180	$780 - $1,500
Gibson, Dunn & Crutcher LLP	In re LightSquared Inc., *et al.,* Debtors, No. 12-12080 (SCC)	(S.D.N.Y.) (Jan. 2016) (Dkt. No. 2444)	$395 - $765 (fees voluntarily reduced by roughly 8%)	$765 - $1,800 (fees voluntarily reduced by roughly 8%)
	In re Newland International Properties, Corp., Debtor, No. 13-11396	(S.D.N.Y.) (July 2013) (Dkt. No. 146)	$510 - $795	$960 - $1,170
Proskauer Rose LLP	In re IPC International Corporation, *et al.,* Debtors, No. 13-12050 (MFW)	(Bankr. D. Del.) (Aug. 2013) (Dkt. No. 57)	$200 - $1,150	$600 - $1,250
Sullivan & Cromwell, LLP	In re CIT Group Inc. and CIT Group Funding Co. of Delaware LLC, Debtors, No. 09-16565 (ALG)	(Bankr. S.D.N.Y.) (Jan. 2010) (2010 WL 354151)	$305 - $950	$850 - $965

*Listed in order of filing date.

EXHIBIT 13

EXHIBIT 13

Shah et al. v. Zimmer Biomet Holdings, Inc. et al.,
Case No. 3:16-cv-00815-PPS-MGG

PROJECT ATTORNEY
BIOGRAPHIES AND WORK SUMMARIES

LISA HOLMAN graduated from Cornell University with a Bachelor of Arts degree in Psychology. She received her Juris Doctor degree from The University of Michigan Law School, and is admitted to the State Bar of New York. Ms. Holman was a staff attorney and project manager for Cohen Milstein Sellers & Toll PLLC, where she played an important role in pre-trial discovery projects for complex corporate securities fraud cases and Residential Mortgage Backed Securities (RMBS) litigation, including management of deposition preparation, research and writing assignments, and document review. Prior to Cohen Milstein, Ms. Holman was Of Counsel at Zwerling Schachter & Zwerling LLP in New York, where she monitored holdings and transactions of institutional clients, investigated potential actions and monitored active cases for institutional clients, and played a significant role in all aspects of pre-trial discovery matters for complex securities, commercial and antitrust class action litigation.

EDUCATION:
Cornell University, B.A., 1994
The University of Michigan Law School, J.D., 1997

BAR ADMISSION:
New York

Work performed in the Action (1,380.00 hours): Ms. Holman was one of the document review team project managers in this Action. As a project manager, Ms. Holman assisted Lead Counsel in the selection of critical factual evidence and coordinated with other project managers and Lead Counsel on the development of factual evidence. Additionally, Ms. Holman: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) conducted targeted research and analysis on specific factual issues relating to the Company; (3) drafted memoranda summarizing (a) research performed on specific factual issues relating to the Company, and (b) the substantive analysis of documents reviewed; (4) participated in weekly telephonic meetings to discuss relevancy of factual evidence uncovered and key discovery findings; (5) developed, conducted, and analyzed targeted searches of factual evidence for potential inclusion in mediation statements; and (6) analyzed targeted searches of factual evidence, and conducted witness-specific background research, to create "depo kits" for specific fact witnesses.

SANDRA HUNG graduated *cum laude* from UCLA with a Bachelor of Science degree, majoring in Biology and minoring in Cognitive Science. Ms. Hung received her juris doctorate degree from UCLA School of Law. Ms. Hung also has a Master's Degree in Acupuncture and Traditional Chinese Medicine. Ms. Hung worked as a contract attorney at Irell & Manella and was an associate at Sedgwick LLP. At Irell & Manella, Ms. Hung was responsible for analyzing corporate documents in response to discovery requests, court orders, and governmental and regulatory

investigations. She conducted privilege review of documents and prepared privilege logs. At Sedgwick LLP, Ms. Hung participated primarily in the defense of consumer class action cases. She was involved in day-to-day case management and strategy that included: responding to complaints; propounding and responding to discovery; drafting motions; expert witness selection; and participating in settlement negotiations and mediations. Ms. Hung also researched and drafted memoranda and motions focusing on state and federal class action related issues with a primary focus on California's Unfair Competition Law and Consumer Legal Remedies Act. Ms. Hung is a member of the California State Bar and is fluent in conversational Mandarin and Taiwanese.

EDUCATION:

University of California, Los Angeles, B.S., 1998
UCLA School of Law, J.D., 2002

BAR ADMISSION:

California

Work performed in the Action (968.80 hours): Ms. Hung was one of the document review team project managers in this Action. As a project manager, Ms. Hung responded to review team's substantive questions relating to the analysis of factual evidence with Lead Counsel's guidance, coordinated assignments covering specific factual issues, outlined a timeline of relevant underlying events, and assisted Lead Counsel in the selection of critical factual evidence. Additionally, Ms. Hung: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) developed, conducted, and analyzed targeted searches of Defendants' document production to research specific factual issues relating to Defendants; (3) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (4) analyzed targeted searches of factual evidence for potential inclusion in mediation statements; (5) analyzed targeted searches of factual evidence, and conducted witness-specific background research, to create "depo kits" for specific fact and 30(b)(6) witnesses; (6) drafted memoranda summarizing (a) the research performed on specific factual issues relating to Defendants, and (b) the substantive analysis of documents reviewed; (7) reviewed work performed by review team members and provided feedback with Lead Counsel's guidance; (8) reviewed and collected documents for Plaintiffs' experts; and (9) attended meetings with expert/consultant.

HOLLY HEATH graduated from Loyola Marymount University with a Bachelor of Arts degree in Political Science. She received her Juris Doctor from New England School of Law and is admitted to the State Bar of New Jersey and New York. Ms. Heath started out at Salmas Law Group, a boutique business law firm in Century City, California. Ms. Heath managed all aspects of discovery and trial preparation. Ms. Heath has worked at several New York firms including Sullivan & Cromwell, Cravath, Swaine & Moore LLP, and Gibson Dunn, reviewing matters such as patent infringement, medical arbitrations and employment anti-trust cases. She also provided quality assurance of financial regulatory matters such as internal due diligence findings on bank examination privilege and Suspicious Activity Reports.

EDUCATION:

Loyola Marymount University, B.A., 2000
New England School of Law, J.D., 2003

BAR ADMISSION:
New Jersey
New York

Work performed in the Action (569.90 hours): Ms. Heath was one of the document review team project managers in this Action. As a project manager, Ms. Heath with Lead Counsel's guidance, responded to the review team's substantive questions relating to the analysis of factual evidence, coordinated assignments covering specific factual issues, and created and maintained a litigation database to track key discovery findings. Additionally, Ms. Heath: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) developed, conducted, and analyzed targeted searches of Defendants' document production to research specific factual issues relating to Defendants; (3) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (4) analyzed targeted searches of factual evidence for potential inclusion in mediation statements; (5) drafted memoranda summarizing (a) the research performed on specific factual issues relating to Defendants, and (b) the substantive analysis of documents reviewed; and (6) reviewed work performed by review team members and provided feedback with Lead Counsel's guidance.

ERIN BURKE graduated Valedictorian of the College of Communications at The Pennsylvania State University with a Bachelor of Arts degree in Journalism. She then began work at CNN in Atlanta as an associate producer before receiving her Juris Doctor degree from Tulane University Law School. She is admitted to the State Bar of New York. Ms. Burke was a staff attorney at Quinn Emanuel Urquhart & Sullivan, LLP, where she prepared for defensive depositions on several cases involving collateralized debt obligations, securities lending and residential mortgage-backed securities. Prior to Quinn Emanual, Ms. Burke was a staff attorney at Debevois & Plimpton LLP, where she worked in both the New York City and London offices on large scale internal regulatory investigations and copyright and trademark infringement matters.

