UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRICIA B. BAUM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. HARMAN INTERNATIONAL INDUSTRIES, INCORPORATED, et al., Defendants.	No. 3:17-cv-00246-RNC CLASS ACTION DECLARATION OF DAVID A. KNOTTS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES

I, DAVID A. KNOTTS, declare as follows:

1. I am a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"). My firm was appointed by the Court as lead counsel ("Lead Counsel") for lead plaintiff Patricia B. Baum ("Lead Plaintiff") and the proposed Class.[1] I have been actively involved in the prosecution and resolution of this action (hereinafter, the "Litigation"), am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my active supervision and participation in all material aspects of the Litigation.

2. The purpose of this declaration is to set forth the basis for and background of the Litigation, its procedural history, and the negotiations that led to the Settlement. This declaration articulates why the Settlement is fair, reasonable, and adequate and should be approved by the Court, why the Plan of Allocation is reasonable, and why the request for attorneys' fees and expenses is reasonable and should be approved by the Court.

I. PRELIMINARY STATEMENT

3. This is an action on behalf of a class of all Persons who held Harman common stock during the Merger of Harman into Samsung Electronics Co., Ltd. ("Samsung"). Defendants include Harman and its Board of Directors at the time of the Merger. The Amended Complaint alleges that Defendants violated §§14(a) and 20(a) of the Securities Exchange Act of 1934 ("1934 Act") and SEC Rule 14a-9 promulgated thereunder, by making materially misleading statements and omissions in the Proxy.

4. The Settlement, which this Court preliminarily approved on July 13, 2022, provides for the payment of $28,000,000 in cash for the benefit of the Class to settle all claims asserted in this

[1] All capitalized terms not otherwise defined herein have the same meaning as those set forth in the Stipulation of Settlement filed June 23, 2022. ECF 197-3.

action and release of all related claims by Lead Plaintiff and Class Members against Defendants and their affiliated persons and entities.[2]

5. Lead Counsel believe that the Settlement is a very good result for the Class. The substantial investigation into these claims informed Lead Counsel and Lead Plaintiff that, while our case had strengths, it also had weaknesses, which we carefully evaluated in determining the best course of action for the Class. As set forth below, despite the fact that Lead Plaintiff's allegations likely would have remained supported in the course of continued discovery, there were numerous uncertainties if the case proceeded to summary judgment, trial, and potential further appeals.

6. The risk in pursuing this case was significant. Lead Counsel are aware of only one other case since at least 2016, in any jurisdiction, where plaintiffs obtained a monetary recovery greater than $28 million on a pure §14(a) negligence claim challenging a merger proxy (with no open market securities fraud component). Lead Counsel also believe that this $28 million Settlement is the largest §14(a) post-merger common fund recovery in the history of the District of Connecticut.

7. In the same regard, Cornerstone Research published a report regarding "Shareholder Litigation Involving Acquisitions of Public Companies" for 2015 and the first half of 2016, which was relatively close in proximity to the filing of this Litigation. *See* Ex. 1. After identifying hundreds of merger-related lawsuits in both state and federal court during that time, according to the study, only six such cases resulted in any monetary recovery for stockholders. *Id*. at 5. Of those six cases, only one, *Hot Topic*, arose in federal court on a §14(a) proxy claim. *Id.* The study noted that in merger-related litigation, "[m]onetary consideration paid to shareholders has remained relatively rare." *Id.* Cornerstone Research issued a similar report regarding 2017 M&A litigation, which identified no additional monetary recoveries for stockholders on merger claims. Ex. 2. Another

[2] The Court's Order Preliminarily Approving Settlement and Providing for Notice (ECF 201) is hereinafter referred to as the "Preliminary Approval Order."

recent study by Cornerstone found that federal securities cases related to mergers had a dismissal rate 44% higher than other securities cases. Ex. 3 at 17. This case's standing against such few others highlights the favorable nature of this result, relative to the extreme risk in litigating post-merger securities cases.

8. Lead Plaintiff's case, although strong, was not without risk. As the Court remarked at a November 2021 status conference discussing the then-upcoming mediation, "I recognize that given what has happened over these past years [regarding Harman's alleged post-closing performance], if I were plaintiffs' counsel I would need to think long and hard about investing in this litigation." Ex. 4 at 13 (Pretrial Conference Transcript, dated Nov. 11, 2021). The Court also remarked, "it could be . . . that this case has modest value on its best day." *Id.* at 12. The Court also made the following observations at the October 21, 2021 status conference:

> I grant you it's not an easy case for the plaintiffs, but that's not the question. . . . [This is a] case that does have some apparent weaknesses, which are well known, I assume, to everybody on this call, including the claim against the directors based on a conflict. . . . I think therefore that what has happened since the merger needs to be considered at least in the context of mediation, and for that reason I think that an exchange of information as you suggest would be in order as it would be important to the mediation. If the shareholders here had no more lucrative option than retaining their shares and watching the company decline, for purposes of settlement that seems to be important.

Ex. 5 at 6-7, 14-15, 21 (Pretrial Conference Transcript, dated Oct. 21, 2021).

9. But Lead Counsel believed in the case, continued litigating, continued pursuing discovery, continued investing, and ultimately reached the proposed Settlement.

10. In addition to the general risks in achieving a meaningful monetary recovery on post-merger federal proxy claims, Lead Plaintiff and Lead Counsel considered the case-specific risks associated with proving the claims alleged in the Amended Complaint. For example, it was Defendants' position that Harman stockholders suffered no harm through the Merger at all. They contended that the premium on the Merger compared more favorably than Harman's allegedly

deteriorating standalone position in a declining market (absent the Merger). Although Lead Plaintiff disputes Defendants' assertions, Defendants offered both evidence and legal arguments to bolster these defenses and would like continue to do so at summary judgment and ultimately at trial. And while we were, and remain, confident in the likelihood of defeating Defendants' interlocutory appeal motion (the "Appeals Motion") and the inevitable summary judgment motion (if the Appeals Motion were denied), the odds of winning any securities case at trial and again on appeal are never certain. We had to weigh these risks against the relative certainty of a proposed $28 million recovery for the Class.

11. Perhaps for these reasons, other law firms, and other Harman stockholder plaintiffs, viewed this case as far too risky to pursue. In fact, only one Harman stockholder (other than Lead Plaintiff) filed a case challenging the Proxy under §14(a) of the 1934 Act. The complaint in that case did not contain the detailed allegations that Lead Counsel developed in the Amended Complaint and was voluntarily dismissed as a result. Lead Plaintiff and Lead Counsel, however, continued forward in pursuit of a monetary recovery for the Class.

12. Despite the risks described herein, Lead Plaintiff and Lead Counsel obtained a highly favorable settlement that will result in prompt recovery of $28 million for the Class. In total, the Settlement confers an immediate benefit to the Class and eliminates the risk of continued litigation under circumstances where a favorable outcome was not assured.

13. The Settlement was reached only after Lead Counsel: (i) reviewed and analyzed detailed discovery regarding Harman's expected business outlook and conducted a detailed comparison of that information with the disclosures in the Proxy; (ii) consulted with a corporate finance and valuation expert regarding Harman's expected business outlook in light of specific company trends as well as the global economy in general; (iii) reviewed and analyzed documents filed publicly by the Company with the SEC; (iv) reviewed other publicly available information,

including press releases, news articles and other public statements issued by or concerning the Defendants; (v) reviewed scores of research and analyst reports issued by financial analysts concerning the Company, Samsung, and their respective markets; (vi) reviewed thousands of documents produced during discovery by Defendants and third-parties; (vii) researched applicable law governing the claims and potential defenses; (viii) prepared and filed two complaints, including the fact-intensive and detailed Amended Complaint; (ix) opposed, through multiple rounds of briefing, Defendants' motion to dismiss the Amended Complaint (the "Motion to Dismiss"), Defendants' Pleadings Motion, Defendants' Judicial Notice Motion, Defendants' Appeals Motion; and (x) conducted settlement negotiations spanning months in order to reach this highly favorable cash settlement.

14. In sum, this Settlement was achieved after a detailed investigation and several months of arm's-length settlement discussions. Accordingly, it is respectfully submitted that: the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate; and Lead Counsel should be awarded 31% of the Settlement Amount, plus expenses.

II. ABBREVIATED HISTORY OF THE LITIGATION

15. On February 15, 2017, Plaintiff Baum filed the initial complaint in this matter. The next day, Plaintiff Baum's counsel issued a notice to investors informing them of their right to seek appointment as lead plaintiff within sixty (60) days of the notice. The Court ultimately appointed Plaintiff Baum as lead plaintiff and Robbins Geller as lead counsel in this Litigation on May 11, 2017. No other Harman stockholder sought a leadership role in this case.

16. Following extensive and detailed investigation, on July 12, 2017, Lead Plaintiff filed the Amended Complaint for violations of §§14(a) and 20(a) of the 1934 Act. Defendants filed the Motion to Dismiss on October 6, 2017, which the Court granted in part and denied in part on

October 3, 2019. The discovery process commenced shortly thereafter. On January 14, 2020, Lead Plaintiff filed a motion seeking an order certifying this Litigation as a class action.

17. On January 13, 2020, Defendants filed the Pleadings Motion which sought the dismissal of Lead Plaintiff's remaining claims. On January 21, 2020, the Court held a conference in which it informed the parties that all discovery efforts should cease pending a ruling on the Pleadings Motion. On September 30, 2021, the Court issued an order denying the Pleadings Motion. Defendants then filed the Appeals Motion, seeking (i) certification of interlocutory appeal of the order denying the Pleadings Motion, and (ii) a stay of the Litigation pending that appeal.

18. At a status conference held on October 21, 2021, the Court inquired whether the parties would engage in private mediation. As a result, the parties ultimately retained Phillips ADR to assist in this effort and participated in a mediation in front of Hon. Layn R. Phillips (Ret.) on January 5, 2022. The parties did not reach a resolution that day, but discussions with the assistance of Judge Phillips and his office continued. Following nearly four-months of arm's-length negotiations, on April 27, 2022, the parties filed with the Court a "Notice of Settlement." Over the next two months, the parties continued to engage in substantial and detailed arm's-length negotiation regarding the specific terms of this Settlement, which culminated in the Stipulation and related exhibits, filed on June 23, 2022. ECF 197-3.

III. INVESTIGATION OF COUNSEL

19. Lead Counsel engaged in significant investigation and analysis in order to craft a theory of liability and detailed allegations that appeared in no other complaint challenging the Merger, despite another failed attempt by a prior stockholder. Harman was widely followed in the local media, as well as by many professional analysts – none of whom uncovered the detailed facts alleged in the Amended Complaint that contributed to this $28 million Settlement.

20. A searching, detailed, and extensive investigation in this case was necessary to develop claims that would stand a chance of surviving the pleading stage under the PSLRA. Specifically, as Defendants contended here, "because plaintiff asserts claims under the [1934 Act], her complaint is subject to the heightened standards of the PSLRA. Plaintiff must: (1) 'specify each statement alleged to have been misleading, [and] the reason or reasons why the statement is misleading'; and (2) 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" Pleadings Motion at 17 (quoting 15 U.S.C. §78u-4(b)).

21. In recognition of those issues, Lead Counsel engaged in a detailed review and analysis of available facts in order to draft a strong Amended Complaint, with multiple theories for relief. Most notably, Lead Counsel exhaustedly reviewed and analyzed information regarding Harman's historical forecasting practices and expected business outlook and conducted a detailed comparison of that information with the disclosures in the Proxy. This work led to allegations regarding Harman's previously disclosed business prospects and their apparent inconsistency with the lowered forecasts of the Proxy. In addition, Lead Counsel retained and consulted with a corporate finance and valuation expert regarding Harman's expected business outlook relative to company trends and the global market in general. All of this hard work uncovered claims appearing in no other complaint regarding the Merger.

22. Further, Lead Counsel engaged in extensive effort in responding to (and largely defeating) Defendants' numerous pleadings challenges over the past five years – including the Motion to Dismiss, the Pleadings Motion, the Judicial Notice Motion, the Appeals Motion, and a multitude of supplemental submissions. In fact, the extensive briefing on pleading challenges over the past four years has totaled over 370 pages (excluding exhibits). This work involved significant research into the law applicable to Lead Plaintiff's claims and Defendants' related challenges.

23. These significant efforts by Lead Counsel ultimately produced this $28 million asset for the benefit of the Class.

IV. FACT DISCOVERY

24. In addition to the thorough investigation that led to the drafting of the Amended Complaint, Lead Counsel engaged in numerous meet-and-confers and exchanged voluminous correspondence, proposals, and counter-proposals concerning Lead Plaintiff and Defendants' demands for the production of evidence. A timeline and overview of these discovery efforts is set forth below.

A. Discovery Sought from Defendants

25. On October 25, 2019, promptly after the Court's partial denial of Defendants' Motion to Dismiss, Lead Plaintiff served Defendants with a First Set of Requests for Production of Documents containing 31 discrete requests for documents relating to the claims and issues in the Amended Complaint. Lead Plaintiff later served Defendants with a Second Set of Requests for Production of Documents on December 29, 2021, containing twelve additional requests relating to Harman's post-Merger financial performance.

26. Following service of each of the foregoing requests, Defendants served objections and responses and, with respect to several requests, refused to produce any responsive documents at all. Lead Counsel then engaged in multiple rounds of meet-and-confers to resolve Defendants' objections. The meet and confer discussions were successful. Despite Defendants' many objections to the production of documents, Lead Plaintiff ultimately secured the production of over 19,000 pages of documents from Defendants. Lead Plaintiff was working to obtain a further production of Defendants' emails at the time of the Settlement.

27. Lead Plaintiff served her First Set of Interrogatories to Defendant Harman and to the Individual Defendants (separately) on December 29, 2021. The interrogatories sought information

concerning, among others, the identification of text messages and other repositories that would be searched for relevant information, and the efforts took by Defendants to preserve and collect such information. Defendants served responses and objections, refusing to provide any responsive information to many of the interrogatories. Lead Counsel was working to secure amended responses to these interrogatories at the time of the Settlement.

B. Discovery Sought from Third-Parties

1. J.P. Morgan

28. On October 28, 2019, Lead Plaintiff served J.P. Morgan with a subpoena seeking documents and deposition testimony relating to, among other subjects, J.P. Morgan's valuation of Harman, and J.P. Morgan's business relationship with Samsung. After extensive discussions, J.P. Morgan produced its "Deal File," which contained over 10,000 pages of documents.

2. Samsung

29. On October 28, 2019, Lead Plaintiff served Samsung Electronics America, Inc. ("SEA") with a subpoena seeking documents and deposition testimony relating to, among other subjects, Samsung's valuation of Harman, post-Merger employment or consulting positions offered by Samsung to Harman employees, and Samsung's business relationship with J.P. Morgan. SEA refused to produce any witness or any responsive documents, principally arguing that SEA – a Samsung affiliate – had no documents and would not respond to the subpoena on behalf of Samsung.

30. On February 10, 2022, and in the days following, Lead Plaintiff attempted to serve subpoenas on (i) Samsung (via two of its employees), and (ii) Young Kwon Sohn, Samsung's Chief Strategy Officer. The subpoenas sought, among other subjects, documents and deposition testimony relating to the same topics covered by Lead Plaintiff's subpoena to SEA, in addition to documents relating to Harman's financial performance post-Merger. After these initial attempts, Lead Plaintiff ultimately served Samsung on March 2, 2022, this time through a different Samsung affiliate,

Samsung Semiconductor, Inc. ("SSI"). SSI refused to produce any witness or any responsive documents, arguing, like SEA previously, that SSI was merely a Samsung affiliate. At the time of the Settlement, Lead Counsel was actively engaged in meet-and-confer discussions to resolve these objections.

3. Lazard

31. On November 4, 2019, Lead Plaintiff served Lazard Frères & Co., LLC ("Lazard"), with a subpoena seeking documents and deposition testimony relating to, among other subjects, Lazard's financial due diligence concerning the Merger, and Lazard's valuation of Harman. After extensive discussions, Lazard produced its "Deal File," which contained over 13,400 pages of documents.

32. During the course of fact discovery, Lead Counsel worked to obtain more than 5,000 documents, consisting of over 43,000 pages of documents, from Defendants and their financial advisors. Lead Counsel uploaded all of these documents into a litigation document storage database, and then reviewed, analyzed, and coded each of them according to importance and substantive issues. The following is a chart summarizing Defendants' and third parties' productions of documents in the case:

Date(s) of Production(s)	Produced By	Number of Documents in Production(s)	Number of Pages in Production(s)
10/29/2021; 11/8/2021; 11/10/2021; 12/28/2021; 1/20/2022; 1/31/2022	Defendants	3,628	19,635
11/5/2021	J.P. Morgan	727	10,162
12/16/2021	Lazard	649	13,477
TOTAL		**5,004**	**43,274**

V. SUMMARY OF THE CLAIMS[3]

A. Background of Harman and the Merger

33. Harman was a leader in the design and engineering of connected products and solutions for automakers, consumers and enterprises worldwide, including connected car systems, audio and visual products, enterprise automation solutions and connected services. ¶2[4]. On November 14, 2016, Harman and Samsung announced the Acquisition. Under the parties' merger agreement, Samsung through its affiliates, would acquire all of the outstanding shares of Harman common stock for $112.00 per share in cash. ¶3.

34. On January 20, 2017, Harman issued the Proxy in order to secure shareholder support for the Merger. ¶5. The Amended Complaint alleged that the Proxy, which recommended that Harman's stockholders vote in favor of the Merger, omitted and misrepresented material information in contravention of §§14(a) and 20(a) of the 1934 Act. *Id*.

B. Events Alleged in the Amended Complaint

35. The Amended Complaint alleged that Samsung rewarded Harman insiders with additional payments for consummating the Merger and continuing with Samsung post-close. ¶4. In particular, the Amended Complaint alleged that former Harman CEO Dinesh Paliwal ("Paliwal") negotiated an important and unprecedented side-payment from Samsung before any director voted in favor of the Merger and before receiving a final fairness presentation in support of the Merger price. *Id*. The Amended Complaint alleged that this "personal receipt of over $50 million that he would not have otherwise received if Harman had continued as a standalone entity," provided Paliwal with a unique and strong motivation to provide a misleading narrative in the Proxy, in order to complete

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[3] This summary describes only those claims and related allegations of the Amended Complaint that survived the Court's order granting in part and denying in part Defendants' Motion to Dismiss. ECF 61.

[4] All "¶__" or "¶¶__" references are to the Amended Complaint.

the Merger. ¶¶4, 102-108. The Amended Complaint further alleged that despite Paliwal's conflicts of interest, the full Board granted Paliwal broad personal discretion in shaping a misleading narrative regarding the Company's intrinsic value and standalone prospects, which led to severe problems in the disclosure statements regarding the Merger. ¶6.

36. The Amended Complaint alleged that Paliwal directed Harman management to apply a 25% reduction to the Company's standalone projections, which resulted in a reduction of the approximate midpoint on the Company's financial advisors discounted cash flow analysis from $116.24 per share to $100.25 per share. ¶¶10, 70-72. The Amended Complaint alleged that the Proxy misled stockholders regarding the rationale for Paliwal's cut. *Id*. When describing the downward revision, the Board stated as follows: "[T]he Company's senior management determined, taking into account the perspectives of the Financial Advisors, that the Management Projections currently reflected more downside risk as described above than likely upside potential . . . ." *Id*., ¶71. The Amended Complaint contended that this determination was both objectively and subjectively false because it was contradicted by Paliwal's repeated statements to analysts that the same overall guidance was "by far very conservative" and that he was "very confident" about the guidance. ¶¶56-58, 70-72.

37. In the Proxy, the Board stated that the valuation on the downward revised "Sensitized Projections" was a "principal factor . . . that the board believes supports its decision" in the "Reasons for the Merger" section of the Proxy. ¶71; ECF 89-3 at 36-39. Apart from publicly available premiums and multiples, the discounted cash flow valuation on the Sensitized Projections was the only specific numerical valuation the Board included in this section of the Proxy. *Id*.

38. The Amended Complaint also alleged that the Proxy failed to disclose that an affiliate of J.P. Morgan – the Board's lead financial advisor on the Merger – was concurrently engaged by a

Samsung affiliate at the same time it was purportedly negotiating against Samsung in connection with the Merger. ¶¶12, 78-82.

39. On November 13, 2016, the Board agreed to the Merger at $112.00 per share. ¶98. The Amended Complaint alleged that when negotiating the $112.00 per share price, the Board did not try to elicit a higher bid for Harman stockholders, but rather agreed to preclusive deal protection devices that impeded other possible buyers. ¶99.

40. Harman stockholders voted in favor of the Merger on February 17, 2017. ¶13. In an advisory note, Harman stockholders voted against Paliwal and other Harman executives' Merger-related compensation. ¶14. Because the vote was "advisory" and "non-binding," however, both Samsung and Harman agreed to pay Paliwal. *Id*.

C. The Amended Complaint's Allegations Regarding the Proxy

41. The Amended Complaint alleged, in part, that the Proxy omitted and/or misrepresented the material information set forth below in contravention of §§14(a) and 20(a) of the 1934 Act, as follows:

(a) The Proxy stated that the Management Projections contained greater downside risk than upside potential, which directly contradicted Paliwal's earlier statements that, *inter alia*, the same projections were based on "by far very conservative" assumptions and that he was "very confident" in hitting the numbers in the later years. ¶¶70-72;

(b) The Proxy failed to disclose that J.P. Morgan Asset Management – a J.P. Morgan affiliate – served as investment manager for Samsung while advising Harman in connection with the Merger. ¶¶78-81.

42. The Amended Complaint then alleged that the above information was material to the decision of Harman stockholders on whether to vote in favor of the Merger and that had Harman's

true intrinsic value and standalone prospects been disclosed in the Proxy, Harman stockholders would have likely voted against the Merger. ¶¶70-72, 78-81.

VI. SETTLEMENT NEGOTIATIONS

43. In October 2021, after prompting from the Court at a status conference, the parties began discussing the potential for resolution of this matter. The parties retained Phillips ADR to assist in this effort and participated in a mediation in front of Hon. Layn R. Phillips (Ret.) on January 5, 2022. The parties did not reach a resolution that day, but discussions with the assistance of Judge Phillips and his office continued. Arm's-length negotiations took place for months. On April 27, 2022, the parties filed with the Court a "Notice of Settlement" stating that "the parties, through ongoing mediation, have agreed on the economic terms of a resolution and are working to document a settlement that would resolve all outstanding issues in this case among all parties." ECF 195. Over the next two months, the parties engaged in substantial and detailed arm's-length negotiation regarding the specific terms of this Settlement, which culminated in the Stipulation and related exhibits, filed on June 23, 2022. ECF 197-3.

VII. THE STRENGTHS AND WEAKNESSES OF THE CASE AND THE RISKS FACED BY LEAD PLAINTIFF IN THE LITIGATION

44. In deciding to enter into the Settlement, Lead Plaintiff and Lead Counsel considered: the likelihood of success at potential interlocutory appeal, at class certification, at summary judgment and at trial; the strength of the claims as pleaded and as may be further developed in continued discovery; the complexity, expense, and duration involved in continuing litigation; the timing of, and possible substantial delay and increased risk of uncertainty of, any potential recovery to the Class if the settlement was rejected. These issues are described in greater detail below.

A. Risks of Establishing Liability and Damages

45. Lead Plaintiff's case, although strong, was not without risk. As noted above, the Court remarked at a November 2021 status conference discussing the then-upcoming mediation, "I

recognize that given what has happened over these past years [regarding Harman's alleged post-closing performance], if I were plaintiffs' counsel I would need to think long and hard about investing in this litigation." Ex. 4 at 13 (Pretrial Conference Transcript, dated Nov. 11, 2021). The Court also remarked, "it could be . . . that this case has modest value on its best day." *Id.* at 12.

46. The Court also made the following observations at the October 21, 2021 status conference:

> I grant you it's not an easy case for the plaintiffs, but that's not the question. . . . [This is a] case that does have some apparent weaknesses, which are well known, I assume, to everybody on this call, including the claim against the directors based on a conflict. . . . I think therefore that what has happened since the merger needs to be considered at least in the context of mediation, and for that reason I think that an exchange of information as you suggest would be in order as it would be important to the mediation. If the shareholders here had no more lucrative option than retaining their shares and watching the company decline, for purposes of settlement that seems to be important.

Ex. 5 at 6-7, 14-15, 21 (Pretrial Conference Transcript, dated Oct. 21, 2021).

47. As this Litigation illustrates, securities cases are complex and dismissals are common. While two of Lead Plaintiff's claims survived Defendants' Motion to Dismiss, two additional claims contained in the Amended Complaint were dismissed. The Amended Complaint alleged that the Proxy did not disclose that Management Projections did not account for future acquisitions, despite them being an integral part of Harman's business model. Lead Counsel believed this was a very strong claim, and featured it predominantly in the Amended Complaint. However, the Court did not find this claim to be actionable because, in part, Lead Plaintiff had "not alleged facts that would show that Harman . . . had a known acquisition in the pipeline." *Baum v. Harman Int'l Indus., Inc.*, 408 F. Supp. 3d 70, 82 (D. Conn. 2019). Another claim – that the Proxy misleadingly indicated that the Management Projections had not been previously released – was also dismissed after the Court found that the "one-time release" of materially similar projections did not contradict the Proxy's statement that the Company did not, "as a matter of course," make public long-term projections as to

future performance. *Id*. at 90. The unexpected dismissal of what Lead Counsel believed were strong and viable claims underscored to Lead Counsel the uncertainty and riskiness of securities litigation.

48. As noted above, Lead Counsel still continued forward on the remaining claims. With two of Lead Plaintiff's claims still standing, Lead Counsel were optimistic that Lead Plaintiff had a good chance of defeating Defendants' Appeals Motion. The outcome, however, was uncertain. Defendants' loss causation and PSLRA safe harbor arguments could not be completely discounted as having no chance of success. For example, Defendants made the following arguments in their Appeals Motion briefing:

- that the Amended Complaint failed to articulate "any concrete, non-speculative basis to suggest that there was a viable path to achieving more than the deal price" (Appeals Motion at 15);
- that the Court's determination that Lead Plaintiff had sufficiently pleaded loss causation under the PSLRA was "at odds with rulings by at least two district courts within this circuit . . . one of which referred to this Court's analysis as 'not supported by law' and was latter affirmed by the Second Circuit" (*id*. at 13);
- that "[a] court of appeals reversal on loss causation would terminate the litigation" (*id*. at 11);
- that "a statement that there is greater downside risk than likely upside potential in a set of projections is demonstrably forward-looking" (*id*. at 15);
- that "[t]he Court's ruling to the contrary is now squarely at odds with that of at least four other district courts within this circuit," and "also in conflict with several district court decisions outside the circuit that have dismissed Section 14(a) claims" (*id*. at 15, 17); and
- that "[i]f that issue [PSLRA's safe harbor] is decided in defendants' favor, all that will be left is a claim that Harman should have disclosed a relationship between J.P. Morgan and a 'Samsung' entity that wasn't even owned by the Samsung that bought Harman" (*id*. at 11).

49. Lead Plaintiff and Lead Counsel disagree with those arguments, but they were made by well-capitalized Defendants through highly respected, accomplished, and aggressive defense attorneys. And given the amount of investigation conducted by Lead Counsel in this case, we were optimistic that if Lead Plaintiff defeated the Appeals Motion and obtained additional discovery, Lead

Plaintiff stood a good chance of surviving summary judgment and potentially prevailing at trial. But, there were substantial uncertainties and risks the Class faced.

50. Even if the Appeals Motion were denied, Lead Plaintiff faced significant risks and uncertainties in proving out her claims. Defendants might have continued to argue that the existence of an alleged global downturn in the auto industry supported the conclusion that the Merger consideration was more beneficial to Harman shareholders than Harman remaining a stand-alone entity. Indeed, in support of their loss causation argument, Defendants had repeatedly argued that Harman's post-close performance undermined Lead Plaintiff's claim regarding the downward revision of the projections of the Proxy. For example, Defendants claimed that "the global auto recession and underlying data . . . clearly show that the opinion statement at issue in this case was not false and is thus not actionable." Judicial Notice at 2.

51. Relatedly, Defendants argued that "courts have recognized [that] a forecast that 'ultimately proves to be accurate' cannot 'give rise to liability,'" and therefore "the fact that Harman's cautions have now proved accurate is . . . dispositive." *Id*. at 10-11. Defendants would have undoubtedly continued to argue that a continued downturn in the auto industry impacted Lead Plaintiff's ability to prove loss causation. Moreover, a possibility existed that additional discovery would not prove beneficial if Harman's internal documents supported Defendants' argument here (despite publicly available evidence to the contrary).

52. Finally, at one status conference hearing, the Court had expressed skepticism regarding the viability of Lead Plaintiff's conflict of interest claim about J.P. Morgan, which the Court stated was "secondary to the main claim." Ex. 4 at 12 ("I think that describing it that way might even dignify it, but I won't use a different term."). After further stating that this claim could be a "stumbling block" to a successful mediation, the Court strongly encouraged the parties to treat

this claim "as if it's not even in the case" for the purposes of mediation. *Id.* Lead Counsel was cognizant of these comments by the Court when assessing the strength of the remaining claims.

53. Even if liability was established in part, Lead Plaintiff faced further risk and uncertainty regarding damages. Defendants would continue to argue that the deal price represented the best way to assess Harman's value. This argument has been accepted in certain recent challenges to corporate mergers in the Delaware Court of Chancery, particularly in appraisal cases. While Lead Plaintiff would have responded that the federal courts employ a separate body of law with respect to causation and damages on §14(a) merger-related claims, the general inclination of courts to look to the Delaware Court of Chancery on corporate-related matters is, at times, difficult to overcome. In addition, the damages analysis could have simply turned into a "battle of the experts," which is often an uncertain and difficult-to-predict endeavor. Continued litigation thus bore the risk that potential damages could have been reduced, perhaps significantly, as Lead Plaintiff litigated the case to trial.

54. In sum, Lead Plaintiff faced numerous obstacles in proving both liability and damages and there was no certainty, given Defendants' asserted defenses, that Lead Plaintiff and the Class would prevail on either. And there was no certainty that if Lead Plaintiff did prevail, the recovery would exceed the Settlement. Additionally, Defendants would inevitably appeal any substantial verdict and damages award. The entire litigation process could span several more years, delaying any recovery by Class Members and increasing the risk that an intervening change in the law or other unforeseeable changed circumstances could delay, reduce, or eliminate a recovery entirely.

55. As a result of these risks and the delays associated with continued litigation and eventually proceeding to trial, there was a risk that the Class' recovery would be no better or worse than the Settlement, and delayed by several years. Obtaining a better result was thus speculative at best. Therefore, Lead Counsel believe that the Settlement is in the best interest of the Class.

B. Possible Range of Recovery

56. Damages in this case were uncertain. While there is not a wealth of precedent on the matter, Lead Plaintiff has submitted that damages on a §14(a) proxy claim following a merger are typically assessed based on the fair value of company common stock at the time of the Merger, less the value received in the merger. The Court agreed with Lead Plaintiff's theory of damages when denying Defendants' Motion for Judgment on the Pleadings, ruling as follows: "in cases brought by minority shareholders who have been cashed-out as a result of a merger, courts have applied a measure of damages that compares the value of what the plaintiff received and the fair value of the shares." *Baum v. Harman Int'l Indus.*, 575 F. Supp. 3d 289, 299 (D. Conn. 2021). Here, that would mean the fair value of Harman's stock (as eventually determined by Lead Plaintiff's damages expert), less the $112.00 per share received by stockholders in the Merger. Lead Plaintiff and Lead Counsel retained and were advised in this Litigation by paid financial consultants and valuation professionals, who concluded that Harman's fair value may have exceeded the $112.00 per share price. Lead Plaintiff and Lead Counsel in fact believed that to be the case. On the other hand, Defendants indicated they would vigorously contest damages in this case. Defendants likely would have argued that the deal price of $112.00 per share (or less, based on the pre-Merger trading price of Harman's stock) represents fair value. As noted above, while Lead Plaintiff would have strenuously contested that argument, that is a notion that has gained some traction in limited circumstances in the Delaware Court of Chancery.

57. Given those issues, there was substantial uncertainty regarding the range of possible damages, as well as any ultimately provable damages. For these additional reasons, achieving a substantial monetary settlement at this stage of the litigation was a meaningful achievement that avoids the considerable expense, delay, and risk of further litigation.

C. Mailing and Publication of Notice of Settlement

58. The Court entered the Preliminary Approval Order on July 13, 2022. It directed the Claims Administrator to commence mailing of the Notice and the Proof of Claim and Release by First-Class Mail to all Class Members identifiable with reasonable efforts, no later than August 3, 2022. Pursuant to the Preliminary Approval Order, and under Robbins Geller's supervision, commencing on August 3, 2022, the Claims Administrator mailed over 37,700 copies of the Notice and Proof of Claim and Release to all potential Class Members and nominees. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶¶4-11, submitted herewith.

59. The Preliminary Approval Order also directed the Claims Administrator to cause the Summary Notice to be published once in the national edition of *The Wall Street Journal* and once over a national newswire service no later than July 23, 2022. The Claims Administrator caused the Summary Notice to be published in the national edition of *The Wall Street Journal* and over *Business Wire* on July 22, 2022. *See id.*, ¶12.

D. Reaction of the Class

60. The Notice apprised the Class Members of their right to, and procedure for, objecting to the Settlement, the Plan of Allocation, to Lead Counsel's application for attorneys' fees and expenses, and/or the expenses of Lead Plaintiff (if requested). The time to file objections will expire on October 20, 2022. At the time of the filing of this declaration, I have been informed that no objections have been raised to any aspect of the Settlement, the Plan of Allocation, Lead Counsel's request for attorneys' fees and expenses, and that no requests for exclusion have been received.

VIII. THE PLAN OF ALLOCATION

61. Upon approval by the Court, the Plan of Allocation governs the method by which the Net Settlement Fund will be distributed to Class Members who submit valid, timely Proofs of Claim

and Release ("Authorized Claimants"). The Plan of Allocation was fully described in the Notice distributed to the Class Members, and provides for a distribution to those Class Members who were holders of record of Harman common stock at the close of business on January 10, 2017, and were thus holders of record entitled to vote on the Merger, and who submit a valid Proof of Claim and Release to the Claims Administrator. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00.

62. The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Class Members who have legal standing to bring the §§14(a) and 20(a) claims currently asserted in the Litigation. Only those stockholders holding Harman common stock as of the close of business on January 10, 2017 were considered record holders entitled to vote on the Merger. Given that the currently pending claims in the Litigation challenge statements made in the Proxy related to that vote, Lead Counsel believe that this proposed Plan of Allocation aligns the recovery with those who have legal standing to bring the claims currently asserted in the Litigation.

63. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by its claim as compared to the total claims of all eligible Class Members who submit acceptable Proofs of Claim and Release. Payments shall be conclusive against all Authorized Claimants. The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Class Members might have been able to recover after a trial.

64. In order to ascertain the most sensible, equitable, and legally supported plan of allocation in this case, Lead Counsel previously conducted a survey of all recent cash recoveries on merger-related §14(a) claims. As described in greater detail in the accompanying memorandum, that

research uncovered that similar distributions, *i.e.*, based on the voting record date for a merger, occurred in at least the following cases:

- *NECA-IBEW Pension Tr. Fund v. Precision Castparts Corp.*, No. 3:16-cv-01756 (D. Or. 2021) – relevant material attached hereto as Ex. 6.
- *Duncan v. Joy Global Inc.*, No. 2:16-cv-01229 (E.D. Wis. 2021) – relevant material attached hereto as Ex. 7.
- *In re Hot Topic, Inc. Sec. Litig.*, No. 2:13-cv-02939 (C.D. Cal. 2015) – relevant material attached hereto as Ex. 8.
- *Lane v. Page*, No. Civ-06-1071 (D.N.M. 2012) – relevant material attached hereto as Ex. 9.
- *In re Piedmont Office Realty Trust Inc. Sec. Litig.*, No. 1:07-cv-02660 (N.D. Ga. 2013) – relevant material attached hereto as Ex. 10.

IX. LEAD COUNSEL'S ATTORNEYS' FEES AND EXPENSES

65. Lead Counsel respectfully requests that the Court award 31% of the Settlement Amount for attorneys' fees. In light of the risky nature of this Litigation, the diligent and thoughtful prosecution of the action, the complexity of the factual and legal issues presented, we believe that a 31% fee in this action, plus interest, is fair and reasonable and is supported by ample precedent in this Circuit.

66. In addition, Lead Counsel respectfully requests that the Court award Plaintiff's Counsel's expenses incurred in litigating this case, in an amount of $123,809.79, plus interest earned from the date the Settlement is funded, at the same rate as earned on the Settlement Fund.

67. To date, there have been no objections to the fee request. The legal authorities supporting the requested fees are set forth in the Memorandum in Support of Motion for Final Approval of Class Action Settlement, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses, filed concurrently herewith.

A. Time, Labor and Fee Percentage Requested

68. Plaintiff's Counsel have expended more than 3,850 hours in the investigation, prosecution and resolution of the Litigation against Defendants, for a collective lodestar value of $2,872,093.25. Submitted herewith is the Declaration of David A. Knotts Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Declaration"), the Declaration of Brett M. Middleton Filed on Behalf of Johnson Fistel LLP in Support of Application for Award of Attorneys' Fees and Expenses, and the Declaration of William H. Narwold Filed on Behalf of Motley Rice LLC in Support of Application for Award of Attorneys' Fees and Expenses (collectively, "Plaintiff's Counsel Declarations").

69. Included with Plaintiff's Counsel Declarations are schedules that summarize the lodestar of the firms after having been reviewed and reduced in the exercise of billing judgment. In particular, the Robbins Geller Declaration indicates the amount of time spent on this case by each attorney and professional support staff employed by the firm, and the lodestar calculations based on their current billing rates. The declaration was prepared from contemporaneous daily time records regularly prepared and maintained by Robbins Geller. The hourly rates for attorneys and professional support staff included within that schedule are consistent with hourly rates submitted by the Firm to state and federal courts in other securities class action litigation. The Firm's rates are set based on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense side.

70. Robbins Geller has significant experience in representing investors in securities fraud cases and the team of attorneys litigating this case are experienced trial lawyers, particularly in trials adjudicating stockholder disputes to mergers and acquisitions. Lead Counsel's representation of the Class in this case required considerable briefing on Defendants' Motion to Dismiss, the Pleadings Motion, the Judicial Notice Motion, the Appeals Motion, and investigation when preparing the initial

complaint and Amended Complaint, as well as considerable work in propounding and reviewing discovery. Lead Counsel's substantial collective experience and advocacy were required in order to negotiate and achieve the best possible settlement and convince Defendants, defense counsel, and the Company of the risks they faced from not settling.

71. The fee request is based upon a percentage of the recovery after approval by Lead Plaintiff. *See* Lead Plaintiff's Declaration in Support of Settlement Approval, submitted herewith. The fee request is similar to other requests approved in the Second Circuit, as set forth in the accompanying memorandum.

B. The Risk of Contingent Class Action Litigation Supports the Requested Fee Award

72. As set forth in the accompanying memorandum, a determination of a fair fee should include consideration of the contingent nature of the fee and the complex issues of law and fact that presented considerable risk to Lead Plaintiff's case. This case involved litigating highly complex issues under §§14(a) and 20(a) of the 1934 Act and Rule 14a-9 promulgated thereunder. Thus, when Lead Counsel undertook this representation, there was no assurance that the Litigation would survive a motion to dismiss, a motion for summary judgment, trial and/or any appeals and therefore no assurance Lead Counsel would recover any payment for their services.

73. This action was prosecuted by Lead Counsel on a contingent fee basis. Lead Counsel accepted the representation on a contingent basis in a securities fraud class action wherein, even if a recovery was obtained, any payment for Lead Counsel's services was likely to be delayed for several years. These cases present formidable challenges as there are numerous decisions ruling in favor of defendants at each stage of litigation. Defendants' filings raised complex and challenging arguments that required experience and considerable effort to respond to in opposing. As evidenced by the procedural posture of this case, an early recovery was unlikely at the outset of this Litigation – these cases rarely settle prior to a motion to dismiss and typically require several years of litigation. If the

case had not settled, Lead Counsel were fully prepared to litigate this case through the complex stages of fact discovery, expert discovery, class certification, summary judgment, trial and appeal. Each of those stages of litigation poses considerable challenges and expense in securities fraud class actions. Proving material misstatements in a proxy, as well as analyzing and proving loss causation and damages, requires substantial expertise and effort. In addition to the legal complexities, this Litigation did require and, had it continued, would have continued to require, complex damages analysis and evaluation of Harman's various sets of projections and business forecasts.

74. When committing thousands of hours of attorney time and incurring tens of thousands of dollars in expenses in litigating this action, Lead Counsel fully assumed the risk of an unsuccessful result. Lead Counsel have received no compensation for their services during the course of this Litigation and any fees awarded to Lead Counsel have always been at risk and are completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result for the Class.

75. As described above, while Lead Counsel are confident that Harman was undersold, to recover for the Class, Lead Plaintiff would have to win the "battle of experts." If Defendants' expert(s) calculations were accepted, damages would be zero. Lead Plaintiff thus faced the prospect of advancing all the way to trial and winning the liability phase, but recovering nothing for the Class and losing the case. That is precisely what happened in both the *Trados* and *PLX* merger cases – plaintiffs proved liability in a merger trial, but the court found that the price was fair and damages were zero. *See In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013); *In re PLX Tech. Inc. Stockholders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018).

76. Another example of the risks and delays inherent in securities litigation, even after a jury verdict in favor of the class, is *Jaffe v. Household International, Inc.*, No. 1:02-CV-05893 (N.D.

Ill.). In *Household*, a securities class action case filed by Robbins Geller in 2002, plaintiffs obtained a jury verdict in their favor on May 7, 2009, after a month-long trial and seven years of costly and contentious litigation. Because of post-verdict challenges, a judgment was not entered until October 17, 2013, which was then appealed. After thirteen years of litigation, and six years after a favorable jury verdict, the Seventh Circuit ruled in May 2015 that the defendants were entitled to a new trial, primarily on the issue of loss causation. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 433 (7th Cir. 2015). The case finally settled in June of 2016 – fourteen years after the litigation commenced, and on the eve of a second trial.

77. There are also a number of merger cases where plaintiffs' counsel in contingent cases such as this, after the expenditure of thousands of hours, have received no compensation, including on those taken to trial. Indeed, the following cases provided examples where Lead Counsel's specific team of deal litigation attorneys litigated merger cases at least through summary judgment or trial, but lost:

- *Laborers' Loc. #231 Pension Fund v. Cowan*, 2020 WL 1304041 (D. Del. Mar. 19, 2020) (motion for summary judgment granted after years of fact and expert discovery, dismissing §§14(a) and 20(a) claims challenging a $356 million merger, later affirmed by the Third Circuit);

- *In re PLX Tech. Inc. Stockholders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018) (the trial court ruled in favor of the defendant after finding that the plaintiffs had failed to prove damages, a decision affirmed over a year later by the Delaware Supreme Court);

- *Cinotto v. Levine*, No. B242191 (Santa Barbara Super. Ct., Jan. 4, 2011) (motion for summary judgment granted after years of fact and expert discovery, dismissing breach of fiduciary duty claims challenging $1.1 billion merger);

- *Air Prods. & Chems., Inc. v. Airgas, Inc.*, 16 A.3d 48 (Del. Ch. 2011) (after a week-long trial in October 2010 and subsequent three-day evidentiary hearing in January 2011, the court ruled in favor of the defendants, denied the shareholder plaintiffs' request for relief, and dismissed the case with prejudice); and

- *Elloway v. Pate*, 238 S.W.3d 882, 889 (Tex. App. 2007) (the trial court entered a take nothing judgment, which the Court of Appeals of Texas affirmed, after a three-week jury trial in the Texas District Court of Harris County).

78. In *Cowan*, for example, the plaintiff brought §§14(a) and 20(a) claims challenging the $356 million merger of Lionbridge into HIG. The complaint principally alleged that, despite Lionbridge's historical acquisition-based growth strategy, the projections supporting the fairness opinion failed to take into account any future acquisitions. *Cowan*, 2020 WL 1304041, at *2. Because those projections did not incorporate a key element of Lionbridge's growth, the complaint alleged, the representation in the proxy by the Lionbridge's board that it viewed the bankers' fairness opinion as a "positive reason" to approve the merger was false and misleading. *Id.* at *3. After surviving the defendants' motion to dismiss, the case proceeded to discovery. *Id.* The defendants filed their motion for summary judgment shortly after the close of a very lengthy and costly discovery process. *Id.* at *1. The court granted the motion and entered a judgment in favor of the defendants. *Id.* at *5. The court found, in part, that "the Lionbridge directors uniformly testified that they believed the [fairness] opinion was a positive reason supporting their decision to recommend the merger notwithstanding the fact that the projections on which [the bankers] relied did not account for future acquisitions." *Id.* at *3. The decision was later upheld by the Third Circuit Court of Appeals. *Laborers Local No. 231 Pension Fund v. Cowan*, 837 F. App'x 886, 893 (3d Cir. 2020). *Cowan* illustrates the very real risk that Lead Counsel faced in this Litigation under similar claims.

79. On the other hand, that same team of Robbins Geller attorneys have recently taken post-merger cases to trial and won. *See, e.g.*, *In re Rural Metro Corp. Stockholders Litig.*, 88 A.3d 54 (Del. Ch. 2014); *In re Dole Food Co.*, 2015 Del. Ch. LEXIS 223 (Del. Ch. Aug. 27, 2015).

80. The fact that defendants and their counsel know that the leading members of the plaintiffs' bar are able to, and will, go to trial even in high-risk cases like this one gives rise to meaningful settlements in actions such as this. The losses suffered by class counsel in other actions where insubstantial settlement offers were rejected, and where class counsel ultimately received little or no fee, should not be ignored. The undersigned counsel knows from personal experience that

despite the most vigorous and competent of efforts, attorneys' success in contingent litigation is never assured.

81. Under these circumstances, Lead Counsel are justly entitled to the award of a reasonable percentage fee based on the benefit conferred and the common fund obtained for the Class. A 31% fee and payment of expenses is fair and reasonable under the circumstances present here.

C. Quality of the Representation

82. Lead Counsel worked diligently to obtain an excellent result for the Class. From the outset, Lead Counsel employed considerable resources and spent considerable time researching and investigating facts to support a pleading that could advance beyond the pleading stage and position the litigation for class certification. Damages theories were complex and Lead Counsel devoted extensive time and analysis working to formulate a class-wide method of calculating damages.