EDUCATION:
The Pennsylvania State University, B.A., 1999
Tulane University Law School, J.D., 2005

BAR ADMISSION:
New York

Work performed in the Action (1,476.50 hours): Ms. Burke was primarily involved in fact discovery efforts. Ms. Burke, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) developed, conducted, and analyzed targeted searches of Defendants' document production to research specific factual issues relating to Defendants; (3) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (4) drafted memoranda summarizing (a) the research performed on specific factual issues relating to Defendants, and (b) the substantive analysis of documents reviewed; and (5) analyzed targeted searches of factual evidence, and conducted witness-specific background research, to create "depo kits" for specific fact witnesses.

CAMI DAIGLE received a Bachelor of Arts degree from Texas State University, majoring in Political Science with a minor in Business Administration. She received her Juris Doctor degree from Albany Law School. While in law school, Ms. Daigle earned a Dean's Scholarship, and served as a senior editor of the Albany Law Review, and worked as a teaching fellow. Ms. Daigle also worked as a legal intern for the New York Office of the Attorney General, where she drafted internal memoranda on administrative rule making and the False Claims Act. Ms. Daigle was admitted to the New York State Bar in 2010. Ms. Daigle worked as a staff attorney, team leader and/or project manager for Labaton Sucharow LLP, Boies Schiller Flexner LLP, and Bernstein Litowitz Berger & Grossman LLP. Her experience includes trial and discovery preparation for complex corporate securities fraud cases and Residential Mortgage Backed Securities (RMBS) litigation. As a project manager, Ms. Daigle managed a team of over a dozen attorneys and directed key deposition projects.

EDUCATION:

Texas State University, B.A., 2002
Albany Law School, J.D., 2009

BAR ADMISSION:

New York

Work performed in the Action (1,451.30 hours): Ms. Daigle was primarily involved in fact discovery efforts. Ms. Daigle, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) analyzed targeted searches of Defendants' document production to research specific factual issues relating to Defendants; (3) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (4) drafted memoranda summarizing (a) the research performed on specific factual issues relating to Defendants, and (b) the substantive analysis of documents reviewed; and (5) analyzed targeted searches of factual evidence, and conducted witness-specific background research, to create "depo kits" for specific fact witnesses.

RICHARD URISKO attended the United States Air Force Academy with experience in flight training, intercollegiate football and lacrosse with an emphasis in Chemical Engineering through 1979, and graduated from Ramapo College in 1980. He is a 1983 graduate from University of Detroit Law School. Mr. Urisko gained extensive jury trial experience focusing on automotive product liability for both domestic and international manufacturers (predominantly Japanese) while working as an Associate for Reynolds, Beeby, Magnuson & Kenny, P.C. and then as an Associate then Partner at Miller, Canfield, Paddock and Stone, LLC trying cases in Michigan, California, Washington, Texas and New York, including Lead Counsel in Nuclear Power Plant litigation (especially nuclear engineering) in Texas and Washington before transitioning to Managing Counsel and Lead Trial Counsel for Michelin North American, Inc. and thereafter as National Trial Counsel for Kmart Corporation and a number of its subsidiaries in the United States, Mexico and the Caribbean. He was also a former Partner in the New York office of Katten, Muchin & Zavis specializing in Securities and ERISA litigation in the United States. Mr. Urisko is a published author (including law reviews) on a number of legal areas and has lectured for Michigan CLE courses on various litigation topics. He is a former Mediator for the Wayne County Circuit Court in Detroit, Michigan. He is the Founding President of the Detroit Chapter of the Lawyers'

Division of the Federalist Society beginning in 1986. He is fluent in French, Japanese and basic conversational and written Mandarin.

EDUCATION:
Ramapo College, B.A., 1980
University of Detroit Law School, J.D., 1983

BAR ADMISSION:
Michigan

Work performed in the Action (1,432.00 hours): Mr. Urisko was primarily involved in fact discovery efforts. Mr. Urisko, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (3) drafted memoranda summarizing (a) the research performed on specific factual issues relating to Defendants, and (b) the substantive analysis of documents reviewed; and (4) analyzed targeted searches of factual evidence, and conducted witness-specific background research, to create "depo kits" for specific fact witnesses.

PETER RABINOV graduated from the University of Massachusetts at Amherst with a BA in English Literature. He earned his J.D. from New England Law and was admitted to the State Bars of California and Massachusetts. Mr. Rabinov joined Gibson, Dunn and Crutcher LLP in 2005 where he was eDiscovery Staff Attorney. In 2010, he joined Irell & Manella LLP as Discovery Counsel. In 2018, Mr. Rabinov joined Duke Energy Corporation as Sr. Counsel leading the eDiscovery COE and involved with Legal Operations and RIM functions. He now runs an Information Law consulting practice. Mr. Rabinov holds a CIPP/US credential.

EDUCATION:
University of Massachusetts, Amherst, B.A., 1988
New England Law School, J.D., 1997

BAR ADMISSION:
California
Massachusetts

Work performed in the Action (1,426.80 hours): Mr. Rabinov was primarily involved in fact discovery efforts. Mr. Rabinov, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in this Action; (2) conducted targeted research and analysis on specific factual issues relating to the Company; (3) drafted numerous memoranda summarizing (a) research performed on specific factual issues relating to the Company, and (b) the substantive analysis of documents reviewed; (4) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (5) regularly communicated via email with Lead Counsel to discuss substantive issues relating to factual evidence; and (6) analyzed targeted searches of factual evidence, and conducted witness-specific background research to create "depo kits" for certain key witnesses.

NILLA WATKINS earned her undergraduate degree with a double major in Philosophy and French Literature from Brown University from where she graduated with Honors, and her law degree from The University of Virginia School of Law from where she also graduated with Honors. While in law school, Ms. Watkins was selected out of 200 candidates to serve as a Dillard Fellow, teaching legal writing & research to first-year students. Following her graduation from law school, Ms. Watkins worked as an associate at Sullivan & Cromwell LLP, where she managed and oversaw teams of over fifty (50) J.D. temp attorneys in document review/due diligence projects, worked directly one-on-one with the firm's most senior partners, and advised corporate executives, buyers, sellers, and financial advisors with respect to both hostile and friendly acquisitions involving public, private, domestic, and international companies (such acquisitions ranging up to 100B). She then served as the Chief Compliance Officer of an investment advisory firm, Trevor Stewart Burton & Jacobson with 500AUM, where she performed core compliance and legal functions in close collaboration with the firm's CEO, CFO, and CIO. She then worked as an in-house counsel at Red Bull North America, where she prepared, structured, drafted, reviewed, redlined, monitored, and negotiated a wide battery of commercial agreements in a broad range of transactional disciplines. Thereafter, Ms. Watkins worked as a freelance contract attorney with several law firms, where she counseled clients on broad-ranging issues, drafting operating and other agreements, and negotiating key deal points with the third-parties. Ms. Watkins has full professional proficiency in French.

EDUCATION:

Brown University, A.B., with Honors, 2002
University of Virginia School of Law, J.D., with Honors, 2005

BAR ADMISSION:

New York

Work performed in the Action (1,338.00 hours): Ms. Watkins was primarily involved in fact discovery efforts. Ms. Watkins, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) analyzed targeted searches of Defendants' document production to research specific factual issues relating to Defendants; (3) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (4) drafted memoranda summarizing (a) the research performed on specific factual issues relating to Defendants, and (b) the substantive analysis of documents reviewed; and (5) analyzed targeted searches of factual evidence, and conducted witness-specific background research, to create "depo kits" for specific fact witnesses.