83. The recovery obtained for the Class is the direct result of the significant efforts of highly-skilled and specialized attorneys who possess substantial experience in the prosecution of complex merger-related class actions. Lead Counsel are among the most experienced merger-related class action attorneys in the country. The Settlement represents a substantial recovery for the Class, one that is attributable to the determination, hard work, and reputation of Lead Counsel.

84. The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. Defendants were represented by experienced and highly skilled lawyers from Wachtell, Lipton, Rosen & Katz, who are among the most well-respected and formidable attorneys in the securities defense bar. Wachtell has a reputation for vigorous advocacy in the defense of complex securities cases such as this. The ability of Lead Counsel to obtain a favorable settlement in the face of such quality opposition confirms the high quality of Lead Counsel's representation.

85. When Lead Counsel undertook to represent Lead Plaintiff and the Class, it was with the expectation that we would have to devote a significant amount of time and effort in our prosecution, and advance large sums in out-of-pocket expenses on experts, case related travel, mediation, and discovery. The time spent by Lead Counsel on this case was at the expense of the time that we could have devoted to other matters. Lead Counsel undertook this case solely on a contingent fee basis, assuming a substantial risk that the case would yield no recovery and leave counsel uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and reimbursed for their expenses on a regular basis, Lead Counsel have not been compensated for any time or expenses since this case began. When Lead Counsel undertook to represent Lead Plaintiff and the Class in this matter, it was with the knowledge that we would spend many hours of hard work against some of the best defense lawyers in the United States with no assurance of ever obtaining any compensation for our efforts. The only way we would be compensated was to achieve a successful result.

X. CONCLUSION

86. As discussed above, the Settlement is an excellent result for the Class in light of the risk and obstacles to recovery presented in this case. Instead of facing additional years of uncertain, costly and time-consuming litigation, the Settlement will provide Class Members an immediate benefit without the risk of no recovery if the Litigation were to continue.

87. In light of the significant recovery to the Class and the substantial risks of the Litigation, Lead Counsel respectfully submit that the Settlement and Plan of Allocation should be approved as fair and reasonable. In addition, as a result of the recovery obtained in the face of substantial risks, including the contingent nature of the fees and the complexity of the case, Lead Counsel respectfully submit that the Court should award a fee in the amount of 31% of the Settlement Amount plus payment of expenses. *See supra*, §IX.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of October, 2022, at San Diego, California.

s/ David A. Knotts
DAVID A. KNOTTS

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 6, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ David A. Knotts

DAVID A. KNOTTS

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

Email: dknotts@rgrdlaw.com

Mailing Information for a Case 3:17-cv-00246-RNC Baum v. Harman International Industries, Incorporated et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Wilfred T Beaye , Jr**
  wtbeaye@wlrk.com
- **Stephen R. DiPrima**
  SRDiPrima@wlrk.com
- **Caitlin A. Donovan**
  CADonovan@wlrk.com
- **Tadhg Dooley**
  tdooley@wiggin.com,asierra@wiggin.com,lweeden@wiggin.com
- **Mathew P. Jasinski**
  mjasinski@motleyrice.com,vlepine@motleyrice.com,ajanelle@motleyrice.com
- **David A. Knotts**
  dknotts@rgrdlaw.com,jaimem@rgrdlaw.com,e_file_sd@rgrdlaw.com,tdoremus@rgrdlaw.com,dknotts@ecf.courtdrive.com
- **Ryan A. McLeod**
  RAMcLeod@wlrk.com
- **Joseph C. Merschman**
  JMerschman@wiggin.com,JKrawczyk@wiggin.com,bhammond@wiggin.com
- **Brett Middleton**
  brettm@johnsonfistel.com,paralegal@johnsonfistel.com
- **William H. Narwold**
  bnarwold@motleyrice.com,mjasinski@motleyrice.com,vlepine@motleyrice.com,ajanelle@motleyrice.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

EXHIBIT 1

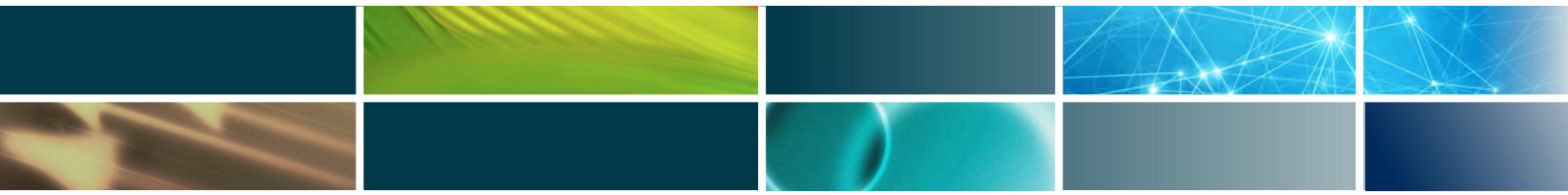
CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Shareholder Litigation Involving Acquisitions of Public Companies

Review of 2015 and 1H 2016 M&A Litigation

Filings | Litigation Outcomes | Settlements



Background

This report looks at litigation challenging M&A deals valued over $100 million announced from 2007 through June 30, 2016, filed on behalf of shareholders of public target companies.

These lawsuits usually take the form of a class action. Plaintiff attorneys typically allege that the target's board of directors violated its fiduciary duties by conducting a flawed sales process that failed to maximize shareholder value. Common allegations include the failure to conduct a sufficiently competitive sale, the existence of restrictive deal protections that discouraged additional bids, and conflicts of interest, such as executive retention post-merger or change-of-control payments to executives.

Another typical allegation is that the target board failed to disclose enough information about the sale process and the financial advisor's valuation. However, recent decisions made by the Delaware Court of Chancery against "disclosure-only" settlements have shifted the rate and mix of shareholder challenges.

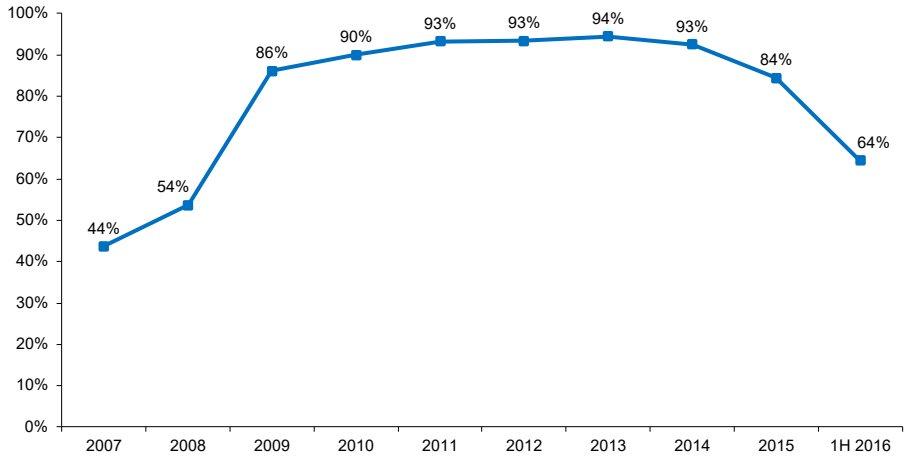
This report discusses lawsuit filings, outcomes, and settlement terms.

HIGHLIGHTS

For the first time since 2009, the percentage of M&A deals valued over $100 million that were subject to shareholder litigation declined to below 90 percent in 2015 and so far in 2016. The lower rate in late 2015 and the first half of 2016 may be due to the impact of the January 2016 *Trulia* ruling that diminished the acceptability of disclosure-only settlements. In addition, a smaller number of competing lawsuits were filed for the same deal and in fewer competing jurisdictions. Lawsuits were less likely to be filed in the Delaware Court of Chancery than in previous years.

- In 2015 and the first half of 2016, 84 and 64 percent of M&A deals valued over $100 million were litigated, respectively. This is the first time since 2009 that the rate has dipped under 90 percent. (Figure 1)
- The average number of lawsuits per deal declined, from 4.6 in 2014 to 4.1 in 2015 and 2.9 in 1H 2016. (page 2)
- The majority of litigation for 2015 deals was filed in only one jurisdiction (65 percent). The same is true for the first half of 2016 (57 percent). (page 3)
- In 2014, 75 percent of lawsuits were resolved before deals closed. This compares to 57 percent in 2015 and 56 percent in 1H 2016. (page 4)
- While disclosure-only settlements are less likely to be approved by the Delaware Court of Chancery, it remains to be seen whether other venues will continue to grant them. Early anecdotal evidence indicates that it is possible that they will. This has led to cases being litigated with increasing frequency outside Delaware. (pages 4–5)

Figure 1: **Percentage of M&A Deals Challenged by Shareholders (by deal year)**



Source: Thomson Reuters SDC; SEC Filings
Note: Percentages have been rounded to the nearest whole number.

FILINGS

Most litigated deals of 2015
(by number of lawsuits)

EMC Corp./Dell Inc.	15
Entropic Communications Inc./ MaxLinear Inc.	13
Martha Stewart Living/ Sequential Brands Group Inc.	13
TECO Energy Inc./ Emera Inc.	12
Office Depot Inc./Staples Inc.	11
Broadcom Corp./ Avago Technologies Ltd.	11

Most litigated deals of 1H 2016
(by number of lawsuits)

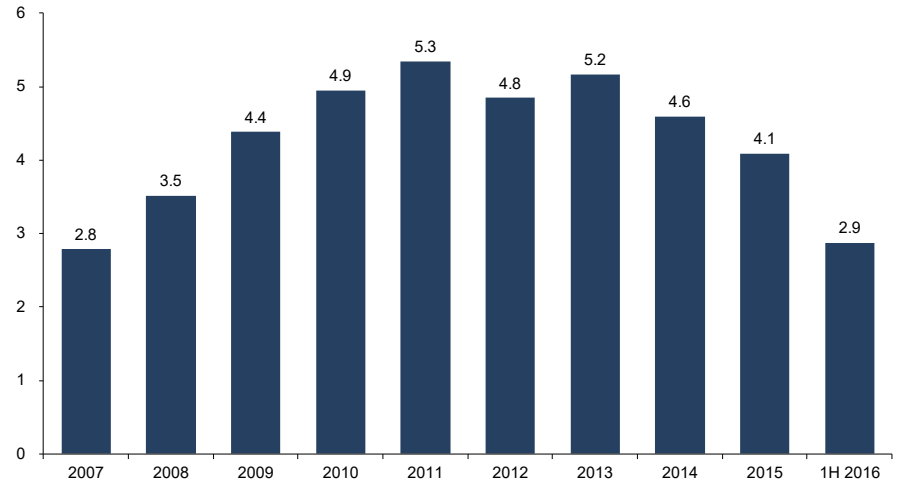
ITC Holdings Corp./ Fortis Inc.	7
Affymetrix Inc./ Thermo Fisher Scientific Inc.	7

Top three in 2007–1H 2016

Genentech Inc. (2008)	30+
Dynegy Inc. (2010)	29
Dell Inc. (2013)	26

- The rate of M&A litigation has declined substantially since the Delaware Court of Chancery's decision in *Trulia*.
- Plaintiff attorneys filed lawsuits in 84 percent of all M&A deals announced in 2015 and valued over $100 million. A total of 174 M&A deals had associated lawsuits in 2015.
- Lawsuits were filed in 64 percent of all M&A deals announced in 1H 2016 and valued over $100 million. There were 47 M&A deals with associated lawsuits during the first half of the year.
- The average number of lawsuits per deal declined from 4.6 in 2014 to 4.1 and 2.9 in 2015 and 1H 2016, respectively (Figure 2).
- The number of deals with more than 10 filings decreased, from nine in 2014 to six in 2015. There were no deals with more than seven lawsuits filed in 1H 2016.
- Lawsuits were filed more slowly in 2015 and 1H 2016. During that period, the first lawsuit was filed an average of 22 days after the deal announcement, compared with 14 days in 2014. If this trend of increasing lag time continues, the 64 percent litigation rate seen in 1H 2016 may rise over time as these lawsuits are filed.

Figure 2: **Average Number of Lawsuits per M&A Deal**
(by deal year)



Source: Thomson Reuters SDC; SEC Filings; Dockets

JURISDICTIONS

Most active state courts 2015
(by number of deals litigated)

Delaware	91
California	22
Maryland	10
Florida	9
Texas	6

Most active state courts 1H 2016
(by number of deals litigated)

California	10
Delaware	10
New Jersey	4
Michigan	3
North Carolina	3
Pennsylvania	3

- Recent trends indicate that the Delaware Court of Chancery is becoming less common as a filing destination. This is likely due to the impact of the *Trulia* decision. The majority of M&A litigation in 2015 and 1H 2016 was filed in only one venue, continuing a trend that began in 2014 (Figure 3).
- For 2015 deals, 65 percent of M&A litigation was filed in one jurisdiction, with only 5 percent of the deals challenged in three or more courts. In the first half of 2016, the respective figures are 57 percent and 9 percent.
- Plaintiffs filed in Delaware for 61 percent of the litigated deals over the first three quarters of 2015 but only 26 percent of litigated deals in 4Q 2015 and 1H 2016.
- For litigation in which the acquired company was incorporated in Delaware, plaintiffs filed in Delaware for 74 percent of litigated deals in 2015. In 1H 2016, this rate was 36 percent. (Figure 4)

Figure 3: **Number of Jurisdictions per M&A Deal**
(by deal year)

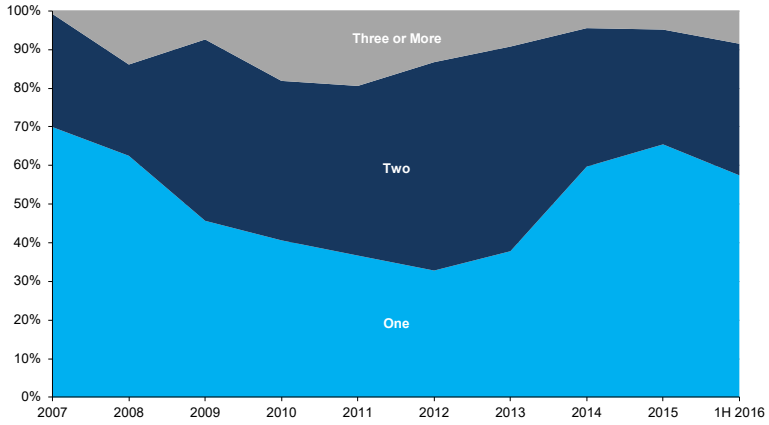
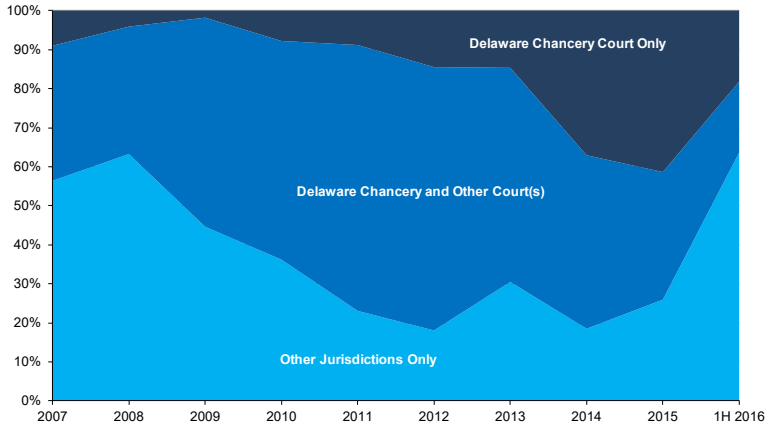


Figure 4: **Jurisdictions for Acquisitions of Companies Incorporated in Delaware**
(by deal year)



Source: Thomson Reuters SDC; SEC Filings

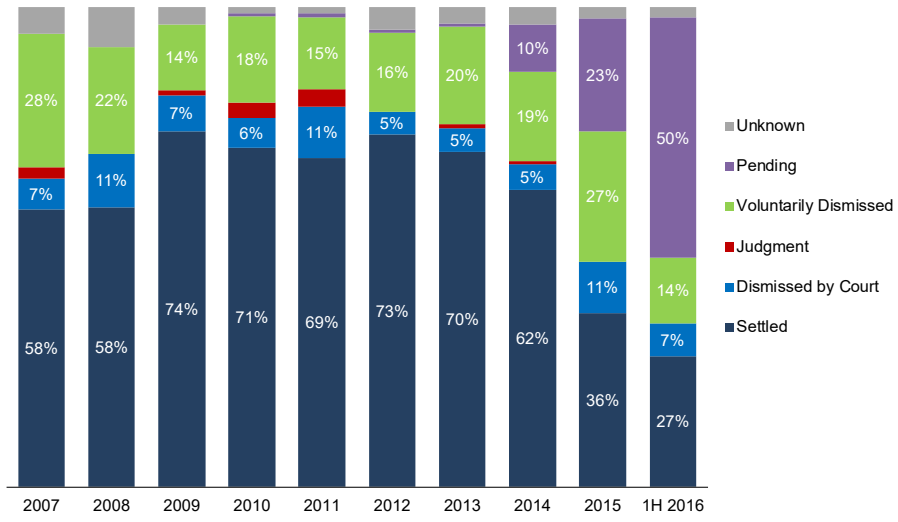
LITIGATION OUTCOMES

Percentage of M&A deals for which litigation was resolved before closing
(by deal year)

2007	65%
2008	54%
2009	78%
2010	74%
2011	74%
2012	78%
2013	74%
2014	75%
2015	57%
1H 2016	56%

- From 2009 to 2014, between 74 and 78 percent of M&A litigation was resolved before the deal closed. This figure declined to 57 percent in 2015 and to 56 percent in 1H 2016. This is potentially a result of the increased difficulty in obtaining disclosure-only settlements.
- Unlike prior years, settlements in 2015 accounted for less than half of all litigation outcomes (Figure 5). These rates, particularly the 1H 2016 figure, may increase as more pending cases are resolved.
- Historically, of litigation that was resolved before deal closing, approximately 80 to 90 percent settled, and the remainder was either withdrawn by plaintiffs or dismissed by courts. In cases for which litigation was resolved after a merger closing, only 6 to 21 percent reached a settlement; the majority was either dropped by plaintiffs or dismissed by the courts.

Figure 5: **Litigation Outcomes for All M&A Deals**
(by deal year)



Source: Thomson Reuters SDC; SEC Filings; Dockets

SETTLEMENTS

Monetary settlements
2015 and 1H 2016
(Dollars in Millions)

Dole Food Co. (2013)	$148.2
PriMedia Inc. (2011)	$39.0
Bluegreen Corp. (2011)	$36.5
Globe Specialty Metals Inc. (2015)	$32.5
Hot Topic Inc. (2013)	$14.9
Prospect Medical Holdings Inc. (2010)	$6.5

- Monetary consideration paid to shareholders has remained relatively rare—there were only a handful of monetary awards and settlements reached in 2015 and 1H 2016.
- The short-term reaction following the *Trulia* decision indicates both a lower rate of merger litigation and a lower share of such litigation in the Delaware Court of Chancery. It remains to be seen whether such shifts are sustainable. Over the next several months, courts in other jurisdictions will have the opportunity to either adopt or disregard the *Trulia* standard for disclosure-only settlements. If the *Trulia* standard becomes universal, the share of merger litigation in Delaware may revert to historical levels.
- To date, a small number of disclosure-only settlements have been approved in various state courts post-*Trulia* in cases where the settlement was reached before the *Trulia* decision. It is not yet clear whether such approvals will continue to occur in cases where the settlement was reached after the *Trulia* decision.
- As more post-*Trulia* cases are resolved, a future report will focus on settlements and plaintiff attorney fees.

The views expressed in this report are solely those of the author, who is responsible for the content, and do not necessarily represent the views of Cornerstone Research.

Please direct any questions, comments, or requests for information to Ravi Sinha. The author requests that you reference Cornerstone Research in any reprint of the tables or figures included in this study.

ABOUT THE AUTHOR

Ravi Sinha
M.B.A., The Wharton School, University of Pennsylvania
B.A., University of California, Berkeley

415.229.8194
rsinha@cornerstone.com

Ravi Sinha, a principal of Cornerstone Research, has more than 10 years of experience working with clients and experts to address complex financial and valuation issues. He has analyzed market efficiency, class certification, valuation, and aggregate damages across a variety of matters involving debt, equity, and derivative securities. Mr. Sinha has worked on a variety of merger and acquisition matters. He is experienced in all phases of litigation, including deposition, mediation, and trial. He has managed large case teams and has worked with multiple experts.

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www.cornerstone.com

Twitter at @Cornerstone_Res

Boston
617.927.3000

Chicago
312.345.7300

London
+44.20.3655.0900

Los Angeles
213.553.2500

New York
212.605.5000

San Francisco
415.229.8100

Silicon Valley
650.853.1660

Washington
202.912.8900

www.cornerstone.com

EXHIBIT 2

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Shareholder Litigation Involving Acquisitions of Public Companies

Review of 2017 M&A Litigation

Introduction

This report examines litigation challenging M&A deals valued over $100 million announced from 2008 through 2017, filed on behalf of shareholders of publicly traded target companies.

These lawsuits usually take the form of class actions filed in either federal or state court. Plaintiffs typically allege that the target's board of directors violated its fiduciary duties by conducting a flawed sales process that failed to maximize shareholder value.

Common allegations include:

- failure to conduct a sufficiently competitive sale
- existence of restrictive deal protections that discouraged additional bids
- conflicts of interest, such as executive retention post-merger or change-of-control payments to executives
- failure to disclose information about the sales process and the financial advisor's valuation

Distinct from these merger objection cases is appraisal litigation. In these suits, plaintiffs submit their shares to the court for appraisal instead of accepting the deal price. Appraisal litigation, and its recent unprecedented growth, is the subject of a forthcoming publication by Cornerstone Research.

In these lawsuits, plaintiffs typically allege that the target's board of directors violated its fiduciary duties.

Table of Contents

Table of Figures

Executive Summary

For years courts raised concerns about merger objection class actions. In these cases, typical resolutions involved attorneys' fees to plaintiffs' counsel and a release for defendants. The only consideration to shareholders was "supplemental disclosures" of information not included in the merger's original proxy statement.

Since decisions made by the Delaware Court of Chancery against disclosure-only settlements—notably the 2016 *Trulia* decision—M&A litigation rates have decreased. In 2013, 94 percent of M&A deals valued over $100 million were litigated. While the majority of deals are still challenged by shareholders, in 2017 this percentage was 73 percent.

The 2017 data also show a shift from state to federal venues. The number of deals litigated in Delaware declined 81 percent from 2016 to 2017. At the same time, the number of M&A deals litigated in the Third Circuit more than doubled. It remains to be seen, however, if federal and other courts will continue to grant disclosure-only settlements.

Figure 1: M&A Litigation Summary
(by deal year)

	Average (2013–2016)	2016	2017
Number of M&A Deals Challenged by Shareholders	139	137	112
Percentage of M&A Deals Challenged by Shareholders	84%	71%	73%
Average Number of Lawsuits Filed per M&A Deal	4.2	2.8	2.8
Percentage of M&A Deal Litigation Voluntarily Dismissed	26%	39%	52%

Note: Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million.

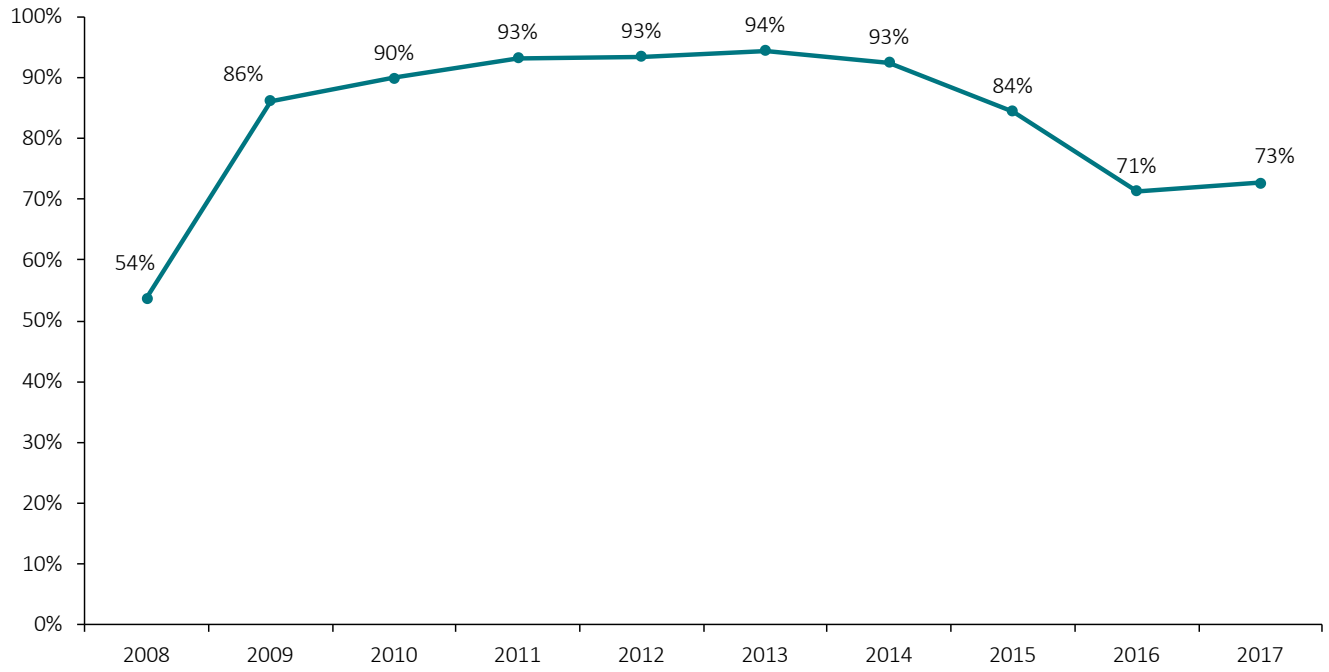
Filings

- A total of 112 M&A deals valued over $100 million had associated lawsuits in 2017 compared to 137 in 2016 (an 18 percent decline).
- Shareholders filed lawsuits in 71 and 73 percent of all M&A deals valued over $100 million announced in 2016 and 2017, respectively.
- Lawsuits were filed more slowly in 2016 and 2017 compared to pre-*Trulia* trends. In 2017, the first lawsuit was filed an average of 48 days after the deal announcement, compared to 40 days in 2016 and 21 days in 2015.

The rate of M&A litigation has declined following the 2016 Delaware decision in Trulia.

Figure 2: Percentage of M&A Deals Challenged by Shareholders

(by deal year)



Source: Thomson Reuters SDC; SEC Filings; ISS Securities Class Action Services; Dockets

Note: Percentages have been rounded to the nearest whole number. The percentage for 2017 includes deals that were pending as of February 9, 2018, and for which litigation had not yet been filed by that time. Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million.

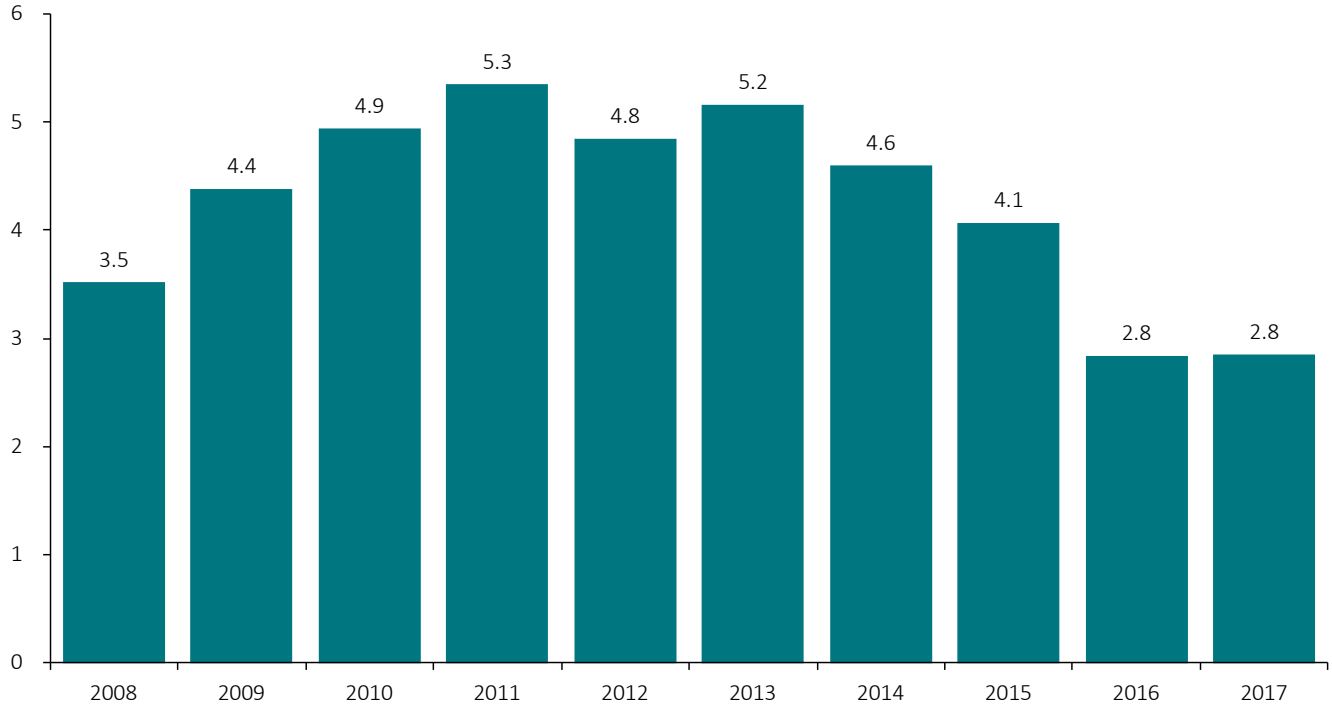
Lawsuits per Litigated Deal

- In 2016, in the immediate aftermath of *Trulia,* the average number of lawsuits per M&A deal declined by 32 percent.
- The low levels continued in 2017, with an average of 2.8 lawsuits per deal.

The average number of lawsuits per M&A deal in 2017 and 2016 was at a 10-year low.

Figure 3: Average Number of Lawsuits per M&A Deal

(by deal year)



Source: Thomson Reuters SDC; SEC Filings; ISS Securities Class Action Services; Dockets

Note: Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million.

Most Active Courts

- In 2017, the number of M&A deals litigated in federal court increased 20 percent, while state court filings declined.
- The Third Circuit was the most active federal court in 2017.
- The number of M&A deals litigated in Delaware declined 81 percent from 37 in 2016 to seven in 2017.
- In 2017, there were only three deals litigated in California state courts, a decrease of 81 percent from 16 in 2016.
- In 2016 and 2017, there were no deals with more than nine lawsuits filed.

In 2016 and 2017, there was a shift in activity from state to federal courts.

Figure 4: M&A Deals Litigated by Federal Court Circuit

	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	DC
2017	9	8	33	17	10	8	8	12	20	6	2	2
2016	5	5	15	9	8	7	7	4	23	9	5	0

Source: Thomson Reuters SDC; SEC Filings; ISS Securities Class Action Services; Dockets

Note: Represents the number of unique M&A deals litigated in a given circuit. If a deal has multiple lawsuits in the same circuit, only one is counted. Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million.

Figure 5: Most Litigated M&A Deals in 2017

Target Name	Acquirer Name	Number of Lawsuits
Akorn Inc.	Fresenius Kabi AG	9
ClubCorp Holdings Inc.	Apollo Global Management LLC	8
Rockwell Collins Inc.	United Technologies Corp.	7
DigitalGlobe Inc.	MacDonald Dettwiler & Associates Ltd.	6
Astoria Financial Corp.	Sterling Bancorp	6
KCG Holdings Inc.	Virtu Financial Inc.	6
Care Capital Properties Inc.	Sabra Health Care REIT Inc.	6
Rice Energy	EQT Corp.	6
Orbital ATK Inc.	Northrop Grumman Corp.	6

Source: Thomson Reuters SDC; SEC Filings; ISS Securities Class Action Services; Dockets

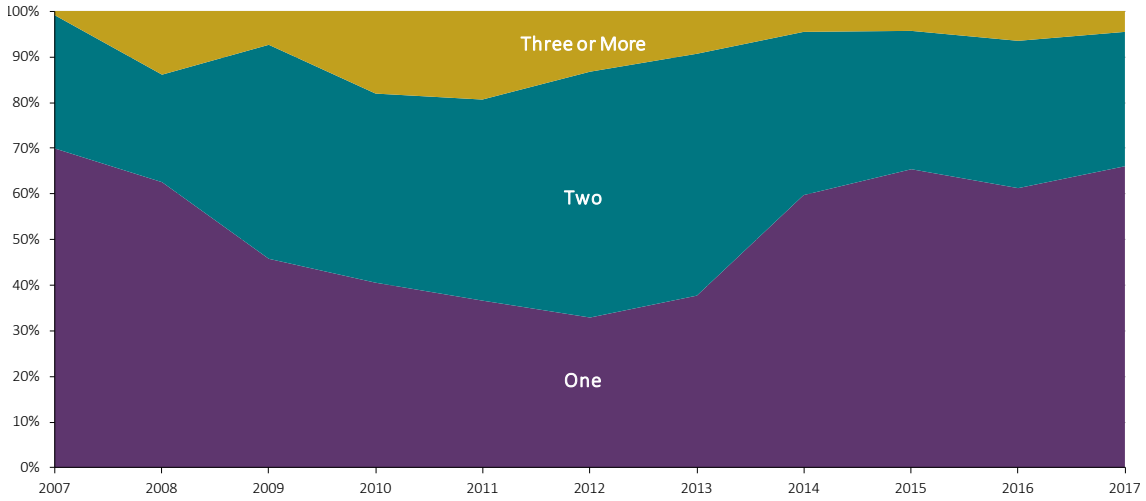
Note: Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million.

Litigation Jurisdictions

- In 2016 and 2017, the majority of M&A litigation (66 percent) was filed in a single jurisdiction, continuing a trend that began in 2014.
- For 2017 deals, only 4 percent were challenged in three or more jurisdictions, compared to 7 percent in 2016.
- For litigation in which the target was incorporated in Delaware, plaintiffs filed in Delaware for 6 percent of litigated deals in 2017 compared to 23 percent in 2016.

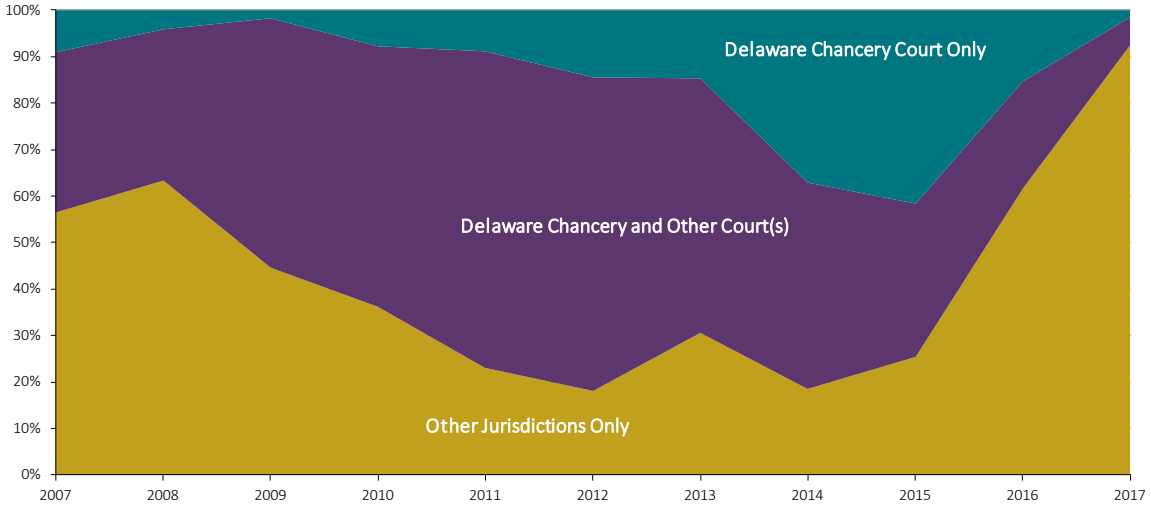
Plaintiffs filed in Delaware for only 6 percent of all litigated M&A deals in 2017, compared to 27 percent in 2016.

Figure 6: Number of Jurisdictions per M&A Litigation (by deal year)



Source: Thomson Reuters SDC; SEC Filings; ISS Securities Class Action Services; Dockets
Note: Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million.

Figure 7: Jurisdictions of Targets Incorporated in Delaware (by deal year)



Source: Thomson Reuters SDC; SEC Filings; ISS Securities Class Action Services; Dockets
Note: Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million.

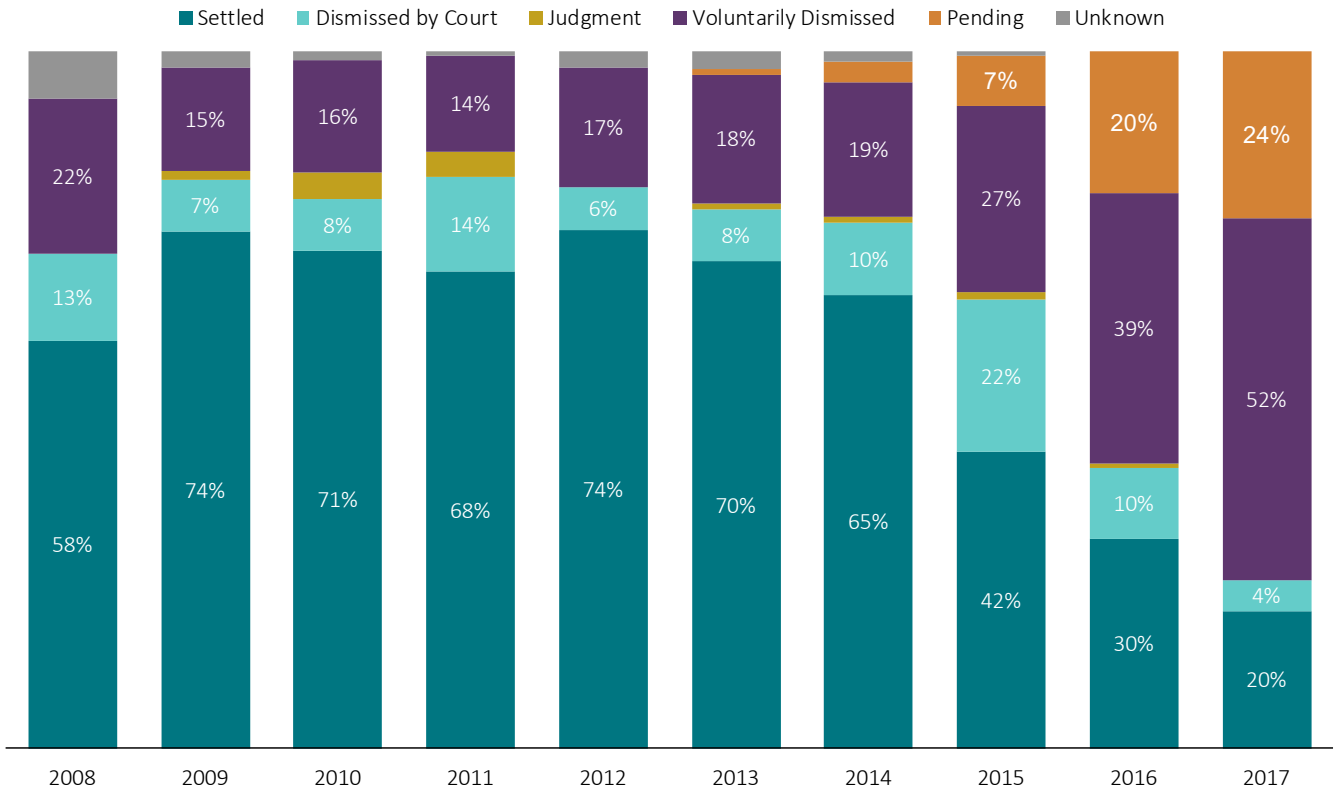
Litigation Resolution

- Between 2009 and 2014, more than 74 percent of M&A litigation was resolved before the deal closed.
- The rate of resolution prior to deal closing has steadily declined from 78 percent in 2012 to a 10-year low of 43 percent in 2017.
- Historically, of litigation that was resolved prior to closing, a large percentage of cases settled. The remainder was either voluntarily dismissed (withdrawn) or dismissed by courts.
- Settlement rates are considerably smaller for cases that were resolved post-closing.
- Voluntary dismissals in 2017 cases were 33 percent higher than in 2016. This is likely a reflection of the removal of the disclosure-only settlement option post-*Trulia*.

For the first time in a decade, more than 50 percent of cases were voluntarily dismissed.

Figure 8: Litigation Outcomes for All M&A Deals

(by deal year)



Source: Thomson Reuters SDC; SEC Filings; ISS Securities Class Action Services; Dockets

Note: Limited to suits filed on behalf of shareholders of public target companies in M&A deals valued over $100 million. Percentages may not add to 100 percent due to rounding.

Appraisal Litigation

M&A-related appraisal litigation in the Delaware Court of Chancery has surged in the past decade.

In appraisal litigation, shareholders submit their shares for valuation by the court instead of accepting the deal price.

The annual number of M&A transactions in which shareholders filed appraisal or quasi-appraisal actions in Delaware increased from a low of 17 in 2009 to a peak of 85 in 2016. This growth was concentrated between 2012 and 2016, with the number of petitions filed nearly quadrupling.

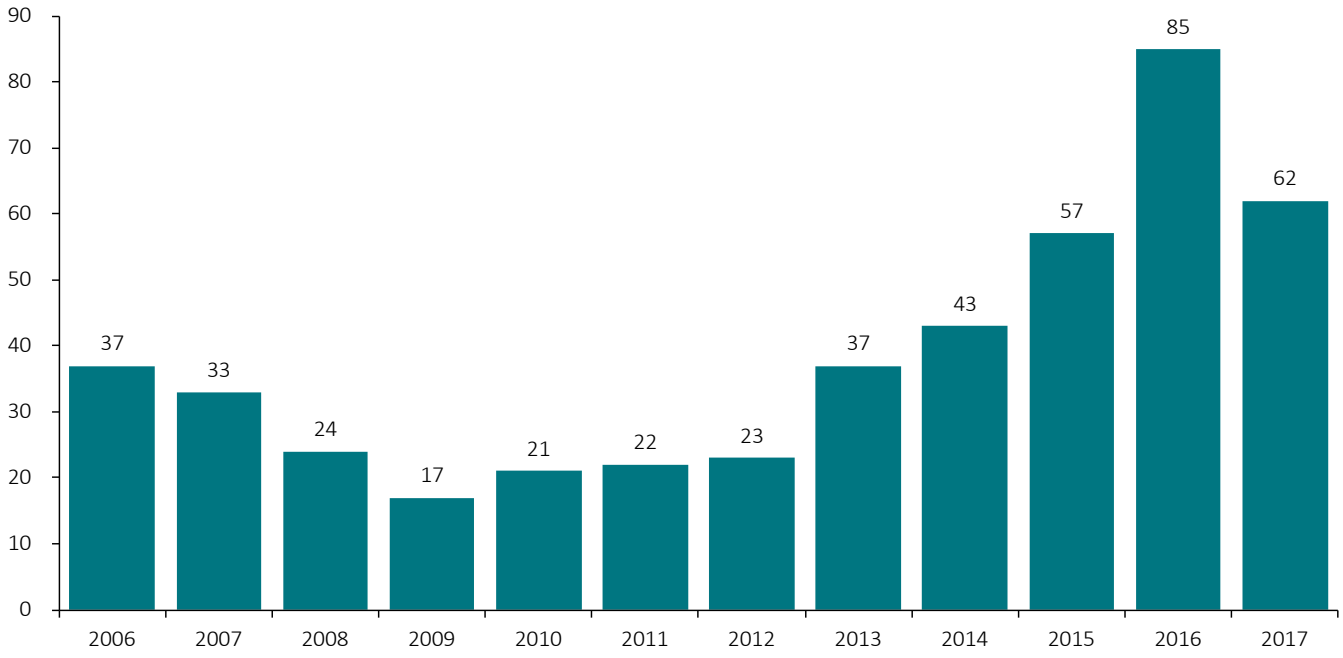
A forthcoming publication by Cornerstone Research will take a deeper dive into Delaware appraisal litigation trends—highlighting key market participants, filing rates, resolutions, and Chancery Court decisions.

A forthcoming publication by Cornerstone Research will take a deeper dive into Delaware appraisal litigation trends

Following the Delaware Supreme Court's decision in *In re Appraisal of Dell Inc.*, the Chancery Court seems to have come to a crossroads. Its decisions in *Verition Partners Master Fund Ltd. and Verition Multi-Strategy Master Fund Ltd. v. Aruba Networks Inc.*, and in *In re Appraisal of AOL Inc.*, appear to question how to determine fair value in appraisals.

Figure 9: Number of Appraisal Litigation Cases Filed in Delaware Court of Chancery

(by filing year)



Source: Courthouse News

Note: Delaware appraisal litigation cases consist of appraisal and quasi-appraisal petitions filed in the Delaware Court of Chancery.

Research Sample

The research sample in this report uses Thomson Reuters SDC to identify mergers above $100 million and where the target company is publicly traded.

Institutional Shareholder Services through Securities Class Action Services (ISS SCAS) is used to identify the lead case in each jurisdiction against the target company involved in the merger. Data on other challenges to the target company within the same jurisdiction as the lead case are collected using SEC filings and PACER docket information.

The sample contains 1,372 deals announced from November 19, 2006 through December 18, 2017. The analyses in this report are as of February 9, 2018.

Many publications quote, cite, or reproduce data, charts, or tables from Cornerstone Research reports. The author requests that you reference Cornerstone Research in any reprint, quotation, or citation of the figures or data in this report.

Please direct any questions to:

Ravi Sinha
415.229.8194
rsinha@cornerstone.com

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EXHIBIT 3

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Securities Class Action Filings

2021 Year in Review

Table of Contents

Table of Figures

Executive Summary

Overall filing volume plummeted in 2021, falling to 218 filings from 333 in 2020. This decline was largely due to reductions in M&A and core federal Rule 10b-5 filings without Section 11 allegations, which were down 82% and 17%, respectively. However, the typical filing size increased as median filing MDL and DDL rose 41% and 105%, respectively.