DIARRA PORTER graduated cum laude from Winston-Salem State University with a Bachelor of Arts degree in English and a minor in Political Science. She received her Juris Doctor from Tulane University Law School and is admitted to the State Bar of Georgia. Ms. Porter worked for The Carter Law Firm, a boutique entertainment law firm in Atlanta, Georgia where she primarily assisted in the drafting of recording contracts, producer agreements and performed research regarding intellectual property matters. Ms. Porter has also worked as a contract attorney for several firms including Gibson Dunn, Skadden Arps and Irell & Manella. Her experience includes trial and discovery preparation for complex corporate securities fraud cases, patent prosecution, along with governmental and regulatory investigations.

EDUCATION:
Winston-Salem State University, B.A., 1999
Tulane University Law School, J.D., 2003

BAR ADMISSION:
Georgia

Work performed in the Action (590.00 hours): Ms. Porter was primarily involved in fact discovery efforts. Ms. Porter, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) drafted memoranda summarizing the substantive analysis of documents reviewed; and (3) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims.

CHRIS DEL VALLE received a Bachelor of Arts degree from S.U.N.Y. Buffalo, majoring in English Literature/Journalism. He received his Juris Doctor from California Western School of Law. Mr. Del Valle was admitted to the California State Bar in 2004. Mr. Del Valle worked as an attorney at Irell & Manella, Fitzsimmons & Associates, and DLA Piper. His experience includes trial and discovery preparation for complex corporate securities fraud litigation; patent prosecution, oral arguments, research, injunction hearings, trial work, mediations, drafting and negotiating contracts, depositions, and client intake.

EDUCATION:
State University of New York at Buffalo, B.A., 1997
California Western School of Law, J.D., 2004

BAR ADMISSION:
California

Work performed in the Action (413.60 hours): Mr. Del Valle was primarily involved in fact discovery efforts. Mr. Del Valle, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (3) reviewed, analyzed, and drafted summaries of key critical evidence, specifically highly technical FDA documents; (4) performed research relating to Company's supply chain issues, FDA regulations related to medical devices, and quality control issues at Company's storage facilities; and (5) drafted memoranda summarizing (a) the research performed on specific factual issues relating to the Defendants, and (b) the substantive analysis of documents reviewed.

MERLYNE JEAN-LOUIS earned her undergraduate degree, *cum laude*, in Psychology and French (minor in Pre-Business Studies) from the New York University and her law degree from the Duke University School of Law. Ms. Jean-Louis is the founder of Jean-Louis Law, P.C., a New York-based business and entertainment law firm. She is also a legal commentator who has been featured on Bloomberg, CBS, The Verge, and Business News Daily. Ms. Jean-Louis is admitted to practice law in New York. Ms. Jean-Louis is fluent in English, French, and Haitian Creole.

EDUCATION:

New York University, B.A., 2006
Duke University School of Law, J.D., 2012

BAR ADMISSION:

New York

Work performed in the Action (265.70 hours): Ms. Jean-Louis was primarily involved in fact discovery efforts. Ms. Jean-Louis, among other tasks: (1) reviewed and analyzed documents produced by Defendants and various third parties for factual evidence supporting Plaintiffs' claims in the Action; (2) participated in weekly telephonic meetings to discuss relevancy of key discovery findings as they related to Plaintiffs' claims; (3) drafted memoranda summarizing the substantive analysis of documents reviewed; and (4)) analyzed targeted searches of factual evidence, and conducted witness-specific background research, to create "depo kits" for specific fact witnesses.

EXHIBIT 14

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE GUIDANT CORPORATION ERISA LITIGATION	Master Docket No. 1:05-cv-1009-LJM-TAB
THIS DOCUMENT RELATES TO ALL ERISA ACTIONS	

FINAL ORDER AND JUDGMENT

The Court has considered the Plaintiffs' Unopposed Motion for Final Approval of Settlement of the above-captioned ERISA class action (the "Motion"), and has held a duly-noticed final approval hearing on September 9, 2010. The Court expressly finds, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay, and therefore grants the Motion and expressly directs the entry of final judgment as to the Released Persons (as defined in the Stipulation of Settlement).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has jurisdiction over the subject matter of this litigation and the parties, including the members of the Settlement Class certified by Order of the Court dated May 19, 2010 (the "Settlement Class").

2. Terms defined in the Stipulation of Settlement, dated March 18, 2010 (the "Stipulation"), shall have the same meanings when used in this Final Order and Judgment.

3. The Court finds that due and adequate notice has been provided pursuant to Rule 23 of the Federal Rules of Civil Procedure to all members of the Settlement Class, notifying the Settlement Class of, among other things, the pendency of this action and the proposed settlement

with Defendants. The notice provided was the best notice practicable under the circumstances and included individual notice by first class mail to all members of the Settlement Class identified from internal participant transactional data from the Guidant Employee Savings and Stock Ownership Plan (the "Plan"). Notice was also given by publication on Business Wire. Such notice fully complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005 and due process of law.

4. The Court finds that the Stipulation is fair, reasonable, and adequate to the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure. The Settlement with the Defendants was reached following extensive investigation and resulted from vigorous arm's length negotiations which were undertaken in good faith by counsel with significant experience litigating complex class actions. The Stipulation is hereby approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and shall be binding on every member of the Settlement Class and party to the Stipulation. In this regard, the Court also finds that the Plan of Allocation set forth in the Notice is fair, reasonable, and adequate to the Settlement Class.

5. The Settlement Fund has been established pursuant to the Stipulation as a qualified settlement fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

6. The Court hereby awards attorneys' fees to Class Counsel from the Settlement Fund of $ 2,675,000 and $ 312,344.65 as reimbursement for expenses, payable pursuant to Section 6.2 of the Stipulation. Such sums shall include a pro-rata portion of the interest earned on the Settlement Fund. Class Counsel are authorized to allocate to other counsel the fees awarded herein, taking into account their relative contributions to the Action.

7. The Court hereby awards $ 10,000.00 as an award to named Plaintiffs to be paid from the Settlement Fund in recognition of these Plaintiffs' efforts in initiating and pursuing this litigation on behalf of the Settlement Class.

8. Without affecting the finality of this Final Order and Judgment in any way, the Court hereby retains continuing and exclusive jurisdiction for the purposes of, among other things, implementing and enforcing the Stipulation and the Settlement contemplated thereby (including any issue that may arise in connection with the formation and/or administration of the qualified settlement fund described in ¶ 5 above) and determining any disputes that may arise with respect to the Stipulation, the Settlement, or the Settlement Fund.

9. Consistent with the Stipulation, the Released Claims are hereby released and fully and forever discharged as against the Released Persons. The Released Claims are defined as any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, including but not limited to claims for attorneys' fees, expenses and costs not otherwise provided for by the Stipulation, whether arising under local, state, or federal law, whether by statute, contract, common law, equity, or otherwise, whether brought in an individual, representative, or any other capacity, whether known or unknown (as set forth in paragraph 3.4 of the Stipulation), suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that have been, could have been, or could be brought by or on behalf of Plaintiffs, the Plan or any member of the Settlement Class and that arise out of, relate to directly or indirectly or are based on the allegations, facts, matters, occurrences or omissions set forth in the Complaints, which occurred prior to, during or after the Settlement Class Period, including but not limited to:

a. breach of duties or obligations under ERISA to the Plan, to Plaintiffs, to the Settlement Class or to the other participants and beneficiaries of the Plan in connection with the acquisition or direct or indirect holding of Company Stock and/or the Company Stock Fund by or for the benefit of the Plan or the Plan's participants or beneficiaries;

b. failure to provide accurate information to the Plan's fiduciaries or the Plan's participants and beneficiaries regarding Guidant or Company Stock;

c. failure to appoint, remove and/or adequately monitor the Plan's fiduciaries;

d. violation of ERISA duties related directly or indirectly to the acquisition, disposition or retention of Company Stock by the Plan;

e. breach of ERISA duties in connection with the failure to avoid or resolve conflicts of interest; and

f. knowingly participating in or enabling an ERISA breach of fiduciary duty related directly or indirectly to the acquisition, disposition or retention of Company Stock by the Plan, and/or failing to remedy such breach or in the breach of any other co-fiduciary responsibility.

10. Plaintiffs and Plaintiffs' Counsel are released from any and all actual or potential claims, actions, causes of action, demands, obligations and liabilities which pertain to any conduct related to the direction to calculate, the calculation of and/or the method or manner of allocation of the Settlement Fund or Net Settlement Fund to the Plan or any participant or beneficiary of the Plan pursuant to the Plan of Allocation, so long as undertaken and/or performed in accordance with the Plan of Allocation.

11. In addition, each of the Defendants releases and fully and forever discharges the Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to, or in connection with the institution or prosecution of the Action or the settlement of any of the Released Claims.

12. Plaintiffs and every member of the Settlement Class, and every member of the Settlement Class's predecessors, successors, agents, representatives, attorneys and affiliates, and the heirs, executors, administrators, successors and assigns of each of them, directly or indirectly, individually, derivatively, representatively or in any other capacity are hereby permanently barred and enjoined from asserting, instituting, maintaining, prosecuting or enforcing against Defendants, or any other the Released Persons, in any state or federal court or arbitration forum, or in the court of any foreign jurisdiction, any and all Released Claims.

13. Neither this Final Order and Judgment, the Stipulation nor any document referred to herein nor any action taken pursuant to or to carry out the Stipulation is or may be deemed to be or may be used as an admission by or against any of the Parties to this Action of any fact, claim, defense, assertion, matter, contention, fault, culpability, obligation, wrongdoing or liability whatsoever. The Stipulation and its Exhibits may be used by the Defendants or the other Released Persons to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense.

14. Any Plan of Allocation submitted by Plaintiffs' Counsel or any order entered regarding the attorneys' fees application shall in no way affect or delay the Effective Date or the finality of this Final Order and Judgment.

15. This Action is hereby dismissed as to all Defendants with prejudice and with each party to bear its own costs, except as provided for in the Stipulation.

Sept 9, , 2010.

LARRY J. McKINNEY
UNITED STATES DISTRICT JUDGE

EXHIBIT 15

22

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE GREAT LAKES DREDGE & DOCK CORPORATION SECURITIES LITIGATION	Case No. 1:13-cv-02115 Honorable Charles R. Norgle, Sr.

ORDER AND FINAL JUDGMENT APPROVING SETTLEMENT AND DISMISSING THE ACTION WITH PREJUDICE

This matter came before the Court to determine whether a proposed settlement (the "Settlement") as set forth in a Stipulation of Settlement, dated May 26, 2015 (the "Stipulation"), entered into, on the one hand, by the Court-appointed Lead Plaintiff in this action, United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 ("Local No. 8" or "Lead Plaintiff,") on behalf of itself and all members of the putative class, and, on the other hand, defendants Great Lakes Dredge & Dock Corporation ("GLDD" or the "Company"), Jonathan W. Berger, Bruce J. Biemeck, and William S. Steckel (collectively, "Defendants"), should be finally approved as fair, reasonable and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure. Having considered all papers filed and proceedings held herein, including a hearing (the "Fairness Hearing") held on September 18, 2015, and good cause appearing therefore, the Court has determined that the Settlement as set forth in the Stipulation should be approved as fair, reasonable, and adequate. The Court hereby enters this order and final judgment (the "Judgment") dismissing the Action as to all claims and all Defendants with prejudice and on the merits.[1]

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of the Action and over Defendants, Lead Plaintiff and all members of a class (the "Settlement Class") of all persons or entities who purchased or otherwise acquired shares of GLDD common stock from August 7, 2012 through August 7, 2013, inclusive (the "Settlement Class Period"), including any and all of their respective current or future representatives, successors-in-interest, successors, predecessors, trustees, executors, heirs, administrators, estates, assigns, and transferees, and any person or entity acting for or on their behalf, or claiming under, any of them ("Settlement Class

[1] Capitalized terms not otherwise defined herein have the meanings assigned to them in the Stipulation.

Members"). Excluded from the Settlement Class are Defendants and all officers and directors of GLDD, and all such persons' Family Members, legal representatives, heirs, executors, predecessors, successors and assigns, and any entity in which any excluded person has or had a controlling interest.

2. For purposes of the Settlement only, the Court finds that the Settlement Class satisfies the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure in that: (a) the number of Settlement Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) Lead Plaintiff's claims are typical of the claims of the Settlement Class; (d) Lead Plaintiff fairly and adequately represents the interests of the Settlement Class; (e) the questions of law and fact common to Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for purposes of the Settlement only, Lead Plaintiff is certified as Settlement Class Representative and Lead Counsel Saxena White P.A. is certified as Settlement Class Counsel.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby approves the Settlement set forth in the Stipulation and finds that the Settlement is, in all respects, fair, reasonable, and adequate to, and in the best interests of, Lead Plaintiff, the Settlement Class, and each of the Settlement Class Members. The Court further finds that the Settlement set forth in the Stipulation is the result of arms'-length negotiations between experienced counsel representing the respective interests of Lead Plaintiff, Settlement Class Members, and Defendants. Accordingly, the Settlement set forth in the Stipulation is hereby

approved in all respects, and Lead Plaintiff and Defendants are hereby directed to consummate the Settlement in accordance with the terms of the Stipulation.

5. The Action and all claims contained therein, including all of the Released Claims, are hereby dismissed with prejudice as against each and all of the Released Persons. The parties are to bear their own fees and costs, except as otherwise provided for in the Stipulation.

6. Lead Plaintiff and all Settlement Class Members hereby fully, finally, and forever settle, release, relinquish, and discharge any and all Released Claims against any and all Released Persons, whether or not such Lead Plaintiff or Settlement Class Member executed the Proof of Claim.

7. Lead Plaintiff and all Settlement Class Members waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of 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.

Lead Plaintiff and all Settlement Class Members waive and relinquish, to the fullest extent permitted by law, 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 international or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542. Lead Plaintiff and Settlement Class Members 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 Released Claims, but Lead Plaintiff and each Settlement Class Member fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore

have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff and the Settlement Class Members have acknowledged, including by operation of law, that the inclusion of Unknown Claims (as defined in the Stipulation) in the definition of Released Claims, and this foregoing waiver and relinquishment, were separately bargained for and were key elements of the Settlement.

8. Each of the Released Persons fully, finally, and forever releases, relinquishes, and discharges Lead Plaintiff, all Settlement Class Members and Settlement Class Counsel from all claims arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims.

9. Lead Plaintiff and all Settlement Class Members are forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding of any kind in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind asserting any and all Released Claims against any and all Released Persons, whether or not such Lead Plaintiff or Settlement Class Member executed the Proof of Claim.

10. Nothing in this Judgment shall in any way impair or restrict the rights of Lead Plaintiff or Defendants to enforce the terms of the Stipulation.

11. The Court finds that the form and manner of the notice of the Settlement provided to the Settlement Class (i) met the requirements of Federal Rule of Civil Procedure 23, 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, and due process; (ii) was the best notice

practicable under the circumstances; and (iii) constituted due and sufficient notice to all persons and entities entitled thereto. No Settlement Class Member shall be relieved or excused from the terms of the Settlement, including the releases of claims provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. The Court finds that a full opportunity has been afforded to Settlement Class Members to object to the Settlement and/or to participate in the Fairness Hearing. It is therefore determined that all Settlement Class Members are bound by this Judgment.