Core filings with allegations related to special purpose acquisition companies (SPACs) increased more than sixfold from 2020 to 2021 following the rise in SPAC IPOs. Federal Section 11 and state 1933 Act filings, however, were roughly in line with 2020—the federal-only share of these filings was the largest since 2014.

Number and Size of Filings

- Plaintiffs filed 218 **new class action securities cases** (filings) in federal and state courts in 2021, down 35% relative to 2020 and below the 1997–2020 average of 228. "Core" filings—those excluding M&A filings—fell 15% to 200.
- While the number of **IPOs** rose significantly in 2021, federal and state court class actions alleging **claims under the Securities Act of 1933** (1933 Act) remained roughly in line with 2020. (pages 21 and 23)
- **Disclosure Dollar Loss (DDL)** was largely in line with 2020, increasing by only 0.1% to $274 billion in 2021. **Maximum Dollar Loss (MDL)** decreased by 41% to $941 billion, due to a substantial drop in mega MDL filings. (pages 10, 12, and 28)

Other Measures of Filing Intensity

- The percentage of **U.S. exchange-listed companies** subject to filings decreased for the second straight year, from a record high of 8.9% in 2019 to 4.2% in 2021. (page 14)

Federal M&A and core federal Rule 10b-5 filings without Section 11 allegations had their largest percentage declines in the last decade.

Figure 1: Federal and State Class Action Filings Summary

(Dollars in Billions)

	Annual (1997–2020)			2020	2021
	Average	Maximum	Minimum		
Class Action Filings	228	427	120	333	218
Core Filings	*192*	*267*	*120*	*234*	*200*
Disclosure Dollar Loss (DDL)	$142	$331	$42	$273	$274
Maximum Dollar Loss (MDL)	$701	$2,046	$145	$1,599	$941

Note: This figure presents data on a combined federal and state filings basis. Filings in federal courts may have parallel cases filed in state courts. When parallel cases are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure's filing counts may not match those in Figures 4–8, 12, 14–19, 21, or 24–31.

Key Trends in Federal Filings

Core federal SPAC filings in 2021 increased more than sixfold relative to 2020. The overall decline in federal filings was driven by an 82% drop in M&A filings and a 17% drop in core federal Rule 10b-5 filings without Section 11 allegations. The percentage of S&P 500 firms with core federal filings in 2021 fell to the third-lowest value on record.

M&A Filings

- Federal filings of **M&A class actions**—those involving M&A transactions with Section 14 claims but no Rule 10b-5, Section 11, or Section 12(a) claims—decreased by 82% to the lowest level since 2014. (page 4)
- M&A filings continued to have a much higher rate of dismissal (92%) than core federal filings (48%) over the period 2011 to 2020. (page 17)

Federal SPAC Cases

- Core filings related to **SPACs** in 2021 increased more than sixfold relative to 2020 and more than fivefold relative to the 2019–2020 total. (page 5)
- One-third of all SPAC filings in 2021 involved the **auto industry**. (page 6)
- While nearly all federal SPAC filings were M&A filings in 2019, in 2021, all but one SPAC filing had Rule 10b-5 allegations. (page 8)

U.S. Issuers

- In 2021, the likelihood of core and M&A filings targeting **U.S. exchange-listed companies** dropped to their lowest combined level since 2014. (page 14)
- Core federal filings against **S&P 500 firms** in 2021 occurred at a rate of 2.2%, falling to the lowest level since 2015. (page 15)

Non-U.S. Issuers

- There were 41 core federal filings against **non-U.S. issuers**, a reversion to 2012–2019 levels after an all-time high in 2020. (page 25)
- The likelihood of a core federal filing against a non-U.S. issuer again surpassed the likelihood of such a filing against an S&P 500 company. (page 27)

By Industry

- All industries were within three filings of their 2020 levels, except for **Financial** and **Basic Materials**, which fell by a combined 17 filings. (page 29)

By Circuit

- The **Second** and **Ninth Circuits** had the highest combined share of total core federal filings for any two circuits since tracking began in 1997. (page 30)

Mega Federal Filings

- The number and total index value of **mega DDL and MDL** filings were down from 2020's highs, but remained above historical averages. (page 28)

Dismissal Rates by Plaintiffs' Counsel

- Complaints filed by the **three plaintiff law firms** that have most frequently filed first identified complaints continue to have higher dismissal rates than those filed by other plaintiffs' counsel. (page 31)

Trend Cases

- After 17 filings in 2020 and 10 filings in the first half of 2021, **COVID-19 filings** fell to seven in 2021 H2. (page 5)

New Developments

- Ninth Circuit Court of Appeals decision in *Pirani v. Slack Technologies Inc*. involving Section 11 claims arising out of the direct listing of registered and unregistered shares.
- Denial of class certification in *Stoyas v. Toshiba Corp*., a case involving claims relating to unsponsored American Depositary Receipts (ADRs) that were found to have been purchased outside the United States.
- Investigation by the Department of Justice and potential rulemaking by the SEC relating to short selling.

Featured: Annual Rank of Filing Intensity

Filings in 2021 continued to decline sharply from the record highs observed in 2019. Federal M&A filings fell to the lowest count since 2014, despite a substantial increase in M&A activity.[1] The number of 1933 Act filings in state courts has continued to decline since the Delaware Supreme Court ruling in *Sciabacucchi* in March 2020, while federal-only Section 11 filings have increased over the same period.

Of companies in the S&P 500 at the beginning of 2021, 11 were subject to a core federal filing, the third-lowest number since 2000. MDL fell 41% from 2020, while DDL rose by 0.1%. Median MDL and DDL both rose, by 41% and 105%, respectively.

Figure 2: Annual Rank of Measurements of Federal and State Filing Intensity

	2019	2020	2021
Number of Total Filings	1st	4th	10th
Core Filings	1st	4th	12th
M&A Filings	3rd	4th	9th
Size of Core Filings			
Disclosure Dollar Loss	2nd	4th	3rd
Maximum Dollar Loss	5th	2nd	6th
Percentage of U.S. Exchange-Listed Companies Sued			
Total Filings	1st	4th	7th
Core Filings	1st	3rd	6th
Percentage of S&P 500 Companies Subject to Core Federal Filings	4th	13th	19th

Note: This figure presents combined federal and state data in the rankings in all categories beginning in 2010, except the Percentage of S&P 500 Companies Subject to Core Federal Filings, which excludes state data. Filings in federal courts may have parallel cases filed in state courts. When parallel cases are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, the filing counts determining the rankings in this figure may not match those in Figures 4–8, 12, 14–19, 21, or 24–31. Rankings cover 1997 through 2020 with the exceptions of M&A filings, which have been tracked as a separate category since 2009, and analysis of the litigation likelihood of S&P 500 companies, which began in 2001. M&A filings are securities class actions filed in federal courts that have Section 14 claims, but no Rule 10b-5, Section 11, or Section 12(a) claims, and involve merger and acquisition transactions. Core filings are all state 1933 Act class actions and all federal securities class actions excluding those defined as M&A filings.

[1] According to *FactSet MergerMetrics*, the number of non-withdrawn mergers with a transaction value greater than $100 million and with a public company target traded on the NYSE or Nasdaq rose from 116 with announcement dates in 2020 to 208 with announcement dates in 2021.

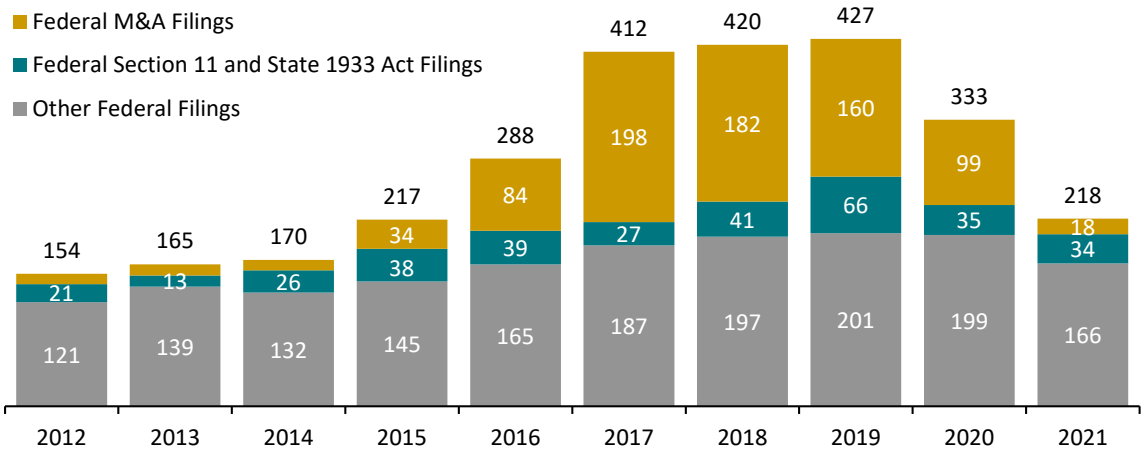
Combined Federal and State Filing Activity

- Plaintiffs filed 218 new securities class actions in federal and state courts, a 35% decline from 2020 and 45% lower than the 2017–2020 average of 398. Filing activity in 2021 was instead more in line with the 2012–2016 average of 199 filings.
- In 2021 both federal M&A and core federal Rule 10b-5 filings without Section 11 allegations had their largest percentage declines in the last decade, decreasing by 82% and 17%, respectively.

The number of class action filings dropped largely due to a decline in M&A and core federal Rule 10b-5 filings without Section 11 allegations.

- On the other hand, federal Section 11 and state 1933 Act filings declined only 3% from 2020, dropping from 35 to 34.
- Of these 34 filings, only eight were filed exclusively in state courts—a 43% decrease from 2020 and the lowest share since 2017.
- Of all federal Section 11 and state 1933 Act filings, 62% were federal-only filings, the highest share since 2014, compared to 37% in 2020.
- Parallel filings in state and federal courts fell from eight filings in 2020 to five filings in 2021.

Figure 3: Federal Section 11 and State 1933 Act Class Action Filings by Venue
2012–2021



	Federal Section 11 and State 1933 Act Filings									
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Federal Courts Only	13	12	21	21	12	11	9	13	13	21
State Courts Only	3	0	2	11	13	3	16	28	14	8
Parallel Filings	5	1	3	6	14	13	16	25	8	5
Total	21	13	26	38	39	27	41	66	35	34

Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; Institutional Shareholder Services' Securities Class Action Services (ISS' SCAS)

Note: This figure presents combined federal and state data. Filings in federal courts may have parallel cases filed in state courts. When parallel cases are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure's filing counts may not match those in Figures 4–8, 12, 14–19, 21, or 24–31. See Additional Notes to Figures for more detailed information.

Summary of Trend Cases

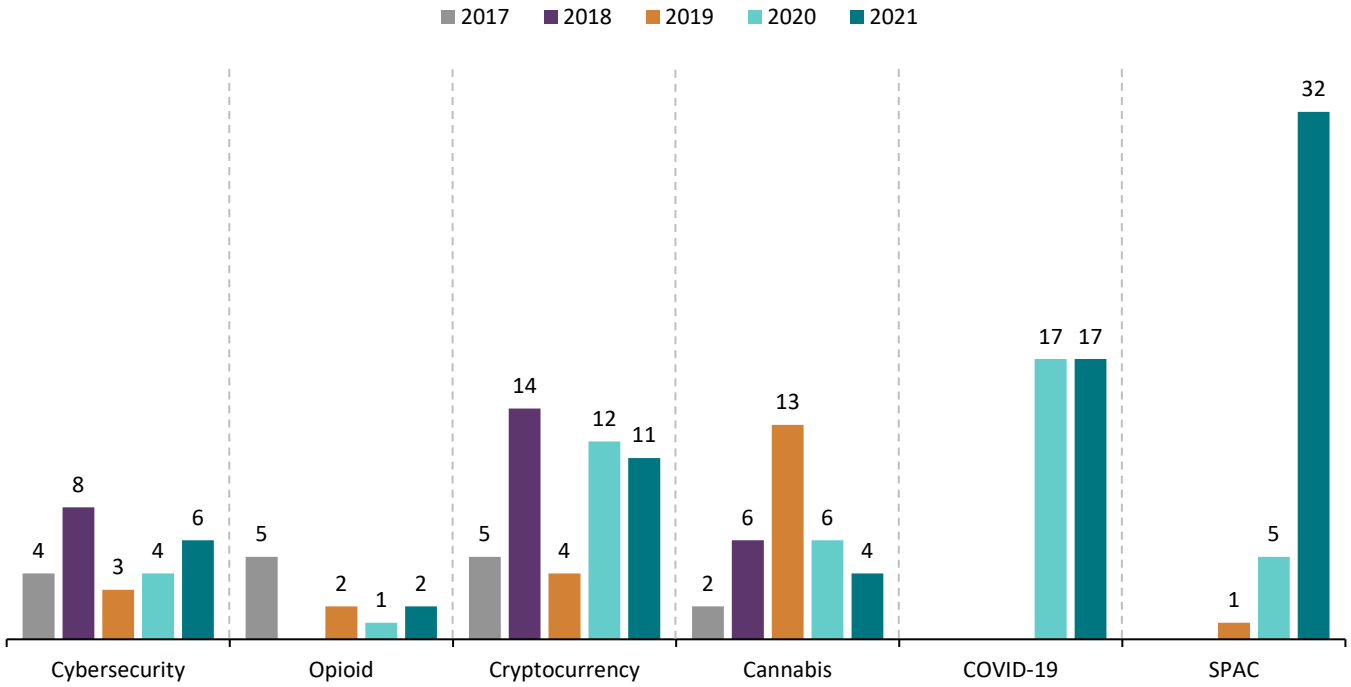
This figure highlights recent trends that have appeared in core filing activity.

- The most dominant trend in 2021 concerned SPACs, with 32 filings, followed by COVID-19 (17 filings) and cryptocurrency (11 filings).
- Federal SPAC filings increased more than sixfold from five in 2020 to 32 in 2021. Of these, 11 filings (34%) were related to the auto industry.
- COVID-19 filings fell from 10 in 2021 H1 to seven in 2021 H2. Of the 2021 H2 COVID-19 filings, five concerned companies that were alleged to have misrepresented temporary increases in demand due to the pandemic. Six of the 2021 H1 COVID-19 filings involved companies developing COVID vaccines, tests, masks, or treatments.
- Cryptocurrency filings remained elevated. Of these, two were against the same defendant (Coinbase Global Inc.). One filing against Coinbase Global contained allegations surrounding the definition of exchanges and securities.

Federal SPAC filings increased more than sixfold, while the number of COVID-19-related filings remained constant.

- There were six cybersecurity filings in 2021, four of which occurred in 2021 H2 (and all in a span of eight days in July). These filings were in response to reviews from the Cyberspace Administration of China.
- Cannabis-related filings fell from six in 2020 to four in 2021, only one of which occurred in 2021 H2.
- While the number of opioid filings remained low, one of the 2021 filings was especially large. About half of the total MDL associated with opioid filings since the first opioid filing in 2016 is attributable to a January 2021 filing.

Figure 4: Summary of Trend Cases—Core Federal Filings
2017–2021



Note: M&A SPAC filings are excluded from this exhibit. There were five, two, and one of such filings in 2019, 2020, and 2021, respectively. See Additional Notes to Figures for trend definitions and more detailed information.

Industry Comparison of Federal SPAC Filings

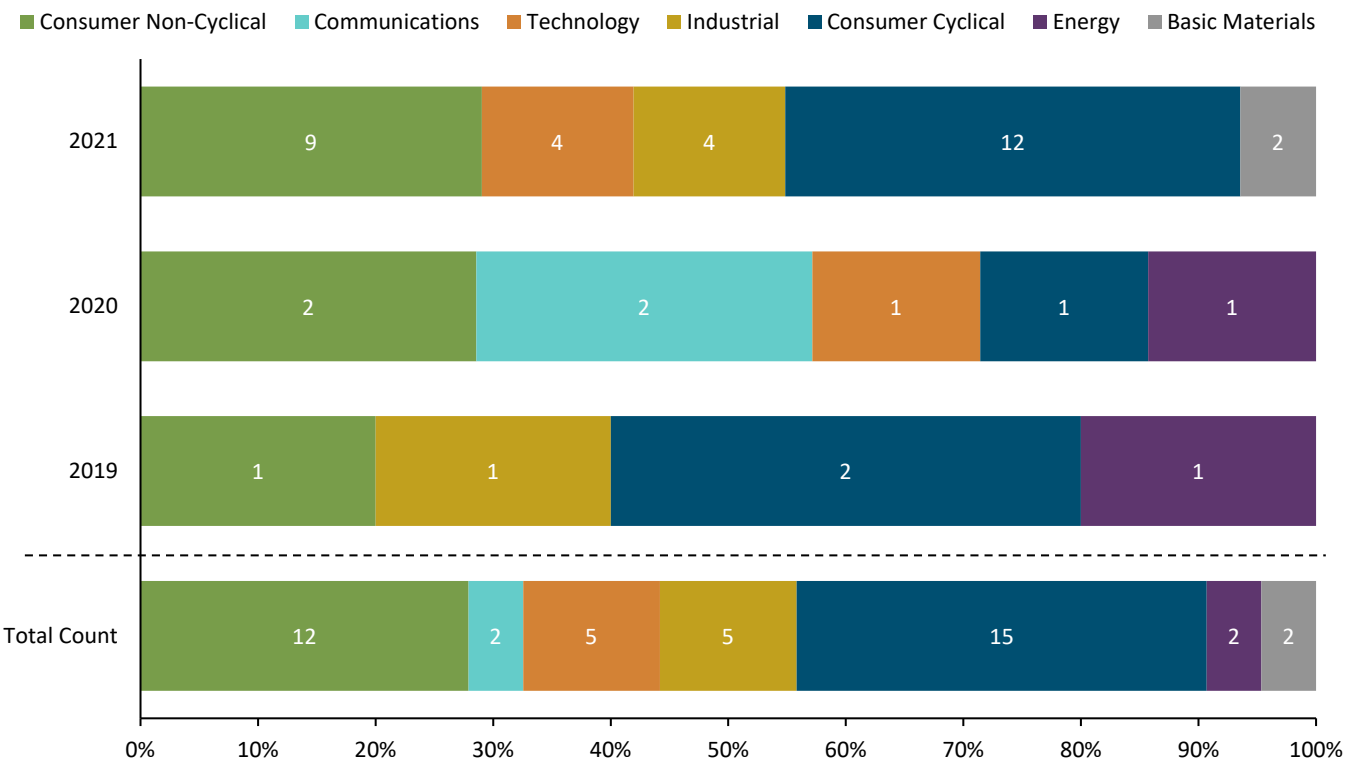
This analysis examines the industry composition associated with the substantial increase in federal filings against current and former SPACs observed over the last three years.

- Of the 15 SPAC Consumer Cyclical filings in the last three years, 10 had a subsector classification of Auto Manufacturers or Auto Parts & Equipment, nine of which were filed in 2021. Two other filings (for a total of 11 in 2021) were also related to the auto industry.
- Three subsectors—Entertainment, Retail, and Leisure Time—made up the remaining filings in the Consumer Cyclical sector.
- The Consumer Non-Cyclical sector was the second most common sector for SPAC filings.
- The Industrial sector had four SPAC filings in 2021, bringing its three-year total to five filings.

One-third of all SPAC filings in 2021 involved the auto industry.

- Among Consumer Non-Cyclical SPAC filings, healthcare-related subsectors appeared for the first time in 2021, accounting for six of the nine total Consumer Non-Cyclical filings. These subsectors comprised Biotechnology (one filing), Healthcare-Services (three filings), Healthcare-Products (one filing), and Pharmaceuticals (one filing).
- Consumer Non-Cyclical SPAC filings in 2019–2021 also included the following subsectors: Commercial Services (three filings), Food (one filing), and Agriculture (one filing).

Figure 5: Filings by Industry—All Federal SPAC Filings



Note: M&A SPAC filings are included in this exhibit. Filings with missing sector information or infrequently used sectors are excluded. Some filings in which the security at issue could not be used to calculate market capitalization may also be excluded. As a result, numbers in this chart may not match other total SPAC counts listed in the report. See Additional Notes to Figures for more detailed information.

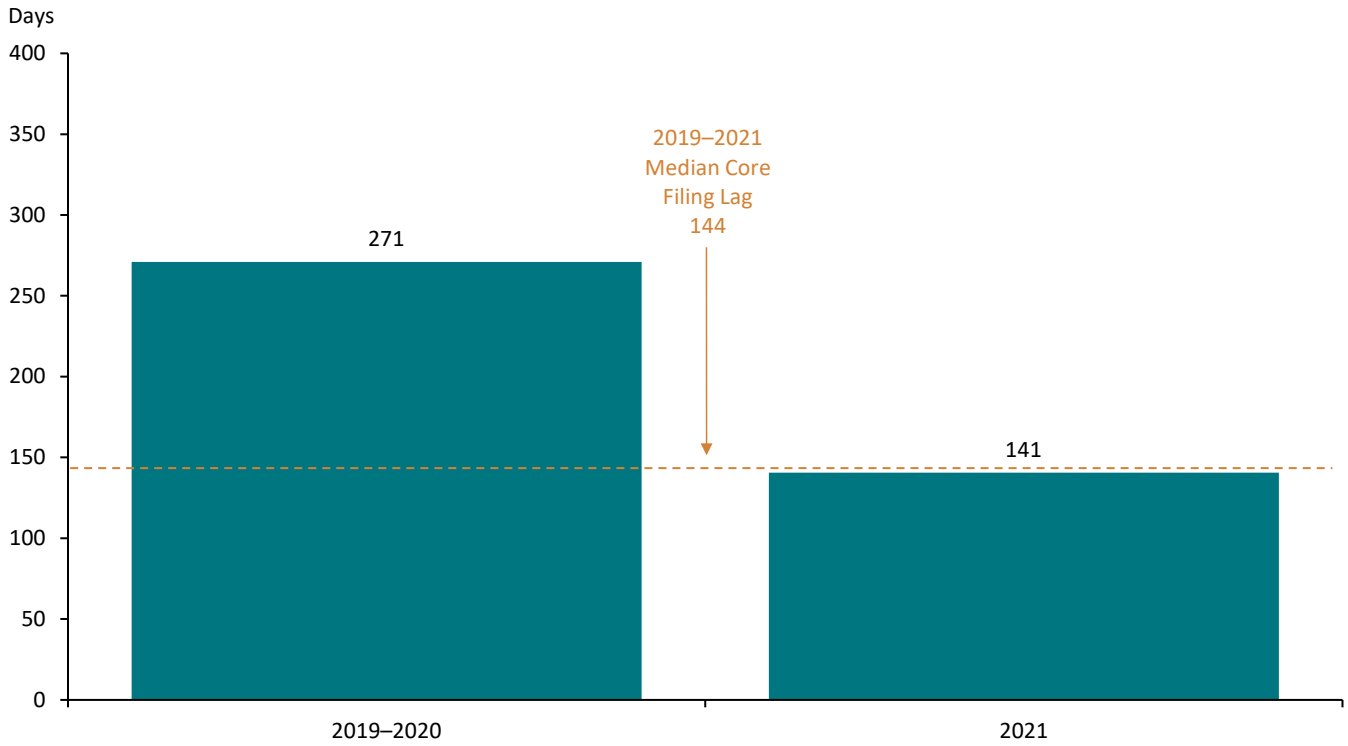
Lag between De-SPAC Transaction and Core Federal Filings

This analysis reviews the median number of days between the closing date of the SPAC merger transaction (De-SPAC Transaction) and the filing date of a core federal securities class action.

- The median filing lag after a De-SPAC Transaction was much greater in 2019–2020 (271 days) than it was in 2021 (141 days).
- The 2021 median filing lag after a De-SPAC Transaction (141 days) is only slightly less than the overall 2019–2021 median filing lag (144 days, or roughly four and a half months).

From 2019 through 2021, the median filing lag for a SPAC subject to a core federal filing was roughly four and a half months.

Figure 6: Median Lag between De-SPAC Transaction and Core Federal SPAC Filings 2019–2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; *SPAC Insider*

Note: Federal M&A SPAC filings are not considered, as they typically occur before the closing date of the De-SPAC Transaction. Additionally, the analysis excludes two filings against SPACs that did not complete the merger transactions referenced in the filing and one filing against a SPAC that was made before the merger transaction was completed. See Additional Notes to Figures for more detailed information.

Federal SPAC Filing Allegations

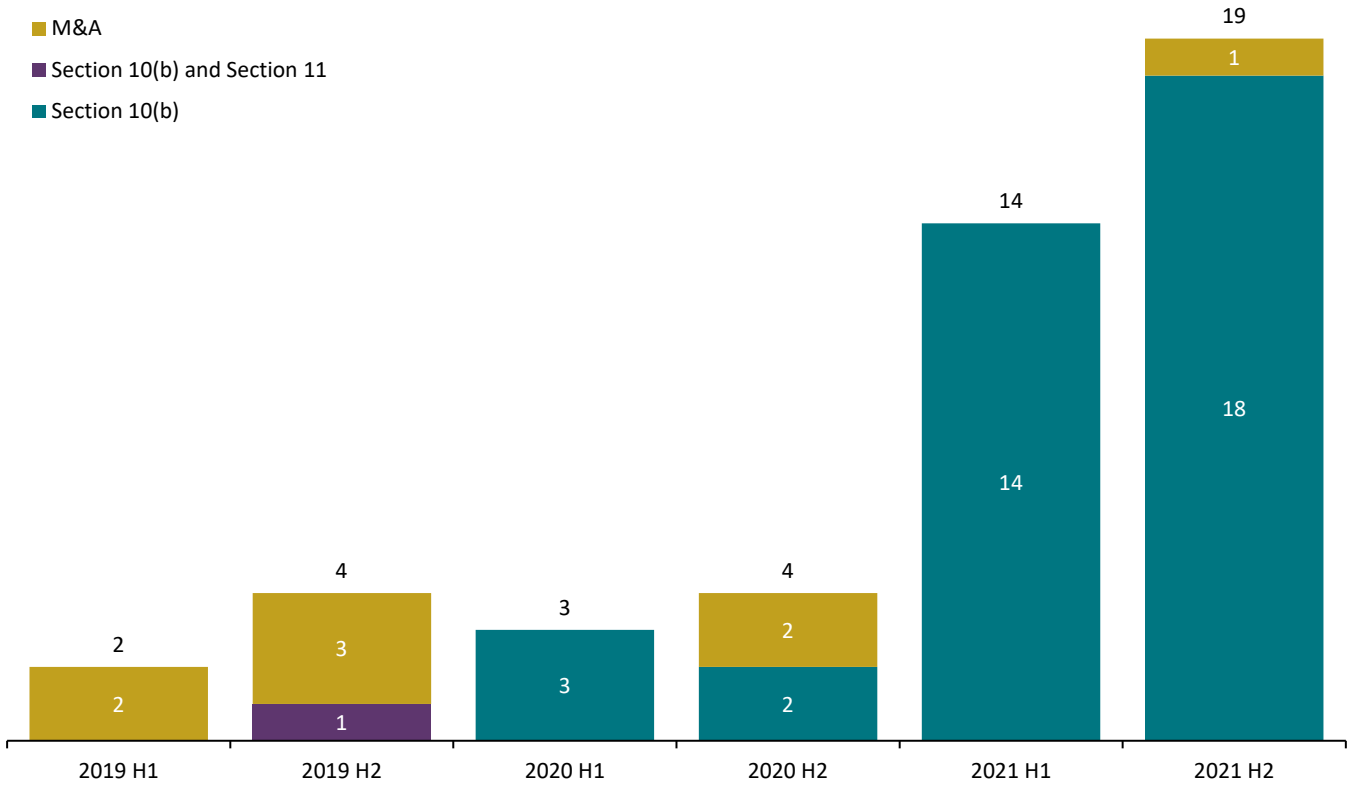
The figure below illustrates how the types of allegations in filings against current and former SPACs have changed over time. Allegations are based on first identified complaints.

- According to *SPAC Insider*, as of December 31, 2021, 291 SPAC merger transactions have closed since the start of 2019. Over this same period, there have been 46 federal SPAC filings.
- This equates to a core litigation rate of about 13%, slightly above the *cumulative* core litigation rate that recent newly public issuers have faced in the first two years after IPOs.[1]

The rate of core filings involving SPACs is approximately 13%.

- While nearly all federal SPAC filings were M&A filings in 2019, in 2021, only one of the 33 SPAC filings had Section 14 allegations while 32 had Section 10(b) allegations.
- Over the last three years, only one federal SPAC filing has included Section 11 allegations.
- Over the last two years, The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray LLP accounted for 73% of first identified core federal SPAC filings, compared to 61% for all first identified core federal non-SPAC filings.
- In 37% of all 2019–2021 federal SPAC filings, one or more stock-price drops was alleged to have resulted from a short-seller report.

Figure 7: Federal SPAC Filing Allegations
2019–2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; *SPAC Insider*
Note: SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future. These include current and former SPACs. One filing in 2021 included both Section 10(b) and M&A allegations. This filing is characterized as Section 10(b) rather than M&A.

[1] See Appendix 5: Litigation Exposure for IPOs in the Given Periods—Core Filings.

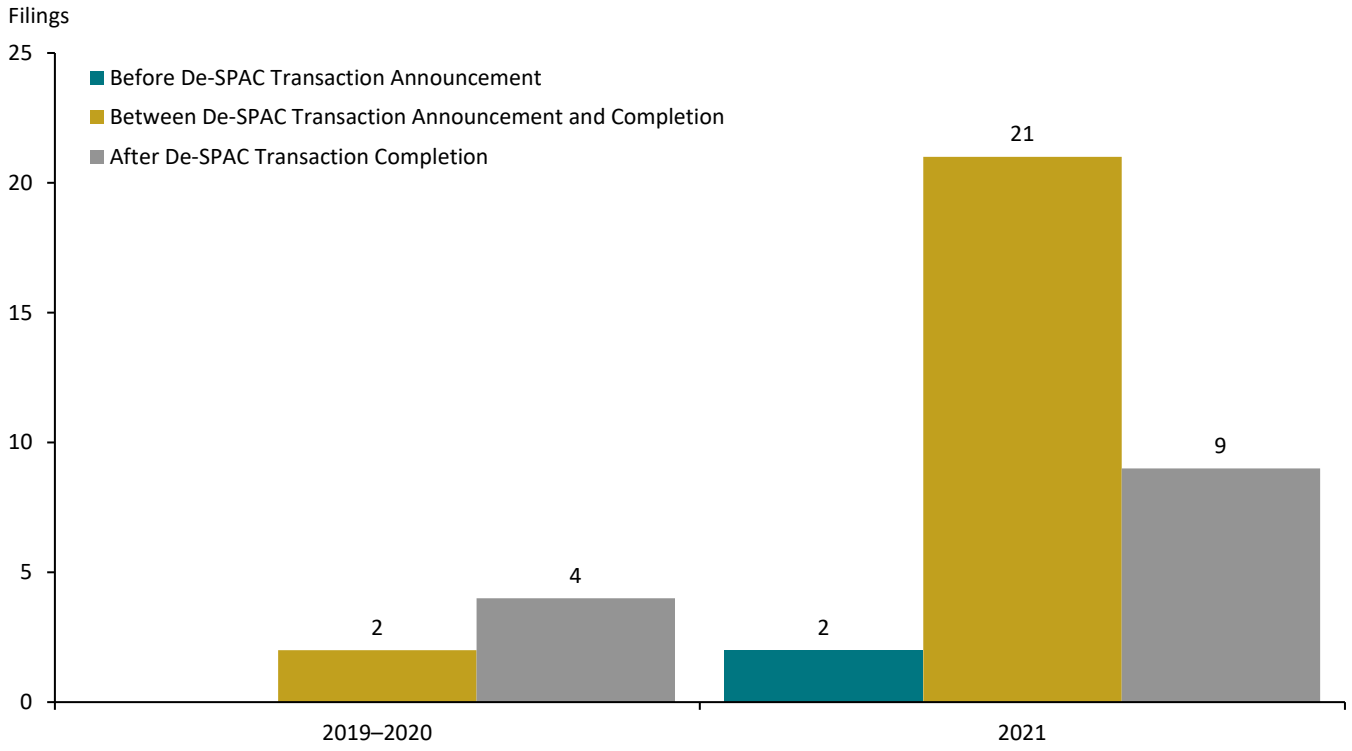
New: SPAC Filing Class Period Start Date Analysis

The following figure shows the relationship among all core federal SPAC filings between their alleged class period start dates and their respective De-SPAC Transaction announcement and completion dates.

Since 2019, 61% of all core federal SPAC filings alleged a class period start date between the De-SPAC Transaction announcement date and the completion of the transaction.

- 2021 was the first year in which any core federal SPAC complaint alleged a class period start date before the De-SPAC Transaction announcement date. This occurred in two of the 32 core federal SPAC filings in 2021.
- Of the core federal SPAC filings in 2021 that did not allege a class period start date before the De-SPAC Transaction date, 70% alleged a class period start date between the De-SPAC Transaction announcement and completion dates.
- Total core federal SPAC filings increased dramatically in 2021 to 533% of the combined 2019–2020 count of such filings.

Figure 8: Core Federal SPAC Filing Class Period Start Date Analysis
2019–2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; *SPAC Insider*

Note: M&A SPAC filings are excluded from this exhibit. SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future. These include current and former SPACs.

Market Capitalization Losses for Federal and State Filings

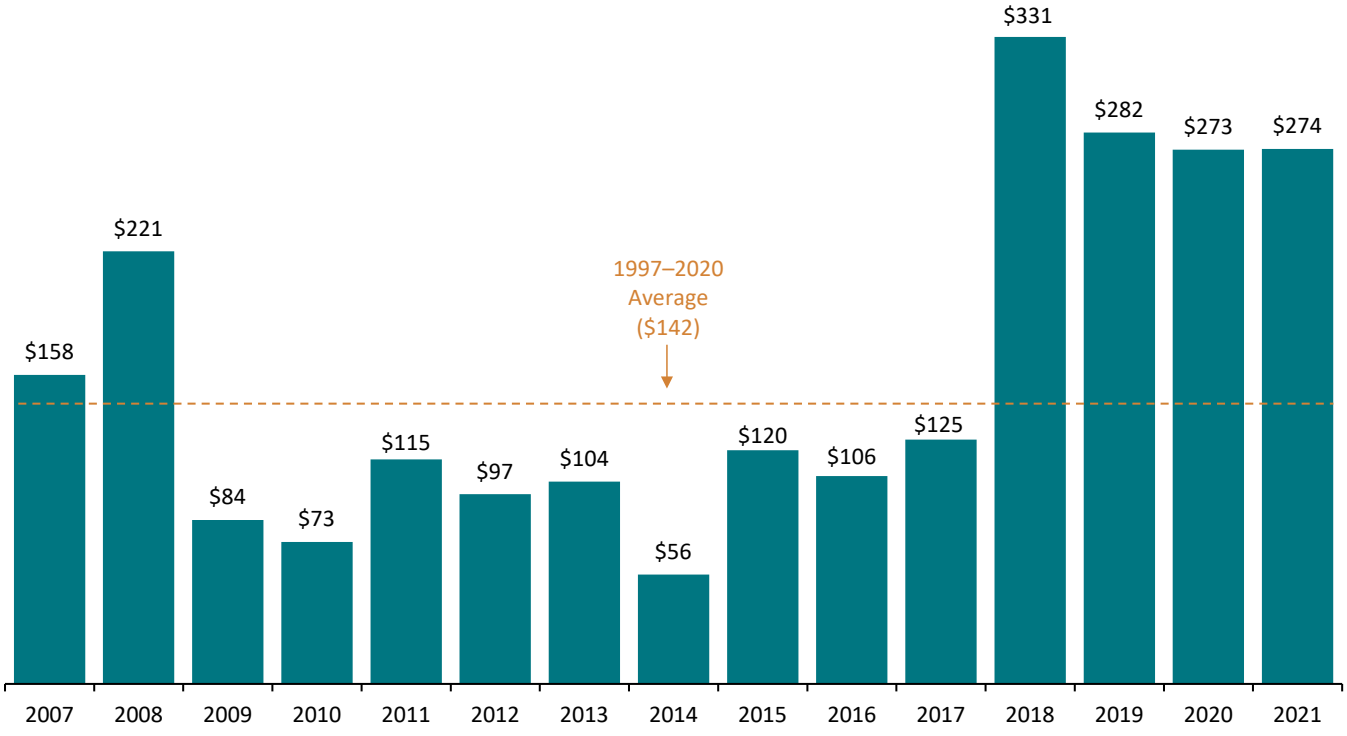
Disclosure Dollar Loss Index® (DDL Index®)

This index measures the aggregate annual DDL for all federal and state filings. DDL is the dollar-value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. See the Glossary for additional discussion on market capitalization losses and DDL.

The DDL Index remained at the previous year's level, well above historical averages.

- The DDL Index of $274 billion remained virtually unchanged from the previous year, although down 17% from the all-time high in 2018. The 2021 DDL index value remained substantially higher than the 1997–2020 average.
- As shown in Figure 10, the 2021 median DDL per filing more than doubled the 2020 median, reversing a two-year decline. See Appendix 1 for DDL totals, averages, and medians from 1997 to 2020.
- There were 11 mega DDL filings in state and federal courts in 2021, accounting for 57% of total DDL, or $157 billion.

Figure 9: Disclosure Dollar Loss Index® (DDL Index®)
2007–2021
(Dollars in Billions)

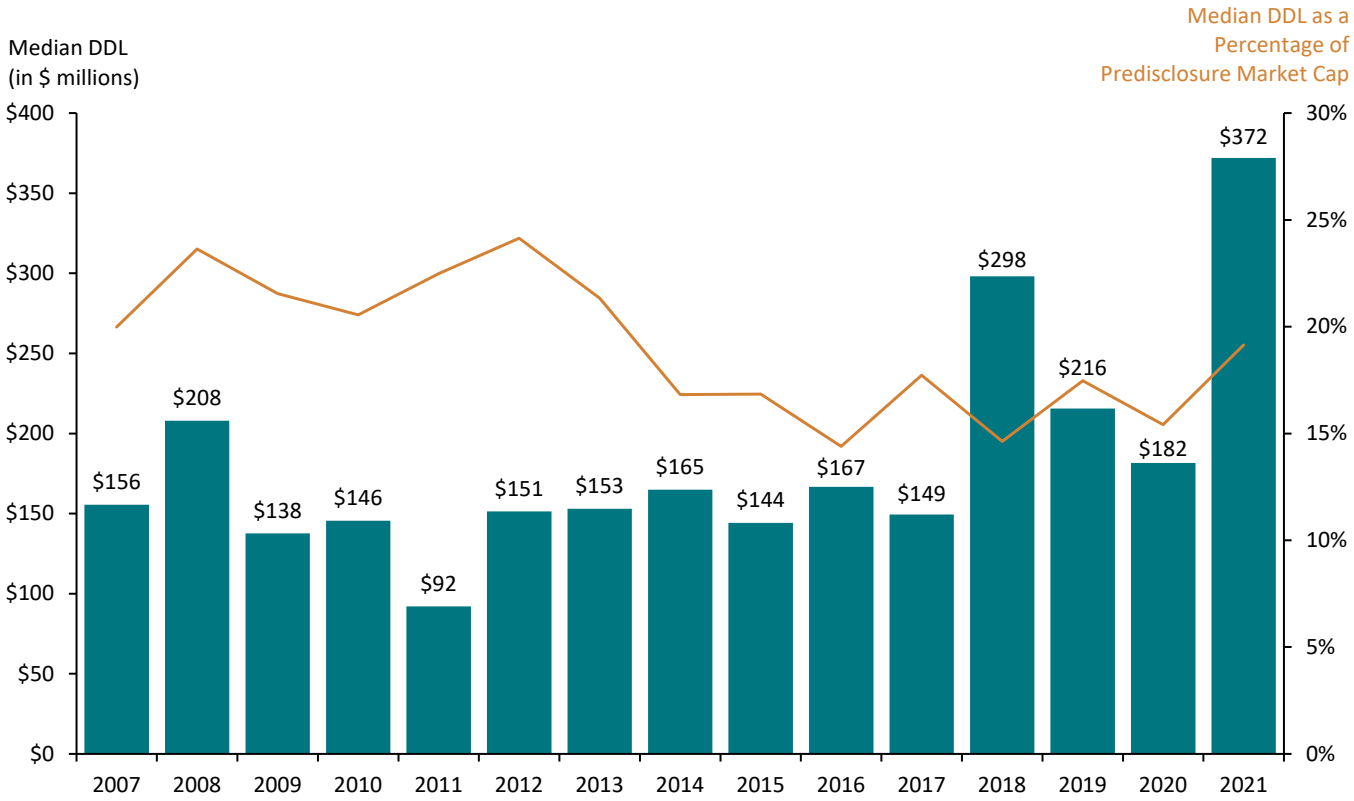


Note: This figure begins including DDL associated with state 1933 Act filings in 2010. As a result, this figure's DDL Index will not match those in Figure 27 or Appendices 6–8, which summarize federal filings. DDL associated with parallel class actions is only counted once in this figure.

- As shown by the gold line in the figure below, since 2014, the typical (i.e., median) percentage stock price drop at the end of the class period has oscillated between about 15% and 18% of the predisclosure market capitalization. That measure was 19% in 2021, slightly higher than 2017 and 2019 levels.
- 2021 had the highest median DDL per filing on record, 163% above the 1997–2020 average.
- This record-high level of median DDL is the first time this metric has exceeded $300 million and is only the fourth time it has exceeded $200 million.

Median DDL in 2021 more than doubled its 2020 measure, reaching a record high, while the median value of DDL as a percentage of predisclosure market capitalization rose to 19%, slightly above 2014 to 2020 levels.

Figure 10: Median Disclosure Dollar Loss
2007–2021



Note: This figure begins including DDL associated with state 1933 Act filings in 2010. As a result, this figure's DDL Index will not match those in Figure 27 or Appendices 6–8, which summarize federal filings. DDL associated with parallel class actions is only counted once in this figure.

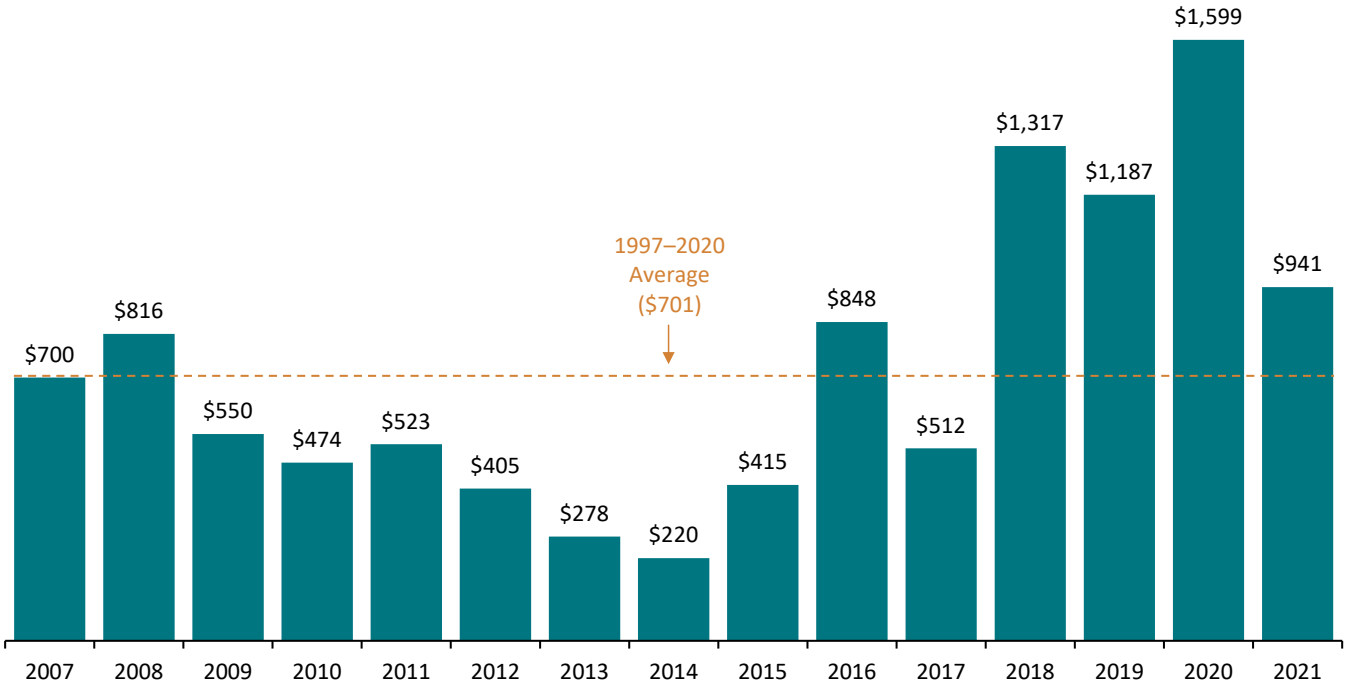
Maximum Dollar Loss Index® (MDL Index®)

This index measures the aggregate annual MDL for all federal and state filings. MDL is the dollar-value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. See the Glossary for additional discussion on market capitalization losses and MDL.

- The MDL Index sharply declined 41% to $941 billion, but was still more than 34% above the 1997–2020 average. See Appendix 1 for MDL totals, averages, and medians from 1997 to 2021.
- Despite the MDL Index's sharp decline, the 2021 median MDL of $1.419 billion was the second highest on record, 103% above the 1997–2020 average. This is slightly below the record level of $1.494 billion in 2002, but well above the third-highest year, 2008, with $1.077 billion. See Appendix 1.
- There were 20 mega MDL filings in federal courts in 2021—lower than in 2020 but still 40% above the 1997–2020 average. See Figure 27.
- The 22 mega MDL filings in both state and federal courts accounted for $640 billion, or 68%, of total MDL.

The MDL Index sharply declined by 41%, falling under $1 trillion for the first time since 2017.

Figure 11: Maximum Dollar Loss Index® (MDL Index®)
2007–2021
(Dollars in Billions)



Note: This figure begins including MDL associated with state 1933 Act filings in 2010. As a result, this figure's MDL Index will not match those in Figure 27 or Appendices 6–8, which summarize federal filings. MDL associated with parallel class actions is only counted once in this figure.

Classification of Federal Complaints

- Of the 2021 core federal filings, 14% contained a Section 11 claim (up from 10% in 2020).
- Section 12(a) claims decreased from 11% of core federal filings in 2020 to 6% in 2021.
- Core federal filings with allegations of internal control weaknesses declined by nearly 50%, from 18% in 2020 to only 9% in 2021, the lowest level over the last five years. Similarly, allegations related to announced restatements dropped to just 3%, also the lowest level over the last five years.

Rule 10b-5 claims were asserted in 91% of core federal filings in 2021, the highest level since 2017.

- Core federal filings with allegations of announced internal control weaknesses decreased from 7% in 2020 to 4% in 2021, continuing a decline from 2019.

Figure 12: Allegations Box Score—Core Federal Filings

	Percentage of Filings[1]				
	2017	2018	2019	2020	2021
Allegations in Core Federal Filings[2]					
Rule 10b-5 Claims	93%	86%	87%	85%	91%
Section 11 Claims	12%	10%	16%	10%	14%
Section 12(a) Claims	4%	10%	7%	11%	6%
Misrepresentations in Financial Documents[3]	100%	95%	98%	90%	90%
False Forward-Looking Statements	46%	48%	47%	43%	43%
Trading by Company Insiders	3%	5%	5%	4%	6%
Accounting Violations[4]	22%	23%	23%	27%	22%
Announced Restatement[5]	6%	5%	8%	5%	3%
Internal Control Weaknesses[6]	14%	18%	18%	18%	9%
Announced Internal Control Weaknesses[7]	7%	7%	10%	7%	4%
Underwriter Defendant	8%	8%	11%	9%	10%
Auditor Defendant[8]	0%	0%	0%	0%	0%

Note:

1. The percentages do not add to 100% because complaints may include multiple allegations.
2. Core federal filings are all federal securities class actions excluding those defined as M&A filings.
3. First identified complaint (FIC) includes alleged misrepresentations of information in financial documents, including, but not limited to, those filed with the U.S. Securities and Exchange Commission (SEC) (e.g., Form 10-Ks and registration statements) and press releases announcing financial results.
4. FIC includes allegations of U.S. GAAP violations or violations of other reporting standards such as IFRS. In some cases, plaintiff(s) may not have expressly referenced violations of U.S. GAAP or other reporting standards; however, the allegations, if true, would represent violations of U.S. GAAP or other reporting standards.
5. FIC includes allegations of Accounting Violations and refers to an announcement during or subsequent to the class period that the company will restate, may restate, or has unreliable financial statements.
6. FIC includes allegations of internal control weaknesses over financial reporting.
7. FIC includes allegations of internal control weaknesses and refers to an announcement during or subsequent to the class period that the company has internal control weaknesses over financial reporting.
8. In each of 2018, 2019, and 2020, there was one FIC with allegations against an auditor defendant.
9. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

U.S. Exchange-Listed Companies

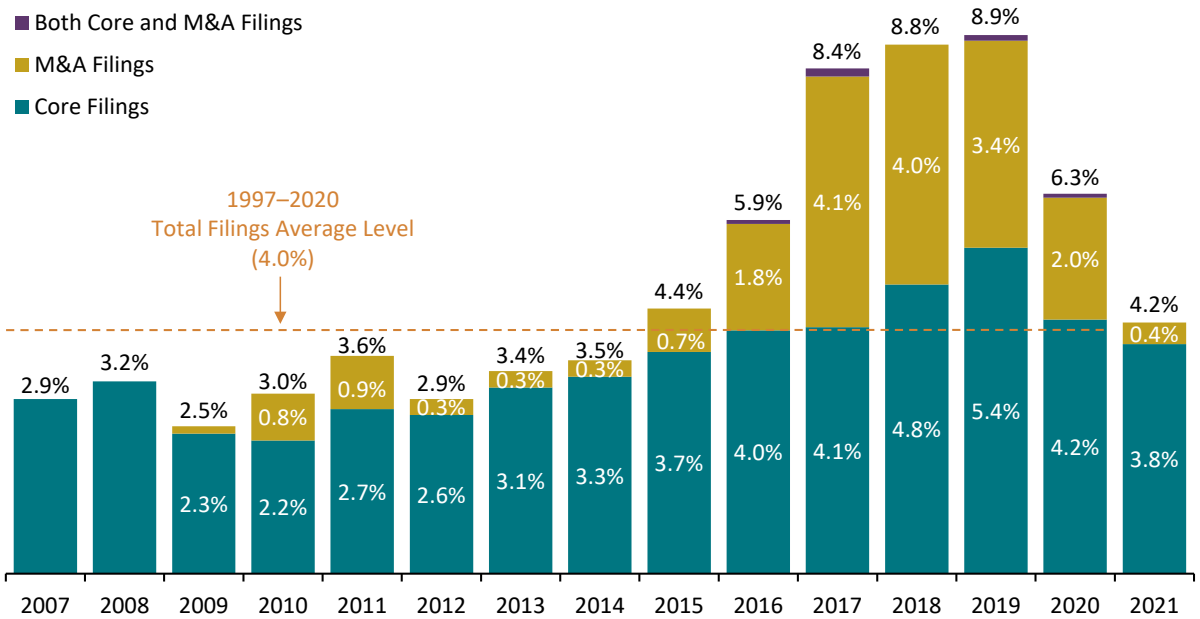
The percentage of companies subject to filings is calculated as the unique number of companies listed on the NYSE or Nasdaq subject to federal or state securities fraud class actions in a given year divided by the unique number of companies listed on the NYSE or Nasdaq in the same year.

- The percentage of companies subject to filings decreased for the second year in a row, falling to 4.2%, its lowest point in seven years and in line with the 1997–2020 average level of 4.0%. Similarly, the percentage of companies subject to core filings decreased to its lowest point in six years (3.8%).
- While M&A class action litigation in federal courts has subsided, the risk of core stock price drop litigation remains elevated above pre-2015 levels, even after two consecutive declines from an all-time high of 5.4% in 2019.

While lower than in recent years, the likelihood of stock drop filings targeting U.S. exchange-listed companies is still higher than it was at the top of the credit crisis.

- The percentage of all companies subject to M&A filings fell to 0.4%, putting it at levels similar to those prior to 2016.
- Filing volume was down in 2021 for firms listed on both exchanges, but total filing size rose for firms listed on Nasdaq (total DDL rose from $120 million to $163 million). The decline in total filings for NYSE-listed firms (42%) was steeper than that for firms listed on Nasdaq (27%). See Appendix 8 for more information about filings by exchange.

Figure 13: Percentage of U.S. Exchange-Listed Companies Subject to Federal or State Filings
2007–2021



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Number of Firms	5,467	5,339	5,042	4,764	4,660	4,529	4,411	4,416	4,578	4,593	4,411	4,406	4,318	4,514	4,759
Percent Change	(1.0%)	(2.3%)	(5.6%)	(5.5%)	(2.2%)	(2.8%)	(2.6%)	0.1%	3.7%	0.3%	(4.0%)	(0.1%)	(2.0%)	4.5%	5.4%

Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Center for Research in Security Prices (CRSP)
Note: This figure presents combined federal and state data. Filings in federal courts may have parallel cases filed in state courts. When parallel cases are filed in different years, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. The figure begins including issuers facing suits in state 1933 Act filings in 2010. See Additional Notes to Figures for more detailed information.

Heat Maps: S&P 500 Securities Litigation™ for Federal Core Filings

The Heat Maps analysis illustrates federal court securities class action activity by industry sector for companies in the S&P 500 index. Starting with the composition of the S&P 500 at the beginning of each year, the Heat Maps examine each sector by:

(1) The percentage of these companies subject to new securities class actions in federal court during each calendar year.

(2) The percentage of the total market capitalization of these companies subject to new securities class actions in federal court during each calendar year.

- Of the companies in the S&P 500 at the beginning of 2021, approximately one in 45 (2.2%) was subject to a core federal filing. This percentage is the lowest since 2015, and the third lowest on record. See Appendix 2A for percentage of companies by sector from 2001 to 2021.

The likelihood of an S&P 500 company being sued continued to decline after a decade-high in 2018.

- The Consumer Discretionary, Financials/Real Estate, Health Care, and Utilities sectors all had no federal filings, which has not occurred for any sector since 2015.
- The percentage of companies subject to core federal filings in the Consumer Staples, Energy/Materials, and Communication Services/Telecommunications/ Information Technology sectors more than doubled relative to 2020.

Figure 14: Heat Maps of S&P 500 Securities Litigation™ Percentage of Companies Subject to Core Federal Filings

	Average 2001–2020	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Consumer Discretionary	5.3%	4.9%	8.4%	1.2%	0.0%	3.6%	8.5%	10.0%	3.1%	8.1%	0.0%
Consumer Staples	3.7%	2.4%	0.0%	0.0%	5.0%	2.6%	2.7%	11.8%	12.1%	3.1%	6.3%
Energy/Materials	1.6%	2.7%	0.0%	1.3%	0.0%	4.5%	3.3%	1.8%	3.7%	1.9%	5.7%
Financials/Real Estate	7.5%	3.7%	0.0%	1.2%	1.2%	6.9%	3.3%	7.0%	2.0%	5.3%	0.0%
Health Care	8.9%	1.9%	5.7%	0.0%	1.9%	17.9%	8.3%	16.1%	12.9%	6.3%	0.0%
Industrials	4.1%	1.6%	0.0%	4.7%	0.0%	6.1%	8.7%	8.8%	10.1%	2.7%	1.4%
Communication Services/ Telecommunications/ Information Technology	6.3%	3.8%	9.1%	0.0%	4.2%	6.8%	8.5%	12.7%	10.0%	2.0%	5.1%
Utilities	5.3%	0.0%	0.0%	0.0%	3.4%	3.4%	7.1%	7.1%	6.9%	7.1%	0.0%
All S&P 500 Companies	5.5%	3.0%	3.4%	1.2%	1.6%	6.6%	6.4%	9.4%	7.2%	4.4%	2.2%

0% | 0–5% | 5–15% | 15–25% | 25%+

Note:

1. The figure is based on the composition of the S&P 500 as of the last trading day of the previous year. Sectors are based on the Global Industry Classification Standard (GICS), which differ from those in the Bloomberg Industry Classification System used in Figures 5 and 28.

2. Percentage of Companies Subject to Core Federal Filings equals the number of companies subject to new securities class action filings in federal courts in each sector divided by the total number of companies in that sector.

3. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017. In 2018, the Telecommunication Services sector was incorporated into a new sector, Communication Services. With this name change, all companies previously classified as Telecommunication Services and some companies classified as Consumer Discretionary (such as Netflix, Comcast, and CBS) and Information Technology (such as Alphabet and Facebook) were reclassified into the Communication Services sector.

4. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

- The percentage of total market capitalization of S&P 500 companies subject to core federal filings rose from 4.3% in 2020 to 5.1% in 2021. See Appendix 2B for market capitalization percentage by sector from 2001 to 2021.
- The Consumer Staples sector's percentage of market capitalization subject to core federal filings increased from 1.8% in 2020 to 17.7% in 2021.
- The Energy/Materials sector's percentage of market capitalization subject to core federal filings also increased dramatically, from 0.4% in 2020 to 12.0% in 2021.
- The Financials/Real Estate sector continued to fluctuate annually between low litigation percentages (<5%) and high litigation percentages (>10%) with its drop from 16.9% in 2020 to 0% in 2021.

In five of the eight sectors, the percentage of market capitalization subject to core federal filings fell from the previous year.

Figure 15: Heat Maps of S&P 500 Securities Litigation™ Percentage of Market Capitalization Subject to Core Federal Filings

	Average 2001–2020	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Consumer Discretionary	4.5%	1.6%	4.4%	2.5%	0.0%	2.8%	8.2%	4.7%	0.5%	2.2%	0.0%
Consumer Staples	4.2%	14.0%	0.0%	0.0%	1.9%	1.0%	6.7%	15.2%	9.1%	1.8%	17.7%
Energy/Materials	2.7%	0.9%	0.0%	0.2%	0.0%	19.8%	2.3%	1.4%	1.2%	0.4%	12.0%
Financials/Real Estate	14.5%	11.0%	0.0%	0.3%	3.0%	11.9%	1.5%	12.5%	2.2%	16.9%	0.0%
Health Care	11.5%	0.8%	4.4%	0.0%	3.1%	13.2%	2.7%	26.3%	6.6%	4.7%	0.0%
Industrials	8.9%	1.2%	0.0%	1.7%	0.0%	8.7%	22.3%	19.4%	21.6%	4.9%	0.5%
Communication Services/ Telecommunications/ Information Technology	8.8%	2.2%	16.6%	0.0%	7.0%	12.3%	4.4%	19.4%	18.0%	1.6%	8.2%
Utilities	6.2%	0.0%	0.0%	0.0%	3.7%	4.4%	9.6%	6.5%	7.9%	6.6%	0.0%
All S&P 500 Companies	8.4%	4.3%	4.7%	0.6%	2.8%	10.0%	6.1%	14.9%	10.0%	4.3%	5.1%

0% 0–5% 5–15% 15–25% 25%+

Note:

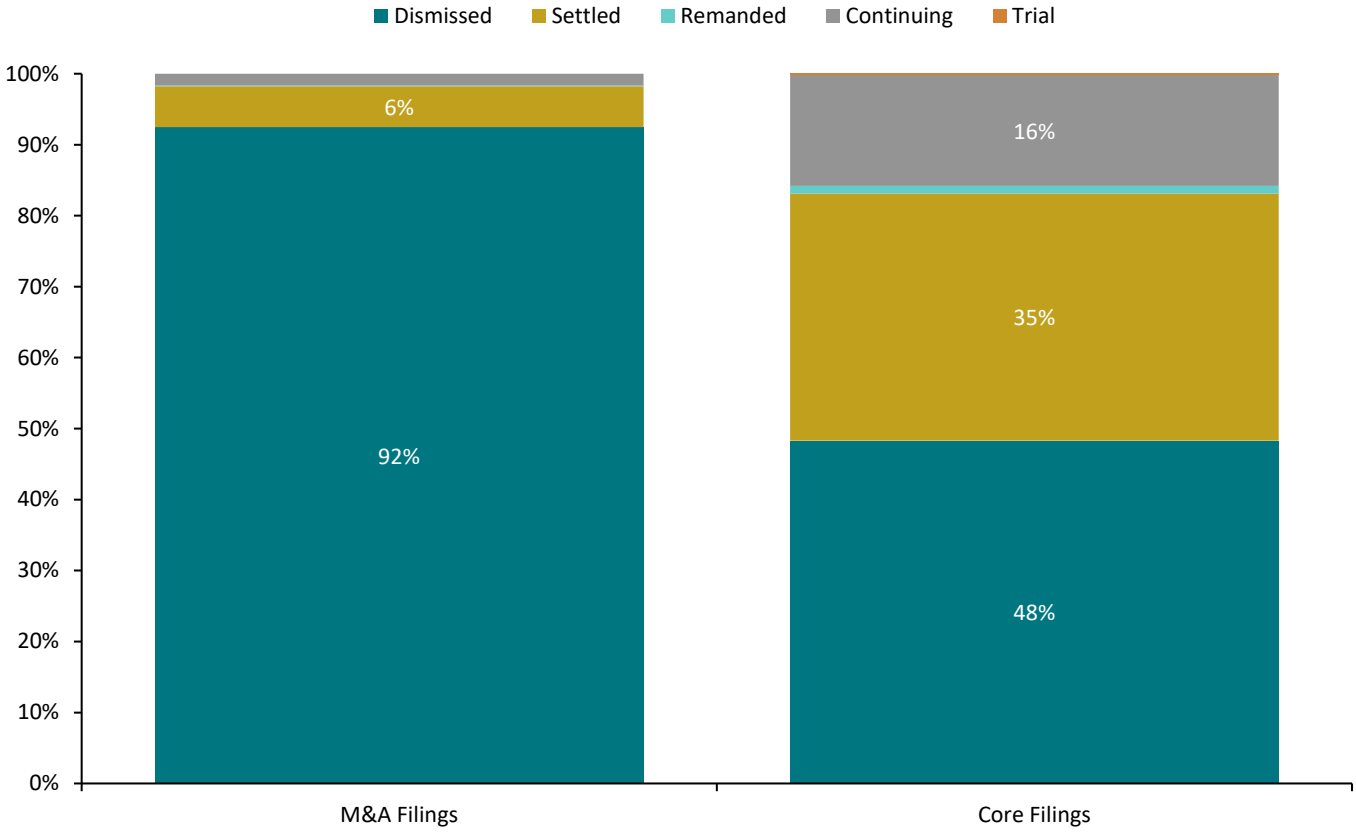
1. The figure is based on the composition of the S&P 500 as of the last trading day of the previous year.
2. Sectors are based on the Global Industry Classification Standard (GICS).
3. Percentage of Market Capitalization Subject to Core Federal Filings equals the market capitalization of companies subject to new securities class action filings in federal courts in each sector divided by the total market capitalization of companies in that sector.
4. In August 2016, GICS added a new industry sector, Real Estate. This analysis begins using the Real Estate industry sector in 2017. In 2018, the Telecommunication Services sector was incorporated into a new sector, Communication Services. With this name change, all companies previously classified as Telecommunication Services and some companies classified as Consumer Discretionary (such as Netflix, Comcast, and CBS) and Information Technology (such as Alphabet and Facebook) were reclassified into the Communication Services sector.
5. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

Status of M&A Filings in Federal Courts

- There were 837 M&A filings between 2011 and 2020, compared to 1,847 core federal filings over the same period.
- From 2011 to 2020, about 98% of M&A filings were resolved, compared to about 84% of core filings.
- M&A filings were dismissed almost twice as often as core federal filings over the last 10 years, with a dismissal rate 44% higher than that of core filings. The settlement rate of core filings was nearly six times the settlement rate for M&A filings. See Appendix 3 for a year-by-year overview of M&A and core filings status.

M&A filings continued to be dismissed at a much higher rate and settled at a much lower rate than core federal filings.

Figure 16: Status of M&A Filings Compared to Core Federal Filings
2011–2020



Note:

1. The Securities Class Action Clearinghouse began tracking M&A filings as a separate category in 2009.
2. The 2021 filing cohort is excluded since a large percentage of cases are ongoing.
3. Percentages may not sum to 100% due to rounding.
4. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

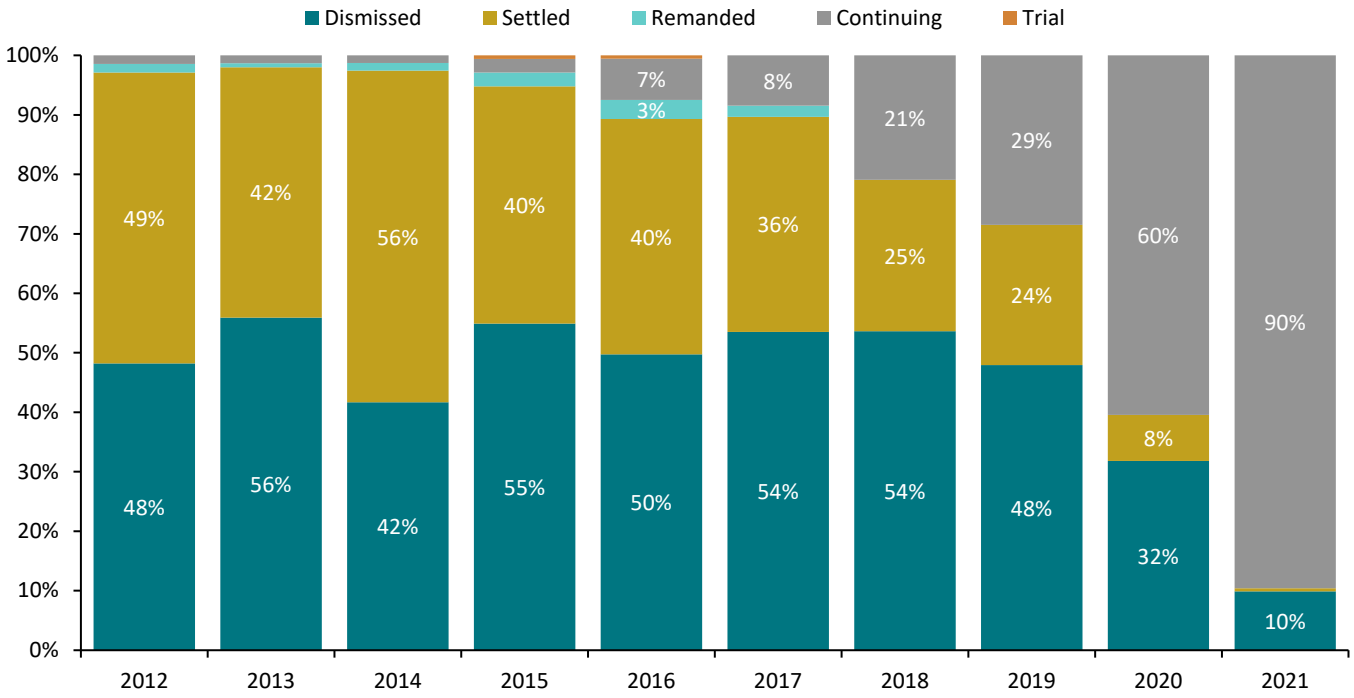
Status of Core Federal Securities Class Action Filings

This analysis compares filing groups to determine whether filing outcomes have changed over time. As each cohort ages, a larger percentage of filings are resolved—whether through dismissal, settlement, remand, or by trial. In the first few years after filing, a larger proportion of core federal cases are dismissed rather than settled, but in later years more are resolved through settlement than dismissal.

Despite litigation delays due to the COVID-19 pandemic, the 2019 and 2020 cohorts have experienced above-average resolution rates given their maturities.

- From 1997 to 2021, 46% of core federal filings were settled, 43% were dismissed, 0.5% were remanded, and 10% are continuing. During this time, only 0.4% of core federal filings (or 19 cases) reached trial, and less than 0.2% (11 cases) were tried to a verdict.
- The 2020 cohort had the fourth-highest one-year resolution rate on record, despite litigation delays due to the COVID-19 pandemic. Appendix 4 shows the proportion of core federal filings in each cohort that were resolved within each of the first three years after their filing date.
- The 2019 cohort's 71.5% three-year resolution rate is 8.9 percentage points higher than the 1997–2018 average rate and the second highest on record—and will likely get higher given that the data are incomplete.

Figure 17: Status of Filings by Year—Core Federal Filings
2012–2021



Note:

1. Percentages may not sum to 100% due to rounding.

2. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

1933 Act Cases Filed in State Courts

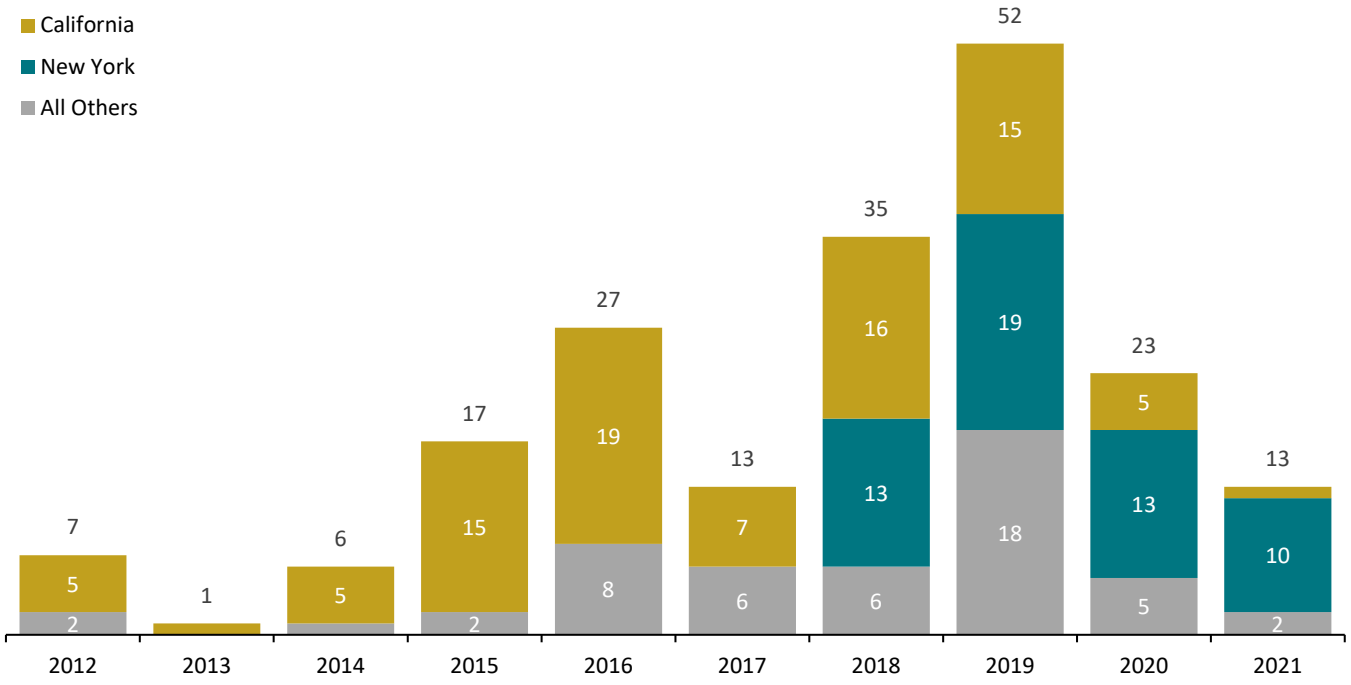
The following data include 1933 Act filings in California, New York, and other state courts. Filings from prior years are added retrospectively when identified. These filings may include Section 11, Section 12, and Section 15 claims, but do not include Rule 10b-5 claims.

- In 2021, the number of state 1933 Act filings dropped dramatically with only one filing in California, 10 filings in New York, and two filings in all other state courts.

State 1933 Act filing activity decreased by 43% from 2020, continuing the steep decline from 2019.

- Filings in New York accounted for the vast majority of state 1933 Act filings in 2021. Of these 10 filings, half were against non-U.S. issuers, similar to the period 2018–2020, when non-U.S. issuers made up 56% of New York state filings. By comparison, only 21% of core federal filings were against non-U.S. issuers in 2021. See Figure 24.
- State 1933 Act filings in states other than New York and California dropped to the lowest level since 2015. Pennsylvania and New Jersey each had one state 1933 Act filing.

Figure 18: State 1933 Act Filings by State
2012–2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note: This analysis counts all filings in state courts. It does not present data on a combined federal and state basis, nor does it identify or account for cases that have parallel filings in both state and federal courts. As a result, totals in this analysis may not match Figures 1–3, 9–11, 13, 20, or 22–23. See Additional Notes to Figures for more detailed information.

Dollar Loss on Offered Shares™ (DLOS Index™) in Federal Section 11–Only and State 1933 Act Filings

This analysis calculates the loss of market value of class members' shares offered in securities issuances that are subject to 1933 Act claims. It is calculated as the shares offered at issuance (e.g., in an IPO, a seasoned equity offering (SEO), or a corporate merger or spinoff) acquired by class members multiplied by the difference between the offering price of the shares and their price on the filing date of the first identified complaint.

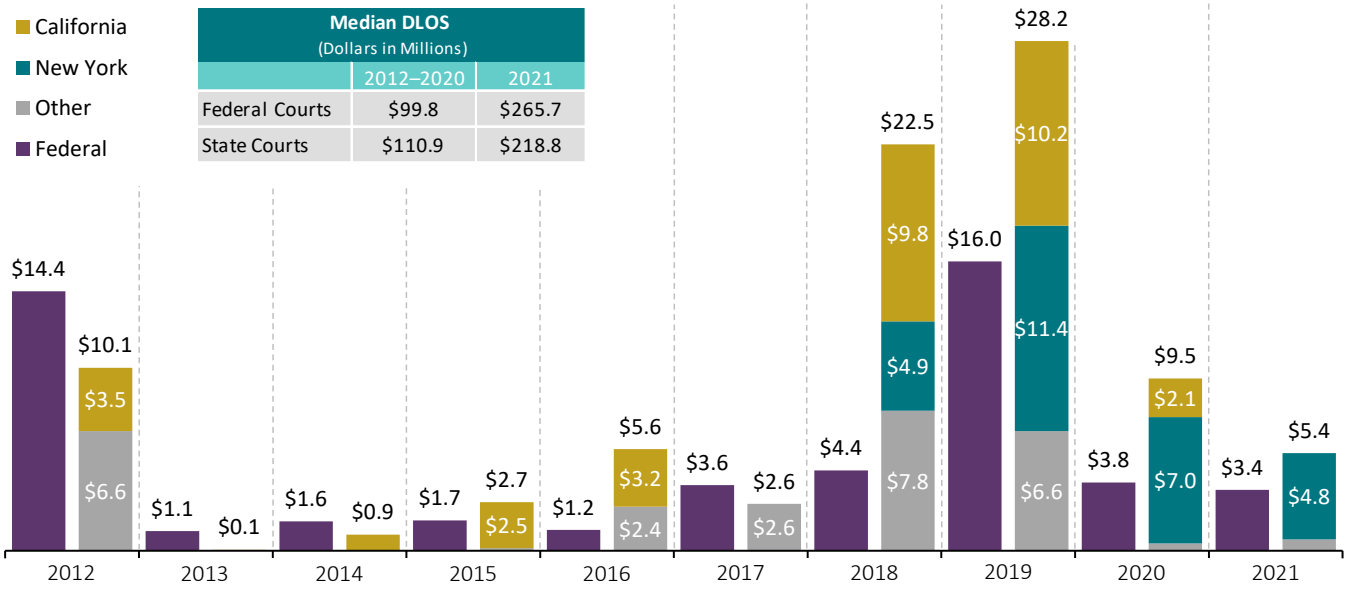
This alternative measure of losses has been calculated for federal filings involving only Section 11 claims (i.e., no Section 10(b) claims) and 1933 Act filings in state courts. This measure, Dollar Loss on Offered Shares (DLOS), aims to capture, more precisely than MDL, the dollar loss associated with the specific shares at issue as alleged in a complaint.

In 2021, the Dollar Loss on Offered Shares for filings in New York was nearly eight times the amount in all other state courts combined.

- Total DLOS for both federal filings and state 1933 Act filings were well below their 2012–2020 averages of $5.3 billion and $9.1 billion, respectively.
- In 2021, DLOS attributable to 1933 Act filings declined by 43%, partially due to the decline in California DLOS.

Figure 19: Dollar Loss on Offered Shares™ (DLOS Index™) for Federal Section 11–Only and State 1933 Act Filings 2012–2021

(Dollars in Billions)



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS; CRSP; SEC EDGAR

Note: This analysis compares all Section 11 filings in federal courts with all 1933 Act filings in state courts. It does not present data on a combined federal and state basis, nor does it identify or account for cases that have parallel filings in both state and federal courts. See Additional Notes to Figures for more detailed information.

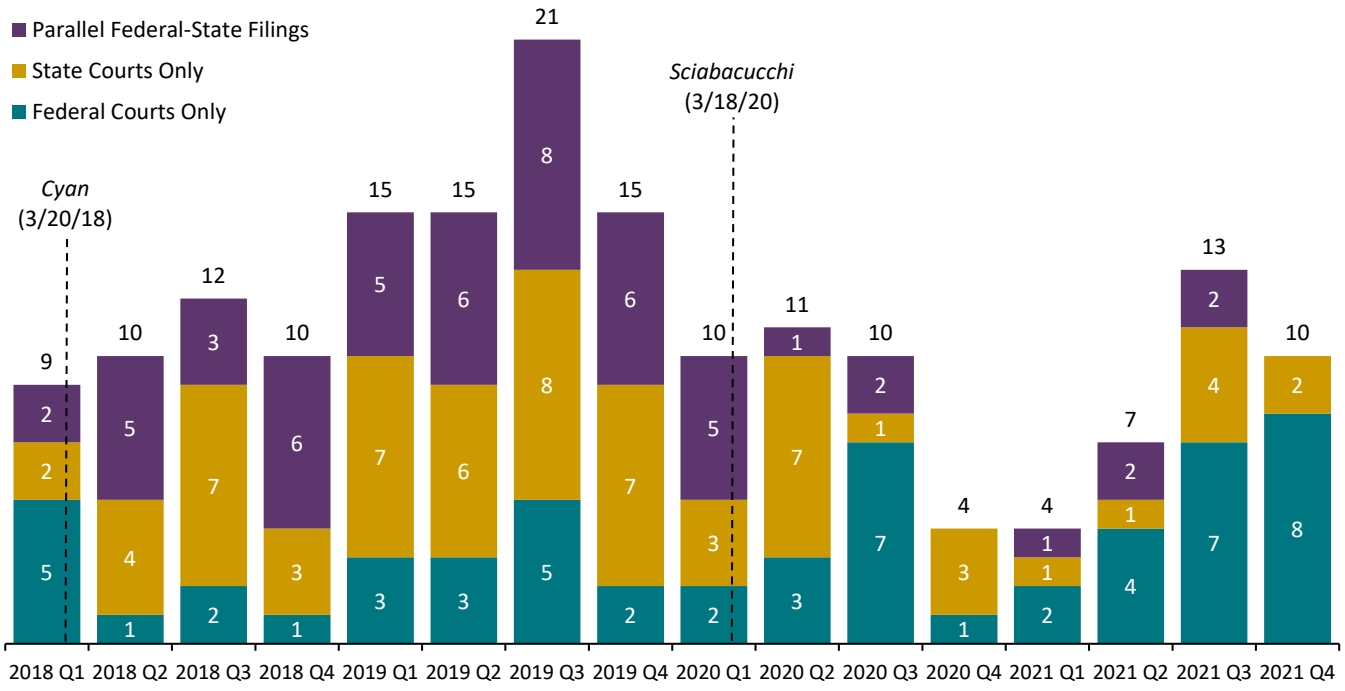
Comparison of Federal Section 11 Filings with State 1933 Act Filings

The figure below is a combined measure of Section 11 filing activity in federal courts and 1933 Act filings in state courts. It highlights parallel (or related) class actions in federal and state courts.

- Following *Cyan* but before the *Sciabacucchi* decision, 41% of these filings were state-only and 40% were parallel. However, since *Sciabacucchi*, the percentage of state-only filings decreased to 32%, and the percentage of parallel filings decreased to 16%. During this same period, federal-only filings increased dramatically, from 18% to 52%.
- In 2021, overall filing activity was consistent with historical averages (with 34 federal Section 11 and state 1933 Act filings as compared to the 2011–2020 average of 33 filings) but depressed compared to the all-time highs observed in 2019, down 48% by comparison.
- In 2021, federal-only Section 11 filings increased substantially, rising 62% compared to 2020, and comprising 62% of total federal Section 11 and state 1933 Act filings in 2021. This is in contrast to parallel and state-only filings, which fell 38% and 43%, respectively, in 2021.

2021 had the most federal-only Section 11 filings since 2015, and the greatest share of federal-only filings since 2014, likely an effect of the Sciabacucchi *decision.*

Figure 20: Quarterly Federal Section 11 and State 1933 Act Filings
2018–2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note: This figure presents combined federal and state data. Filings in federal courts may have parallel cases filed in state courts. When parallel cases are filed in different quarters, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure's filing counts may not match those in Figures 4–8, 12, 14–19, 21, or 24–31. See Additional Notes to Figures for more detailed information.

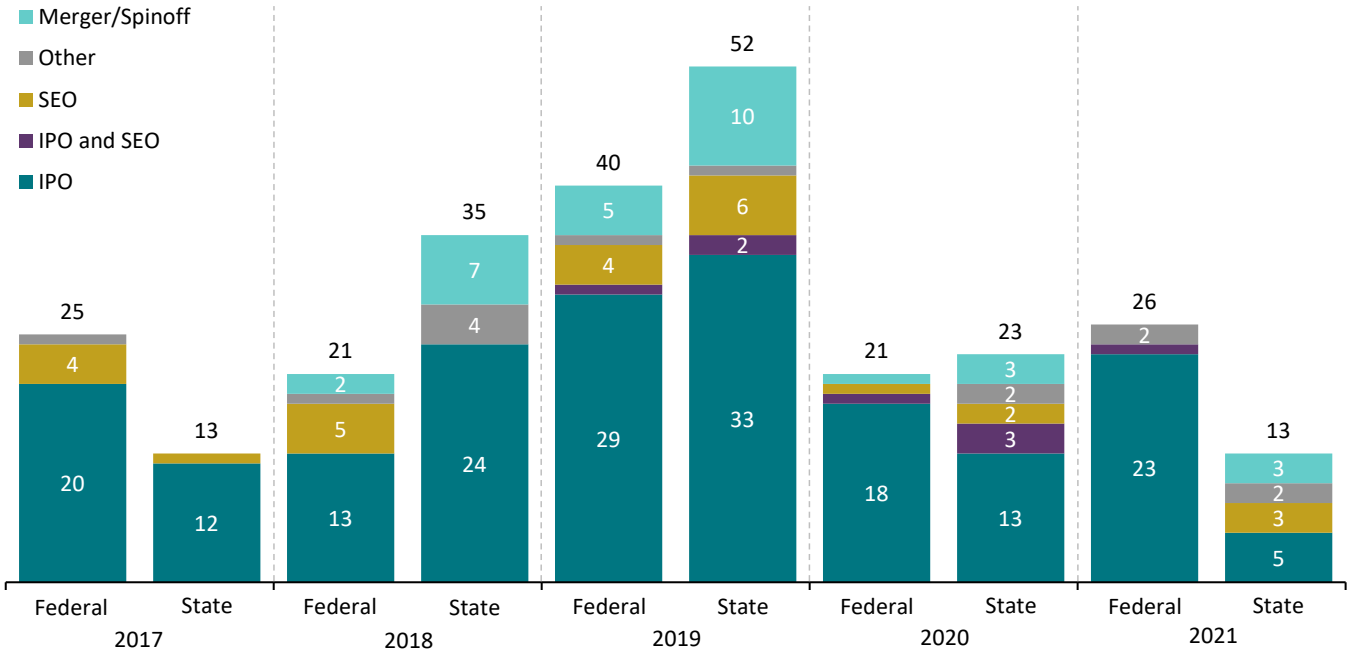
Type of Security Issuance Underlying Federal Section 11 and State 1933 Act Filings

The figure below illustrates Section 11 claims in federal courts and 1933 Act claims in state courts based on the type of security issuance underlying the lawsuit.

State court filings related to IPOs fell to five, down 62% from 2020 and 85% from 2019.

- IPOs accounted for 88% of Section 11 filings in federal courts, while 1933 Act filings in state courts were more evenly dispersed across all issuance types.
- Following significant growth in 2019, federal Section 11 and state 1933 Act filings have reverted to nearly the same levels as 2017.
- The share of state 1933 Act filings related to IPOs or IPOs and SEOs fell to 38%, the lowest share on record.

Figure 21: Federal Section 11 and State 1933 Act Class Action Filings by Type of Security Issuance
2017–2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Bloomberg Law; ISS' SCAS

Note: This analysis compares all Section 11 filings in federal courts with all 1933 Act filings in state courts. It does not present data on a combined federal and state basis, nor does it identify or account for cases that have parallel filings in both state and federal courts. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23. There was one federal court filing in 2019 related to both a merger-related issuance and SEO. This analysis categorizes this filing as relating to a merger-related issuance to avoid double-counting.

IPO Activity and Federal Section 11 and State 1933 Act Filings

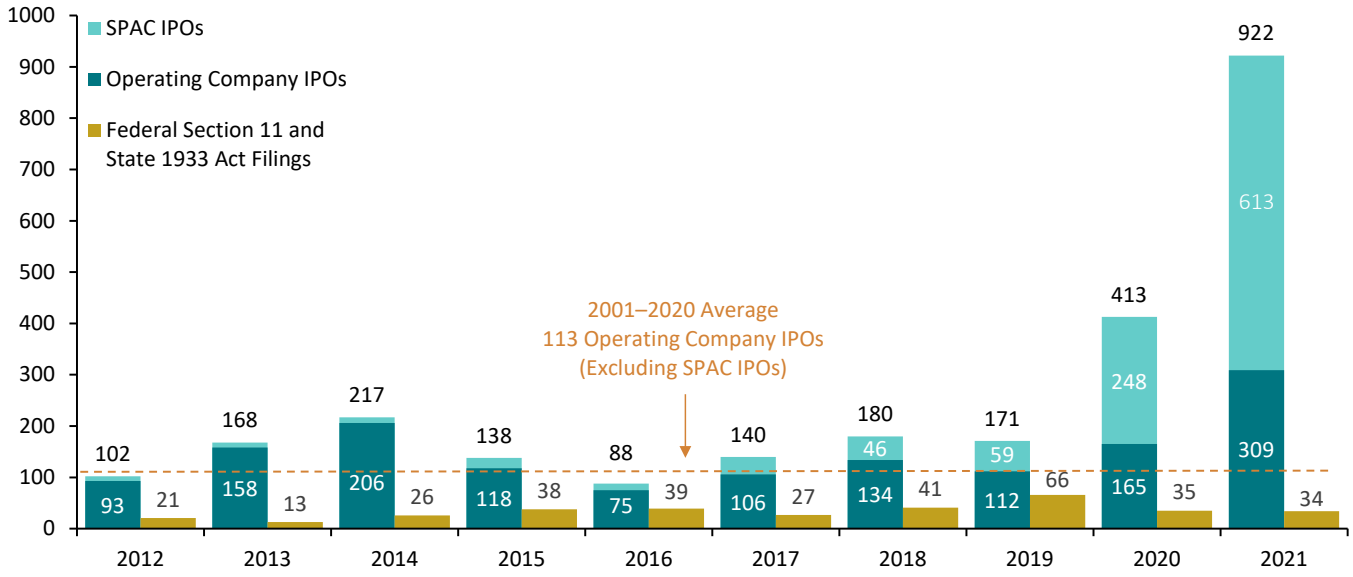
This figure compares IPO activity (operating company IPOs and SPAC IPOs) with counts of federal Section 11 and state 1933 Act filings.

- Although historically SPACs have represented only a small portion of IPOs, in the last two years, SPACs have become an increasingly large share of IPO activity. In 2021, the number of SPAC IPOs continued to surge, increasing from 248 to 613, almost double that of operating company IPOs.

While the number of IPOs rose significantly in 2021, filings with 1933 Act claims fell for the second consecutive year.

- With 309 IPOs, the number of operating company IPOs increased 87% from 2020 to 2021, the largest percentage increase since 2010, and nearly triple the 2001–2020 average of 113 operating company IPOs.
- Generally, heavier operating company IPO activity appears to be correlated with increased levels of federal Section 11 and state 1933 Act filings in the ensuing year. Although the number of operating company IPOs in 2020 increased to 165 from 112 in 2019, the number of federal Section 11 and state 1933 Act filings decreased from 35 in 2020 to 34 in 2021, the lowest since 2017.
- The boom of IPO activity in 2021, especially that involving SPACs, may lead to substantial future litigation.

Figure 22: Number of IPOs on Major U.S. Exchanges and Number of Filings of Federal Section 11 and State 1933 Act Claims 2012–2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse; Jay R. Ritter, "Initial Public Offerings: Updated Statistics," University of Florida, January 5, 2022

Note:

1. Operating company IPOs exclude the following offerings: those with an offer price of below $5.00, ADRs, unit offers, closed-end funds, REITs, natural resource limited partnerships, small best efforts offers, banks and S&Ls, and stocks not included in the CRSP database (CRSP includes Amex, NYSE, and Nasdaq stocks). SPAC IPOs include unit and non-unit SPAC IPOs, as defined by Professor Ritter.

2. This figure presents combined federal and state data. Filings in federal courts may have parallel cases filed in state courts. When parallel cases are filed in different quarters, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings. As a result, this figure's filing counts may not match those in Figures 4–8, 12, 14–19, 21, or 24–31. The federal Section 11 cases displayed may include Rule 10b-5 claims, but state 1933 Act filings do not.

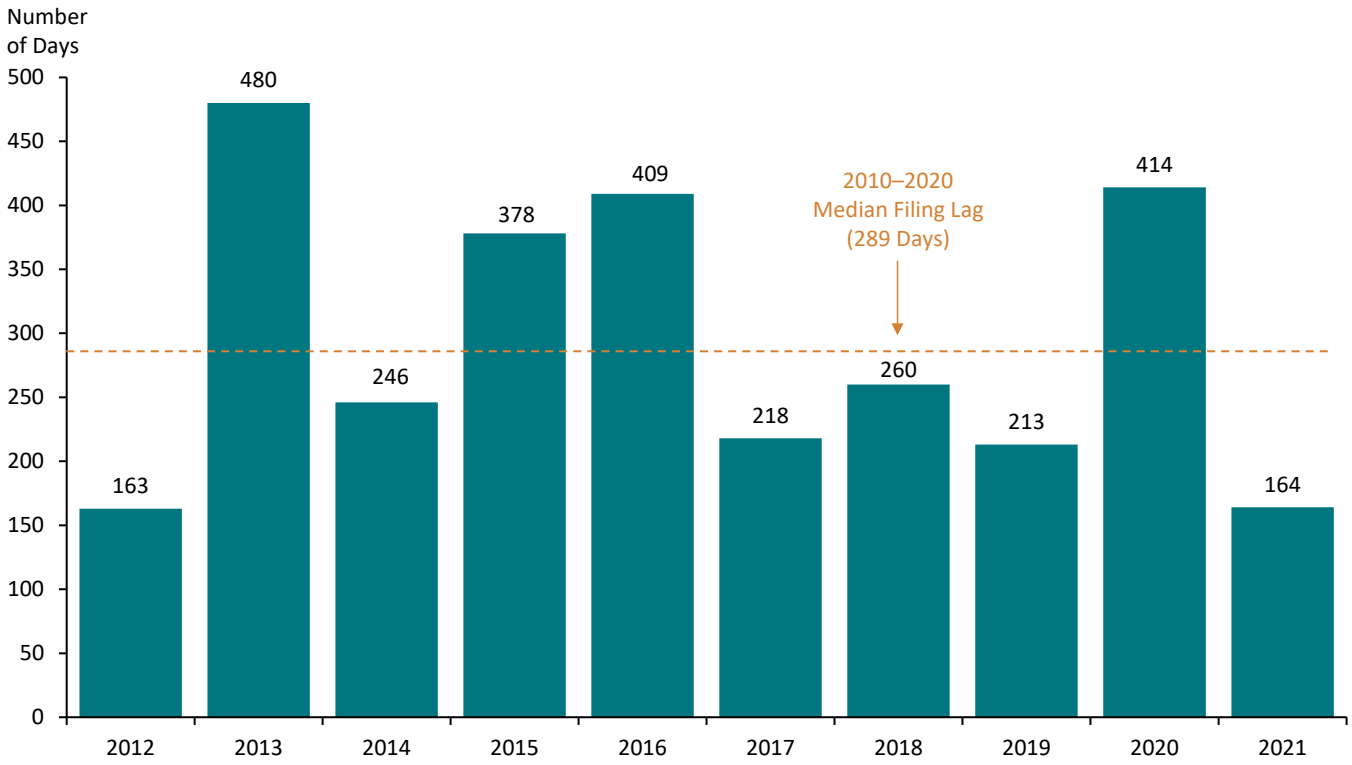
Lag between IPO and Federal Section 11 and State 1933 Act Filings

This analysis reviews the number of days between the IPO of a company and the filing date of a federal Section 11 or state 1933 Act securities class action.