12. The Class Action Fairness Act ("CAFA") Notice has been given to the relevant public officials pursuant to and in the manner directed by the Preliminary Approval Order, and full opportunity to be heard has been offered to all recipients of the CAFA Notice. The form and manner of the CAFA Notice is hereby determined to have been in compliance with each of the requirements of 28 U.S.C. § 1715.

13. The Court finds that the Plan of Allocation is a fair and reasonable method to distribute the Settlement Fund to the Settlement Class.

14. The Escrow Agent shall continue to serve as such for the Settlement Fund, until such time as all funds in the Settlement Fund are distributed pursuant to the Plan of Allocation or further order of the Court.

15. Neither the Stipulation nor the Settlement, whether or not consummated, nor any negotiations, discussions, proceedings, acts performed or documents executed pursuant to or in furtherance of the Stipulation or the Settlement, is or may be:

(a) deemed to be, or used as, an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any Defendant;

(b) offered or received against any Defendant as evidence of a presumption, concession, admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Defendant, or against Lead Plaintiff or any Settlement Class Member as evidence of any infirmity in the claims of Lead Plaintiff and the Settlement Class;

(c) deemed to be, or used as, an admission of, or evidence of, any fault or omission of any Defendant in any civil, criminal, or administrative action or proceeding in any court, administrative agency, or other tribunal, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation, including the releases therein; or

(d) construed against Defendants, Lead Plaintiff or the Settlement Class as an admission or concession that the consideration provided for in the Stipulation represents the amount that could be or would have been recovered after trial.

16. Without affecting the finality of this Judgment in any way, the Court hereby retains continuing jurisdiction over (a) implementation of the Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; and (c) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

17. The Court finds that an award of attorneys' fees to Settlement Class Counsel in the amount of $651,666.66 is fair and reasonable. In addition, the Court grants the amount of $104,628.98 to Settlement Class Counsel as reimbursement of reasonable litigation expenses, and the amount of $5,000 to Lead Plaintiff as reimbursement of its reasonable costs and expenses directly relating to its representation of the Settlement Class. The foregoing amounts shall be

paid from the Settlement Fund in accordance with the terms of the Stipulation. Any appeal from the portion of this Judgment that relates solely to the fees and expenses granted hereunder shall have no effect on the finality of this Judgment approving the Settlement or the Effective Date as provided for in the Stipulation.

18. Without further approval from the Court, Lead Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Lead Plaintiff and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

19. In the event that the Effective Date does not occur in accordance with the terms of the Stipulation, this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection therewith shall be null and void to the extent provided by and in accordance with the Stipulation.

20. The Court finds that Lead Plaintiff and Defendants and their respective counsel complied at all times with the requirements of Federal Rule of Civil Procedure 11 during the course of this Action.

21. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: 9/17/2015

SO ORDERED: 13-C-02115

Charles R Norgle

THE HONORABLE CHARLES R. NORGLE, ~~SR.~~
UNITED STATES DISTRICT JUDGE

EXHIBIT 16

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

IN RE ACURA PHARMACEUTICALS, INC. SECURITIES LITIGATION	Case No. 10-CV-5757 **FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE**

This matter came before the Court for hearing on the application of the Settling Parties for approval of the Settlement set forth in the Stipulation and Agreement of Settlement dated as of October 31, 2011. Due and adequate notice having been given of the Settlement, and the Court having considered all papers filed and proceedings held herein, otherwise being fully informed in the premises and good cause appearing,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including Class Members.

3. The Court finds, for the purposes of settlement only, that the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure are satisfied in that: (a) the number of Class Members is so numerous that joinder of all Class Members is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Lead Plaintiff are typical of the claims of the Class it seeks to represent; (d) Lead Plaintiff fairly and adequately represents the interests of the Class; (e) the questions of law and fact common to the Class

Members 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 separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by Class Members, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of a class action.

4. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies, for settlement purposes only, a class consisting of all Persons (including, as to all such Persons, their beneficiaries) who purchased or otherwise acquired the securities of Acura Pharmaceuticals between February 21, 2006 and April 22, 2010, inclusive. Excluded from the Class are the Defendants; any officers or directors of Acura Pharmaceuticals during the Class Period and any current officers or directors of Acura Pharmaceuticals; any corporation, trust or other entity in which any Defendant has a controlling interest; and the members of the immediate families of Andrew D. Reddick, Peter A. Clemens, Bruce F. Wesson, William A Sumner, and Immanuel Thangaraj and their successors, heirs, assigns, and legal representatives. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of settlement only, Lead Plaintiffs are certified as class representatives and Lead Plaintiffs' selection of Kahn Swick & Foti, LLC as Lead Counsel for the Class is approved.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement and finds that said Settlement is, in all respects, fair, reasonable, and adequate to, and is in the best interests of, the Lead Plaintiff, the Class, and each of the Class Members. This Court further finds the Settlement is the result of arm's-length negotiations between experienced counsel representing the interests of the Lead Plaintiffs, the Class Members, and the Defendants. Accordingly, the Settlement is hereby approved in all respects

and shall be consummated in accordance with its terms and provisions. The Settling Parties are hereby directed to perform the terms of the Stipulation.

7. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto) who have validly and timely requested exclusion from the Class, the Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against each and all of the Released Persons, including all Defendants. Lead Plaintiff and the Class will not make applications against any Released Person, and Defendants will not make applications against Lead Plaintiff and the Class, for fees, costs or sanctions, pursuant to Rule 11, Rule 37, Rule 45 or any other court rule or statute, with respect to any claims or defenses in this Action or to any aspect of the institution, prosecution, or defense of this Action.

8. Upon the Effective Date, Lead Plaintiff and each of the Class Members, on behalf of themselves, their respective present and former parent entities, subsidiaries, divisions, and affiliates, the present and former employees, officers, directors, advisors, partners, and agents of each of them, and the predecessors, heirs, executors, administrators, trusts, family members, successors and assigns of each of them, and anyone claiming through or on behalf of any of them, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims (including Unknown Claims) as against the Released Persons, whether or not such Class Member executes and delivers a Claim Form or participates in the Settlement Fund.

9. Upon the Effective Date, all Class Members (including Lead Plaintiff) and anyone claiming through or on behalf of any of them (except for those Persons identified in Exhibit 1 attached hereto), will be forever barred and enjoined from commencing, instituting, intervening in or participating in, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind or character (whether brought directly, in a representative capacity, derivatively, or in any other capacity) asserting any of the Released Claims against any of the Released Persons.

10. Upon the Effective Date, each of the Released Persons shall be deemed to have,

and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Lead Plaintiff, each and all of the Class Members, any confidential witness, any individual contacted by Lead Counsel in the course of their investigation, and Lead Counsel from all claims whatsoever arising out of, relating to, or in connection with the investigation, institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for those claims brought to enforce the Settlement.

11. The Court hereby finds that the distribution of the Notice of Pendency and Proposed Settlement of Class Action and the publication of the Summary Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort. Said notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including the proposed Settlement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, and any other applicable law.

12. Neither the Plan of Allocation submitted by Lead Counsel or any portion of this order regarding the attorneys' fee and expense application shall in any way disturb or affect this Judgment and shall be considered separate from this Judgment.

13. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, concession or evidence of, the validity of any Released Claim, the truth of any fact alleged by Lead Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, or of any alleged wrongdoing, liability, negligence, or fault of any Released Person; or (b) is or may be deemed to be or may be used as an admission, concession or evidence of, any fault or misrepresentation or omission of, including with respect to any statement or written document attributed to, approved or made by, any Released Person in any civil, criminal, administrative, or

other proceeding before any court, administrative agency, arbitration tribunal, or other body. Any Released Person may file the Stipulation and/or the Judgment in any other action or other proceeding that may be brought against them in order to support a defense, argument, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense, argument, or counterclaim.

14. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement; (b) disposition of the Settlement Fund; (c) hearing and determining any further applications for attorneys' expenses in the Action; and (d) all Settling Parties hereto for the purpose of construing, enforcing and administering the Stipulation and this Judgment.

15. After completion of the processing of all claims by the claims administrator, Lead Plaintiff shall disburse the Net Settlement Fund in accordance with the Stipulation and Plan of Allocation without further order of this Court.

16. The Court finds that during the course of the Action, the Lead Plaintiffs, Defendants, and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

17. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice was directed to all Class Members advising them (i) that Lead Counsel would seek an award of attorneys' fees not greater than one third (33 $^{1}/_{3}$%) of the Settlement Fund and reimbursement of expenses incurred in connection with the prosecution of the Action not to exceed $52,000.00 plus any interest on all such amounts, and (ii) that Class Members had a right to object to such application(s). A full and fair opportunity was given to all Persons who are Class Members to be heard with respect to the application for the award of attorneys' fees and expenses. The Court finds and concludes that the requested fee award is reasonable and awards attorneys' fees of $33^{1}/_{3}$% percent of the Settlement Fund, plus reimbursement of expenses in the amount of $51,605.49 plus any

interest on such attorneys' fees and expenses accrued at the same rate and for the same periods as earned by the Settlement Fund (until paid), both to be paid from the Settlement Fund pursuant to the terms of the Stipulation, immediately after the Effective Date of the Settlement.

18. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice was directed to all Class Members advising them of the Plan of Allocation and of their right to object, and a full and fair opportunity was given to all Class Members to be heard with respect to the Plan of Allocation. The Court finds that the formula for the calculation of the claims of Authorized Claimants, which is set forth in the Notice of Pendency and Proposed Settlement of Class Action sent to Class Members, provides a fair and reasonable basis upon which to allocate among Class Members the proceeds of the Settlement Fund established by the Stipulation, with due consideration having been given to administrative convenience and necessity. The Court hereby finds and concludes that the Plan of Allocation set forth in the Notice is in all respects fair and reasonable and the Court hereby approves the Plan of Allocation.

19. This Action is hereby dismissed in its entirety with prejudice as to all Defendants.

20. In the event that the Settlement does not become Final in accordance with the terms of the Stipulation or the Effective Date does not occur, this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated. In such event, all orders entered and releases delivered in connection herewith shall also be null and void to the extent provided by and in accordance with the Stipulation.

21. There is no just 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.

IT IS SO ORDERED.

DATED: 3-14-12

UNITED STATES DISTRICT COURT JUDGE

EXHIBIT 17

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: PLASMA-DERIVATIVE PROTEIN THERAPIES ANTITRUST LITIGATION This Document Relates To All Actions	Case No. 09 C 7666 MDL No. 2109 Judge Joan B. Gottschall Magistrate Judge Arlander Keys

[PROPOSED] ORDER GRANTING CLASS PLAINTIFFS' MOTION FOR INTERIM AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

The Court, having considered Class Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses (the "Motion"), and the memorandum and declarations in support thereof, and after a duly noticed hearing, hereby finds that:

1. The Motion seeks an award of attorneys' fees of 33 1/3% of the $64,000,000 Settlement Fund created by the settlement payments from CSL Limited, CSL Behring LLC, CSL Plasma Inc. (collectively, "CSL") and the Plasma Protein Therapeutics Association ("PPTA") (collectively with CSL, "Settling Defendants"). Class Counsel Richard A. Koffman and Charles E. Tompkins, of Cohen Milstein Sellers & Toll PLLC and Williams Montgomery & John Ltd., respectively, also seek an order awarding reimbursement of $4,095,879.19 in expenses incurred in connection with the prosecution of this action.

2. The amount of attorneys' fees requested is fair and reasonable under the "percentage-of-the-fund" method. This is confirmed by a lodestar "cross-check," which reveals a negative multiplier, based upon 92,281.66 hours of work and a collective lodestar of $37,033,138.22.

3. The attorneys' fees requested were entirely contingent upon success. Class Counsel risked time and effort, and advanced significant costs and expenses with no ultimate

guarantee of compensation. The award of 33 1/3% is warranted for reasons set out in Class Counsel's moving papers.

4. Given the risks involved in this case, the effort put forth by Plaintiffs' Counsel, the level of sophistication of the work done, and the extraordinary results achieved for the Class, an award of 33 1/3% is justified.

5. The expenses sought, as detailed in the Joint Declaration attached to Plaintiffs' brief, were incurred in connection with the prosecution of the litigation for the benefit of the Class, and were reasonable and necessary.

6. Therefore, upon consideration of the Motion and accompanying declarations, and based upon all matters of record including the pleadings and papers filed in this action and oral argument given at the hearing on this matter, the Court hereby finds the following: (1) the attorneys' fees requested are reasonable and proper; and (2) the expenses requested were necessary, reasonable and proper.

7. IT IS HEREBY ORDERED AND DECREED:

(a) Class Counsel are awarded attorneys' fees for distribution to Plaintiffs' Counsel in the amount of $21,333,333 equal to 33 1/3% of the $64,000,000 added to the Settlement Fund. Class Counsel may be paid 33 1/3% of $64,000,000 immediately upon entry of this Order.

(b) Plaintiffs' Counsel are awarded $4,095,879.19 in reimbursement of expenses incurred in connection with the prosecution of this action.

(c) The attorneys' fees and reimbursement of expenses shall be paid from the Settlement Fund.

(d) The attorneys' fees and expenses shall be allocated amongst Plaintiffs' Counsel by Class Counsel Richard A. Koffman and Charles E. Tompkins in a manner which, in Class Counsel's good-faith judgment, accurately reflects each of such Plaintiffs' Counsel's contributions to the establishment, prosecution, and resolution of this litigation.

IT IS SO ORDERED this 22 day of January, 2014

Honorable Joan B. Gottschall
United States District Judge

EXHIBIT 18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

IN RE: POTASH ANTITRUST LITIGATION (II)	MDL Docket No. 1996
	Civil No. 1:08-cv-06910
THIS DOCUMENT APPLIES TO:	The Honorable Ruben Castillo
ALL DIRECT PURCHASER ACTIONS	

ORDER GRANTING DIRECT PURCHASER PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS

This Court, having considered Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (the "Motion") and memorandum in support thereof, after a duly noticed hearing, hereby finds that:

1. The Motion seeks an award of attorneys' fees of $30,000,000, representing one-third of the $90,000,000.00 Settlement Funds that comprise the settlement payments paid into escrow by all Settling Defendants. Class Counsel for Direct Purchaser Plaintiffs also seek an order awarding $791,124.63 in expenses incurred during the pendency of this action that were not previously requested and awarded. Finally, the Motion seeks an incentive award of $15,000.00 for each Class Representative.

2. The amount of attorneys' fees requested is fair and reasonable under the percentage-of-the-fund method, which is confirmed by a lodestar "cross-check."

3. The attorneys' fees requested were entirely contingent upon a successful outcome for the Class. The risk undertaken by Class Counsel was significant, especially considering the lack of any related government proceedings, the complex legal theories advanced in the case, the vigorous defense by experienced defense counsel, the lengthy appellate proceedings, and the

proposed novel discovery methodology.

4. In addition to risking time and effort, Class Counsel advanced substantial costs and expenses in connection with the prosecution of the litigation for the benefit of the Class with no guarantee of compensation.

5. An award of one-third of the Settlement Funds is reasonable and warranted for the reasons set forth in Direct Purchaser Plaintiffs' Memorandum in Support of their Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards (the "Memorandum"), including, but not limited to, the following: the outstanding result obtained for the Class – payment by Defendants of $90,000,000 in cash; the quality of work product and quantity of work performed by Class Counsel, including extensive motion practice, substantial discovery efforts, mediation, and appellate practice, all involving complex issues of fact and law that were zealously litigated since 2008; and the risks faced throughout the litigation, which existed from the outset and continued until the ultimate settlement of the case.