- The IPO filing lag has varied substantially since 2010, but is fairly centered around the median filing lag of 289 days.
- The IPO filing lag fell to 164 days in 2021 from 414 days in 2020, a 60% decline.
- The 2021 IPO filing lag is the lowest since 2012.

The median filing lag for an IPO subject to a federal Section 11 or state 1933 Act claim was roughly nine and a half months between 2010 and 2020.

Figure 23: Lag between IPO and Federal Section 11 and State 1933 Act Filings
2012–2021



Note:

1. These data only consider IPOs with a subsequent federal Section 11 or state 1933 Act class action complaint. Only complaints that exclusively were in reference to an IPO were considered. Federal filings that also include Rule 10b-5 allegations are not considered.
2. Year refers to the year in which the complaint was filed.
3. This figure presents combined federal and state data. Filings in federal courts may have parallel cases filed in state courts. When parallel cases are filed in different quarters, only the earlier filing is reflected in the figure above. Filings against the same company brought in different states without a filing brought in federal court are counted as unique state filings.

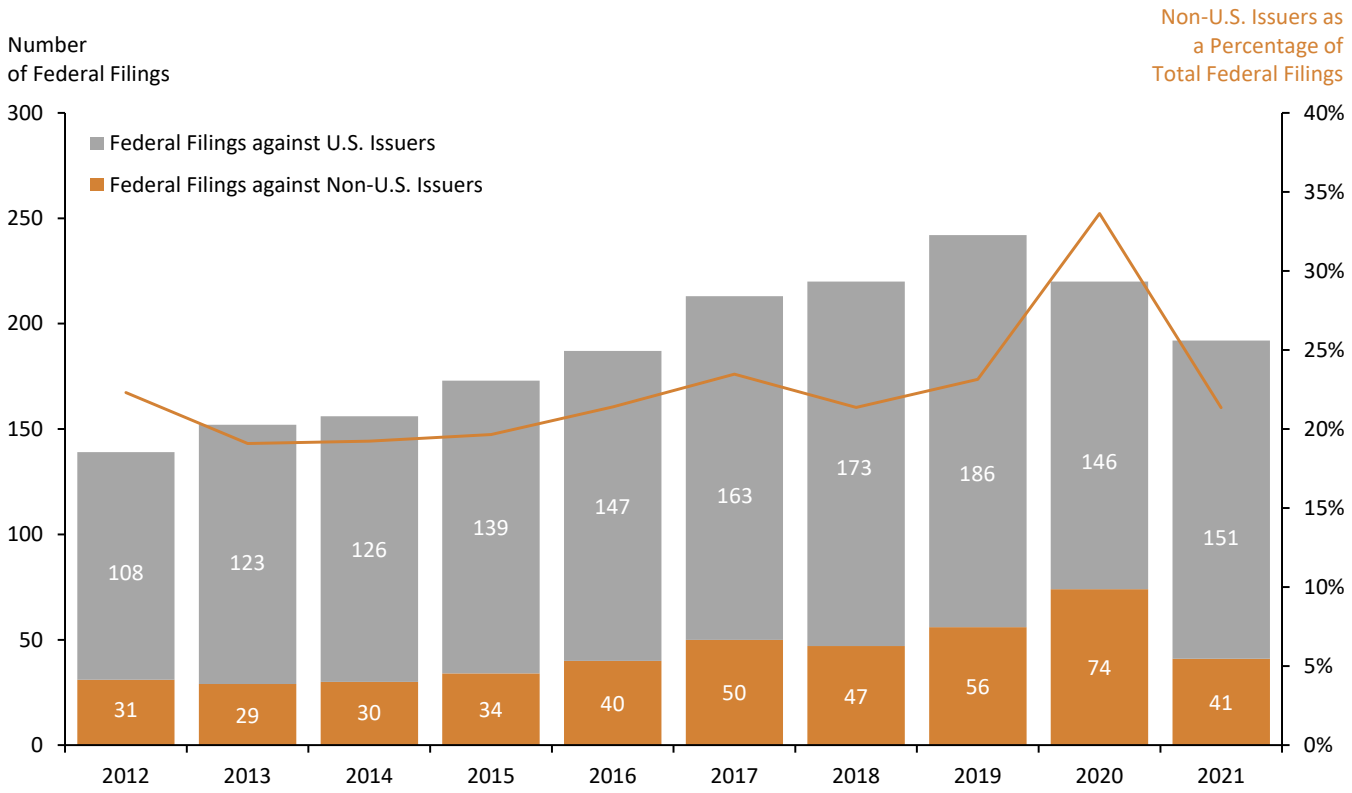
Non-U.S. Core Federal Filings

This index tracks the number of core federal filings against companies headquartered outside the United States relative to total core federal filings.

- The number of filings against non-U.S. issuers as a percentage of total filings declined steeply after gradually trending upwards since 2013. While reaching only 41, or just over half its record high of 74 in 2020, the number of non-U.S. core federal filings in 2021 is in line with the 2012–2019 average of 40.
- As a percentage of total core federal filings, core federal filings against non-U.S. issuers decreased from 34% in 2020 to 21% in 2021. This also represents a reversion back to 2012–2019 levels, when the average was 21%.

The number of core federal filings against non-U.S. issuers fell to 41, significantly down from its record high of 74 in 2020.

Figure 24: Annual Number of Class Action Filings by Location of Headquarters—Core Federal Filings 2012–2021

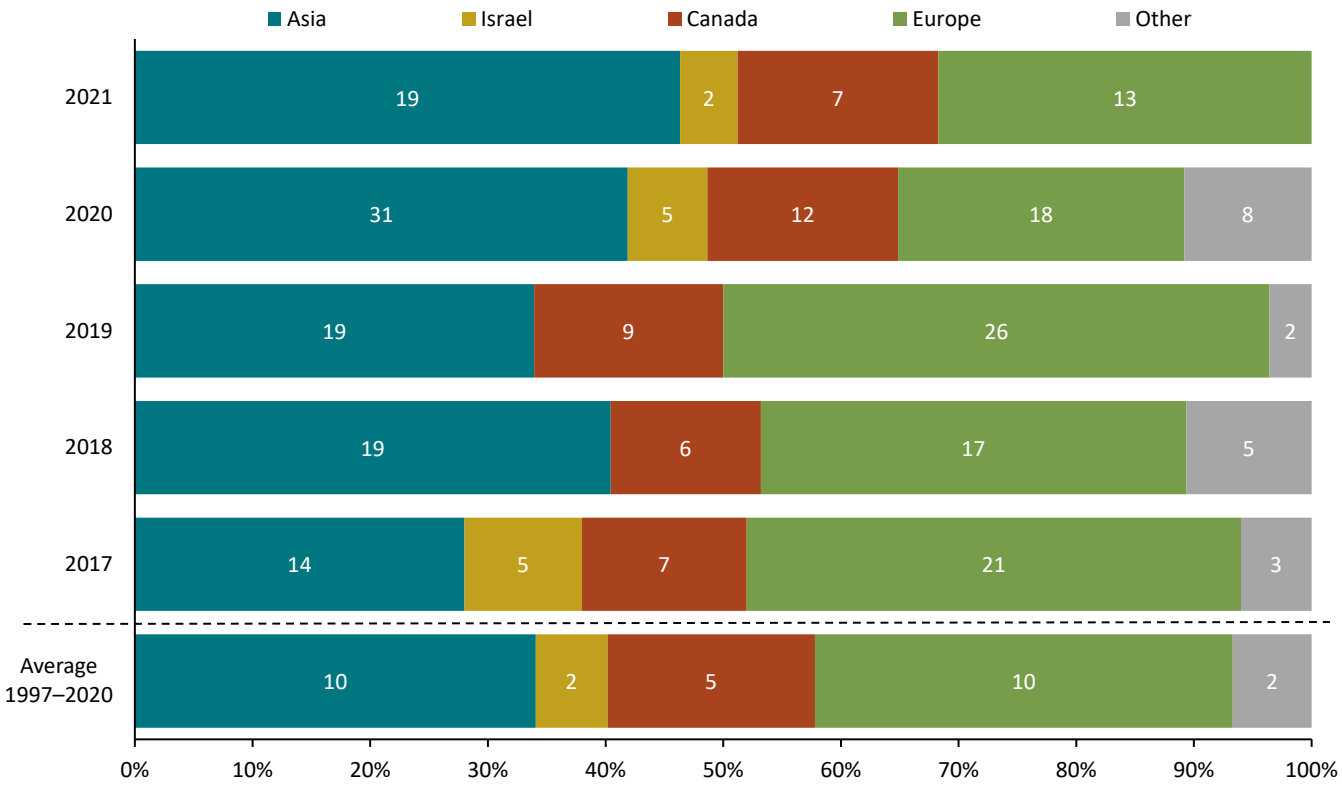


Note: This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

- While there were only 19 core federal filings against Asian firms, compared to 31 filings against Asian firms the year prior, 2021 had the highest proportion of core federal filings against Asian firms relative to all other non-U.S. core federal filings since 2015. Of these 19 filings, 18 involved Chinese firms, including four filed in a span of eight days in July as Chinese regulators cracked down against Chinese tech firms' use of consumer data.
- Of the 13 core federal filings against European firms, there were no more than two filings against companies headquartered in any one country. Five of the 13 European filings were related to the healthcare or pharmaceuticals industry.
- There were seven core federal filings against Canadian firms in 2021. The second half of 2021 is the first semiannual period since cannabis's legalization in Canada in October 2018 that there were no core federal filings against a Canadian cannabis firm.
- Overall, this year's percentage breakdown by region was fairly standard, with all regions (excluding Asia) within seven percentage points (or three filings) of their respective 1997–2020 averages.

The percentage of non-U.S. core federal filings against Asian firms was the highest since 2015.

Figure 25: Non-U.S. Filings by Location of Headquarters—Core Federal Filings



Source: United Nations, "Regional Groups of Member States"

Note: This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23. See Additional Notes to Figures for more detailed information.

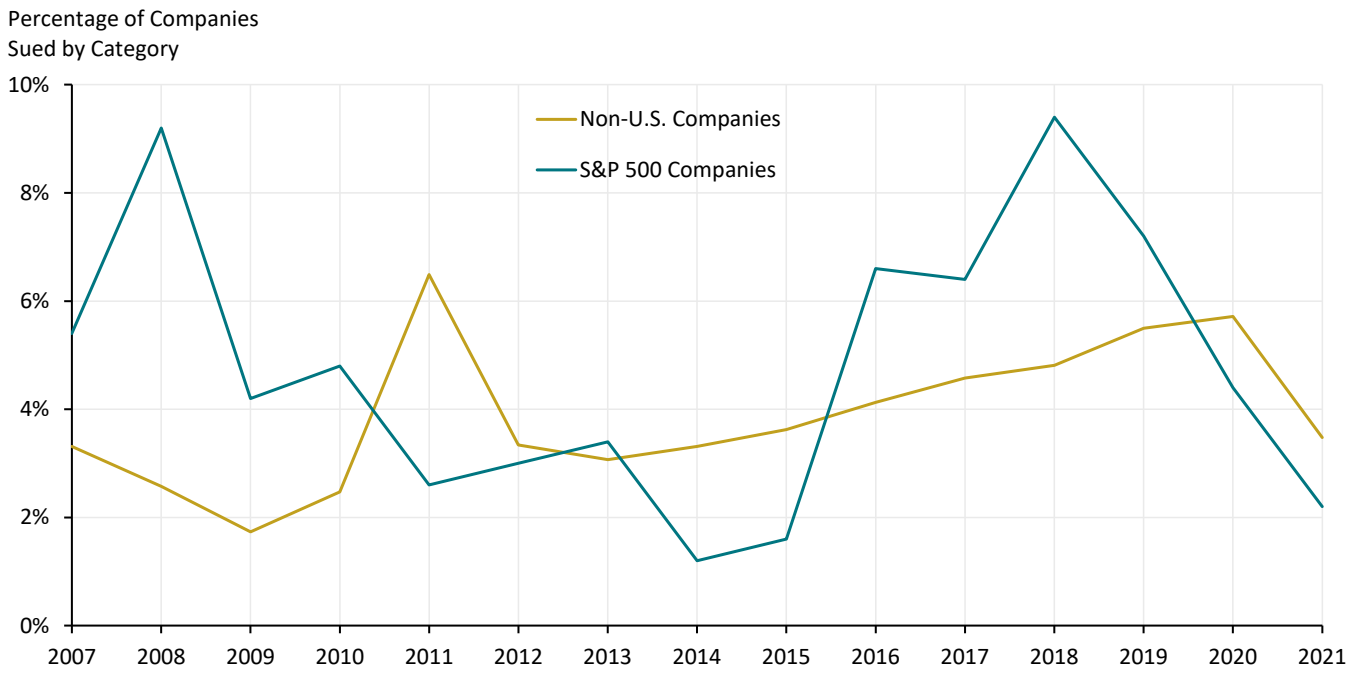
Non-U.S. Company Litigation Likelihood of Federal Filings

This figure examines the incidence of non-U.S. core federal filings relative to the likelihood of S&P 500 companies being the subject of a class action.

The likelihood of a lawsuit against an S&P 500 company and a non-U.S. company listed on a U.S. exchange declined in parallel.

- In 2021 the percentage of non-U.S. companies subject to core federal filings decreased for the first time since 2013, dropping to the fourth-lowest level since 2010. However, this 3.5% level is roughly in line with the 2000–2020 average of 3.2%.
- The percentage of S&P 500 companies sued dropped to 2.2%, the third-lowest level since 2000 and well below the 2000–2020 average level of 5.5%.
- 2021 was the first year since 2009 in which both metrics declined, which is consistent with the general decline in filing activity seen this year.

Figure 26: Percentage of Companies Sued by Listing Category or Domicile—Core Federal Filings 2007–2021



Source: CRSP; Yahoo Finance

Note:

1. Non-U.S. companies are defined as companies with headquarters outside the United States, Puerto Rico, and Virgin Islands. Companies were counted if they issue common stock or ADRs and are listed on the NYSE or Nasdaq.

2. Percentage of Companies Sued is calculated as the number of filings against unique companies in each category divided by the total number of companies in each category in a given year.

3. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

Mega Federal Filings

Mega DDL filings have a DDL of at least $5 billion. Mega MDL filings have an MDL of at least $10 billion. MDL and DDL are only presented for core federal filings.

- The number of mega DDL filings decreased from 14 in 2020 to 10 in 2021, and total DDL from mega filings decreased by $34 billion.
- There were 20 mega MDL filings in 2021. Total MDL for mega core federal filings decreased 54% from $1,319 billion to $606 billion, although still above the 1997–2020 average of $497 billion.
- The 2021 percentages of total federal DDL and MDL represented by mega filings were consistent with their historical averages.
- In 2021, Internet and Software companies made up 60% of mega DDL filings (six) and 40% of mega MDL filings (eight).
- Other notable industries contributing to 2021 mega MDL filings included Energy (both Oil & Gas and alternative fuel, 20% of mega MDL filings) and Consumer Cyclical and Non-Cyclical (Leisure Time and Retail, and Commercial Services, respectively, both 15% of mega MDL filings).

The number and total index value of mega DDL and MDL filings were down from 2020's highs, but were above historical averages.

Figure 27: Mega Filings—Core Federal Filings

	Average 1997–2020	2019	2020	2021
Mega Disclosure Dollar Loss (DDL) Filings[3]				
Mega DDL Filings	6	8	14	10
DDL ($ Billions)	$77	$147	$178	$144
Percentage of Total DDL	54%	53%	66%	56%
Mega Maximum Dollar Loss (MDL) Filings[4]				
Mega MDL Filings	14	20	29	20
MDL ($ Billions)	$497	$825	$1,319	$606
Percentage of Total MDL	71%	71%	83%	67%

Note:

1. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.
2. There are core filings for which data are not available to estimate MDL and DDL accurately. These core filings are excluded from MDL and DDL analysis and counts.
3. Mega DDL filings have a disclosure dollar loss of at least $5 billion.
4. Mega MDL filings have a maximum dollar loss of at least $10 billion.

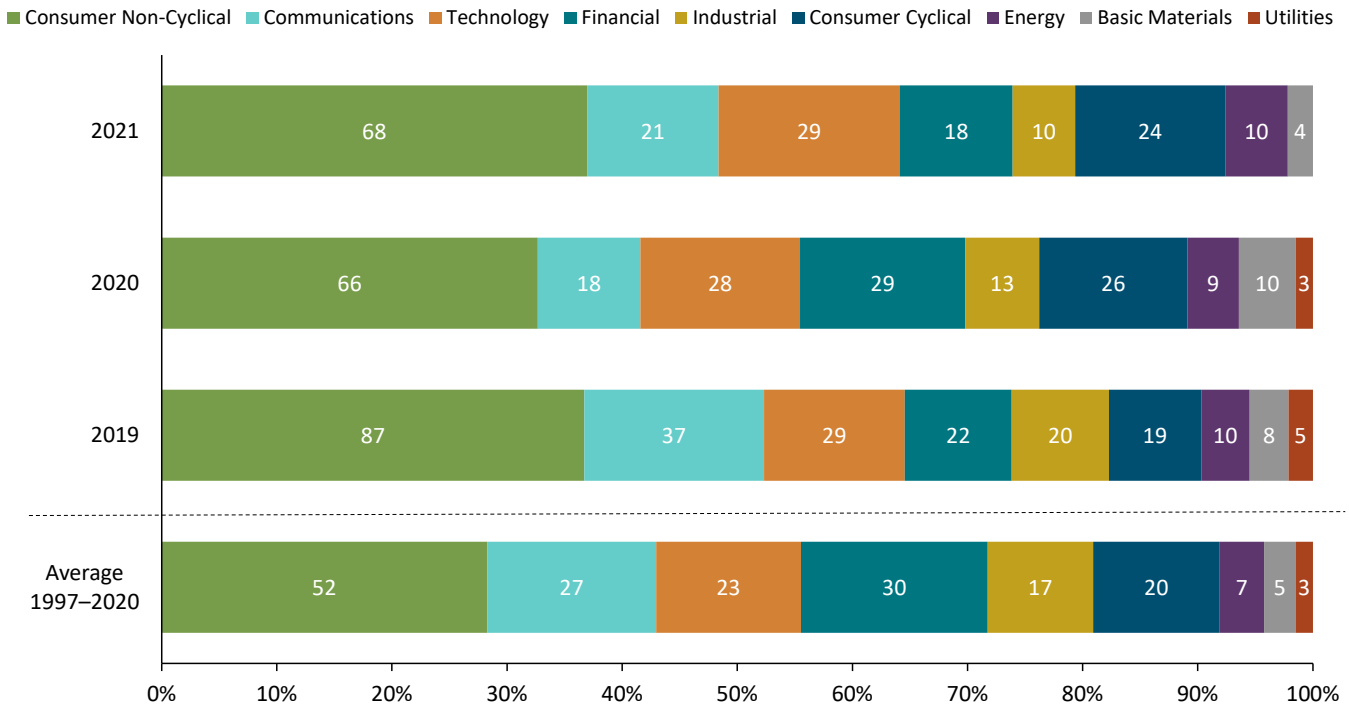
Industry Comparison of Federal Filings

This analysis of core federal filings encompasses both smaller companies and the large capitalization companies of the S&P 500.

- The number of filings in the Financial, Industrial, and Utilities industries all dropped. Corresponding with this drop, the total DDL in each industry fell to less than half of the 2020 total and relative to the 1997–2020 average. See Appendix 6.
- Although Consumer Non-Cyclical companies (primarily composed of pharmaceutical, healthcare, and biotechnology firms) had fewer filings in 2021 (68) than the 2016–2020 average (78), they still surpassed the 1997–2020 average by over 30%.
- There were 21 Communications filings in 2021, slightly more than in 2020 but significantly below the 2019 count of 37 and the 1997–2020 average of 27.
- There were no Utilities sector filings in 2021, the first year without such filings since 2014.
- Filings in the Financial sector decreased by 38% from 2020.
- From 1997 to 2020, the average number of Consumer Non-Cyclical filings was about the same as the number of Technology and Communications filings combined. However, in 2021, as in every year since 2008, there were more Consumer Non-Cyclical filings than Technology and Communications filings.

All industries were within three filings of their 2020 levels, except for Financial and Basic Materials, which fell by a combined 17 filings.

Figure 28: Filings by Industry—Core Federal Filings



Note:

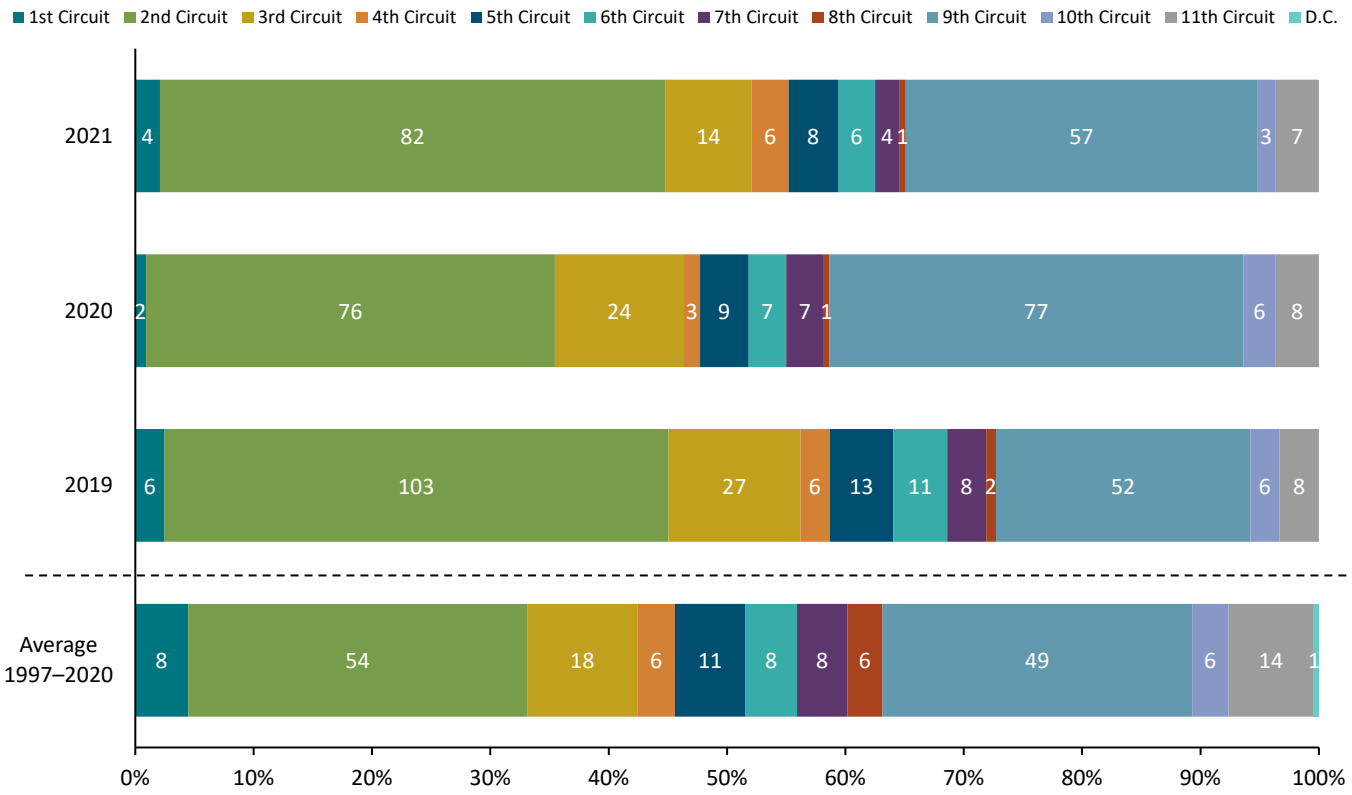
1. Filings with missing sector information or infrequently used sectors may be excluded. Some filings in which the security at issue could not be used to calculate market capitalization may also be excluded. As a result, numbers in this chart may not match other total counts listed in the report.
2. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.
3. Sectors are based on the Bloomberg Industry Classification System.

Federal Filings by Circuit

- The Second and Ninth Circuits made up 72% of all core federal filings in 2021, the highest combined proportion for any two circuits since tracking began in 1997. This value was only modestly higher than that in 2020 (70%), but significantly above the 1997–2020 average of 55%.
- Core federal filings in the Ninth Circuit decreased by 26% to 57 filings, above the 1997–2020 average of 49. Core filings in the Second Circuit increased by 8% from 76 to 82 filings, well above the 1997–2020 average of 54.
- Seven of the 12 federal circuits had decreases in total MDL of 40% or more. Of those seven, MDL in the Sixth, Seventh, Tenth, and Eleventh Circuits declined by at least 70%. See Appendix 7.

The Second and Ninth Circuits made up 72% of all core federal filings in 2021, the highest combined proportion for any two circuits since tracking began in 1997.

Figure 29: Filings by Circuit—Core Federal Filings



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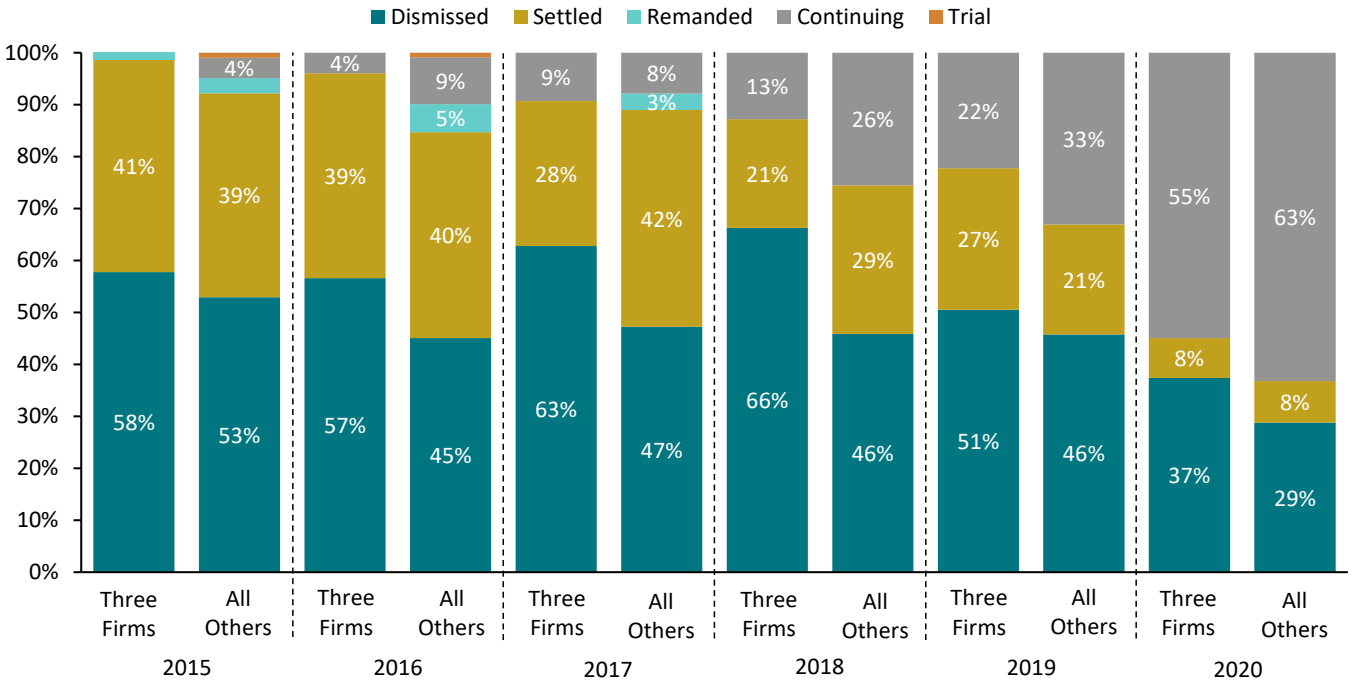
Federal Case Status by Plaintiff Counsel

Three law firms—The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray LLP—have been responsible for 61% of first identified core securities class action complaints in federal courts from 2015 to 2021. The figure below examines case outcomes for core federal filings for which these three firms were listed as counsel of record on the operative complaint. These case outcomes are compared with filings for which other plaintiff law firms are the counsel of record.

Complaints filed by these three plaintiff law firms have been dismissed more frequently than other law firms for all years analyzed.

- Core federal filings made by these three firms fell 8% in 2021 based on first identified complaint, while filings made by other firms decreased by 20%.
- From 2015 through 2020, these three firms have had 55% of their core federal operative complaint class actions dismissed, compared to 44% for all other plaintiff firms. A larger set of filings and more careful consideration of other factors such as circuit, court, industry, type of allegation, and other factors would be necessary to determine if differences between these two groups are statistically significant.
- Prior analysis of these three firms by Michael Klausner, Professor of Law at Stanford Law School, and Jason Hegland, Executive Director of Stanford Securities Litigation Analytics, indicated these firms had higher dismissal rates between 2006 and 2015 as well. See "Guest Post: Deeper Trends in Securities Class Actions 2006–2015," The D&O Diary, June 23, 2016.

Figure 30: Case Status by Plaintiff Law Firm of Record on the Operative Complaint—Core Federal Filings 2015–2020



Note:

1. The analysis relies on the counsel of record on the operative complaint. Of core federal filings in 2020, 2% do not have counsel of record assigned yet; these filings are not included in this analysis. Percentages may not sum to 100% due to rounding.

2. This analysis only considers federal filings. It does not present combined federal and state data, and cases are not identified as parallel. This is different from other figures in this report that account for filings in federal courts that also have parallel cases identified in state courts. In those analyses, when parallel cases are filed in different years, only the earlier filing date is reflected in the analysis. As a result, this figure's filing counts may not match Figures 1–3, 9–11, 13, 20, or 22–23.

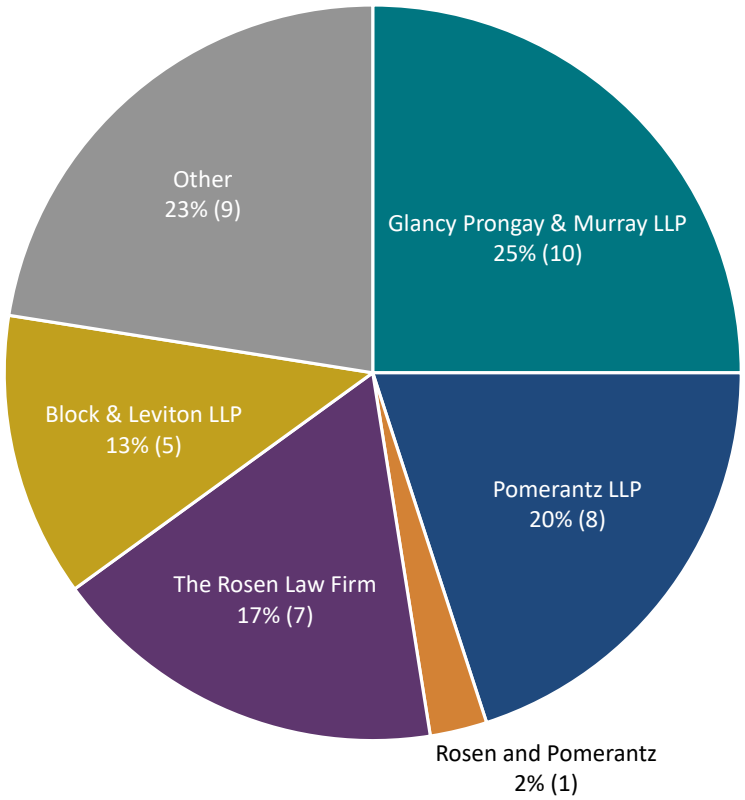
New: Filings Referencing Short-Seller Reports by Plaintiff Counsel

In 2021, 40 core federal first identified complaints, or about 21%, referenced reports published by short sellers. This analysis examines which plaintiff law firms reference reports by short sellers most frequently.

In 2021, four plaintiff law firms filed 78% of the core federal filings that referenced reports published by short sellers.

- Of these 40 core federal filings, 31 (about 78%) were made by four law firms.
- The three law firms discussed above in Figure 30—The Rosen Law Firm, Pomerantz LLP, and Glancy Prongay & Murray LLP—were responsible for 26 (65%) of the 40 core federal filings referencing short-seller reports. Their share of core federal filings referencing short-seller reports slightly exceeded their share of all core federal filings (61%) in 2021.
- A fourth law firm—Block & Leviton LLP—was responsible for an additional five (13%) of the 40 core federal filings.

Figure 31: Core Federal Filings Referencing Short-Seller Reports by Plaintiff Counsel
2021



Source: Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse

Note: Filings that contained at least one of the four plaintiff law firms were included in the relevant category; otherwise, they were included in "Other." Three were filed jointly by at least one of the four plaintiff law firms and another firm not named above.

New Developments

Pirani v. Slack Technologies Inc.

On September 2, 2021, the Ninth Circuit Court of Appeals in *Pirani v. Slack Technologies Inc.*[1] upheld the denial of Defendant's motion to dismiss Plaintiff's Section 11 claims arising out of a direct listing.

Courts have long required Section 11 plaintiffs to trace their shares to the alleged misleading registration statement. In a traditional IPO, investors can satisfy the tracing requirement because only certain shares are registered for sale, and remaining shares, held by insiders or early investors, are prohibited from being sold for a period of time, typically six months. In a direct offering, the company does not sell new shares, but rather lists existing shares on an exchange. Because direct offerings allow the simultaneous sale of securities issued pursuant to a registration statement and those that are exempt from registration, both registered and unregistered shares enter the market and become commingled, preventing investors from being able to establish whether they purchased registered or unregistered shares.

In its direct listing, Slack's shareholders could sell 118 million shares that had been registered under its registration statement and 165 million shares that were exempt from registration under SEC rules. Slack argued that Plaintiff lacked standing to sue because he could not show that he had purchased registered rather than unregistered shares. The Ninth Circuit disagreed, reasoning that all shares sold in the direct listing, whether registered or unregistered, could be traced to one registration statement.

The *Slack* opinion may have profound implications for the future of securities litigation. Among other issues, the opinion appears to contradict prior decisions that have strictly enforced the tracing requirement. It also potentially extends Section 11 liability for misleading registration statements to securities that are exempt from registration, which in turn may expand Section 11 damages far beyond the statutory maximum.

Slack is currently before the Ninth Circuit on a petition for rehearing and could end up before the Supreme Court.

Unsponsored ADRs

In *Stoyas v. Toshiba Corp.*,[2] the court denied Plaintiffs' motion for class certification, finding that their claims or defenses were not typical of those of the proposed class.

At issue in *Toshiba* were unsponsored American Depositary Receipts (ADRs). Unlike sponsored ADRs in which a non-U.S. company enters into an agreement with a U.S. depositary bank to sell depositary receipts backed by its shares on U.S. markets, unsponsored ADRs are implemented without the cooperation of the non-U.S. issuer. The Ninth Circuit had held that a purchaser of unsponsored ADRs may sue under the Securities Exchange Act of 1934 as long as it incurred "irrevocable liability" for the purchase in the United States.[3]

In *Toshiba*, the court found that Plaintiffs incurred irrevocable liability in Japan, and thus their shares were acquired in non-U.S. transactions beyond the reach of the Exchange Act. Because Plaintiffs had failed to establish that they purchased the ADRs in a domestic transaction, unlike members of the proposed class, they could not satisfy the "typicality" requirement for class certification.

Investigation of Short Selling

In December 2021, the Department of Justice launched a criminal investigation into possible relationships between hedge funds that engage in short selling and research firms that are alleged to have published reports with misleading or inaccurate information on certain companies with the goal of causing stock price declines.[4]

Earlier in the year, the SEC proposed a new rule (Exchange Act Rule 10c-1) that would require "any person that loans a security on behalf of itself or another person to report certain material terms of those loans and related information . . . to a registered national securities association (RNSA), such as the Financial Industry Regulatory Authority."[5]

As discussed above, references to one or more published short-seller reports were made in about 21% of core federal securities class action cases filed in 2021. Consequently, the DOJ investigation and the SEC's potential rulemaking could affect the extent to which certain research firms issue negative reports, which could affect the nature of the allegations in or even the number of securities class action filings.

1. Pirani v. Slack Techs. Inc., No. 20-16419 (9th Cir. Sep. 20, 2021).
2. Stoyas v. Toshiba Corp., No. 2:15-cv-04194 (C.D. Cal., Jan. 7, 2022).
3. Toshiba, slip op. at 10, fn. 9.
4. "Hedge Funds Face Expansive Short-Selling Probe, Exciting Critics," *Bloomberg News*, December 10, 2021.
5. SEC Fact Sheet – Securities Lending Transparency.

Glossary

Annual Number of Class Action Filings by Location of Headquarters (formerly known as the Class Action Filings Non-U.S. Index) tracks the number of core federal filings against non-U.S. issuers (companies headquartered outside the United States) relative to total core federal filings.

Class Action Filings Index® (CAF Index®) tracks the number of federal securities class action filings.

Core filings are all state 1933 Act class actions and all federal securities class actions excluding those defined as M&A filings.

Cyan refers to *Cyan Inc. v. Beaver County Employees Retirement Fund.* In this March 2018 opinion, the U.S. Supreme Court ruled that 1933 Act claims may be brought to state venues and are not removable to federal court.

De-SPAC Transaction refers to the transaction by which a SPAC acquires and merges with a previously private company, which will assume the SPAC's exchange listing.

Disclosure Dollar Loss Index® (DDL Index®) measures the aggregate DDL for all federal and state filings over a period of time. DDL is the dollar-value change in the defendant firm's market capitalization between the trading day immediately preceding the end of the class period and the trading day immediately following the end of the class period. DDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed at the end of the class period, including information unrelated to the litigation.

Dollar Loss on Offered Shares Index™ (DLOS Index™) measures the aggregate DLOS for federal filings with only Section 11 claims and for state 1933 Act filings. DLOS is the change in the dollar-value of shares acquired by members of the putative class. It is the difference in the price of offered shares (i.e., from the date the registration statement becomes effective through the filing date of the first identified complaint multiplied by the shares offered). DLOS should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed between the date of the registration statement and the complaint filing date, including information unrelated to the litigation.

Filing lag is the number of days between the end of a class period and the filing date of the securities class action.

First identified complaint is the first complaint filed of one or more securities class action complaints with the same underlying allegations filed against the same defendant or set of defendants. When there is no federal complaint and multiple state complaints are filed, they are treated as separate filings.

Market capitalization losses measure changes to market values of the companies subject to class action filings. This report tracks market capitalization losses for defendant firms during and at the end of class periods. They are calculated for publicly traded common equity securities, closed-ended mutual funds, and exchange-traded funds where data are available. Declines in market capitalization may be driven by market, industry, and/or firm-specific factors. To the extent that the observed losses reflect factors unrelated to the allegations in class action complaints, indices based on class period losses would not be representative of potential defendant exposure in class actions. This is especially relevant in the post-*Dura* securities litigation environment. In April 2005, the U.S. Supreme Court ruled that plaintiffs in a securities class action are required to establish a causal connection between alleged wrongdoing and subsequent shareholder losses. This report tracks market capitalization losses at the end of each class period using DDL, and market capitalization losses during each class period using MDL.

Maximum Dollar Loss Index® (MDL Index®) measures the aggregate MDL for all federal and state filings over a period of time. MDL is the dollar-value change in the defendant firm's market capitalization from the trading day with the highest market capitalization during the class period to the trading day immediately following the end of the class period. MDL should not be considered an indicator of liability or measure of potential damages. Instead, it estimates the impact of all information revealed during or at the end of the class period, including information unrelated to the litigation.

Merger and acquisition (M&A) filings are securities class actions filed in federal courts that have Section 14 claims, but no Rule 10b-5, Section 11, or Section 12(a) claims, and involve merger and acquisition transactions.

Sciabacucchi refers to *Salzberg v. Sciabacucchi*. On March 18, 2020, the Delaware Supreme Court held that forum-selection provisions in corporate charters requiring that some class action securities claims under the 1933 Act be adjudicated in federal courts are enforceable.

Glossary (continued)

Securities Class Action Clearinghouse is an authoritative source of data and analysis on the financial and economic characteristics of federal securities fraud class action litigation, cosponsored by Cornerstone Research and Stanford Law School.

State 1933 Act filing is a class action filed in a state court that asserts claims under Section 11 and/or Section 12 of the Securities Act of 1933. These filings may also have Section 15 claims, but do not have Rule 10b-5 claims.

Additional Notes to Figures

Figure 3: Federal Section 11 and State 1933 Act Class Action Filings by Venue

1. The federal Section 11 data displayed may contain Rule 10b-5 claims, but state 1933 Act filings do not.
2. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims.

Figure 4: Summary of Trend Cases

Definitions:

Cybersecurity filings are those in which allegations relate to data breaches or security vulnerabilities.

Opioid filings involve allegations related to opiate drugs that are addictive, were falsely marketed as non-addictive, or caused other opiate-related issues.

Cryptocurrency filings include blockchain or cryptocurrency companies that engaged in the sale or exchange of tokens (commonly initial coin offerings), cryptocurrency mining, cryptocurrency derivatives, or that designed blockchain-focused software.

Cannabis filings include companies financing, farming, distributing, or selling cannabis and cannabidiol products.

COVID-19 filings include allegations related to companies negatively impacted by the virus or looking to address demand for products as a result of the virus.

SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future. These include current and former SPACs.

Figure 5: Filings by Industry—All Federal SPAC Filings

1. SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future. These include current and former SPACs.
2. Sectors are based on the Bloomberg Industry Classification System.

Figure 6: Median Lag between De-SPAC Transaction and Core Federal SPAC Filings

1. SPAC filings concern companies that went public for the express purpose of acquiring an existing company in the future. These include current and former SPACs.
2. Year refers to the year in which the complaint was filed.

Figure 13: Percentage of U.S. Exchange-Listed Companies Subject to Federal or State Filings

1. Percentages are calculated by dividing the count of issuers listed on the NYSE or Nasdaq subject to filings by the number of companies listed on the NYSE or Nasdaq as of the beginning of the year. Percentages may not sum due to rounding.
2. Core Filings and M&A Filings do not include instances in which a company has been subject to both a core and M&A filing in the same year. These are reported separately in the category labeled Both Core and M&A Filings. Since 2009 there have been 22 instances in which a company has been subject to both core and M&A filings in the same year. 2017 was the only year these filings accounted for more than 0.1% of U.S. exchange-listed companies. *(continued in next column)*

Figure 13 *continued*

3. Listed companies were identified by taking the count of listed securities at the beginning of each year and accounting for cross-listed companies or companies with more than one security traded on a given exchange. Securities were counted if they were classified as common stock or ADRs and listed on the NYSE or Nasdaq.

Figure 18: State 1933 Act Filings by State

1. All Others contains filings in Alabama, Arizona, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin.
2. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims.

Figure 19: Dollar Loss on Offered Shares Index™ (DLOS Index™) for Federal Section 11–Only and State 1933 Act Filings

1. Federal filings included in this analysis must contain a Section 11 claim and may contain a Section 12 claim, but do not contain Section 10(b) claims. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims.
2. Starting with this report, the DLOS methodology has been changed from using the difference between the offering price of the shares and their closing price on the day of the first identified complaint's first alleged corrective disclosure (if none were mentioned, instead the price the day after the complaint filing day was used), to using the difference between the offering price of the shares and their price on the filing date of the first identified complaint.

Figure 20: Quarterly Federal Section 11 and State 1933 Act Filings

1. The federal Section 11 data displayed may contain Rule 10b-5 claims, but state 1933 Act filings do not.
2. Beginning in 2018, California state filings may contain either Section 11 or Section 12 claims. Of the 16 filings in California in 2018, six filings contained Section 12 claims without also containing Section 11 claims.
3. There was one federal court filing in 2019 related to both a merger-related issuance and SEO. This analysis categorizes this filing as relating to a merger-related issuance to avoid double-counting.

Figure 25: Non-U.S. Filings by Location of Headquarters—Core Federal Filings

1. The "Asia" category includes filings for companies headquartered in Hong Kong.
2. In 2020, the definition for region was changed to use groupings set by the United Nations. As a result, counts in this figure may not match those in prior reports.

Appendices

Appendix 1: Basic Filings Metrics

			Disclosure Dollar Loss			Maximum Dollar Loss			U.S. Exchange-Listed Firms: Core Filings		
Year	Class Action Filings	Core Filings	DDL Total ($ Billions)	Average ($ Millions)	Median ($ Millions)	MDL Total ($ Billions)	Average ($ Millions)	Median ($ Millions)	Number	Number of Listed Firms Sued	Percentage of Listed Firms Sued
1997	174	174	$42	$272	$57	$145	$940	$405	8,113	165	2.0%
1998	242	242	$80	$365	$61	$224	$1,018	$294	8,190	225	2.7%
1999	209	209	$140	$761	$101	$364	$1,978	$377	7,771	197	2.5%
2000	216	216	$240	$1,251	$119	$761	$3,961	$689	7,418	205	2.8%
2001	180	180	$198	$1,215	$93	$1,487	$9,120	$771	7,197	168	2.3%
2002	224	224	$201	$989	$136	$2,046	$10,080	$1,494	6,474	204	3.2%
2003	192	192	$77	$450	$100	$575	$3,363	$478	5,999	181	3.0%
2004	228	228	$144	$739	$108	$726	$3,722	$498	5,643	210	3.7%
2005	182	182	$93	$595	$154	$362	$2,321	$496	5,593	168	3.0%
2006	120	120	$52	$496	$109	$294	$2,827	$413	5,525	114	2.1%
2007	177	177	$158	$1,013	$156	$700	$4,489	$715	5,467	158	2.9%
2008	224	224	$221	$1,516	$208	$816	$5,591	$1,077	5,339	170	3.2%
2009	164	157	$84	$830	$138	$550	$5,447	$1,066	5,042	118	2.3%
2010	174	135	$73	$691	$146	$474	$4,515	$598	4,764	107	2.2%
2011	189	146	$115	$850	$92	$523	$3,876	$439	4,660	127	2.7%
2012	154	142	$97	$758	$151	$405	$3,139	$647	4,529	119	2.6%
2013	165	152	$104	$750	$153	$278	$2,011	$532	4,411	137	3.1%
2014	170	158	$56	$378	$165	$220	$1,489	$528	4,416	144	3.3%
2015	217	183	$120	$671	$144	$415	$2,332	$512	4,578	169	3.7%
2016	288	204	$106	$554	$167	$848	$4,418	$1,038	4,593	188	4.1%
2017	412	214	$125	$637	$149	$512	$2,613	$665	4,411	186	4.2%
2018	420	238	$331	$1,584	$298	$1,317	$6,299	$1,063	4,406	211	4.8%
2019	427	267	$282	$1,190	$216	$1,187	$5,008	$1,010	4,318	237	5.5%
2020	333	234	$273	$1,346	$182	$1,599	$7,875	$1,008	4,514	193	4.3%
2021	218	200	$274	$1,555	$372	$941	$5,348	$1,419	4,759	182	3.8%
Average 1997–2020	228	192	$142	$829	$142	$701	$4,101	$701	5,557	171	3.1%

Note:

1. 1933 Act filings in state courts are included in the data beginning in 2010.

2. Average and median numbers are calculated only for filings with MDL and DDL data. Filings without MDL and DDL data include M&A-only filings, initial coin offering filings, and other filings where calculations of MDL and DDL are non-obvious.

3. The number and percentage of U.S. exchange-listed firms sued are based on core filings and include companies that were subject to both an M&A filing and a core filing in the same year.

Appendices (continued)

Appendix 2A: S&P 500 Securities Litigation—Percentage of S&P 500 Companies Subject to Core Federal Filings

Year	Consumer Discretionary	Consumer Staples	Energy/ Materials	Financials/ Real Estate	Health Care	Industrials	Telecomm./ Comm./IT	Utilities	All S&P 500 Companies
2001	2.4%	8.3%	0.0%	1.4%	7.1%	0.0%	18.0%	7.9%	5.6%
2002	10.2%	2.9%	3.1%	16.7%	15.2%	6.0%	11.0%	40.5%	12.0%
2003	4.6%	2.9%	1.7%	8.6%	10.4%	3.0%	5.6%	2.8%	5.2%
2004	3.4%	2.7%	1.8%	19.3%	10.6%	8.5%	3.2%	5.7%	7.2%
2005	10.3%	8.6%	1.7%	7.3%	10.7%	1.8%	6.7%	3.0%	6.6%
2006	4.4%	2.8%	0.0%	2.4%	6.9%	0.0%	8.1%	0.0%	3.6%
2007	5.7%	0.0%	0.0%	10.3%	12.7%	5.8%	2.3%	3.1%	5.4%
2008	4.5%	2.6%	0.0%	31.2%	13.7%	3.6%	2.5%	3.2%	9.2%
2009	3.8%	4.9%	1.5%	9.5%	3.7%	6.9%	1.2%	0.0%	4.2%
2010	5.1%	0.0%	4.3%	10.3%	13.5%	0.0%	2.4%	0.0%	4.8%
2011	3.8%	2.4%	0.0%	1.2%	2.0%	1.7%	7.1%	0.0%	2.6%
2012	4.9%	2.4%	2.7%	3.7%	1.9%	1.6%	3.8%	0.0%	3.0%
2013	8.4%	0.0%	0.0%	0.0%	5.7%	0.0%	9.1%	0.0%	3.4%
2014	1.2%	0.0%	1.3%	1.2%	0.0%	4.7%	0.0%	0.0%	1.2%
2015	0.0%	5.0%	0.0%	1.2%	1.9%	0.0%	4.2%	3.4%	1.6%
2016	3.6%	2.6%	4.5%	6.9%	17.9%	6.1%	6.8%	3.4%	6.6%
2017	8.5%	2.7%	3.3%	3.3%	8.3%	8.7%	8.5%	7.1%	6.4%
2018	10.0%	11.8%	1.8%	7.0%	16.1%	8.8%	12.7%	7.1%	9.4%
2019	3.1%	12.1%	3.7%	2.0%	12.9%	10.1%	10.0%	6.9%	7.2%
2020	8.1%	3.1%	1.9%	5.3%	6.3%	2.7%	2.0%	7.1%	4.4%
2021	0.0%	6.3%	5.7%	0.0%	0.0%	1.4%	5.1%	0.0%	2.2%

Appendix 2B: S&P 500 Securities Litigation—Percentage of Market Capitalization of S&P 500 Companies Subject to Core Federal Filings

Year	Consumer Discretionary	Consumer Staples	Energy/ Materials	Financials/ Real Estate	Health Care	Industrials	Telecomm./ Comm./IT	Utilities	All S&P 500 Companies
2001	1.3%	6.3%	0.0%	0.8%	5.4%	0.0%	32.6%	17.4%	10.9%
2002	24.7%	0.3%	1.2%	29.2%	35.2%	13.3%	9.1%	51.0%	18.8%
2003	2.0%	2.3%	0.4%	19.9%	16.3%	4.6%	1.7%	4.3%	8.0%
2004	7.9%	0.1%	29.7%	46.1%	24.1%	8.8%	1.2%	4.8%	17.7%
2005	5.7%	11.4%	1.6%	22.2%	10.1%	5.6%	10.3%	5.6%	10.7%
2006	8.9%	0.8%	0.0%	8.2%	18.1%	0.0%	8.3%	0.0%	6.7%
2007	4.4%	0.0%	0.0%	18.1%	22.5%	2.2%	3.4%	5.5%	8.2%
2008	7.2%	2.6%	0.0%	55.0%	20.0%	26.4%	1.4%	4.0%	16.2%
2009	1.9%	3.9%	0.8%	30.7%	1.7%	23.2%	0.3%	0.0%	7.6%
2010	4.9%	0.0%	5.2%	31.1%	32.7%	0.0%	5.9%	0.0%	11.1%
2011	4.6%	0.8%	0.0%	6.9%	0.7%	2.1%	13.4%	0.0%	5.0%
2012	1.6%	14.0%	0.9%	11.0%	0.8%	1.2%	2.2%	0.0%	4.3%
2013	4.4%	0.0%	0.0%	0.0%	4.4%	0.0%	16.6%	0.0%	4.7%
2014	2.5%	0.0%	0.2%	0.3%	0.0%	1.7%	0.0%	0.0%	0.6%
2015	0.0%	1.9%	0.0%	3.0%	3.1%	0.0%	7.0%	3.7%	2.8%
2016	2.8%	1.0%	19.8%	11.9%	13.2%	8.7%	12.3%	4.4%	10.0%
2017	8.2%	6.7%	2.3%	1.5%	2.7%	22.3%	4.4%	9.6%	6.1%
2018	4.7%	15.2%	1.4%	12.5%	26.3%	19.4%	19.4%	6.5%	14.9%
2019	0.5%	9.1%	1.2%	2.2%	6.6%	21.6%	18.0%	7.9%	10.0%
2020	2.2%	1.8%	0.4%	16.9%	4.7%	4.9%	1.6%	6.6%	4.3%
2021	0.0%	17.7%	12.0%	0.0%	0.0%	0.5%	8.2%	0.0%	5.1%
Average 2001–2020	4.5%	4.2%	2.7%	14.5%	11.5%	8.9%	8.8%	6.2%	8.4%

Note: Average figures are calculated as the sum of the market capitalization subject to core filings in a given sector from 2001 to 2020 divided by the sum of market capitalization in that sector from 2001 to 2020.

Appendices (continued)

Appendix 3: M&A Federal Filings Overview

		M&A Case Status					Case Status of All Other Federal Filings				
Year	M&A Filings	Dismissed	Settled	Remanded	Continuing	Trial	Dismissed	Settled	Remanded	Continuing	Trial
2011	43	40	3	0	0	0	69	74	1	0	1
2012	12	9	3	0	0	0	67	68	2	2	0
2013	13	7	6	0	0	0	85	64	1	2	0
2014	12	9	3	0	0	0	65	87	2	2	0
2015	34	27	7	0	0	0	95	69	4	4	1
2016	84	68	14	0	2	0	93	74	6	13	1
2017	198	190	6	1	1	0	114	77	4	18	0
2018	182	176	4	0	2	0	118	56	0	46	0
2019	160	153	2	0	5	0	116	57	0	69	0
2020	99	95	0	0	4	0	70	17	0	133	0
2021	18	11	0	0	7	0	19	1	0	172	0

Note:

1. The Securities Class Action Clearinghouse began tracking M&A filings as a separate category in 2009.
2. Case status is as of the end of 2021.

Appendix 4: Case Status by Year—Core Federal Filings

	In the First Year				In the Second Year				In the Third Year			
Filing Year	Settled	Dismissed	Other	Total Resolved within One Year	Settled	Dismissed	Other	Total Resolved within Two Years	Settled	Dismissed	Other	Total Resolved within Three Years
1997	0.6%	7.5%	0.0%	8.0%	14.9%	8.6%	0.0%	31.6%	17.8%	4.0%	0.0%	53.4%
1998	0.8%	7.4%	0.0%	8.3%	16.1%	12.8%	0.0%	37.2%	15.7%	7.9%	0.0%	60.7%
1999	0.5%	6.7%	0.0%	7.2%	11.0%	12.0%	0.0%	30.1%	18.2%	9.1%	0.0%	57.4%
2000	1.9%	4.2%	0.0%	6.0%	11.6%	13.0%	0.0%	30.6%	15.7%	10.6%	0.5%	57.4%
2001	1.7%	6.7%	0.0%	8.3%	11.7%	10.6%	0.0%	30.6%	18.3%	5.0%	0.0%	53.9%
2002	0.9%	5.8%	0.4%	7.1%	6.7%	9.4%	0.0%	23.2%	15.2%	11.6%	0.0%	50.0%
2003	0.5%	7.8%	0.0%	8.3%	7.8%	13.5%	0.0%	29.7%	14.6%	14.6%	0.0%	58.9%
2004	0.0%	10.5%	0.0%	10.5%	9.6%	16.2%	0.0%	36.4%	12.7%	9.6%	0.0%	58.8%
2005	0.5%	11.5%	0.0%	12.1%	8.8%	19.8%	0.0%	40.7%	17.0%	8.8%	0.0%	66.5%
2006	0.8%	9.2%	0.0%	10.0%	8.3%	17.5%	0.0%	35.8%	16.7%	7.5%	0.0%	60.0%
2007	0.6%	7.3%	0.0%	7.9%	7.9%	18.1%	0.0%	33.9%	19.8%	11.9%	0.0%	65.5%
2008	0.0%	13.0%	0.9%	13.9%	4.9%	20.2%	0.0%	39.0%	10.3%	10.3%	0.0%	59.6%
2009	0.0%	9.6%	0.0%	9.6%	6.4%	22.9%	0.0%	38.9%	8.3%	8.9%	0.0%	56.1%
2010	1.5%	11.0%	0.7%	13.2%	8.8%	20.6%	0.0%	42.6%	5.9%	13.2%	0.0%	61.8%
2011	0.0%	12.4%	0.7%	13.1%	4.1%	18.6%	0.0%	35.9%	22.1%	11.7%	0.0%	69.7%
2012	0.7%	12.9%	1.4%	15.1%	6.5%	25.9%	0.0%	47.5%	15.8%	6.5%	0.0%	69.8%
2013	0.0%	19.1%	0.7%	19.7%	9.9%	25.0%	0.0%	54.6%	14.5%	5.3%	0.0%	74.3%
2014	0.6%	10.9%	1.3%	12.8%	11.5%	21.8%	0.0%	46.2%	16.0%	7.7%	0.0%	69.9%
2015	0.0%	17.3%	2.3%	19.7%	6.4%	23.7%	0.0%	49.7%	11.6%	9.2%	0.0%	70.5%
2016	0.0%	14.4%	1.6%	16.0%	8.0%	22.5%	0.5%	47.1%	11.8%	7.5%	1.1%	67.4%
2017	0.0%	18.3%	1.4%	19.7%	5.6%	22.5%	0.5%	48.4%	11.7%	8.0%	0.0%	68.1%
2018	0.0%	13.2%	0.0%	13.2%	6.8%	22.7%	0.0%	42.7%	10.9%	13.6%	0.0%	67.3%
2019	0.0%	14.9%	0.0%	14.9%	8.7%	26.0%	0.0%	49.6%	14.9%	7.0%	0.0%	71.5%
2020	1.4%	17.3%	0.0%	18.6%	6.4%	14.5%	0.0%	39.5%	-	-	-	-
2021	0.5%	9.9%	0.0%	10.4%	-	-	-	-	-	-	-	-

Note: Percentages may not sum due to rounding. Percentages below the lines indicate cohorts for which data are not complete. “Other” represents cases that were remanded or went to trial. Case Status is reported as of the last significant docket update as determined by the Cornerstone Research and Stanford Law School Securities Class Action Clearinghouse.

Appendix 5: Litigation Exposure for IPOs in the Given Periods—Core Filings

	Cumulative Exposure			Incremental Exposure		
Years Since IPO	2009–2020	2001–2008	1996–2000	2009–2020	2001–2008	1996–2000
1	6.3%	3.8%	2.0%	6.3%	3.8%	2.0%
2	11.5%	6.5%	5.9%	5.1%	2.7%	4.0%
3	16.1%	8.6%	8.8%	4.6%	2.1%	2.9%
4	19.5%	10.8%	11.5%	3.5%	2.2%	2.6%
5	22.8%	12.2%	14.6%	3.3%	1.4%	3.1%
6	25.3%	13.6%	16.7%	2.5%	1.5%	2.2%
7	27.5%	15.3%	19.3%	2.2%	1.6%	2.6%
8	29.2%	17.1%	21.5%	1.7%	1.8%	2.2%
9	31.4%	18.1%	24.0%	2.2%	1.1%	2.5%
10	33.8%	19.9%	25.7%	2.4%	1.8%	1.7%

Note:

1. Cumulative litigation exposure correcting for survivorship bias is calculated using the following formula:

$$\left(\text{cumulative litigation exposure in year } t\right) = 1 - \prod_{i=1}^{t}\left(1 - p_i\right), \text{ where:}$$

$$p_i = \frac{\text{number of companies sued in year } i}{\text{number of companies surviving at the end of year } \left(i-1\right)}$$

Appendix 6: Filings by Industry—Core Federal Filings

(Dollars in Billions)

	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
Industry	Average 1997–2020	2019	2020	2021	Average 1997–2020	2019	2020	2021	Average 1997–2020	2019	2020	2021
Financial	30	22	29	18	$21	$10	$75	$7	$137	$41	$805	$33
Consumer Non-Cyclical	52	87	66	68	$41	$68	$68	$63	$163	$324	$309	$179
Industrial	17	20	13	10	$13	$22	$16	$6	$50	$105	$45	$10
Technology	23	29	28	29	$25	$100	$69	$41	$96	$426	$126	$101
Consumer Cyclical	20	19	26	24	$10	$9	$12	$44	$55	$38	$125	$134
Communications	27	37	18	21	$24	$55	$11	$83	$145	$163	$88	$259
Energy	7	10	9	10	$4	$5	$5	$13	$22	$25	$40	$175
Basic Materials	5	8	10	4	$2	$9	$4	$3	$15	$23	$15	$7
Utilities	3	5	3	0	$2	$2	$11	$0	$10	$20	$25	$0
Unknown/ Unclassified	4	5	18	8	$0	$0	$1	$0	$0	$0	$3	$0
Total	188	242	220	192	$142	$280	$270	$259	$696	$1,165	$1,580	$899

Note: Figures may not sum due to rounding.

Appendix 7: Filings by Circuit—Core Federal Filings

(Dollars in Billions)

	Class Action Filings				Disclosure Dollar Loss				Maximum Dollar Loss			
Circuit	Average 1997–2020	2019	2020	2021	Average 1997–2020	2019	2020	2021	Average 1997–2020	2019	2020	2021
1st	8	6	2	4	$7	-$1	$0	$1	$20	$30	$0	$5
2nd	54	103	76	82	$45	$82	$72	$109	$251	$360	$633	$371
3rd	18	27	24	14	$18	$18	$21	$10	$69	$99	$107	$49
4th	6	6	3	6	$2	$1	$1	$5	$12	$9	$4	$17
5th	11	13	9	8	$7	$4	$5	$11	$35	$20	$47	$156
6th	8	11	7	6	$7	$8	$13	$2	$27	$24	$34	$8
7th	8	8	7	4	$8	$29	$10	$1	$34	$106	$105	$2
8th	6	2	1	1	$3	$2	$0	$0	$12	$5	$1	$1
9th	49	52	77	57	$38	$133	$140	$113	$197	$501	$575	$272
10th	6	6	6	3	$2	$2	$1	$1	$12	$7	$13	$3
11th	14	8	8	7	$5	$1	$7	$6	$22	$4	$61	$16
D.C.	1	0	0	0	$1	$0	$0	$0	$3	$0	$0	$0
Total	188	242	220	192	$142	$280	$270	$259	$696	$1,165	$1,580	$899

Note: Figures may not sum due to rounding.

Appendices (continued)

Appendix 8: Filings by Exchange Listing—Core Federal Filings

	Average (1997–2020)		2020		2021	
	NYSE/Amex	Nasdaq	NYSE	Nasdaq	NYSE	Nasdaq
Class Action Filings	92	115	118	173	69	126
Core Filings	*77*	*95*	*83*	*110*	*62*	*115*
Disclosure Dollar Loss						
DDL Total ($ Billions)	$91	$50	$147	$120	$93	$163
Average ($ Millions)	$1,304	$528	$1,911	$1,145	$1,754	$1,473
Median ($ Millions)	$286	$108	$524	$113	$499	$360
Maximum Dollar Loss						
MDL Total ($ Billions)	$456	$235	$1,146	$413	$335	$557
Average ($ Millions)	$6,443	$2,483	$14,884	$3,929	$6,316	$5,018
Median ($ Millions)	$1,419	$490	$2,588	$675	$2,539	$1,159

Note:

1. Average and median numbers are calculated only for filings with MDL and DDL data.
2. NYSE/Amex was renamed NYSE MKT in May 2012.

Research Sample

- The Securities Class Action Clearinghouse, cosponsored by Cornerstone Research and Stanford Law School, has identified 6,116 federal securities class action filings between January 1, 1996, and December 31, 2021 (securities.stanford.edu). The analysis in this report is based on data identified by Stanford as of January 12, 2022.
- The sample used in this report includes federal filings that typically allege violations of Sections 11 or 12 of the Securities Act of 1933, or Sections 10(b) or 14(a) of the Securities Exchange Act of 1934.
- The sample is referred to as the "classic filings" sample and excludes IPO allocation, analyst, and mutual fund filings (313, 68, and 25 filings, respectively).
- Multiple filings related to the same allegations against the same defendant(s) are consolidated in the database through a unique record indexed to the first identified complaint.
- In addition to federal filings, class actions filed in state courts since January 1, 2010, alleging violations of the Securities Act of 1933 are also separately tracked.
- An additional 204 state class action filings in state courts, from January 1, 2010, to June 30, 2021, have also been identified.

The authors request that you reference Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse in any reprint of the information or figures included in this study.

Please direct any questions to:

Alexander Aganin
650.853.1660
aaganin@cornerstone.com

Cornerstone Research

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EXHIBIT 4

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - - x
PATRICIA B. BAUM, ET AL, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs

vs.

HARMAN INTERNATIONAL INDUSTRIES INCORPORATED, ET AL

Defendants

No.3:17CV246(RNC)

HARTFORD, CONNECTICUT
NOVEMBER 11, 2021

- - - - - - - - - - - - - - - - - - x

PRETRIAL CONFERENCE

BEFORE:

HON. ROBERT N. CHATIGNY, Senior U.S.D.J.

Corinna F. Thompson, RPR
Official Court Reporter

APPEARANCES:

FOR THE PLAINTIFFS:

ROBBINS GELLER RUDMAN & DOWD
655 West Broadway
Suite 1900
San Diego, California 92101
BY: DAVID A. KNOTTS, ESQ.
RANDALL BARON, ESQ.

JOHNSON FISTEL, LLP
655 West Broadway
Suite 1400
San Diego, California 92101
BY: BRETT MIDDLETON, ESQ.

MOTLEY RICE
One Corporate Center
20 Church Street
Hartford, Connecticut 06103
BY: MATHEW P. JASINSKI, ESQ.

FOR THE DEFENDANTS:

WACHTELL LIPTON ROSEN & KATZ
51 West 52nd Street
New York, New York 10171
BY: STEPHEN R. DIPRIMA, ESQ.
WILFRED T. BEAYE, ESQ.

WIGGIN & DANA
One Century Tower
265 Church Street
P. O. Box 1832
New Haven, Connecticut 06508-1832
BY: JOSEPH C. MERSCHMAN, ESQ.
TADHG DOOLEY, ESQ.

2:02 PM

THE COURT: Good afternoon.

MR. DiPRIMA: Good afternoon, Your Honor.

MR. KNOTTS: Good afternoon, Your Honor.

THE COURT: I hope that you're able to hear me.

Let me start off by asking counsel who will be participating to please enter their appearances at this time.

MR. KNOTTS: Good Afternoon, Your Honor. David Knotts for plaintiffs. Robbins Geller Rudman Dowd.

THE COURT: Good afternoon.

MR. DiPRIMA: Your Honor, this is Steven DiPrima from Wachtel, Lipton, Rosen & Katz for the defendants.

THE COURT: Good afternoon.

MR. DiPRIMA: Good afternoon.

THE COURT: Anybody else?

MR. BARON: Your Honor, Randall Baron from Robbins Geller Rudman & Dowd for plaintiffs.

THE COURT: Thank you.

MR. MIDDLETON: Good afternoon, Your Honor. Brett Middleton from Johnson Fistel also on behalf of the plaintiffs.

THE COURT: Thank you.

Anybody else want to enter appearance?

(No response.)

THE COURT: Let me be sure our court reporter is able to hear everyone.

THE COURT REPORTER: Yes, Your Honor. I did an audio check with everyone before we began.

THE COURT: I want to thank the court reporter for being available today on a court holiday.

I received your status reports, which I've read, and of course I know that a motion has been filed seeking certification of interlocutory appeal. I've taken a look at that too.

I thought that it might be best if we talked first about the status of discovery in anticipation of the mediation as set out in your status reports. To frame that discussion I will briefly state what I understand to be the situation.

The plaintiffs submitted a request for electronic discovery seeking emails involving Mr. Paliwal, Ms. Rowland for a four-and-a-half-month period of time using 16 search terms. This has led to an impasse apparently on the ground that this discovery is likely to be unduly expensive.

That's my understanding of where you are. Please feel free to correct or amend that as you wish and then we can talk about what would make the most sense going forward.

MR. DiPRIMA: Your Honor, this is Steve DiPrima. I don't know if there's a preference you had in who talks first, but I could address where we are.

THE COURT: Okay. That's fine.

MR. DiPRIMA: Sure.

So we have agreed to make a fair amount of discovery in advance of the January 5 mediation date. We've produced the board record related to the deal. J. P. Morgan has produced its deal file. We've started producing financial information results for Harman for the forecast period post deal results. As we discussed with the Court on one of our last conferences, that information we think is extremely important, really case dispositive. It shows that Harman has missed its forecasts, whichever forecasts you want to look at, by half a billion dollars on the profit line every year of the forecast period.

We had pointed the plaintiffs to Samsung's public filings. They've pointed out -- and correctly -- that they require conversion, currency conversion to get it to to an apples-to-apples comparison, but we've produced or are now producing the audited and unaudited results that we think will show a pretty clear line of sight to how the company has done. I believe that's included as well the monthly results across -- broken down by segment. So it's highly detailed information.

We've also committed -- and we haven't done yet -- but we've committed to do how our finance folks do a reconciliation of those numbers to the projections so it's all sort of lined up.

J. P. Morgan bankers have produced their deal file. We understand as well that request has been made that the other banker that Harman hired in connection with the deal, that they produce their deal file as well. We've raised no objection to that. We understand that that is being done as well.

We've committed to do a couple other things that are in the works. We've committed to provide information -- if Your Honor will recall, there was an allegation that J. P. Morgan had an undisclosed relationship with a Samsung entity. We've made the point -- and I think Your Honor has likely seen it in the briefs -- that the entity that was referenced in the complaint is not an entity that is owned by the Samsung Electronics that bought Harman. It's a subsidiary of a different Samsung entity. Again, on that, we think the pleading mistake and that that claim, once that discovery is made, it will be seen as not really going anywhere.

So that is discovery that we've committed to get to the plaintiffs that has not yet been made but will be made in advance of January 5.

We've also committed to giving the plaintiffs information on any material, mergers or dispositions that Harman has made since the deal was announced. I think we've previously put before the Court an affidavit a couple years ago that at least as of that time there hadn't been any, but we will update that information. That's discovery that we will get to the plaintiffs before the January 5 mediation date.

And that's sort of a long way of saying we've done a lot, we've committed to do a lot. We're committed to making the mediation work if it can. I think everyone on the call would love for this lawsuit to be over. We think it's time that it be over. But in terms of electronic discovery we think that is burdensome in light of everything else we've committed to.

And in addition to that, to say this delicately because I don't want to offend the Court, we're very interested in seeing the Court's opinion. We know that's under -- I don't know what the right word is -- advisement, submission. But we do think that the way this should work is that we have the benefit of the Court's reasoning. We got into it a little bit on one of these calls earlier, but obviously they are very substantial issues. We have an intervening Second Circuit decision, we have a lot of intervening law since the Court's

original decision, and getting the benefit of the Court's writing and reasoning on that I think is important to us before we go down the road of electronic discovery.

THE COURT: That's fine. I'm not offended.

Would you please explain why that's so? What is it that you need from me that would bear upon the expense, feasibility or justification for this electronic discovery in connection with the mediation?

MR. DiPRIMA: Sure.

THE COURT: I hope I don't offend you by that question.

MR. DiPRIMA: No, no, no. That's totally fine. For example, Your Honor, we got in a little bit on the last call on the loss causation question. As you know, they're this further issue of the J. P. Morgan relationship. We think that there are facts before the Court that are judicially noticeable that make it clear that that is just an issue that really shouldn't be in the case. I assume that the Court has rejected our arguments on that. We haven't seen and don't necessarily understand why.

And then on the loss causation question, the Court raised, we have of Judge Katzmann's analysis. We would just very much like to understand sort of how and why the Court is distinguishing that decision. Obviously,

it's a very recent Second Circuit decision, affirms a district court decision from the Southern District, a sister court, that looked at this Court's prior analysis and expressly disagreed with it.

Before we get into what we believe will be lengthy burdensome discovery on questions about, for example, other bidders, we made the point there were no other bidders and we think that makes that case easier and not harder than Wesco. If you have another bidder, at least in theory you have the possibility of someone who may potentially dig a little deeper and pay a little more. In this case we don't have that.

So the Court's thinking on that, I don't think I'm saying something controversial. The structure of PSLRA is designed precisely with this in mind. The pleading burden is harder, it's not ordinary notice pleading, and the plaintiffs are put to their allegations. The Court's decision in this case, as in any case, is an extremely important touchpoint for understanding the scope of what's at issue.

So here what we've provided -- the board record, the board minutes, the board communications, the bank index -- we think it's all entirely consistent with what's disclosed. What we're talking about is a disclosure that this is not a breach of fiduciary duty case. It's a

disclosure case and we're focus quite narrowly now on two disclosures. One was the one I mentioned, the disclosure related to the Samsung entity. The other was a caution about projections, that there was more downside risk than likely an upside potential in the numbers.

We think the board record and the banker files are going to show what they show about what people were thinking. And we now have the results. And the results really sort of cry out, why are we here? Why are we spending money on this case, more money on this case than we should? We have a forecast period. It was four and a half years long. A long forecast period. But here we are and it's over. This company missed its forecast by half is a billion dollars every year.

So the idea that the company and the executives and the independent men and women who served on this board should be put through more discovery than necessary when the reality is that that caution, if anything, understated risk. I mean, imagine, Your Honor, if these shareholders loaded down this transaction, they voted it down, and then watched as Harman missed its projections by half a billion dollars each year. We would be sued. The projections, unfortunately, are fodder for this kind of thing.

We believe that, as laid out in our motions, in the briefing and the interlocutory appeal that there are

protections under the PSLRA. We didn't carry the day on those arguments, but now in discovery, in aid of an early effort to try to settle the case and avoid the costs of litigation, we're endeavoring to do what a lot of litigants don't have the opportunity to do because projections are fundamentally forward looking. We're now -- we've fast forwarded to the end point. We think those -- that information would weigh very, very heavily in favor of limiting discovery until at least an early opportunity to settle.

As I said in our statement, we are prepared, once we get through what we've agreed do -- and it's going to take a little time do that, we're working very hard to get it done -- and we have the benefit of the Court's decision, the opinion that the Court indicated on the 30th that it would be providing and I think indicated again in one of our later conferences that it was in the works, to revisit this and talk about it. If there are things that could advance the ball, we'll talk about them at that point. But I think to order us into what effectively is expedited electronic discovery before we're done doing what we agreed to do and before we have the Court's opinion it's perhaps premature.

THE COURT: Okay. Thank you for your comments.

I believe I have a reasonably good understanding

of your position as you have just stated it. I'm not sure you answered my question, Mr. DiPrima. Let me tell you what's in my mind.

I think that the claim based on the alleged conflict of interest is -- how shall I put this -- secondary to the main claim. I think that describing it that way might even dignify it, but I won't use a different term. My point is I think for purposes of mediation I could be persuaded that that claim could be disregarded. It could be treated as though it's not even in the case.

MR. DiPRIMA: Thank you, Your Honor.

THE COURT: I wouldn't want you to fall short of a successful mediation because of a stumbling block posed by that secondary claim. I would rather that you treat it as if it's not even in the case.

The real bone of contention here is whether people deliberately misled shareholders by describing the projections in a way that seems to be in conflict with earlier statements. That's really all it is. And it could be, Mr. DiPrima, that this case has modest value on its best day. It could be that in the absence of emails supporting the suspicion that there was lying going on, this case would have to be resolved on terms that would be very modest, not least of all because we have the benefit

of everything that has happened in these past number of years.

So I'm not missing the point. I'm not missing the point. I recognize that given what has happened over these past years, if I were plaintiffs' counsel I would need to think long and hard about investing in this litigation.

So I'm not missing the point. I think I have the point clearly in mind. But here's the thing: What if there is an email that corroborates the plaintiffs' theory of the case? What if there is? I can't tell the plaintiffs to accept on my say so that there's no such email. And I gather that plaintiffs' counsel -- there are a number of them here in the Zoom conference, four by my count -- I gather they have a sufficient interest in this case to want to know whether there is such an email. And if they don't have access to the emails, I imagine that's going to fuel their suspicion, the suspicion that has them devoting their time and energy to this litigation.

In regard to my decision, you really have it, Mr. DiPrima. I'm not holding back any magic bullet. You have my initial decision. I view your motion for judgment on the pleadings as a motion for reconsideration. So it's really a question of asking me to revisit and change my initial decision. There's really nothing new about the

matter. And I did tell you last time why, in my opinion, this claim about deliberately misleading investors via this alleged tactic clears the bar.

The point is, again, I wouldn't want you to think that I can add something new or different that's going to change the world. It is what it is. And you believe, with good reason -- I'm not suggesting otherwise -- you believe as defense counsel that this case should be thrown out. I'm not there. Maybe we all would be better off if I were, but I'm not.

So what I'm left with is a situation where a claim that has managed to pass muster, for better or worse, is going to be the subject of a mediation. And I guess it's going to be very difficult to have a meaningful mediation process in the absence of any electronic discovery whatsoever.

So all of that said, my question for plaintiffs' counsel would be: Given the defense position as well articulated by Mr. DiPrima, given what you are up against in this case, not least of all the performance of this company over these past number of years, is there a way to narrow your electronic discovery to get at what seems to me to be the crux of it: Did Mr. Paliwal mislead investors the way he did in order to feather his own nest. That's my understanding of the crux of the matter. And

I'm wondering if there is an email search that you could construct that would get at that question. And if there is, then I don't know why the defense would expect me to think that such a request was exorbitant.

MR. KNOTTS: Your Honor, thank you for that and I'm happy to address that directly.

And I do want to just respond briefly to that point that Your Honor just made in Mr. DiPrima's discussion about this post close performance issue, because I do think at these various conferences Mr. DiPrima has submitted just statements and things outside of the pleadings -- I don't want to call it in evidence -- and has attempted to push that narrative.

Harman did produce a handful of post close documents recently. So defendants now have produced a grand total of 45 documents. We looked at them and they directly contradict what Mr. DiPrima has been saying about the post close performance.

So earlier, in connection with the motion for judgment on the pleadings and I think the request for judicial notice after the hearing on that motion, the defendants' relied on submissions by Samsung, and now we have these figures in U.S. dollars, these high level accounting figures. And what we see is that from a revenue, from a net sales standpoint, which is what should

matter for tracking post close performance of a subsidiary with a conglomerate operating under a different cost structure. So the accounting on cost changes, but the revenue shouldn't. What we see is Harman's post close performance was and Harman's projections were spot on all of the way through 2019 right up until COVID happens, around 2020.

2018 -- this merger was early 2017 -- you go out to 2018, Harman's actual performance from a revenue standpoint beat, beat the management projections that were purportedly too aggressive.

You go out to 2019, actual performance missed the management projections by about 1 percent. So essentially again, spot on.

And then you add it all up, 2017, 2018, 2019, Harman's performance relative to the management projections was spot on. I think there's a less than 1 percent difference from the $23 billion, like $23.4 billion in revenue that was projected, 23.3 or 4 that happened in actuality. That's from a revenue standpoint. That's from a net sales standpoint.

And Mr. DiPrima, what he's talking about in post close performance, he's talking about EBITDA numbers that are cobbled together under this Samsung subsidiary with a different accounting structure.

So I just wanted to address that narrative about Harman falling well short of its projections on a post close basis because the documents that we've seen from a revenue and from a net sales standpoint contradict that notion.

To Your Honor's point that email discovery is routine in a case like this where we're passed the motion to dismiss. The defendants -- I just looked to their earlier statements and agreements on this issue previously after the Court issued the first ruling granting in part and denying the motion to dismiss, which is the same complaint, it's still the same scope of complaint that's at issue today -- and it said they're willing to meet and confer with plaintiff regarding the custodians whose files will be searched pursuant to a search protocol.

The defendants also said that producing electronically stored information in accordance with a case specific reasonable discovery protocol encompassing search terms is consistent with defendants' obligations under the Federal Rules of Civil Procedure, the District of Connecticut local rules, and this Court's individual practices. So that's from the defendants themselves.

What we tried do in crafting these search terms is exactly what Your Honor suggested in crafting a narrow set of material that gets to the heart of the issue and

gets to the adjustments of the projections during this time period and perhaps relating to Mr. Paliwal's incentive. So ordinarily on a case like this, the email protocol would involve I'd say ten to 15 custodians, there's ten or 11 defendants here and then there would be management from the company. That would take about -- it would go a little over a year period because that's how long -- which the defendants agreed to as the relevant time period under the full scope of discovery, about a year, because that's how long the overall process took -- and there would be dozens and dozens of search terms.

So what we tried to do in this very, very limited and narrow initial set was get right to the heart of the case. So what we did was take just two custodians, Mr. Paliwal, the CEO, Ms. Rowland, the CFO, and we took the time period August 4 -- we went a couple weeks in front of that -- August 4, 2016 where Mr. Paliwal made those public statements talking about how he thought that the management projections were conservative. So we took that opening time period and then we went to around the time of the announcement of the merger, maybe a couple weeks after that to the preliminary proxy.

So we took that very limited roughly four-month time period to try to get to the heart of what I think the Court referred to as the primary claim here.

And we included just 16 search terms. Some of those search terms were related to get to projection related materials. 2019E is a term. That's 2019 estimate. We saw that from board materials that that's a term that Harman uses to describe projections. We included some the code words for Samsung about this merger.

So we tried to, instead of proposing the full, one-year 15-custodian-type thing -- which the parties will ultimately get to if this case doesn't settle -- we tried to propose an extremely narrow, truncated set of two custodians, four months that get to the heart of the issues.

Mr. DiPrima says it's unduly burdensome and expensive. It's a sliver of the full costs that would be required in this case.

But in any event, what we've asked -- if you think something is too burdensome, if something results in too many hits, send us a hit report. We'll work it out with you. We are happy to consider any terms. Let's say Samsung. That's a term, for example. Let's say that the CEO is getting a bunch of analyst reports that mention Samsung and have nothing to do with the deal. We'll take a look at that and we'll take it off the list.

I think it's difficult for defendants to make an

argument of burden when they have no idea what the burden is. They're basically saying that searching one email is too burdensome and that's too much.

But I think, as the Court indicated, we have provided an extremely limited set of material. And if certain terms are too burdensome, if there's time period that the defendants think is irrelevant, we're happy to discuss it. But the defendants, we ask to get on the phone and they just won't do that because -- well, I guess Mr. DiPrima can explain why. We've tried to get a very, very streamlined proposal so that we can at least have some baseline of information coming into this mediation, some fragment of the overall e-discovery that we would get in a case like this.

I'll also just add one quick point. We talked about setting a schedule in the case in the event that mediation isn't successful so that we all aren't kind of looking around in a few months wondering where the last couple months went. So I think we reiterate our request for that.

I'll also add on the issue of burden with respect to search terms and things like that, we've proposed what's called a quick peek protocol. There's a lot of standards or templates for an agreement like this. And that would basically mean that the defendants run the

search terms and under very strict and stringent protective orders, plaintiffs would then undertake the burden of reviewing that material and anything that's not directly relevant goes back to the defendants. We can't use any privileged material or anything like that. So the plaintiffs undertake the burden of the review. Again, we'd be happy to work out a protocol in that regard. If burden is Mr. DiPrima's issue, I think it takes that issue off the table.

MR. DiPRIMA: Your Honor, if I might, could I address some of that?

THE COURT: Briefly, please.

MR. DiPRIMA: Very briefly.

What Mr. Knotts doesn't dispute is that this company missed its profit projections every year of the forecast period by a mile, by hundreds and hundreds of millions of dollars. There is no universe in which that doesn't manifest its downside risk in the projections. Profits are how companies are valued, it's how this company was valued by the bankers in this case, and I think we all readily appreciate and understand that.

I would again generally and almost apologetically, Your Honor, disagree that a decision here isn't something of very, very big significance to our clients. We did make these motions some time ago and

we're very interested in seeing the Court's reasoning. We do think on the pleadings motion we pointed the Court to some aspects of the prior analysis that we don't think were accurately reflected in the proxy.

And on top of that, in terms of what's new, what's new is the change in the law. These cases have been almost uniformly rejected by the courts of this circuit and by courts of other circuits in ways that we think are in very fundamental tension with this Court's decision, including Judge Katzmann's decision in the Second Circuit and the other decisions and Wesco.

As I said, we think that the right time to do electronic discovery is once we have that decision in hand and once we've gotten through the discovery that we've agreed to provide.

THE COURT: Well, I'm not sure that there's anything more to discuss today. It sounds like the defense is not of a mind to engage in any discussion about electronic discovery until it receives my ruling. So there we are.

It's left for me to inquire now, I guess, what the plaintiffs have in mind with regard to the motion for certification of interlocutory appeal. Are you planning to submit an opposition to that? Are you not opposed? What is your present thinking, Mr. Knotts?

MR. KNOTTS: Yes, Your Honor. I think that we do plan to submit an opposition as of the deadline to do so, which comes up in about two and a half weeks or so. We look at this as sort of a case of the defendants never-ending pleading challenge. This is the fifth or sixth attempt at the same --

THE COURT: I can't hear you. I lost you, Mr. Knotts.

MR. KNOTTS: Okay. Can you hear now, Your Honor?

THE COURT: Yes, I can. Thank you.

MR. KNOTTS: So I said that we do intend to respond. We disagree that this case is anywhere close to the exceptional circumstances that would warrant interlocutory review. It's not an issue of first impression by the Second Circuit. The Second Circuit addressed this type of case not that long ago in a way that was very distinguishable, as Your Honor pointed out the last hearing.

So we do intend to address the motion for interlocutory appeal. We do oppose it. And it's just -- I think the good thing is we've already briefed these issues before.

THE COURT: Okay.

MR. KNOTTS: We've already submitted that.

THE COURT: Thank you.

There was a time when I devoted a lot of energy to helping people resolve cases, and if I were of a mind to engage in that effort here I would seek to persuade defense counsel that it would behoove the defense to at least engage in a negotiation about the scope of electronic discovery on the theory that if you are going to have a mediation, presumably you're not just going through the motions, so to speak. Presumably you actually want to have an effective process. And on the assumption that that is the case, in other words -- and again, let's be careful here. I'm not meaning to give offense to anybody -- but on the assumption that people are acting in good faith, on the assumption that what we're dealing with a good faith effort to resolve this case by mediation and nothing else, then I think it would make sense for me to try to explain why, from my perspective, engaging in a negotiation about some limited electronic discovery would be a good thing to do. But I'm not going to do that. I won't presume to tell anybody their business, and instead what I'll do is I'll issue the decision, which again, will be very familiar. There'll be nothing there, I don't think, that's going to cause you to see things differently than you see them now.

If at that point if it turns out that the

defense is inclined to negotiate some limited electronic discovery, wonderful. That would be great. Because I agree it would be terrific if this case could be resolved.

If not, then I guess I'll await the opposition to the motion for certification. I will expect the mediation to fail, because I don't know why it would succeed in the absence of at least some electronic discovery. I hope I'm wrong about that, but I don't know why it would succeed. And at that point either we have a certified appeal, which maybe we will, or we won't, in which case we'll have a lot more discovery than this.

Maybe the defense will decide to seek to mandamus me on the theory that given the current state of the law these two controlling questions of law can't be answered in any way other than in their favor maybe.

MR. DiPRIMA: That's not part of our thinking, Your Honor.

THE COURT: Well, then I come back to my point, Mr. DiPrima. I don't see why, if we're embarked on a good faith attempt to resolve this case by mediation, you wouldn't want to at least negotiate limited electronic discovery without which I don't see how mediation can succeed.

MR. DiPRIMA: I'll obviously bring the Court's comments back to our client and we'll discuss it.

THE COURT: Okay.

MR. KNOTTS: Just one last point, Your Honor, if I may just reiterate.

I would just ask, I think it helps the good faith effort, so the parties aren't going through the motions of this mediation, if we do get that schedule in place, because this case -- I think again, having deadlines in place will only help the parties in mediation because it puts pressure on all of us. Things are going to have to happen at some point.

THE COURT: Understood. Okay. Thank you very much.

Thank you for being available.

MR. KNOTTS: Thank you, Your Honor. We appreciate it.

(Whereupon, a recess followed.)

C E R T I F I C A T E

BAUM, ET AL VS. HARMAN INTERNATIONAL, ET AL

3:17CV246(RNC)

I, Corinna F. Thompson, RPR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages, pages 1 - 26, are a true and accurate transcription of my shorthand notes taken in the aforementioned matter on November 11, 2021, to the best of my skill and ability.

/s/_____

CORINNA F. THOMPSON, RPR
Official Court Reporter
450 Main Street, Room #225
Hartford, Connecticut 06103
(860) 712-8345

EXHIBIT 5

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - - x
PATRICIA B. BAUM, ET AL, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs

vs.

HARMAN INTERNATIONAL INDUSTRIES INCORPORATED, ET AL

Defendants

No.3:17CV246(RNC)

HARTFORD, CONNECTICUT
OCTOBER 21, 2021

- - - - - - - - - - - - - - - - - - x

PRETRIAL CONFERENCE

BEFORE:

HON. ROBERT N. CHATIGNY, Senior U.S.D.J.

Corinna F. Thompson, RPR
Official Court Reporter

APPEARANCES:

FOR THE PLAINTIFFS:

ROBBINS GELLER RUDMAN & DOWD
655 West Broadway
Suite 1900
San Diego, California 92101
BY: DAVID A. KNOTTS, ESQ.
RANDALL BARON, ESQ.

JOHNSON FISTEL, LLP
655 West Broadway
Suite 1400
San Diego, California 92101

MOTLEY RICE
One Corporate Center
20 Church Street
Hartford, Connecticut 06103
BY: MATHEW P. JASINSKI, ESQ.

FOR THE DEFENDANTS:

WACHTELL LIPTON ROSEN & KATZ
51 West 52nd Street
New York, New York 10171
BY: STEPHEN R. DIPRIMA, ESQ.
WILFRED T. BEAYE, ESQ.

WIGGIN & DANA
One Century Tower
265 Church Street
P. O. Box 1832
New Haven, Connecticut 06508-1832
BY: JOSEPH C. MERSCHMAN, ESQ.
TADHG DOOLEY, ESQ.

2:01 PM

THE COURT: Good afternoon.

THE CLERK: Good afternoon, Your Honor.

THE COURT: This is a conference in the Baum case.

Would counsel please enter their appearances at this time.

MR. KNOTTS: Good afternoon, Your Honor. David Knotts from Robbins Geller Rudman & Dowd for the plaintiffs. With me from the same firm is Randall Baron as well.

MR. JASINSKI: Your Honor, this is Mathew Jasinski with Motley Rice also for the plaintiffs.

MR. MIDDLETON: Your Honor, Brett Middleton, Johnson Fistel, also representing the plaintiffs.

MR. DiPRIMA: Your Honor, this is Stephen DiPrima from Wachtell, Lipton, Rosen & Katz for the defendants.

MR. MERSCHMAN: Good afternoon, Your Honor. Joe Merschman from the law firm of Wiggin & Dana, along with my partner, Tadgh Dooley, who's local counsel for the defendants.

THE COURT: Is that everybody who wishes to enter an appearance?

(No response.)

THE COURT: I gather that it is so let's proceed.

I have read the plaintiffs' pre-conference report and also the response and I'm prepared to speak with you today about how we should proceed.

I note that the defendants think that any intelligent discussion of how we should proceed, typically with regard to discovery, needs to await the filing of my memorandum on the motion for judgment on the pleadings, and I'm happy to talk with you about that right at the start so we can put this conference in the appropriate context.