6. Therefore, upon consideration of the Motion and accompanying Memorandum, and based upon all matters of record in this action, the Court hereby finds that: (1) the requested attorneys' fees are warranted and just; (2) the requested expenses were necessary, reasonable, and proper; and (3) the requested class representative incentive awards are justified.

Having considered Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Class Counsel are awarded attorneys' fees in the amount of $30,000,000 or one-third of the Settlement Funds of $90,000,000.

2. Class Counsel are awarded $791,124.63 as remuneration for their unreimbursed

costs and expenses incurred during the course of the litigation.

3. The Following Class Representatives shall each receive $15,000.00 as incentive awards: Gage's Fertilizer & Grain, Inc., Kraft Chemical Company, Minn-Chem, Inc., Shannon D. Flinn, Thomasville Feed & Seed, Inc., and Westside Forestry Services, Inc. d/b/a/ Signature Lawn Care.

4. The awarded attorneys' fees, reimbursed expenses, and incentive awards shall be paid from the Settlement Funds.

5. The awarded attorneys' fees and reimbursed expenses shall be equitably distributed among Class Counsel by Co-Lead Counsel in a good-faith manner that in Co-Lead Counsel's judgment reflects each individual Class Counsel's contribution to the institution, prosecution, and resolution of the litigation.

6. The Court finding no just reason for delay, this Order shall be entered as of this date pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

This 12th day of June, 2013.

HONORABLE RUBEN CASTILLO
UNITED STATES DISTRICT JUDGE

EXHIBIT 19

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

GERALD GEORGE, et al.,	)	
	)	
Plaintiffs,	)	Case Nos. 1:08-cv-3799; 1:07-cv-1713
	)	
v.	)	Magistrate Judge Nolan
	)	
KRAFT FOODS GLOBAL, INC., et al.,	)	
	)	
Defendants.	)	

ORDER REGARDING PLAINTIFFS' APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

THIS MATTER is before the Court in connection with Plaintiffs' Application for Attorneys' Fees and Reimbursement of Expenses and for Case Contribution Awards for Named Plaintiffs (Doc. 339).[1] In their Application, Class Counsel, the law firm of Schlichter, Bogard & Denton, requests a reasonable fee for their role in obtaining a settlement of class claims under the Employee Retirement Income Security Act ("ERISA"). The settlement provides a $9.5 million monetary recovery for the benefit of as many as 81,000 current and former participants in the Kraft 401(k) Plan, as well as significant affirmative relief: state-of-the-art fee and expense disclosures to participants; less costly, market-priced recordkeeping services; and other steps to control investment expenses.

Class Counsel has asked this Court to approve a fee award of 33.33% of the monetary settlement obtained or $3,166,166. Class Counsel has also asked this Court to award it $1,496,371.33 for outstanding expenses. Additionally, Class Counsel has requested this Court approve $15,000 incentive awards to each of the four Named Plaintiffs.

Pursuant to the Settlement Agreement and the Court's Order, Class Counsel mailed

[1] For ease of reading, citations are to the Court's record in Case No. 07-cv-1713 unless otherwise indicated.

individual notices to the Class and created a Class website to provide information to the Class. Although individual notices were mailed to 81,793 Class Members, only two have objected to Class Counsel's request for fees and costs, one of whom withdrew his objection after reviewing the affirmative relief obtained for the benefit of the Class. Therefore, this Court finds the lack of any meaningful number of objections to be a sign of the Class's support for the Class Counsel's Application.

Based upon this Court's observation of Class Counsel's representation of the Class, its recognition of Plaintiffs' challenging legal issues, and its review of Class Counsel's Application, Class Counsel's Application is GRANTED. This Order explains this Court's conclusion that Class Counsel's fee and cost request is reasonable and merited.

I. FINDINGS AND CONCLUSIONS

A. Class Counsel's Request for Attorneys' Fees

Under the "common-fund" doctrine, a class counsel is entitled to a reasonable fee drawn from the commonly held fund created by a settlement for the benefit of the class. *See, e.g.*, *Boeing Co. v. VanGemert*, 444 U.S. 472, 478 (1980). Additionally, the United States Court of Appeals for the Seventh Circuit has found that attorneys' fees based on the common fund doctrine are appropriate in ERISA cases. *See Florin v. Nationsbank*, 34 F.3d 560, 563 (7th Cir. 1994). A court must also consider the substantial affirmative relief when evaluating the overall benefit to the class. *See* Manual for Complex Litigation, Fourth, § 21.71, at 337 (2004); Principles of the Law of Aggregate Litigation, § 3.13; *cf. Blanchard v. Bergeron*, 489 U.S. 87, 95 (1989) (cautioning against an "undesirable emphasis" on monetary "damages" that might "shortchange efforts to seek effective injunctive or declaratory relief"). Therefore, this Court acknowledges the importance of taking the affirmative relief into account, in addition to

the monetary relief, so as to encourage attorneys to obtain effective affirmative relief. Although the affirmative relief's true value is difficult to ascertain, the affirmative relief will add additional material value to the Kraft 401(k) Plan.

In determining whether to grant a fee application in a class action settlement, the Seventh Circuit Court of Appeals requires the Court to determine whether a requested fee is within the range of fees that would have been agreed to at the outset of the litigation in an arm's length negotiation given the risk of nonpayment and the normal rate of compensation in the market at the time. *See In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). In common fund cases, "the measure of what is reasonable [as an attorney fee] is what an attorney would receive from a paying client in a similar case." *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399, 408 (7th Cir. 2000). "It is not the function of the judge in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by the court." *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 568 (7th Cir. 1992). This requires the district judge to "ascertain the appropriate rate for cases of similar difficulty and risk, and of similarly limited potential recovery." *Kirchoff v. Flynn*, 786 F.2d 320, 326 (7th Cir. 1986).

When determining a reasonable fee, the Seventh Circuit Court of Appeals uses the percentage basis rather than a lodestar or other basis. *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998); *Florin*, 34 F.3d at 566. "[T]he normal rate of compensation in the market [is] 33.33% of the common fund recovered" because the class action market commands contingency fee agreements and the class counsel accepts a substantial risk of nonpayment. *In re Ready-Mixed Concrete Antitrust Litig.*, No. 1:05:CV-00979 (S.D. Ind.), Doc. 732, at 14. A one-third fee is consistent both with the market rate for settlements of this size and in settlements concerning

this particularly complex area of law. *Schulte v. Fifth Third Bank*, 805 F.Supp.2d 560 (N.D.Ill. 2011) (approving one-third fee for class counsel's work in obtaining $9.5 million settlement); *Will v. General Dynamics Corp.*, 2010 WL 481817, *3 (S.D.Ill. Nov. 22, 2010) (finding that in ERISA 401(k) fee litigation, "a one-third fee is consistent with the market rate"). It is clear to the Court that the firm of Schlichter, Bogard & Denton is preeminent in the field of protecting the interests of employees and retirees in 401(k) plans and is the only firm which has invested such massive resources in this area. No one had brought such cases for excessive fes in 401(k) plans before them and such cases involve enormous risk and commitment of vast resources. In this case, certainly, a higher rate could be justified based on the extraordinary risk counsel accepted in agreeing to represent the Class and Class Counsel's demonstrated willingness to pursue both actions through summary judgment and appeal.