As I mentioned, I have read the defendants' response, ECF 163. The response pays particular attention to the Second Circuit's recent opinion in an analogous case and urges that without some explanation as to why I see this case as distinguishable from that one it's not a good idea to plunge into discovery.

I do think that they're distinguishable. Although the Second Circuit's opinion is in the form of a summary order and therefore doesn't give us exhaustive detail, I think that the fair reading of the summary order leaves you with the impression that the Second Circuit viewed the allegations to be complete in that case on the issue of loss causation as essentially self-defeating.

The way I read it, anyway, the plaintiff laid out in some significant detail the number of potential bidders who, on gaining access to Wesco's confidential information, decided not to proceed or offered less money than the consideration gained by the shareholders through the merger.

Beyond that, dealing with the issue of projections, the Second Circuit did not say that projections can't provide a basis for loss causation. They said that the pleading in the context of all of the allegations in the complaint was insufficient to support plausible theory of loss causation because essentially the complaint said little or nothing about the projections or their likelihood.

I think, after considering what the complaint affirmatively alleged and did not allege, the court thought it was reasonable and fair to dismiss the case without an opportunity for discovery because the merger consideration of $11.05 a share appeared to be reasonable. So the court has its decision in terms of a failure to plead facts supporting a plausible theory of loss causation.

In this case we don't have the same set of allegations with regard to the conduct of other potential bidders. So we don't have any real world numbers actually

bid by other people against which to compare the merger consideration.

I think that on that basis alone the cases are clearly distinguishable. I am not prepared to hold that I think at the end of the day the plaintiffs will be able to establish loss causation. The question for me on this motion for judgment on the pleadings -- which is, in essence, a motion for reconsideration -- is whether it's such a plain case that it should be dismissed outright without any opportunity for the plaintiffs to establish that these allegedly false statements did in fact cause economic harm to the shareholders.

In assessing that issue I think it's important to bear in mind that the people who put together this proxy statement had an obligation under the law to be honest and to treat the shareholders as they themselves would wish to be treated if the shoe were on the other foot. And if in fact the plaintiffs prove their allegations with regard to the falsity of the statements in the proxy, if the plaintiffs are able to prove that the statements were false, known to be false and made to induce the shareholders to take a lower price so that Mr. Paliwal could benefit personally, then I don't see why a case of this sort should be thrown out. I grant you it's not an easy case for the plaintiffs, but that's not

the question. And I grant you that discovery as outlined is likely to be expensive, and that's unfortunate, but that's also not the test.

Certainly a Court can pragmatically consider just how steep the uphill climb faced by the plaintiff and just how expensive discovery is likely to be in deciding how to manage a case like this, but that's not what is supposed to motivate a decision on a motion to dismiss, a motion for judgment on the pleadings, or a motion for reconsideration.

Our system allows open access to courts. The plausibility standard, which is the one I'm using, tips the scales in favor of the plaintiff. Maybe the Second Circuit will decide that in fact a higher standard is required to protect the interests of people who were similarly situated to the defendants here. Perhaps the Second Circuit will say that's more consistent with what Congress has legislated. But applying the plausibility standard today in light of the state of the case law today, understanding that opinions can be facts, for these purposes understanding that Omnicare standard of actionability applies under Section 14.

Looking at the existing case law for guidance with regard to the allegations here viewed in their totality, and given the requirement that the allegations

be given the benefit of the assumption that they are a true, I don't think this is a case that should be thrown out today.

I hope that clarifies my thinking in a way that allows us to now go on and talk about how we should manage this case going forward.

MR. KNOTTS: Your Honor, David Knotts for plaintiffs. Thank you for that. I hope that does provide the requested clarity for the defendants.

So I think that hopefully brings us to the schedule that we proposed in our statement, which is the same schedule that the defendants themselves proposed two years earlier on a same complaint. So in light of Your Honor's comments just now, it does appear that the scope of the schedule or discovery should be any different than was contemplated when the Court's ruling on the initial motions to dismiss came out.

I'll also add that the plaintiffs had earlier submitted a more expeditious schedule. We had a disagreement on that, but we've now sort of given up that dispute and are agreeing to the schedule that the defendants have proposed.

So we believe that's an appropriate schedule at this point, but we haven't gotten the defendants' position on that because, as the Court noted, they were requesting

clarity.

THE COURT: Okay.

MR. DiPRIMA: Your Honor, if I could address that the briefly. Just a point of clarification. Does the Court intend to issue a ruling beyond Your Honor's oral comments or is that the Court's decision?

THE COURT: Actually, I'm working on the final draft.

MR. DiPRIMA: Okay.

THE COURT: I expect to be doing that.

MR. DiPRIMA: We have reviewed the schedule that Mr. Knotts provided. We did try to give the Court some sense of where we're coming from and how we're feeling about this case in light of where we are.

I would say I am still somewhat puzzled as to how the allegations here, where there was no other bidder on the horizon, there was no prohibiting for another bidder to come in and make a higher bid if they wanted to, how it can be conceived that shareholders had an opportunity to beat the deal price, which was 30 percent above the prevailing market price. We're having a hard time with that, frankly.

THE COURT: Well, am I right that people are discouraged from including statements of opinion in proxy materials?

MR. DiPRIMA: No, Your Honor, quite to the contrary. Rejections are teed because they are almost always given to the bankers.

(Reporter interrupts due to audio malfunction.)

MR. DiPRIMA: No, Your Honor. Projections are almost always provided in proxy statements.

THE COURT: Unlike you, I am not an expert in this area by any means, but I was interested to read in a treatise, Fletcher's, that in fact they are discouraged. But I will defer to you.

I regret that you're having difficulty. Basically, the allegation is that the shareholders were lied to, knowingly lied to in order for Mr. Paliwal to benefit personally. Now, you may think that that's implausible. You may be perfectly right in thinking that. You may know Mr. Paliwal. I don't. But I think that objectively it's plausible that this could happen in this world of ours, and I think the sort of thing, if it does happen, is actionable. Maybe that's too superficial an analysis for securities experts, but from my point of view, that's really where we are. So if it's difficult, I regret the difficulty.

MR. DiPRIMA: I understand, Your Honor.

THE COURT: This is where we are. What I would

like to hear from you, sir, at this point to your motion for judgment on the pleadings, what I need to know is how do you perceive to go forward with discovery.

MR. DiPRIMA: Sure. Your Honor, where I was going, we're now almost five years from the negotiation of the transaction. The forecast period that was in the proxy, the management projections and the sensitized projections ended on June 30, 2021. So there were four full years of projections in the proxy. Harman's results are reported publicly. It's a subsidiary of Samsung. We can now see how Harman did relative to those projections. The particular disclosure that is at issue in this case is a disclosure where management and directors disclosed that they believed that there was a downside risk and likely upside potential in those projections. And in the securities disclosures that Samsung has made and reported on behalf of Harman, Harman missed its projections by a mile every year. For 2021, it missed by over a half a billion dollars. For 2020, it missed by over half a billion dollars.

And so Your Honor referred to opinion liability. In order for there to be opinion liability it has to be objectively false. Sitting where we are today it's very hard to concede what legs this case has in light of how Harman actually did.

You may recall, Your Honor, way back when, when we were debating the motion to intervene, we had two years back then the same story. Harman was missing its projections, even the lower projections, the sensitized projections, by hundreds and hundreds of millions of dollars.

Putting aside Wesco and Wesco's position, just given where we are in the world, given what's actually happened with this company, we see a very -- we have a very hard time understanding how one would ever impose an opinion liability on an opinion that, if anything, was true. There was way more downside risk liability -- downside risk in these projections and that's been borne out by what's happened.

I understand that the plaintiffs -- and they'll have arguments whether they accept that or not -- but it seems to me that you ought to be thinking about that in terms of just being pragmatic.

Mr. Knotts' schedule, as he's accurately represented, is based on where we were two years ago. It's hard to think about why we need years of motion practice and discovery. I think we get to summary judgment under his schedule in the spring of 2023, when we all know what happened. We know how that Harman missed its projections, not by a little bit, by a whole lot.

Even if it sort of exceeded its projections, we would have a valid defense, but we don't have crystal balls. We can't see into the future. Maybe we can see what can happens tomorrow, but can't see one and a half years.

Here the caution was prescient. It was right on the money. Missing a proffered projection by half a million dollars, that's downside risk. That's what we cautioned on. We'd like to negotiate a schedule that, if we can, get to the ending a little bit quicker.

We have the other issue that Your Honor may or may not recall about the relationship with J. P. Morgan and the Samsung entity. Turns out that that Samsung entity is a subsidiary of Samsung Life Insurance, which is not the Samsung that bought Harman. And so there again, we're kind of left scratching our heads. What is there to this case? And we'd like to have that dialogue and opportunity to have that dialogue with the plaintiffs in figuring out where we go from here.

THE COURT: I'm encouraged to think that you would like to have a meaningful dialogue. I noticed that the plaintiffs' pre-conference report referred to the possibility of a private mediator at some appropriate point. One of the questions I wanted to ask today is when would that appropriate point be? When might that appropriate point crop up?

MR. DiPRIMA: Your Honor, we've been in this case a long time. It's already passed its prime, so to speak. So we're happy to engage in mediation with the plaintiffs in the near term.

MR. KNOTTS: And I think, Your Honor, just to add to that, we certainly have no objection to mediation, but what we would have an objection to is the additional delay in terms of discovery. Mr. DiPrima's entire presentation is based on his side not producing documents, documents they've already agreed to produce. I suspect Mr. DiPrima's willingness to jump at mediation is again an attempt to avoid producing discovery.

We can do mediation. That sounds great. But we came here to set a schedule for discovery. We still prefer to do that, and if we are sent to mediation at the same time, that's great. But we would also like to get this case on schedule and proceed forward with discovery.

THE COURT: Okay. Understood.

I think that it might be best if you focused on what discovery specifically would be necessary in order for counsel to be able to properly evaluate the case for purposes of mediation, and with that focus it may be that the discovery can be proportional to the needs of the case that does have some apparent weaknesses, which are well known, I assume, to everybody on this call, including the

claim against the directors based on a conflict.

I submit that the best way to proceed would be that way; for you to bring to bear your expertise and your knowledge of the case, based on your own investigations to the extent you've been able to do them, identify the discovery that's necessary to enable people to properly evaluate the case for purposes of mediation, schedule that discovery, do that discovery and then go to the mediation.

MR. KNOTTS: Your Honor, I think inevitably the dispute -- especially from everything I'm hearing from Mr. DiPrima today -- is they don't want to produce anything at all and are arguing not to do that.

So at least the scope of discovery, I can identify the scope we would want right now and I'm prepared to do that. I don't know if we want to talk about that now or set up -- I think Judge Garfinkel was involved for a little bit prior to the motion for judgment on the pleadings. I think we will inevitability have some disputes about the scope of that discovery. So I think the issue is going to be defining that, even that initial scope of discovery before getting to that step.

THE COURT: I don't doubt that in the circumstances there is a potential for disagreement. I guess that prediction is probably as well founded as anybody ever made.

Still, I'm thinking to myself -- and so I'll share it with you -- how about if plaintiffs' counsel explained to defendants' counsel, look, this is what we see as the heart of our case. This is our main claim. We in good faith believe that this is an actionable claim. We therefore impose on you and your clients in the following way, which we consider reasonably necessary, given this claim of ours. We don't propose to overburden you. We propose to limit it to what we need in order to resolve this case and then you spell it out. And defense counsel, having given you a respectful hearing, treating you with appropriate courtesy and respect, will say we can't agree on everything you've mentioned, but we can certainly agree on these items and we are not going to needlessly burden you with obstructionist tactics, which are only going to heighten your suspicion about what we're hiding. Instead, we're going to respond in kind. We're going to acknowledge that if we were in your position that's what we would want and we're going to give you that, and we're going to do that knowing that this is the approach that the judge is asking us to take here.

I would hope that you would be able to agree, consistent with your obligations under Rule 1 to work collaboratively to bring about a fair, just, and expeditious resolution of the matter. I would think that

if you were acting in accordance with that rule and your obligations under the rule as spelled out in the note to the rule, you would be able to agree upon most items. I don't know how experienced counsel with expertise in the area could do otherwise. Either your requests make sense or they don't. I would expect that you could come to an agreement that would enable you to make a lot of progress.

MR. KNOTTS: I share that hope and expectation, Your Honor. I mean I think a lot of the issue in a case like this -- and I think we also kind of use the scope of discovery in, for example, what's called a books and records demand under Delaware law 220, which is a very, very preliminary procedural tool that's been litigated a lot recently. It's not full-blown discovery, but something like that could be a useful guideline here. For example, what I was going to suggest would be defendants produce the underlying board minutes, presentations during the merger process to the board, banker and management. That's a set of usually 50 or so documents, less than a hundred. And then from that we would propose streamlined custodians and search terms, say two or three, three custodians, for the time period when the defendants are considering strategic alternatives along with this merger and go from there.

So it's not full-blown, 15, 20 custodian for two

years type email discovery. But as we all know, you don't truly get a picture of what's happening in a process and designing projections and things like that just from board minutes that my friends over at Wachtell's colleagues probably drafted.

So that would be the way that I would propose doing it where we have this set of what's called core documents, the materials that went to the board, and then from that we have a very streamlined set of e-discovery proposals, again, far less than what would ultimately be the scope of discovery on a case like this. So I would propose something like that.

MR. BARON: Your Honor, this is Randy Baron. I hope I'm not breaking protocol. Can I actually add one other suggestion as a backstop.

I think Mr. DiPrima's issue with the schedule is the length of it. That's what he said. So perhaps as a backstop we can enter this lengthy proposal that we have on the table, which is longer. We can agree to at this hearing modify it so that we do as Mr. Knotts suggested, we try to get a smaller set. We can build in a mediation but we have that backstop.

My concern is the point that Mr. DiPrima is making is this case is old. It's five years past. We'd like to be able to have the ability to move it forward if

this proposal -- and I think it's a good proposal by the Court -- doesn't work. But I think having a backstop here rather than having a fight over that if this process doesn't work. We can all be hopeful, but we all know that -- we can all be hopeful, but that things may not work.

So if we can enter the schedule, we can then have -- we have room within it to be able to build in this process that the Court suggested.

So I would just suggest -- so that we keep this moving on and put some pressure on all of us to follow our obligations and the Court's suggestions, that would be my suggestion.

The other concern that I do want to mention is that while we don't think that the -- what has happened post close -- this is all briefed before the Court -- what happened post close to Harman as a subsidiary of another company. We don't know what business plans it took. If that indeed is going to be the defendants' arguments at mediation, that there are -- that proof is in the pudding that they haven't done well, then we actually need information as to how that business was run now as a subsidiary, what business plans were different, how it was doing, whether or not it made other choices that it clearly would not have made as a company.

I'm not sure that that's an area anybody wants to go into, but if indeed that is the position that they are taking at the mediation and in this case going forward, that actually substantially expands the discovery as opposed to taking discovery over the merger period when this was announced. They are actually talking about expanding that inquiry into the last five years going forward. I think that's a substantial amount of work. I think we have to have that discussion with Mr. DiPrima. If that's going to be their position at the mediation, I'm not sure that the suggestion is even possible to do it in a smaller step.

THE COURT: I think those are fair points. I'm certainly open to entering the proposed scheduling order, or something very much like it, today if you think that's going to be helpful to you.

I would also be open to the alternative of having you confer in good faith and in some detail with regard to what discovery is necessary in anticipation of mediation and go from there. That discussion might well inform what the scheduling order should look like. I can enter the order as you suggest and revise it later or I can hold off for a couple of weeks and then get back on the phone with you and figure out what we should be doing.

I think the point you raise with regard to what

has happened since the merger is important --

MR. DiPRIMA: Your Honor --

THE COURT: -- as a practical matter.

From my point of view, in the Wesco case the Second Circuit cited a Seventh Circuit case, the name of which I don't recall, but it was cited for the proposition that the plaintiffs' theory of economic loss in that case was not sufficiently well founded to survive a motion to dismiss. There the allegation was that the shareholders would have rejected the merger had they known the truth, and by doing so would have reaped economic benefits by continuing to own the shares. The Seventh Circuit thought that was illegally insufficient to support a theory of economic loss in this context and noted that there was no allegation that a more lucrative option existed for the company.

I think therefore that what has happened since the merger needs to be considered at least in the context of mediation, and for that reason I think that an exchange of information as you suggest would be in order as it would be important to the mediation. If the shareholders here had no more lucrative option than retaining their shares and watching the company decline, for purposes of settlement that seems to be important.

So yes, I think that you would need to get some

information to flush that out as well.

MR. DiPRIMA: Your Honor, if I could. That is something sitting here today I don't know exactly how we would show that, but it's certainly something we will be able to show. And I do mean when we put the CFO's affidavit in a couple of years ago, she swore that the company --

(Reporter interrupts due to audio malfunction.)

MR. DiPRIMA: That it had been run as it had been when it was a standalone company. I understand Mr. Baron might not accept that, but we can certainly talk to Robbins Geller on what might satisfy them, seeing that this is the same company with the same products. For years it had the same management team. It doesn't today since the passage of time. That's something we would be willing to engage on.

I would suggest, Your Honor, that in terms of going forward we try to pencil in -- I don't know what date would work exactly -- mediation in December and work backwards from there on what discovery we might be able to exchange in order to have a productive settlement conference.

We would oppose entering a schedule that puts us on the clock on briefing the motion for class

certification and things like that and focus on just trying to get that done.

MR. KNOTTS: I think just in response to that we can hold off on -- there was a separate portion of the schedule that dealt with motion for class certification briefing. So as to Mr. DiPrima's concern, we can hold off on that portion of it.

But I do agree that having a schedule in place so that if mediation doesn't work out, it just helps add a little bit to the pressure for all parties that we're not going to find ourselves in December having not made much progress in terms of the case overall and then here we are.

But the good news is that I think Mr. DiPrima mentioned that the schedule is now too long. So if -- or there's too much time for fact discovery. So the good news is that we get the schedule in place and then we look around in December and the mediation, hopefully it's successful, but if it's not, we still have a schedule in place that we can all hit.

I think, again, when -- so for example, when the Court denied the motion to dismiss the last time around, the plaintiffs were producing documents. The defendants would say, okay, let's agree on producing documents, and they didn't do that. And the constant refrain we were

hearing from the defendants is there's no schedule in place. There's no schedule in place so we don't have to produce documents. And then they never produced documents because they filed the motion for judgment on the pleadings.

So not having a schedule is an argument that Mr. DiPrima has used in the past to avoid producing documents. So I think just having a schedule in place is something that will hopefully just put pressure on the parties all around.

MR. BARON: And we can also make our representations, but if Mr. DiPrima wants to shorten that schedule, we're not going to say no, this is the schedule entered into. We're not going to have good faith discussions in how to shorten that schedule and come to this Court and say you shouldn't -- the Court shouldn't shorten that schedule because you entered into a longer one.

We'll be amenable to modifying that, as I think the Court already noted is something that this Court probably does on a regular basis with schedules, usually longer, but they can be modified at any time.

MR. DiPRIMA: Your Honor, I think I'm -- I'll be very quick.

I think mediation in early December with

discovery in advance to try to facilitate a resolution, hopefully put this case on track to being done. There will be time to move forward. That's it.

THE COURT: All right. Is everybody agreed that mediation in early December is the reasonable target date for mediation?

MR. KNOTTS: I think a lot of it would depend on availability of mediators, but yeah; whether early December, December, we're certainly happy to shoot for something like that.

MR. BARON: Again, I think that pressure is clearly on the defendants trying to get us the information that we need so that it can be meaningful and successful. If they can start getting us documents right away, then we can start getting ready for that.

THE COURT: All right. Then what I'll do is consider what you've said and enter an order that takes account of what you've said and hopefully will serve to bring the case to readiness for mediation in December, and if that fails, provides for bringing the case to resolution by some another means within a reasonable period of time after that, on the understanding that I won't include the class certification schedule that was submitted just now, but will hold that in abeyance. And on the further understanding that if it should turn out

that mediation fails and the scheduling order appears to be inadequate at that point, then of course it can be modified.

Anything else for today?

MR. KNOTTS: Just on the same regard, Your Honor. What I would like to avoid is where all of a sudden it's two weeks from now, three weeks from now and we're still negotiating. We don't have anything from the defendants.

I think one interesting note here is that the plaintiffs and the defendants have all agreed to produce documents in advance of the status conference set back on January 13th I think it was, 2019 or 2020. The defendants -- the plaintiffs produced documents and the defendants did not do so, and the defendants filed a motion for judgment on the pleadings and said there's the accelerated stay in place. So I think the defendants have documents that they were planning to produce, that were already produced.

So I would ask that that initial set of core documents -- and I can ask Mr. DiPrima when it would be produced and hopefully it will be produced next week at the latest so that we can at least get that and start making some progress as opposed to finding ourselves two, three weeks from now and that initial set of material is

still missing.

MR. DiPRIMA: Your Honor, we can -- we are from a standing start here. We can go back and look. I think Mr. Knotts is referring to the board of records, board presentations. I imagine that will be a part of what we produce in advance of mediation. I haven't laid ayes on it in many years. I don't think we're going to have a disagreement over that.

MR. KNOTTS: So now we are out to December. Hopefully it can be produced next week.

MR. DiPRIMA: I don't know exactly when it will be produced.

MR. KNOTTS: Mr. DiPrima, it's already been gathered. It was going to be produced two years ago.

MR. DiPRIMA: Your Honor, one other -- you asked if there were other things that we had to discuss. I don't think it will surprise the Court one of things we are contemplating is a request for an interlocutory appeal in light of what we perceive as a conflict between this Court's ruling and the Wesco and some other district court decisions. I'm not asking for anything on that now, but I wanted to alert the Court to that.

THE COURT: I appreciate the heads up.

Why don't I say that counsel will confer consistent with our discussion today about the discovery

that is necessary to put the case in a position for what I assume everybody hopes will be a successful mediation; in other words, counsel will confer about doing that which it seems they actually want to do and are motivated to do. And you will get back to me why don't we say not later than a week from today with regard to what exactly that means.

Please understand that I will want to be able to enter an appropriate order that requires the exchange of that information sufficiently in advance of the mediation to give the mediation a chance to succeed. So I would ask you to think in terms of what is feasible, given the resources available to you, with regard to getting that exchange of information done as soon as reasonably possible. I would think that the bulk of that would be able to be done in the next couple of weeks so that you would have time in the month of November to formulate your positions, to talk with each other about what you think the mediation should look like. And having gotten that done, turning your attention to choosing a mediator and preparing for the mediation in light of what you have learned through the exchange of information.

So please take that into account and be prepared to get back to me with that so I can enter that order. Why don't we say we'll get on the phone again so you can

tell me how you've made out. Why don't we say we'll get on the phone again Wednesday, the 27th at 2:00.

MR. DiPRIMA: Your Honor, unfortunately, I'm in a court-ordered mediation with Robbins Geller in another case on that day.

THE COURT: Oh.

MR. KNOTTS: I'm not in that one.

MR. DiPRIMA: No, you're not. Your colleagues are.

THE COURT: Is there anybody else who can fill in for you on that day?

MR. DiPRIMA: Yeah. We'll work it out. We'll work it out.

THE COURT: I appreciate your consideration.

MR. DiPRIMA: Thank you, Your Honor.

THE COURT: Anything else?

MR. KNOTTS: No, Your Honor.

MR. DiPRIMA: Thank you.

THE COURT: Thank you all.

(Whereupon, a recess followed.)

C E R T I F I C A T E

BAUM, ET AL VS. HARMAN INTERNATIONAL, ET AL

3:17CV246(RNC)

I, Corinna F. Thompson, RPR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages, pages 1 - 29, are a true and accurate transcription of my shorthand notes taken in the aforementioned matter on October 21, 2021, to the best of my skill and ability.

/s/_____

CORINNA F. THOMPSON, RPR
Official Court Reporter
450 Main Street, Room #225
Hartford, Connecticut 06103
(860) 712-8345

EXHIBIT 6

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

NECA-IBEW PENSION TRUST FUND (The Decatur Plan), and ANN F. LYNCH, AS TRUSTEE FOR THE ANGELA LOHMANN REVOCABLE TRUST, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

PRECISION CASTPARTS CORP., MARK DONEGAN, DON R. GRABER, LESTER L. LYLES, DANIEL J. MURPHY, VERNON E. OECHSLE, ULRICH SCHMIDT, RICHARD L. WAMBOLD and TIMOTHY A. WICKS,

Defendants.

No. 3:16-cv-01756-YY

CLASS ACTION

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing pursuant to the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") dated January 15, 2021, on the application of the Settling Parties for approval of the Settlement set forth in the Stipulation of Settlement dated January 8, 2021 (the "Stipulation"). Due and adequate notice having been given to the Class as required in the Preliminary Approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice ("Order and Final Judgment" or "Judgment") incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Litigation and over all Settling Parties to the Litigation, including all Members of the Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies for purposes of settlement only: (i) a Class defined as all persons who purchased, sold or held Precision Castparts Corp. ("Precision" or the "Company") common stock during the period from and including October 9, 2015, the record date for Precision's special meeting regarding the sale of Precision to Berkshire Hathaway Inc. (the "Merger"), through and including the consummation of the Merger on January 29, 2016; (ii) Robbins Geller Rudman & Dowd LLP and Berger Montague PC are certified as Lead Counsel; and (iii) Lead Plaintiffs are certified as Class Representatives. Excluded from the Class are: (i) Defendants; (ii) members of the immediate family of each Defendant; (iii)

the Company's subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Persons who timely and validly excluded themselves from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action sent to Class Members pursuant to the Preliminary Approval Order, and who are identified in Exhibit A hereto.

4. For purposes of settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order and finds that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the Members of the Class are so numerous that joinder of all Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of the Lead Plaintiffs are typical of the claims of the Class; (d) Lead Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by Members of the Class, (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Stipulation and finds that in light of the benefits to the Class and the complexity, risks and expense of further litigation, the Settlement is in all respects fair, reasonable and adequate, having found that: (a) Lead Plaintiffs and Lead Counsel have adequately represented the Class; (b) the Settlement was negotiated at arm's length; (c) the relief provided to the Class is adequate, having taken into account (i) the costs, risks, and delay of further litigation, trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the Class,

including the method of processing Class Members' claims; and (iii) the terms of any proposed award of attorneys' fees and expenses and Lead Plaintiffs' time and expenses, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (d) the proposed Plan of Allocation treats Class Members equitably relative to each other.

6. Accordingly, the Court authorizes and directs implementation of the terms and provisions of the Stipulation, as well as the terms and provisions hereof. The Court hereby dismisses with prejudice and without costs, the Litigation and all claims contained therein and all of the Released Claims as against the Released Persons, except as and to the extent provided in the Stipulation and herein.

7. The releases as set forth in ¶¶4.1-4.4 of the Stipulation, together with the definitions contained in ¶¶1.1-1.31 relating thereto, are expressly incorporated herein in all respects.

8. Upon the Effective Date hereof, and as provided in the Stipulation, Lead Plaintiffs and each and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming through or on behalf of any of them, including, but not limited to, their predecessors, agents, representatives, attorneys, affiliates, heirs, executors, administrators, successors, and assigns, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims (including, without limitation, Unknown Claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Litigation, against the Released Persons, regardless of whether such Class Member executes and delivers a Proof of Claim and Release form, except that claims relating to the enforcement of the Settlement shall not be released.

9. Upon the Effective Date hereof, and as provided in the Stipulation, each of the Released Persons shall be deemed to have, and by operation of this Order and Final Judgment shall

have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiffs, each and all of the Class Members, and Lead Plaintiffs' Counsel from all Settled Defendants' Released Claims, and shall forever be enjoined from prosecuting such claims, except for claims relating to the enforcement of the Settlement.

10. Upon the Effective Date hereof, Lead Plaintiffs, each and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming through or on behalf of any of them, including, but not limited to, their predecessors, agents, representatives, attorneys, affiliates, heirs, executors, administrators, successors, and assigns, shall be forever barred and enjoined from commencing, instituting, asserting, maintaining, enforcing, prosecuting, or continuing to prosecute any action or proceeding in any forum (including, but not limited to, any state or federal court of law or equity, any arbitral forum, any tribunal, administrative forum, or the court of any foreign jurisdiction, or any other forum of any kind), any of the Released Claims (including, without limitation, Unknown Claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Litigation, against any or all of the Released Persons, regardless of whether such Class Member executes and delivers a Proof of Claim and Release form, except that claims relating to the enforcement of the Settlement shall not be released.

11. The terms of the Stipulation and of this Order and Final Judgment shall be forever binding on Lead Plaintiffs, all other Class Members, and Defendants (regardless of whether or not any individual Class Member submits a Proof of Claim and Release or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective, heirs, executors, administrators, predecessors, successors, and assigns.

12. The Escrow Agent shall maintain the Settlement Fund in accordance with the requirements set forth in the Stipulation. No Released Person shall have any liability, obligation,

or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund.

13. The Notice of Pendency and Proposed Settlement of Class Action given to the Class in accordance with the Preliminary Approval Order entered on January 15, 2021, was the best notice practicable under the circumstances, to all Persons entitled to such notice, of those proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation. Said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, the requirements of the Private Securities Litigation Reform Act of 1995, and all other applicable law and rules.

14. Separate orders shall be entered regarding the proposed Plan of Allocation and Lead Counsel's motion for attorneys' fees and expenses as allowed by the Court. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding any attorneys' fee and expense application shall be considered separate from this Judgment and shall in no way disturb or affect this Judgment.

15. Defendants have denied, and continue to deny, any and all allegations and claims asserted in the Litigation, and Defendants have represented that they entered into the Settlement because it would be beneficial to avoid the burden, inconvenience and expense associated with continuing the Litigation and the uncertainty and risks inherent in any litigation. Neither this Order and Final Judgment, the Stipulation, the Supplemental Agreement, nor any of their terms or provisions, nor any of the negotiations, discussions, proceedings connected thereto, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement shall be: (a) offered against any Defendant or their Related Parties as evidence of or construed as or deemed to be evidence of any presumption, concession or admission by any Defendant or their Related Parties of the truth of any fact alleged by the Lead Plaintiffs, the validity of any claim that

has been or could have been asserted in the Litigation, the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault or wrongdoing of Defendants or their Related Parties; or (b) offered against any Defendant or their Related Parties 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 their Related Parties; or (c) offered against any Defendant or their Related Parties as evidence of a presumption, concession, or admissibility of any liability, negligent, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Stipulation, in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or (d) construed against Defendants or their Related Parties as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial. The Released Persons, Lead Plaintiffs, Class Members, and their respective counsel may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settling Parties may file the Stipulation and/or this Judgment in any proceedings that may be necessary to consummate or enforce the Stipulation, the Settlement, or the Judgment.

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

17. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

18. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants as required under the terms of the Stipulation, then 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 be null and void to the extent provided by and in accordance with the Stipulation, and the Parties shall be returned to the status quo immediately prior to their execution of the Stipulation.

19. Without further approval from the Court, the parties are hereby authorized to agree and to adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Order and Final Judgment; and (ii) do not materially limit the rights of Class Members in connection with the Settlement. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

20. The Court has reviewed and considered all objections to the Settlement. The Court finds such objections to be without merit and hereby overrules them.

21. The Court directs immediate entry of this Judgment by the Clerk of the Court.

IT IS SO ORDERED.

DATED: May 7, 2021

/s/ Youlee Yim You

THE HONORABLE YOULEE YIM YOU
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NECA-IBEW PENSION TRUST FUND (The Decatur Plan), and ANN F. LYNCH, AS TRUSTEE FOR THE ANGELA LOHMANN REVOCABLE TRUST, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. PRECISION CASTPARTS CORP., MARK DONEGAN, DON R. GRABER, LESTER L. LYLES, DANIEL J. MURPHY, VERNON E. OECHSLE, ULRICH SCHMIDT, RICHARD L. WAMBOLD and TIMOTHY A. WICKS, Defendants.	No. 3:16-cv-01756-YY CLASS ACTION

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL PERSONS WHO PURCHASED, SOLD, OR HELD PRECISION CASTPARTS CORP. ("PRECISION") COMMON STOCK DURING THE PERIOD FROM AND INCLUDING OCTOBER 9, 2015, THE RECORD DATE FOR PRECISION'S SPECIAL MEETING REGARDING THE SALE OF PRECISION TO BERKSHIRE HATHAWAY INC. (THE "MERGER"), THROUGH AND INCLUDING THE CONSUMMATION OF THE MERGER ON JANUARY 29, 2016 (THE "CLASS")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM ("PROOF OF CLAIM") **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE MAY 6, 2021**.

This Notice of Pendency and Proposed Settlement of Class Action ("Notice") has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Oregon, Portland Division (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of the Litigation (the "Settlement") and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement and the proposed Plan of Allocation of the Settlement proceeds, as well as counsel's application for fees and expenses. This Notice describes the rights you may have in connection with your participation in the Settlement, what steps you may take in relation to the Settlement and this Litigation, and, alternatively, what steps you must take if you wish to be excluded from the Class and this Litigation.[1]

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A PROOF OF CLAIM	The only way to receive a payment. Proofs of Claim must be postmarked or submitted online on or before May 6, 2021.
EXCLUDE YOURSELF	Receive no payment. This is the only option that allows you to ever be part of any other lawsuit against the Defendants or any other Released Persons concerning the issues raised in this Litigation. Exclusion requests must be postmarked no later than April 16, 2021.
OBJECT	Write to the Court about why you oppose the Settlement, the Plan of Allocation, the request for attorneys' fees, and/or the expenses of Lead Plaintiffs. You will still be a Member of the Class. Objections must be received by the Court ***and*** counsel on or before April 16, 2021.

[1] All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement, which, along with other important documents, is available on the settlement website, www.PrecisionShareholderLitigation.com.

APPEAR AT A HEARING ON MAY 7, 2021[2]	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be received by the Court ***and*** counsel on or before April 16, 2021.
DO NOTHING	Receive no payment from the Settlement. Members of the Class who do nothing remain bound by the terms of the Settlement.

SUMMARY OF THIS NOTICE

Statement of Class Recovery

Pursuant to the Settlement described herein, the Settlement Amount is $21 million. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that claimant's claim as compared to the total claims of all eligible claimants who submit acceptable Proofs of Claim. An individual Authorized Claimant may receive more or less than the estimated average amount provided below depending on the number of claims submitted. *See* Plan of Allocation as set forth at pages 11-12 below for more information on your claim.

Statement of Potential Outcome of Litigation

The parties disagree on both liability and damages and do not agree on the average amount of damages per Precision common stock that would be recoverable if the Class prevailed on each claim alleged. The Defendants deny that they are liable to the Class and deny that the Class has suffered any damages.

Statement of Attorneys' Fees and Expenses Sought

Lead Counsel will apply to the Court for an award of attorneys' fees of 33.33% of the Settlement Amount and expenses in an amount not to exceed $936,700.00, plus interest earned from the date the Settlement is funded on both amounts, at the same rate as earned on the Settlement Fund. Since the Litigation's inception in September 2016, Lead Counsel have expended time and effort in the prosecution of this Litigation on a contingent fee basis and advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Class, they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees. The requested fees and expenses amount to approximately $0.06 per damaged share, but the average cost per damaged share will vary depending on the number of acceptable Proofs of Claim submitted. In addition, Lead Plaintiffs may seek payment for time and expenses in pursuing the Litigation in an amount not to exceed $5,000.00 each.

Further Information

For further information regarding the Litigation, this Notice or to review the Stipulation of Settlement, please contact the Claims Administrator toll-free at 1-866-754-7774, or visit the settlement website www.PrecisionShareholderLitigation.com.

You may also contact a representative of Lead Counsel: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, www.rgrdlaw.com.

Please Do Not Call the Court or Defendants with Questions About the Settlement.

Reasons for the Settlement

The principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future.

BASIC INFORMATION

1. Why did I get this Notice package?

You or someone in your family may have purchased, sold, or held Precision common stock during the time period from and including October 9, 2015 through and including January 29, 2016 ("Class Period").

The Court directed that this Notice be sent to Class Members because they have a right to know about the proposed Settlement of this Litigation, and about all of their options, before the Court decides whether to approve the Settlement.

[2] In order to determine whether the date and time of the Final Approval Hearing have changed, or whether Class Members must or may participate by phone or video, it is important that you monitor the Settlement website, www.PrecisionShareholderLitigation.com, before making any plans to attend the Final Approval Hearing. Any updates will be posted to the Settlement website.

This Notice explains this Litigation, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the Litigation is the United States District Court for the District of Oregon, Portland Division, and the case is known as *NECA-IBEW Pension Trust Fund (The Decatur Plan), et al. v. Precision Castparts Corp., et al*., Case No. 3:16-cv-01756-YY. The case has been assigned to the Honorable Youlee Yim You. NECA-IBEW Pension Trust Fund (The Decatur Plan) and Ann F. Lynch, as Trustee for the Angela Lohmann Revocable Trust have been appointed by the Court as lead plaintiffs (referred to as "Lead Plaintiffs" in this Notice), and the parties who were sued and who have now settled are called the "Defendants."

2. What is this lawsuit about?

This is an action on behalf of a putative class of all Persons who held Precision common stock who are alleged to have been harmed by the conduct at issue in the Litigation. Excluded from the Class are Defendants and certain of their affiliates, as discussed below. Lead Plaintiffs allege that Defendants violated §§14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act"), and U.S. Securities and Exchange Commission ("SEC") Rule 14a-9 promulgated thereunder, by making materially misleading statements and omissions in the Definitive Proxy Statement on Schedule 14A (the "Proxy"), filed with the SEC on October 13, 2015. Defendants deny the allegations and deny that they violated any securities laws or SEC rules.

On August 10, 2015, Precision issued a press release announcing the execution of an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which Berkshire Hathaway Inc. ("Berkshire") and certain of its subsidiaries would purchase all of Precision's outstanding shares for $235.00 per share. On October 13, 2015, Precision filed the Proxy. On January 29, 2016, Berkshire completed the Merger.

On September 2, 2016, plaintiffs NECA-IBEW Pension Trust Fund (The Decatur Plan) and Angela Lohmann ("Lohmann"),[3] the former trustee for the Angela Lohmann Revocable Trust (together, the "Original Plaintiffs"), filed the initial Class Action Allegation Complaint (the "Initial Complaint"). ECF No. 1. The Initial Complaint alleged claims against Defendants for violations of §§14(a) and 20(a) of the 1934 Act and SEC Rule 14a-9 promulgated thereunder, in connection with the Proxy.[4]

On November 1, 2016, the Original Plaintiffs filed a motion seeking their appointment as lead plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §§78u-4(a)(3)(B); and the appointment of their counsel Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and Berger Montague PC ("Berger Montague," and together with Robbins Geller, "Lead Counsel") as Lead Counsel ("Motion to Appoint Lead Plaintiffs"). ECF No. 27.

On November 21, 2016, the Court granted the Motion to Appoint Lead Plaintiffs and appointed the Original Plaintiffs as Lead Plaintiffs and Lead Counsel as Lead Counsel. ECF No. 38.

On January 5, 2017, the Original Plaintiffs filed their Amended Class Action Allegation Complaint ("First Amended Complaint"). ECF No. 56.

On March 6, 2017, Defendants filed their Motion to Dismiss the Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Motion to Dismiss"). ECF No. 57. In their Motion to Dismiss, Defendants argued that, under Fed. R. Civ. P. 12(b)(6) and the PSLRA, the First Amended Complaint failed to state a claim upon which relief could be granted and should be dismissed with prejudice. On May 5, 2017, the Original Plaintiffs filed their Opposition to Defendants' Motion to Dismiss the Amended Complaint. ECF No. 59. On June 5, 2017, Defendants filed their Reply in Support of Their Motion to Dismiss the Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 61.

On July 26, 2017, the Court held a hearing on Defendants' Motion to Dismiss, and took the motion under advisement. ECF No. 66.

On October 3, 2017, Magistrate Judge Youlee Yim You issued Findings and Recommendations recommending the denial of Defendants' Motion to Dismiss ("F&R"). ECF No. 72. Defendants objected to the F&R on October 17, 2017. ECF No. 75. Plaintiffs filed their response to Defendants' objection on October 31, 2017. ECF No. 76. On January 24, 2018, Judge Anna J. Brown adopted Judge You's F&R. ECF No. 77.

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[3] Following Ms. Lohmann's death, Lead Plaintiffs filed an unopposed motion to substitute Lohmann's daughter, Ann F. Lynch, the successor trustee for the Trust, for Ms. Lohmann as Plaintiff in this action. ECF No. 125. Plaintiffs' motion was granted by the Court on May 13, 2020. ECF No. 127.

[4] Defendants Murphy and Oechsle were subsequently voluntarily dismissed from the Litigation, and excluded as defendants in Plaintiffs' Second Amended Complaint. ECF No. 122.

On February 7, 2018, Defendants filed their Answer to the First Amended Complaint. ECF No. 79.

From January 2018 through November 2019, the parties conducted extensive fact discovery. Among other things:

- the parties exchanged their Initial Disclosures Pursuant to Rule 26(a)(1) on March 7, 2018;
- the Original Plaintiffs served their First Request for Production of Documents on March 9, 2018, and Defendants served their Responses and Objections on April 9, 2018;
- the Original Plaintiffs served a subpoena to Precision's financial advisor Credit Suisse (USA) LLC ("Credit Suisse") on April 25, 2018, and Credit Suisse served their Responses and Objections on May 9, 2018;
- the Original Plaintiffs served a subpoena to Berkshire on July 1, 2019, and subsequently negotiated the production of documents from Berkshire;
- the parties filed their Motion for Stipulated Protective Order on August 15, 2018 (ECF No. 83), and the Court entered the Stipulated Protective Order on August 17, 2018 (ECF No. 84);
- between November 2018 and February 2019, the Defendants served 10 subpoenas to absent Class Members;
- the Original Plaintiffs filed a Motion to Quash and/or Motion for Protective Order on February 28, 2019 (ECF No. 91), Defendants filed their response on March 6, 2019 (ECF No. 92), and the Court held oral argument and issued a ruling on March 22, 2019 (ECF Nos. 94-95);
- Defendants served their First Set of Document Requests on August 14, 2018, and the Original Plaintiffs served their objections and responses on September 13, 2018;
- the Original Plaintiffs filed a Motion to Compel on August 14, 2019 (ECF No. 99), Defendants filed their opposition on August 23, 2019 (ECF No. 105), the Court held oral argument on September 4, 2019 (ECF No. 106), and issued a ruling on September 27, 2019 (ECF No. 112);
- the Original Plaintiffs served their First Set of Interrogatories to Defendants on July 19, 2019, and Defendants served their responses and objections on August 19, 2019;
- the Original Plaintiffs served their Second Set of Interrogatories to Defendants on September 26, 2019, and Defendants served their responses and objections on November 8, 2019;
- Defendants served their First Set of Interrogatories on September 27, 2019, and the Original Plaintiffs served their responses and objections on November 8, 2019;
- Defendants served their Second Set of Requests for Production of Documents on September 27, 2019, and the Original Plaintiffs served their responses and objections on November 8, 2019;
- the Original Plaintiffs produced over 300 documents, comprising over 4,500 pages;
- Defendants produced over 66,000 documents, comprising approximately 383,000 pages;
- Berkshire, Credit Suisse, and other third parties produced approximately 2,000 documents;
- the Original Plaintiffs took 14 depositions of Defendants and other fact witnesses; and
- Defendants took five depositions of the Original Plaintiffs and other fact witnesses.

During this period, the parties also participated in mediation efforts with a highly experienced mediator, Robert A. Meyer, Esq., of JAMS. On or around March 5, 2019, the parties submitted their respective mediation materials to Mr. Meyer. On March 13, 2019, the parties attended a mediation session in Los Angeles, California. While those initial mediation efforts were unsuccessful, the parties remained in regular contact with Mr. Meyer, keeping him updated about developments throughout the course of the Litigation, and ultimately reached resolution with his assistance, as discussed below.

On December 6, 2019, the Original Plaintiffs filed their motion for leave to amend the First Amended Complaint. ECF No. 117. On January 17, 2020, Defendants filed their response, indicating that while reserving all rights, they did not oppose the motion for leave to amend. ECF No. 118.

On January 27, 2020, the Original Plaintiffs filed their Second Amended Class Action Allegation Complaint (the "Second Amended Complaint"). ECF No. 122.

On February 14, 2020, Defendants filed their Answer to the Second Amended Complaint. ECF No. 123.

On May 12, 2020, Lead Plaintiffs filed the notice of Ms. Lohmann's death, and an unopposed motion to substitute her daughter, Ms. Lynch, the successor trustee, as the plaintiff in this action. ECF Nos. 124-25. The Court granted the motion and substituted Ms. Lynch as the plaintiff on May 13, 2020. ECF No. 127.

From March 2020 to September 2020, the Settling Parties conducted expert discovery. Among other things:

- Lead Plaintiffs served their expert report on March 13, 2020;
- Defendants served four expert reports on May 15, 2020;
- Lead Plaintiffs served two expert reports and one reply expert report on June 26, 2020;
- Defendants served four sur-rebuttal expert reports from August 4, 2020 to September 14, 2020;
- Lead Plaintiffs took five depositions of Defendants' experts; and
- Defendants took three depositions of Lead Plaintiffs' experts.

On September 1, 2020, Defendants took the deposition of Ms. Lynch.

On October 6, 2020, Defendants filed their: (i) motion for summary judgment on liability; (ii) motion for summary judgment on damages and loss causation; and (iii) two Daubert motions concerning two of Lead Plaintiffs' experts.

On October 6, 2020, Plaintiffs filed their: (i) motion for class certification; and (ii) three Daubert motions concerning three of Defendants' experts.

During this time, the parties' counsel continued to discuss the potential for resolution of this matter with Mr. Meyer, as they had done periodically throughout this Litigation. After a series of discussions, Mr. Meyer informed the parties on October 14, 2020, of a mutual agreement in principle on the essential economic elements of a settlement of the Litigation.

On October 14, 2020, the parties informed the Court of this agreement in principle to settle the Litigation.

Defendants have denied and continue to deny all of the claims and contentions alleged by Lead Plaintiffs in the Litigation and maintain that their conduct was at all times proper and in compliance with all applicable provisions of law. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied and continue to deny, *inter alia*, the allegations that they made a materially false statement or omission, that Lead Plaintiffs or the Class have suffered damage, that Lead Plaintiffs or the Class were harmed by the conduct that was alleged or that could have been alleged as part of this Litigation, or that Defendants have any liability to the Class. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation.