Additionally, litigating this case required Class Counsel to be of the highest caliber. Jerome Schlichter and Schlichter, Bogard & Denton's work throughout this litigation illustrates an exceptional example of a private attorney general risking breathtaking amounts of time and money while overcoming many obstacles for the benefit of employees and retirees. At the time the Plaintiffs retained Class Counsel, no other firm was willing to accept such a daunting challenge on this case at *any* rate, and virtually no cases had even been filed against large 401(k) plan sponsors involving claims of excessive fees and prohibited transactions under ERISA. Class Counsel performed substantial work for over a year before filing suit, including investing hundreds of hours of attorney time, intensely investigating, speaking with Plan Participants, obtaining documents from public sources and the Plan administrator, reviewing and analyzing Plan documents and financial statements, developing expertise regarding industry practices, conducting extensive legal research and fashioning the Class's causes of action.

After filing this case on October 16, 2006, Class Counsel has been committed to the interests of the participants and beneficiaries of the Kraft 401(k) Plan. Class Counsel has devoted substantial costs and attorney time to pursuing this case and several other 401(k) fee cases of first impression. Class Counsel's actions have led to dramatic changes in the 401(k) industry which have benefited employees and retirees throughout the country by bringing sweeping changes to fiduciary practices. In the case of this Class, the tireless efforts of Schlichter, Bogard & Denton have brought about a significant monetary recovery and important reforms to the Kraft 401(k) Plan. Current and future Plan Participants will benefit from the affirmative relief for years to come.

Accordingly, this Court finds a contingency fee market for the complex plaintiffs' attorney work in this case and similar cases. Based on the impressive monetary recovery and affirmative relief, including discontinuing retail mutual funds as investment options, continuing limitations on cash holdings of the Kraft and Altria Company Stock Funds, removing the Balanced Fund, enhancing fee disclosures, prohibiting recordkeeping fees from being set as a percentage of plan assets, requiring Kraft to retain a less expensive recordkeeper based on a competitive bidding process, and establishing a binding dispute resolution procedure to resolve potential violations of the Settlement Agreement, Class Counsel's fee application is undoubtedly reasonable. This Court finds that Schlichter, Bogard & Denton has provided an enormous benefit to the Kraft employees and retirees Class, while undertaking a great financial risk in the event of an adverse decision on the merits.

The use of a lodestar cross-check has fallen into disfavor. *See In re Synthroid Marketing Litig.*, 325 F.3d at 979–80 (7th Cir. 2003) ("The client cares about the outcome alone" and class counsel's efficiency should not be used "to reduce class counsel's percentage of the fund that

their work produced."); *Schmulte v. Fifth Third Bank*, 805 F.Supp.2d 560, 598 n.27 (N.D.Ill. 2011) (J. Dow) (recognizing irrelevance of lodestar cross-check while nevertheless approving fee request with lodestar risk multiplier of 2.5); *In re Comdisco Sec. Litig.*, 150 F. Supp. 2d 943, 948 n.10 (N.D. Ill. 2001) ("To view the matter through the lens of free market principles, [lodestar analysis] (with or without a multiplier) is truly unjustified as a matter of logical analysis."). Nevertheless, this Court finds that Class Counsel spent in excess of 19,600 attorney hours and over 4,500 hours of non-attorney professional time litigating this case.[2]

Additionally, few lawyers or law firms are capable of handling this type of national litigation, and none have the proven record of Schlichter, Bogard & Denton. Class Counsel's fee request is one-quarter of the unenhanced value of Class Counsel's work based on current lodestar rates, which were derived from market increases on rates found reasonable in other recent cases. *See, e.g.*, Motion for Attorneys' Fees and Costs, *Eshelman v. Client Services, Inc.*, No 0822-CC-00763 (22d Cir. Mo. Dec. 7, 2009); Opinion and Order on Motion of Class Counsel for Fees, Expenses, and Award to Named Plaintiffs at 8, *Martin v. Caterpillar Inc.*, No. 07-1009 (C.D. Ill. Sept. 10, 2010) (Doc. 197); *Will*, 2010 WL 4818174 and Order Awarding Attorneys' Fees and Costs, *Kanawi v. Bechtel Corp.*, No. 06-05566 (N.D. Cal. 2008) (Breyer, J.) (Doc. 828). The Court finds that the market for legal services in cases such as this is a national one, and that a reasonable hourly rate for Class Counsel's services in this case would be $885.60 per hour for attorneys with 25 years or more experience, $691.88 per hour for those with 15 to 24 years of experience, $498.15 per hour for those with 5 to 14 years of experience, and $359.78 per hour for those with between 2 and 4 years of experience. Additionally, hourly rates for $275 per

[2] The Court may rely on summaries submitted by attorneys and need not review actual billing records. *Will* 2010 WL 4818174 at *3 (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306–07 (3d Cir. 2005)).

hour for paralegals and law clerks and $138.38 per hour for legal assistants are reasonable and consistent with national market rates in ERISA fee litigation.

At these reasonable rates, even an unenhanced lodestar would result in a fee far in excess of what Class Counsel have requested here. Accordingly, while this Court does not believe a lodestar cross-check is necessary, Class Counsel's fee request easily withstands such analysis.

This Court further finds that the Class Counsel's reimbursement expenses request was reasonable and necessary. It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation. Fed.R.Civ.P. 23; *Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980). Class Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent. Additionally, Class Counsel incurred these expenses over the course of six years. Further, the fact that Class Counsel does not seek interest as compensation for the time value of money or costs associated with advancing these expenses to the Class makes this fee request all the more reasonable.

Finally, Plaintiffs request $15,000 incentive awards to each of the four Named Plaintiffs. "Incentive awards are justified when necessary to induce individuals to become named representatives." *In re Synthroid Marketing Litig.*, 264 F.3d at 722–23. The record suggests that the Named Plaintiffs initiated the action, took on a substantial risk, and remained in contact with Class Counsel. Additionally, the Named Plaintiffs devoted substantial amounts of their own time to benefit the class by responding to document requests, reviewing pleadings, assisting discovery and submitting to lengthy depositions. Furthermore, the total award for all four Named Plaintiffs represents just 0.63% of the total Settlement Fund. Awards of $15,000 for a Named

Plaintiff award and total Named Plaintiff awards of less than one percent of the fund are well within the ranges that are typically awarded in comparable cases. *See, e.g.*, *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding award of $25,000 to class representative); *Will*, 2010 WL 4818174 at *4 (awarding named Plaintiffs $25,000 each for their contribution to a case concerning allegedly excessive fees in a 401(k) Plan); *In re Dun & Bradstreet Credit Services Customer Litig.*, 130 F.R.D. 366, 377 (S.D.Ohio 1990) (awarding $215,000 or 1.19% of the settlement fund to the Named Plaintiffs).

II. CONCLUSION

After consideration of Class Counsel's Application, this Court concludes that the requested attorneys' fees and cost reimbursements are fair, reasonable and merited by the Counsel's enormous efforts resulting in relief for the class. But for Class Counsel's determined prosecution of this action, the Kraft 401(k) Plan and its participants would not have obtained any recovery because it is extremely unlikely that they would have found other qualified counsel to assume the burden and risk of pursuing these claims. Schlichter, Bogard & Denton has been virtually alone in its willingness to fully pursue ERISA fiduciary breach claims against large employers for excessive fees, imprudent investment options, and the types of breaches at issue in this case. Accordingly, it is **ORDERED** that the requested attorneys' fees of $3,166,666 are **APPROVED**. It is **FURTHER ORDERED** that the requested reimbursement of $1,496,371.33 in outstanding costs is **APPROVED**. The Settlement Administrator shall pay the combined sum of $4,663,037.33 to the firm of Schlichter, Bogard & Denton out of the Settlement Fund and shall separately pay each of the four Named Plaintiffs the sum of $15,000.

SO ORDERED THIS 26th day of June, 2012.

Nan R. Nolan

JUDGE