3. Why is this a class action?

In a class action, one or more people called plaintiffs sue on behalf of people who have similar claims. All of the people with similar claims are referred to as a Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

4. Why is there a Settlement?

The Court has not decided in favor of the Defendants or the Class. Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation, including trial and post-trial appeals. Lead Plaintiffs agreed to the Settlement in order to ensure that Authorized Claimants will receive compensation, and because Lead Plaintiffs (advised by Lead Counsel) considered the Settlement amount to be a favorable recovery compared to the risk-adjusted possibility of recovery after trial and any appeals, in light of Defendants' legal argument that the statements at issue were not actionable at all by the Class, and its factual arguments that Defendants were complying with all applicable laws. Lead Plaintiffs and Lead Counsel believe the Settlement is in the best interest of the Class in light of the real possibility that continued litigation could result in no recovery at all.

WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

5. How do I know if I am part of the Settlement?

The Court directed that everyone who fits this description is a Class Member: all persons who purchased, sold, or held Precision common stock during the period from and including October 9, 2015, the record date for Precision's special meeting regarding the Merger, through and including the consummation of the Merger on January 29, 2016. Under the Plan of Allocation proposed by Plaintiffs' Counsel and described below, only Class Members who were holders of record of Precision common stock at the close of business on October 9, 2015, and were thus holders of record entitled to vote on the Merger, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery—this aligns the recovery with those who have legal standing to bring the claims currently asserted in the Litigation.

6. Are there exceptions to being included?

Excluded from the Class are: (i) Defendants; (ii) members of the immediate family of each Defendant; (iii) the Company's subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Persons who timely and validly seek exclusion from the Class in accordance with this Notice sent to Class Members pursuant to the Preliminary Approval Order.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at 1-866-754-7774 or visit the settlement website www.PrecisionShareholderLitigation.com, or you can fill out and return the Proof of Claim enclosed with this Notice package, to see if you qualify.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the Settlement provide?

In exchange for the Settlement of this Litigation, Defendants have agreed that a payment of $21 million will be made by Defendants (or on their behalf) to be divided, after taxes, fees, and expenses, among all Authorized Claimants.

9. How much will my payment be?

Pursuant to the Settlement described herein, the Settlement Amount is $21 million. Under the Plan of Allocation proposed by Plaintiffs' Counsel and described below, only Class Members who were holders of record of Precision common stock at the close of business on October 9, 2015, and were thus holders of record entitled to vote on the Merger, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery—this aligns the recovery with those who have legal standing to bring the claims currently asserted in the Litigation. Lead Plaintiffs estimate that approximately 133,042,086 shares of Precision common stock are in the Class and entitled to vote on the Merger. Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Class Members who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. If 100% of the 133,042,086 shares of Precision common stock in the Class and entitled to vote on the Merger submit a claim, each share's average distribution under the Settlement will be approximately $0.16 per share, before deduction of any Taxes on any income earned on the Settlement Amount, Tax Expenses, Notice and Administration Costs, the attorneys' fees and the expenses of Lead Plaintiffs, as determined by the Court (estimated to be approximately $0.06 per share). *See* Plan of Allocation as set forth at pages 11-12 below for more information on your claim.

The Settlement Fund less taxes, tax expenses, notice and administrative costs, any award of attorneys' fees and Lead Plaintiffs' expenses ("Net Settlement Fund") will be distributed to Class Members who submit valid, timely Proofs of Claim ("Claimants") on a *pro rata* basis. However, no distributions will be made to Claimants who would otherwise receive a distribution of less than $10.00.

Defendants expressly deny that any damages were suffered by Lead Plaintiffs or the Class.

Payments shall be conclusive against all Claimants. No Person shall have any claim against Plaintiffs' Counsel, Lead Plaintiffs, the Claims Administrator, Defendants and their Related Parties, or any Person designated by Plaintiffs' Counsel based on distributions made substantially in accordance with the Stipulation and the

Settlement contained therein, or further order(s) of the Court. No Class Member shall have any claim against Defendants for any Released Claims. All Class Members who fail to complete and file a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How can I receive a payment?

To qualify for a payment, you must submit a Proof of Claim. The Proof of Claim may be submitted online at www.PrecisionShareholderLitigation.com. A Proof of Claim is enclosed with this Notice. Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and return it so that it is postmarked, if mailed, or received, if submitted online, no later than May 6, 2021.

Any Class Member that opts out of the Class or otherwise has settled claims with one or more Defendants for claims arising out of the conduct alleged in the Litigation is enjoined from submitting a Proof of Claim or having another person or entity submit a Proof of Claim on its behalf.

11. When would I receive my payment?

The Court will hold a Final Approval Hearing on May 7, 2021, to decide whether to approve the Settlement. If the Court approves the Settlement after that, there might be appeals. It is always uncertain how such appeals will be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

12. What am I giving up to receive a payment or to stay in the Class?

Unless you exclude yourself, you will remain a Class Member, and that means that, if the Settlement is approved, you will give up all "Released Claims" (as defined below), including "Unknown Claims" (as defined below), against the "Released Persons" (as defined below):

- "Related Parties" means with respect to each Defendant, any and all of their related parties, including, without limitation, any and all of their past or present parents, subsidiaries, affiliates, predecessors, or successors, as well as any and all of its or their current or former officers, directors, employees, associates, members of their immediate families, agents or other persons acting on their behalf, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.
- "Released Claims" means any and all claims that have been asserted, could have been asserted, or could be asserted in the future in this Litigation; and any and all actions, claims, debts, demands, losses, matters, rights, suits, causes of action, liabilities, obligations, judgments, suits, matters and issues of any nature whatsoever or for any remedy, known or unknown, accrued or unaccrued, contingent or absolute, mature or immature, discoverable or undiscoverable, concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal, state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore have existed, that have been asserted, could have been asserted, or could be asserted in the future, that arise out of, have arisen from, could have arisen from, concern, or relate in any manner to, the allegations, conduct, facts, events, transactions, acts, occurrences, statements, representations, omissions or any other matter related to, or arising out of, the Litigation, the Merger or the Proxy. "Released Claims" includes "Unknown Claims" defined below.
- "Released Persons" means each and all of the Defendants and each and all of their Related Parties.
- "Settled Defendants' Released Claims" means all actions, claims, debts, demands, liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever, known or unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal, state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore have existed, that have been or could have been asserted by the Released Persons or any of them against Lead Plaintiffs, Class Members, or Plaintiffs' Counsel, that arise out of, have arisen from, could have arisen from, concern, or relate in any manner to the institution, prosecution, settlement,

or resolution of the Litigation or the Released Claims, except to enforce the releases and other terms and conditions contained in this Stipulation or any Court order entered pursuant thereto.

- "Unknown Claims" means any Released Claim that any Lead Plaintiff or any Class Member does not know or suspect to exist in such Person's favor at the time of the release of the Released Persons, and any of the Settled Defendants' Released Claims that the Released Persons do not know or suspect to exist in his, her or its favor at the time of the release of Lead Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, which, if known by such party, might have affected such party's release of the Released Persons or Lead Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, or might have affected such party's decision not to object to this Settlement or seek exclusion. Unknown Claims include those Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Released Claims and the Settled Defendants' Released Claims, upon the Effective Date, Lead Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

  Lead Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law that is similar, comparable or equivalent to California Civil Code §1542. Lead Plaintiffs, Class Members and the Released Persons may hereafter discover facts in addition to or different from those that such party now knows or believes to be true with respect to the subject matter of the Released Claims and the Settled Defendants' Released Claims, but Lead Plaintiffs and Defendants shall expressly, and each Class Member and Released Persons, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever released any and all Released Claims, or the Settled Defendants' Released Claims, as the case may be, 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 that is negligent, reckless, 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, whether or not previously or currently asserted in any action. Lead Plaintiffs and Defendants acknowledge, and the Class Members and Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

If you remain a Member of the Class, all of the Court's orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE CLASS

If you do not want a payment from this Settlement, and you want to keep the right to sue the Defendants and the other Released Persons, on your own, about the matters alleged in this Litigation, then you must take steps to remove yourself from the Settlement. This is called excluding yourself.

13. How do I get out of the proposed Settlement?

To exclude yourself from the Class, you must send a letter by First-Class Mail stating that you "request exclusion from the Class in *NECA-IBEW Pension Trust Fund (The Decatur Plan), et al. v. Precision Castparts Corp., et al*." To be valid, your letter must include the number(s) of shares of Precision common stock you held during the Class Period, and the dates on which each such share was held, purchased, acquired and/or sold. In addition, you must include your name, address, telephone number, and your signature. You must submit your exclusion request so that it is postmarked **no later than April 16, 2021** to:

Precision Shareholder Litigation
c/o Gilardi & Co. LLC
EXCLUSIONS
150 Royall Street, Suite 101
Canton, MA 02021

If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Litigation. If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this Litigation, you may want to consult an attorney and discuss whether any individual claim that you wish to pursue would be time-barred by the applicable statutes of limitations or repose.

14. If I do not exclude myself, can I sue the Defendants and the other Released Persons for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Persons for any and all Released Claims. If you have a pending lawsuit against the Released Persons, speak to your lawyer in that case immediately. You must exclude yourself from this Litigation to continue your own lawsuit. Remember, the exclusion deadline is **April 16, 2021**.

15. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself, you may not send in a Proof of Claim to ask for any money.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court ordered that the law firms of Robbins Geller Rudman & Dowd LLP and Berger Montague PC represent the Class, including you. These lawyers are called Lead Counsel. They will be paid from the Settlement Fund to the extent the Court approves their application for fees. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Lead Counsel will move the Court for an award of attorneys' fees of 33.33% of the Settlement Amount, and expenses in an amount not to exceed $936,700.00, plus interest on both amounts at the same rate earned on the Settlement Fund. In addition, the Lead Plaintiffs may seek up to $5,000.00 each for their time and expenses in pursuing the Litigation. Such sums as may be approved by the Court will be paid from the Settlement Fund.

The attorneys' fees and expenses requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this Litigation on behalf of Lead Plaintiffs and the Class nor for the litigation expenses Plaintiffs' Counsel have incurred. The fees and expenses requested will compensate Plaintiffs' Counsel for their work in achieving the Settlement Fund and is within the range of fees awarded to class counsel under similar circumstances in other cases of this type.

OBJECTING TO THE SETTLEMENT

18. How do I tell the Court that I object to the proposed Settlement?

If you are a Class Member, you can write to the Court to object to the proposed Settlement, the proposed Plan of Allocation, Lead Counsel's fee and expense application, and/or Lead Plaintiffs' time and expense request. The Court will consider your views. To object, you must send a signed letter: (i) saying that you object to the proposed Settlement, the proposed Plan of Allocation, Lead Counsel's fee and expense application, and/or Lead Plaintiffs' time and expense request, in the *Precision Shareholder Litigation*; (ii) identifying any of your previous objections; (iii) stating whether your objection only applies to yourself, a subset of the Class, or to the entire Class; and (iv) stating the reasons why you object. You must include your name, address, telephone number, email address, and your signature, You must identify the date(s), price(s), and number(s) of shares of Precision common stock you held, purchased, acquired, or sold during the Class Period. You must also include copies of documents demonstrating such holding(s), purchase(s), acquisition(s) and/or sale(s). Your objection must be filed with the Court ***and*** mailed or delivered to each of the following addresses such that it is **received no later than April 16, 2021:**

COURT	LEAD COUNSEL	DEFENDANTS' COUNSEL REPRESENTATIVE
Clerk of the Court United States District Court for the District of Oregon, Portland Division United States Federal Building and Courthouse 1000 S.W. Third Avenue Portland, OR 97204	A. Rick Atwood Esther Bylsma ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway Suite 1900 San Diego, CA 92101 Lawrence Deutsch BERGER MONTAGUE PC 1818 Market Street Suite 3600 Philadelphia, PA 19103	Justin C. Clarke CRAVATH SWAINE & MOORE LLP 825 Eighth Avenue New York, NY 10019

19. **What is the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you do not like something about the proposed Settlement, the Plan of Allocation, the fee application or Lead Plaintiffs' time and expense request. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class.

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

20. **When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Final Approval Hearing at 1:00 p.m., on May 7, 2021, at the United States District Court for the District of Oregon, Portland Division, United States Federal Building and Courthouse, 1000 S.W. Third Avenue, Portland, OR 97204[5]. At the hearing the Court will consider whether the Settlement and proposed Plan of Allocation are fair, reasonable, and adequate, and whether Lead Counsel's fee application and Lead Plaintiffs' time and expense request should be granted. If there are objections, the Court will consider them. The Court will, at its discretion, listen to people who have asked to speak at the hearing. After the Final Approval Hearing, the Court will decide whether to approve the Settlement, the Plan of Allocation, Lead Counsel's fee and expense application, and/or Lead Plaintiffs' time and expense request. We do not know how long these decisions will take. The Court may change the date and time of the Final Approval Hearing without another notice being sent to Class Members. If you want to attend the hearing, you may wish to check with Lead Counsel or the settlement website beforehand to be sure that the date and/or time has not changed.

21. **Do I have to come to the hearing?**

No. Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

22. **May I speak at the hearing?**

If you object to the Settlement, the Plan of Allocation or the fee, expense and cost application, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection (*see* Question 18 above) a statement saying that it is your "Notice of Intention to Appear in the *Precision Shareholder Litigation*." Persons who intend to object to the Settlement, the Plan of Allocation, Lead Counsel's fee and expense application, and/or Lead Plaintiffs' time and expense request, and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits

[5] In light of the outbreak of the Coronavirus (COVID-19), the Court may decide to conduct the Final Approval Hearing by video or telephone conference, or otherwise allow Class Members to appear at the hearing by telephone or video without further notice to the Class. No further notice of such decision will be provided to the Class. In order to determine whether the date and time of the Final Approval Hearing have changed, or whether Class Members must or may participate by phone or video, it is important that you monitor the Settlement website, www.PrecisionShareholderLitigation.com, before making any plans to attend the Final Approval Hearing. Any updates will be posted to the Settlement website.

they intend to introduce into evidence at the Final Approval Hearing. You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will get no money from this Settlement. In addition, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the Released Claims in this Litigation.

GETTING MORE INFORMATION

24. Are there more details about the proposed Settlement?

This Notice summarizes the proposed Settlement. More details are available in a Stipulation of Settlement dated January 8, 2021 (the "Stipulation"). You can obtain answers to common questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at 1-866-754-7774. A copy of the Stipulation and other relevant documents are also available on the Claims Administrator's website at www.PrecisionShareholderLitigation.com.

25. How do I get more information?

For even more detailed information concerning the matters involved in this Litigation, reference is made to the pleadings, the Stipulation, the Orders entered by the Court and the other papers filed in the Litigation, which may be inspected at the Office of the Clerk of the United States District Court for the District of Oregon, Portland Division, United States Federal Building and Courthouse, 1000 S.W. Third Avenue, Portland, OR 97204, during regular business hours. For a fee, all papers filed in this Litigation are available at www.pacer.gov.

You can also call 1-866-754-7774 or write to Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd, LLP, 655 W. Broadway, Suite 1900, San Diego, CA 92101, or visit www.PrecisionShareholderLitigation.com.

PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

Plaintiffs' Counsel have proposed a Plan of Allocation described below in Question 26, which will be submitted for the Court's approval. The Net Settlement Fund (the Settlement Amount plus interest less Taxes, tax expenses, Notice and Administration Costs, attorneys' fees, and Lead Plaintiffs' time and expense payment) will be distributed to Class Members who, in accordance with the terms of the Stipulation, are entitled to a distribution from the Net Settlement Fund pursuant to any Plan of Allocation or any order of the Court and who submit a valid and timely Proof of Claim under the Plan of Allocation described below.

26. How will my claim be calculated?

As discussed above, the Settlement provides $21 million in cash for the benefit of the Class. The Settlement Amount and any interest it earns constitute the "Settlement Fund." The Settlement Fund, after deduction of Court-approved attorneys' fees, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court, is the "Net Settlement Fund." If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Claimants—*i.e.*, holders of record of Precision common stock at close of business on October 9, 2015, and who submit a valid Proof of Claim to the Claims Administrator—in accordance with this proposed Plan of Allocation ("Plan of Allocation" or "Plan") or such other plan of allocation as the Court may approve. Only those stockholders holding Precision common stock as of the close of business on October 9, 2015 were considered record holders entitled to vote on the Merger. Given that the currently pending claims in the Litigation challenge statements made in the Proxy related to that vote, Plaintiffs' Counsel believe that this proposed Plan of Allocation aligns the recovery with those who have legal standing to bring the claims currently asserted in the Litigation. Class Members who do not timely submit valid Proofs of Claim and/or who did not hold Precision common stock at the close of business on October 9, 2015 will not share in the Net Settlement Fund, but will otherwise be bound by the Settlement. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Class. Any order modifying the Plan of Allocation will be posted on the settlement website www.PrecisionShareholderLitigation.com.

The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Class Members who have legal standing to bring the claims currently asserted in the Litigation (as described above). The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of

Allocation are not intended to be estimates of, or indicative of, the amounts that Class Members might have been able to recover after a trial.

Pursuant to the Settlement described herein, the Settlement Amount is $21 million. Lead Plaintiffs estimate that approximately 133,042,086 shares of Precision common stock are in the Class and entitled to vote on the Merger. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by its claim as compared to the total claims of all eligible Class Members who submit acceptable Proofs of Claim. A Class Member may receive more or less than the estimated average amount provided below depending on the number of claims submitted. If 100% of the 133,042,086 shares of Precision shares in the Class and entitled to vote on the Merger submit a claim, each share's average distribution under the Settlement will be approximately $0.16 per share, before deduction of any Taxes on any income earned on the Settlement Amount, Tax Expenses, Notice and Administration Costs, the attorneys' fees and the expenses of Lead Plaintiffs, as determined by the Court.

The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis. However, no distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00.

Payments shall be conclusive against all Claimants. No Person shall have any claim against Plaintiffs' Counsel, Lead Plaintiffs, the Claims Administrator, Defendants and their Related Parties, or any Person designated by Plaintiffs' Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Class Member shall have any claim against Defendants for any Released Claims. All Class Members who fail to complete and file a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you held, purchased or acquired Precision common stock during the Class Period for the beneficial interest of an individual or organization other than yourself, the Court has directed that, WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you held, purchased or acquired such common stock during such time period, or (b) request additional copies of this Notice and the Proof of Claim, which will be provided to you free of charge, and within fifteen (15) days mail the Notice and Proof of Claim directly to the beneficial owners of the common stock referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed and retain the names and addresses for any future mailings to Class Members. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator at notifications@gilardi.com or:

Precision Shareholder Litigation
c/o Gilardi & Co. LLC
P.O. Box 43365
Providence, RI 02940-3365

DATED: January 15, 2021

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NECA-IBEW PENSION TRUST FUND (The Decatur Plan), and ANN F. LYNCH, AS TRUSTEE FOR THE ANGELA LOHMANN REVOCABLE TRUST, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. PRECISION CASTPARTS CORP., MARK DONEGAN, DON R. GRABER, LESTER L. LYLES, DANIEL J. MURPHY, VERNON E. OECHSLE, ULRICH SCHMIDT, RICHARD L. WAMBOLD and TIMOTHY A. WICKS, Defendants.	No. 3:16-cv-01756-YY CLASS ACTION

PROOF OF CLAIM AND RELEASE

I. GENERAL INSTRUCTIONS

1. To recover as a Member of the Class in the Settlement[1] of the action entitled *NECA-IBEW Pension Trust Fund (The Decatur Plan), et al. v. Precision Castparts Corp., et al*., Case No. 3:16-cv-01756-YY (the "Litigation"), you must complete and, on page 5 hereof, sign this Proof of Claim and Release. If you fail to submit a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, postmarked or received by the date shown below, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed Settlement of the Litigation.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of the Settlement.

3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN MAY 6, 2021, TO THE COURT-APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

Precision Shareholder Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 43365
Providence, RI 02940-3365
www.PrecisionShareholderLitigation.com

If you are NOT a Member of the Class (as defined in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice")), DO NOT submit a Proof of Claim and Release form.

4. If you are a Member of the Class and you do not timely request exclusion in connection with the proposed Settlement, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

[1] Capitalized terms not otherwise defined herein have the meaning given to them in the Stipulation of Settlement.

II. CLAIMANT IDENTIFICATION

Pursuant to the Plan of Allocation proposed by Plaintiffs' Counsel, only Class Members who were holders of record of Precision Castparts Corp. ("Precision") common stock at the close of business on October 9, 2015 and who submit a valid Proof of Claim and Release to the Claims Administrator may share in the recovery.

If you held Precision common stock at the close of business on October 9, 2015 in your name, you are the beneficial owner as well as the record owner. If, however, you held Precision common stock at the close of business on October 9, 2015 and the shares were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner and the third party is the record owner.

Use Part I of this form entitled "Claimant Identification" to identify each owner of record ("nominee"), if different from the beneficial owner of the common stock which forms the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL OWNER(S) OR THE LEGAL REPRESENTATIVE OF SUCH OWNER(S) OF THE PRECISION COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

All joint owners must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim, and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

If you are acting in a representative capacity on behalf of a Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

NOTICE REGARDING ELECTRONIC FILES: Certain claimants may request to, or may be requested to, submit information regarding their transactions in electronic files. *All claimants MUST submit a manually signed paper Proof of Claim and Release listing all their transactions whether or not they also submit electronic copies.* If you wish to file your claim electronically, you must contact the Claims Administrator at edata@gilardi.com to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgement of receipt and acceptance of electronically submitted data.

III. CLAIM FORM

1. Use Part II of this form entitled "Holdings in Precision Common Stock" to state the number of shares of Precision common stock that you held at the close of business on October 9, 2015.

2. You must provide copies of broker confirmations or other documentation of your holdings in Precision common stock as attachments to your claim. If any such documents are not in your possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

3. The above requests are designed to provide the minimum amount of information necessary to process the simplest claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your recovery. In the event the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Class with the information provided, the Claims Administrator may condition acceptance of the claim upon the production of additional information and/or the claimant's responsibility for any increased costs due to the nature and/or scope of the claim.

Official Office Use Only

[redacted]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

NECA-IBEW Pension Trust Fund (The Decatur Plan), et al. v. Precision Castparts Corp., et al.

Case No. 3:16-cv-01756-YY

PROOF OF CLAIM AND RELEASE

Please Type or Print in the Boxes Below

Do NOT use Red Ink, Pencil, or Staples

Must Be Postmarked (if Mailed) or Received (if Submitted Online) No Later Than May 6, 2021

PIH

PART I: CLAIMANT IDENTIFICATION

Last Name | M.I. | First Name

Last Name (Co-Beneficial Owner) | M.I. | First Name (Co-Beneficial Owner)

○ IRA ○ Joint Tenancy ○ Employee ○ Individual ○ Other _____ (specify)

Company Name (Beneficial Owner—If Claimant is not an Individual) or Custodian Name if an IRA

Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above)

Account#/Fund# (Not Necessary for Individual Filers)

Last Four Digits of Social Security Number

or

Taxpayer Identification Number —

Telephone Number (Primary Daytime) — —

Telephone Number (Alternate) — —

Email Address

MAILING INFORMATION

Address

Address

City | State | ZIP Code

Foreign Province | Foreign Postal Code | Foreign Country Name/Abbreviation

FOR CLAIMS PROCESSING ONLY	OB	CB						FOR CLAIMS PROCESSING ONLY
			○ ATP ○ KE ○ ICI	○ BE ○ DR ○ EM	○ FL ○ ME ○ ND	○ OP ○ RE ○ SH	MM / DD / YYYY	

PART II. HOLDINGS IN PRECISION COMMON STOCK

A. Number of shares of Precision common stock you held at the close of business on October 9, 2015: | | | | | | | | | | Proof Enclosed? ○ Y ○ N

YOUR SIGNATURE ON PAGE 5 WILL CONSTITUTE YOUR ACKNOWLEDGMENT OF THE RELEASE DESCRIBED IN PART V BELOW.

IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim and Release under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the District of Oregon, Portland Division, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim in connection with the purchase or acquisition of Precision common stock during the Class Period, and know of no other person having done so on my (our) behalf.

V. RELEASE

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever waive, release, relinquish, discharge and covenant not to assert any and all Released Claims against the Released Persons as provided in the Stipulation of Settlement.

2. "Defendants" means Precision, Mark Donegan, Don R. Graber, Lester L. Lyles, Daniel J. Murphy, Vernon E. Oechsle, Ulrich Schmidt, Richard L. Wambold, and Timothy A. Wicks.

3. "Related Parties" means, with respect to each Defendant, any and all of their related parties, including, without limitation, any and all of their past or present parents, subsidiaries, affiliates, predecessors, or successors, as well as any and all of its or their current or former officers, directors, employees, associates, members of their immediate families, agents or other persons acting on their behalf, underwriters, insurers, reinsurers, attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives.

4. "Released Claims" means any and all claims that have been asserted, could have been asserted, or could be asserted in the future in this Litigation; and any and all actions, claims, debts, demands, losses, matters, rights, suits, causes of action, liabilities, obligations, judgments, suits, matters and issues of any nature whatsoever or for any remedy, known or unknown, accrued or unaccrued, contingent or absolute, mature or immature, discoverable or undiscoverable, concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal, state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore have existed, that have been asserted, could have been asserted, or could be asserted in the future, that arise out of, have arisen from, could have arisen from, concern, or relate in any manner to, the allegations, conduct, facts, events, transactions, acts, occurrences, statements, representations, omissions or any other matter related to, or arising out of, the Litigation, the Merger or the Proxy. "Released Claims" includes "Unknown Claims" defined below.

5. "Released Persons" means each and all of the Defendants and each and all of their Related Parties.

6. "Settled Defendants' Released Claims" means all actions, claims, debts, demands, liabilities, losses, matters, rights, suits and causes of action of any nature whatsoever, known or unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether concealed or hidden, suspected or unsuspected, whether based in law or equity, arising under federal, state, common or foreign law, or any other law, rule or regulation, which now exist or heretofore have existed, that have been or could have been asserted by the Released Persons or any of them against Lead Plaintiffs, Class Members, or Plaintiffs' Counsel, that arise out of, have arisen from, could have arisen from, concern, or relate in any manner to the institution, prosecution, settlement, or resolution of the Litigation or the Released Claims, except to enforce the releases and other terms and conditions contained in this Stipulation or any Court order entered pursuant thereto.

7. "Unknown Claims" means any Released Claim that any Lead Plaintiff or any Class Member does not know or suspect to exist in such Person's favor at the time of the release of the Released Persons, and any of the Settled Defendants' Released Claims that the Released Persons do not know or suspect to exist in his, her or its favor at the time of the release of Lead Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, which, if known by such party, might have affected such party's release of the Released Persons or Lead Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, or might have affected such party's decision not to object to this Settlement or seek exclusion. Unknown Claims include those Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Released Claims and the Settled Defendants' Released Claims, upon the Effective Date, Lead Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived 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 that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Lead Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law that is similar, comparable or equivalent to California Civil Code §1542. Lead Plaintiffs, Class Members and the Released Persons may hereafter discover facts in addition to or different from those that such party now knows or believes to be true with respect to the subject matter of the Released Claims and the Settled Defendants' Released Claims, but Lead Plaintiffs and Defendants shall expressly, and each Class Member and Released Persons, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever released any and all Released Claims, or the Settled Defendants' Released Claims, as the case may be, 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 that is negligent, reckless, 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, whether or not previously or currently asserted in any action. Lead Plaintiffs and Defendants acknowledge, and the Class Members and Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

8. This release shall be of no force or effect unless and until the Court approves the Stipulation of Settlement and the Settlement becomes effective on the Effective Date.

9. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any claim or matter released pursuant to this release or any other part or portion thereof.

10. I (We) hereby warrant and represent that I (we) have included information (including supporting documentation) about the number of shares of Precision stock held by me (us) at the close of business on October 9, 2015.

11. I (We) hereby warrant and represent that I am (we are) not a Defendant or other person excluded from the Class.

12. I (We) certify that I am (we are) not subject to backup withholding under the provisions of §3406(a)(1)(C) of the Internal Revenue Code.

Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

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

Executed this_____ day of _____ in _____
(Month/Year) (City/State/Country)

_____	_____
(Sign your name here)	(Sign your name here)
_____	_____
(Type or print your name here)	(Type or print your name here)
_____	_____
(Capacity of person(s) signing, *e.g.*, Beneficial Purchaser or Acquirer, Executor or Administrator)	(Capacity of person(s) signing, *e.g.*, Beneficial Purchaser or Acquirer, Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. If this claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of certificates.
5. Keep a copy of your Proof of Claim and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your Proof of Claim please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to the address below.
8. **Do not use highlighter** on the Proof of Claim or supporting documentation.

THIS PROOF OF CLAIM MUST BE SUBMITTED ONLINE OR POSTMARKED NO LATER THAN MAY 6, 2021, ADDRESSED AS FOLLOWS:

Precision Shareholder Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 43365
Providence, RI 02940-3365

EXHIBIT 7

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN DUNCAN, PETER CAHILL and CHARLES CAPARELLI, Individually and on Behalf of All others Similarly Situated,

Plaintiffs,

v. Case No. 16-cv-1229-pp

JOY GLOBAL INC., EDWARD L. DOHENY II, JOHN NILS HANSON, STEVEN L. GERARD, MARK J. GLIEBE, JOHN T. GREMP, GALE E. KLAPPA, RICHARD B. LOYND, P. ERIC SIEGERT and JAMES H. TATE,

Defendants.

ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT (DKT. NO. 58 AT ¶(A)), APPROVING SETTLEMENT (DKT. NO. 52) AND DISMISSING CASE WITH PREJUDICE

In its order dated September 14, 2018, the court preliminarily approved the parties' settlement agreement and scheduled a final approval hearing for December 20, 2018. Dkt. No. 57. In anticipation of that hearing, the plaintiffs filed a Notice of Motion and Motion for Final Approval of Class Action Settlement, Approval of Plan of Allocation, and Award of Attorneys' Fees. Dkt. No. 58. At the December 20, 2018 hearing, the court addressed the motion; regarding that part of the motion that asked the court for final approval of the class action settlement (dkt. no. 58 at ¶(a)), the court considered (i) whether the terms and conditions of the Settlement were fair, reasonable and adequate and should be approved and (ii) whether to dismiss the case with prejudice. Based

on the written pleadings relating to the motion to give final approval to class action settlement, as well as the parties' arguments at the December 20, 2018 hearing (dkt. nos. 74, 75), the court **ORDERS:**

1. This Order incorporates by reference the definitions in the Stipulation (dkt. no. 52), and all terms used in this order shall have the same meanings as set forth in the Stipulation, unless otherwise this order specifies otherwise.

2. This court has jurisdiction over the subject matter of the Litigation and over all Settling Parties to the Litigation, including all Members of the Class.

3. Under Rule 23 of the Federal Rules of Civil Procedure, the court **AFFIRMS** its determinations in the Preliminary Approval Order and **CERTIFIES** for purposes of settlement only: (i) a Class defined as all those who purchased, sold or held Joy Global common stock during the period from and including September 1, 2016, the record date for Joy Global's special stockholder meeting regarding the acquisition of Joy Global by Komatsu Ltd. and certain of its subsidiaries (the "Acquisition"), through and including April 5, 2017, the date the Acquisition closed; (ii) Robbins Geller Rudman & Dowd LLP and Bronstein, Gewirtz & Grossman, LLC are certified as Lead Counsel; and (iii) Lead Plaintiffs are certified as Class Representatives. Excluded from the Class are (i) Defendants; (ii) members of the immediate families of each Defendant; (iii) Joy Global's subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; and (v) the legal

representatives, heirs, successors, administrators, executors, and assigns of each Defendant. Also excluded from the Class are those Persons who properly excluded themselves by timely and validly requesting exclusion from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action sent to Class Members pursuant to the Preliminary Approval Order.

4. For purposes of settlement only, the court **AFFIRMS** its determinations in the Preliminary Approval Order and **FINDS** that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the Members of the Class are so numerous that joinder of all Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of the Lead Plaintiffs are typical of the claims of the Class; (d) Lead Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by Members of the Class, (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

5. Under Federal Rule of Civil Procedure 23, the court **GRANTS** the motion for final approval of class action settlement (dkt. no. 58 at ¶(a)), **APPROVES** the Settlement contained in the Stipulation (dkt. no. 52) and **FINDS** that said Settlement is, in all respects, fair, reasonable, and adequate to the Class.

6. Under Rule 23 of the Federal Rules of Civil Procedure, the court **FINDS** that the Settlement is fair, reasonable, and adequate as to each of the Settling Parties, and that the Settlement contained in the Stipulation is finally approved in all respects, and **DIRECTS** the Settling Parties to perform its terms.

7. The court authorizes and directs implementation of the terms and provisions of the Stipulation, as well as the terms and provisions of this order. The court **ORDERS** that the case and all claims contained therein and all of the released claims as against the released persons is **DISMISSED WITH PREJUDICE** and without costs.

8. Upon the Effective Date of this order, and as provided in the Stipulation, Lead Plaintiffs and each and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming through or on behalf of any of them, including, but not limited to, their predecessors, successors, agents, representatives, attorneys, affiliates, heirs, executors, administrators, and assigns, shall be deemed to have, and by operation of this Order shall have, fully, finally, and forever resolved, discharged, relinquished, released, waived, settled and dismissed with prejudice any and all Released Claims

(including, without limitation, Unknown Claims), as well as any and all claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Litigation or the Released Claims, against each and all of the Released Persons, regardless of whether a Class Member executes and delivers a Proof of Claim and Release, except that claims relating to the enforcement of the Settlement shall not be released.

9. Upon the Effective Date of this order, and as provided in the Stipulation, each of the Released Persons shall be deemed to have, and by operation of this Order shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiffs, each and all of the Class Members, and Lead Counsel from all Settled Defendants' Released Claims, and shall forever be enjoined from prosecuting such claims, except for claims relating to the enforcement of the Settlement.

10. Upon the Effective Date of this order, Lead Plaintiffs, each and all of the Class Members, other than those listed on Exhibit A hereto, and anyone claiming through or on behalf of any of them, including, but not limited to, their predecessors, successors, agents, representatives, attorneys, affiliates, heirs, executors, administrators, and assigns, are and shall be forever barred and enjoined from commencing, instituting, asserting, maintaining, enforcing, aiding, prosecuting, or continuing to prosecute any action or proceeding in any forum (including, but not limited to, any state or federal court of law or equity, any arbitral forum, any tribunal, administrative forum, or the court of any foreign jurisdiction, or any other forum of any kind), any and all of the

Released Claims (including, without limitation, Unknown Claims), as well as any and all claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Litigation or the Released Claims, against each and all of the Released Persons, regardless of whether such Class Member executes and delivers a Proof of Claim and Release, except that claims relating to the enforcement of the Settlement shall not be released.

11. Upon the Effective Date of this order, and as provided in the Stipulation, Lead Plaintiffs and each and every Class Member, for themselves and for any Person claiming now or in the future through or on behalf of them, shall not sue any Released Persons with respect to any and all Released Claims, except to enforce the terms and conditions contained in the Stipulation or this Order.

12. In accordance with the PSLRA as codified at 15 U.S.C. §78u-4(f)(7)(A), (a) all obligations to any Class Member of any Released Person arising out of the Litigation are discharged, and (b) any and all claims for contribution arising out of the Litigation or any of the Released Claims (i) by any person or entity against any of the Released Persons, and (ii) by any of the Released Persons against any person or entity, other than as set out in 15 U.S.C. §78u-4(f)(7)(A)(ii), are hereby permanently barred, extinguished, discharged, satisfied and unenforceable.

13. The terms of the Stipulation and of this Order shall be forever binding on Lead Plaintiffs, all other Class Members, and Defendants (regardless of whether or not any individual Class Member submits a Proof of Claim and

Release or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective, heirs, executors, administrators, predecessors, successors, and assigns.

14. The Escrow Agent shall maintain the Settlement Fund in accordance with the requirements set forth in the Stipulation. No Released Person shall have any liability, obligation, or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund.

15. The Notice of Pendency and Proposed Settlement of Class Action given to the Class (a) was implemented in accordance with the Preliminary Approval Order entered on September 14, 2018, (b) was the best notice practicable under the circumstances, to all Persons entitled to such notice, of those proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, (c) was reasonably calculated under the circumstances, to apprise Class Members of (i) the pendency of the Litigation; (ii) the effect of the proposed Settlement (including the releases contained therein); and (iii) their right to object to any aspect of the proposed Settlement, exclude themselves from the Class, and/or appear at the Final Approval Hearing, (d) was reasonable and constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement, and (e) fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, the requirements of the PSLRA, and all other applicable law and rules.

16. The court will enter separate orders regarding the proposed Plan of Allocation and Lead Counsel's motion for attorneys' fees as allowed by the court. Any plan of allocation submitted by Lead Counsel or any order entered regarding any attorneys' fee application shall in no way disturb or affect this Order and shall be considered separate from this Order.

17. Neither this Order, the Stipulation, the Supplemental Agreement, nor any of their terms or provisions, nor any of the negotiations, discussions, proceedings connected thereto, 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, or evidence of, the validity of any of the allegations in the Litigation or of the validity of any Released Claim, or of any wrongdoing or liability of any Released Persons; or (b) is, or shall be deemed to be, or shall be used as an admission of any fault or omission of any Released Person in any statement, release, or written documents issued, filed, or made; or (c) is or may be deemed to be or may be used as an admission of, or evidence of, any fault, liability, wrongdoing, negligence, or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, arbitration proceeding, administrative agency, or forum or tribunal in which the Released Persons are or become parties; or (d) is or may be deemed to be or may be used as an admission or evidence that any claims asserted by Lead Plaintiffs were not valid or that the amount recoverable was not greater than the Settlement Amount, in any civil, criminal, or administrative proceeding in any court, administrative agency, or

other tribunal. The Released Persons, Lead Plaintiffs, Class Members, and their respective counsel may file the Stipulation and/or this Order in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settling Parties may file the Stipulation and/or this Order in any proceedings that may be necessary to consummate or enforce the Stipulation, the Settlement, or the Order.

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

19. The court **FINDS** that during the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

20. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion of it, is returned to the Defendants as required under the terms of the Stipulation, then this

Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

21. Without further approval from the court, the parties are authorized to agree and to adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this Order; and (ii) do not materially limit the rights of Class Members in connection with the Settlement. Without further order of the court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

Dated in Milwaukee, Wisconsin this 27th day of December, 2018.

BY THE COURT:

HON. PAMELA PEPPER
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

STEVEN DUNCAN, et al., Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

JOY GLOBAL INC., et al.,

Defendants.

Civil No. 2:16-cv-01229-PP

CLASS ACTION

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL PERSONS WHO PURCHASED, SOLD, OR HELD JOY GLOBAL INC. ("JOY GLOBAL" OR THE "COMPANY") COMMON STOCK DURING THE PERIOD FROM AND INCLUDING SEPTEMBER 1, 2016, THE RECORD DATE FOR JOY GLOBAL'S SPECIAL STOCKHOLDER MEETING REGARDING THE ACQUISITION OF JOY GLOBAL BY KOMATSU LTD. AND CERTAIN OF ITS SUBSIDIARIES (THE "ACQUISITION"), THROUGH AND INCLUDING APRIL 5, 2017, THE DATE THE ACQUISITION CLOSED (THE "CLASS")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM ("PROOF OF CLAIM") **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE JANUARY 14, 2019**.

This Notice of Pendency and Proposed Settlement of Class Action ("Notice") has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of Wisconsin, Milwaukee Division (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of the Litigation (the "Settlement") and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement and the proposed Plan of Allocation of the settlement proceeds, as well as counsel's fee application and Lead Plaintiffs' time and expense request. This Notice describes the rights you may have in connection with your participation in the Settlement, what steps you may take in relation to the Settlement and this Litigation, and, alternatively, what steps you must take if you wish to be excluded from the Class and this Litigation.[1]

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A PROOF OF CLAIM	The only way to be eligible to receive a payment. Proofs of Claim must be postmarked or submitted online on or before January 14, 2019.
EXCLUDE YOURSELF	Receive no payment. This is the only option that ***potentially*** allows you to ever be part of any other lawsuit against the Defendants or any other Released Persons about the legal claims related to the issues raised in this Litigation. Exclusions must be received no later than November 29, 2018.
OBJECT	Write to the Court about why you oppose the Settlement, the Plan of Allocation, the request for attorneys' fees, and/or the expenses of Lead Plaintiffs. You will still be a Member of the Class. Objections must be received by the Court ***and*** counsel on or before November 29, 2018.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be received by the Court ***and*** counsel on or before November 29, 2018.
DO NOTHING	Receive no payment from the Settlement. Members of the Class who do nothing remain bound by the terms of the Settlement.

[1] All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement dated May 22, 2018 ("Stipulation"), which, along with other important documents, is available on the Settlement website, www.JoyGlobalSecuritiesLitigation.com.

SUMMARY OF THIS NOTICE

Statement of Class Recovery

Pursuant to the Settlement described herein, the Settlement Amount is $20 million. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that claimant's claim as compared to the total claims of all Class Members who submit acceptable Proofs of Claim. An individual Class Member may receive more or less than the estimated average amount provided below depending on the number of claims submitted. *See* Plan of Allocation as set forth at page 11 below for more information on your claim.

Statement of Potential Outcome of Litigation

The parties disagree on both liability and damages and do not agree on the average amount of damages per Joy Global common stock that would be recoverable if the Class prevailed on each claim alleged. The Defendants deny that they are liable to the Class and deny that the Class has suffered any damages.

Statement of Attorneys' Fees Sought

Lead Counsel will apply to the Court for an award of attorneys' fees of 25% of the Settlement Amount, plus interest earned from the date the Settlement is funded, at the same rate as earned on the Settlement Fund. Since the Litigation's inception in September 2016, Lead Counsel have expended time and effort in the prosecution of this Litigation on a contingent fee basis and advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees. In addition, Lead Plaintiffs may seek reimbursement in accordance with 15 U.S.C. §78u-4(a)(4). The requested fees amount to approximately $0.05 per damaged share, but the average cost per damaged share will vary depending on the number of acceptable Proofs of Claim submitted.

Further Information

For further information regarding the Litigation, this Notice or to review the Stipulation, please contact the Claims Administrator toll-free at 1-866-637-9414, or visit the website www.JoyGlobalSecuritiesLitigation.com.

You may also contact a representative of Lead Counsel: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, www.rgrdlaw.com.

Please Do Not Call the Court or Defendants with Questions About the Settlement.

Reasons for the Settlement

The principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly years into the future.

BASIC INFORMATION

1. Why did I get this notice package?

You or someone in your family may have purchased, sold or held Joy Global common stock during the time period from and including September 1, 2016, through and including April 5, 2017 ("Class Period").

The Court directed that this Notice be sent to Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

This Notice explains the class action lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the Litigation is the United States District Court for the Eastern District of Wisconsin, Milwaukee Division, and the case is known as *Steven Duncan, et al. v. Joy Global Inc., et al.*, Civil No. 2:16-cv-01229-PP. The case has been assigned to the Honorable Pamela Pepper. Steven Duncan, Peter Cahill and Charles Caparelli have been appointed by the Court as lead plaintiffs (referred to as "Lead Plaintiffs" in this Notice), and the parties who were sued and who have now settled are called the "Defendants."

2. What is this lawsuit about?

This is a class action alleging violations of the federal securities laws, brought on behalf of all Persons who purchased, sold or held Joy Global common stock during the Class Period against Joy Global, Edward L. Doheny II, Steven L. Gerard, Mark J. Gliebe, John T. Gremp, John Nils Hanson, Gale E. Klappa, Richard B. Loynd, P. Eric Siegert and James H. Tate (referred to collectively as the "Defendants"). The Amended Complaint alleges that Defendants violated §§14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") and U.S. Securities and Exchange Commission ("SEC") Rule 14a-9 promulgated thereunder by making materially misleading statements and omissions in the Definitive Proxy Statement on Schedule 14A (the "Proxy"), filed with the SEC on September 2, 2016 and as amended by the "Supplemental Disclosures" filed on September 29, 2016 and October 3, 2016. Defendants deny that they violated any securities laws or SEC rules.

On September 13, 2016, Plaintiff Duncan filed the initial complaint in this matter. Also on September 13, 2016, Plaintiff Duncan's counsel issued a notice to investors informing them of the right to seek appointment as lead plaintiff by November 7, 2016.

Between August 24, 2016 and September 8, 2016, six other complaints were filed on behalf of Joy Global's shareholders purportedly arising out of the Acquisition (the "Related Actions"). On October 5, 2016, all plaintiffs in the Related Actions filed a "Stipulation and [Proposed] Order Concerning Plaintiffs' Voluntary Dismissal of the Above Actions," stating that plaintiffs Oduntan, Soffer, Gordon, Rote, Tansey and McGregor were dismissing their cases with prejudice as to them only. On October 7, 2016, the Court signed an Order dismissing the Related Actions with prejudice as to those named plaintiffs only.

On November 7, 2016, Lead Plaintiffs filed motions seeking appointment as lead plaintiffs and their selected counsel as lead counsel in this action. More specifically, Plaintiff Cahill and Plaintiff Caparelli filed a motion seeking appointment as lead plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §§78u-4(a)(3)(B), and seeking approval of their selection of Bronstein Gewirtz & Grossman, LLC as Lead Counsel and Bykhovsky Law LLC as Liaison Counsel. The same day, Plaintiff Duncan filed a motion seeking appointment as lead plaintiff and for an order appointing his selection of Robbins Geller Rudman & Dowd LLP as lead counsel. Plaintiffs Cahill, Caparelli and Duncan, through counsel, negotiated a resolution of the competing lead plaintiff and lead counsel motions. As a result of those arm's-length negotiations, on November 22, 2016, Duncan filed a Stipulation and [Proposed] Order Appointing Lead Plaintiff and Lead Counsel Pursuant to the PSLRA (the "Leadership Stipulation") stating, *inter alia*, that their "respective counsel, have agreed, subject to this Court's approval, that Messrs. Cahill, Caparelli and Duncan should be jointly appointed Lead Plaintiff and their counsel approved as Lead Counsel." Defendants took "no position on the pending motions and reserv[ed] all rights to challenge the Rule 23 requirements at the class certification stage." On November 28, 2016, the Court approved the Leadership Stipulation and ordered: "Pursuant to 15 U.S.C. §78u-4(a)(3)(B), the court APPOINTS Peter Cahill, Charles Caparelli and Steven Duncan as Lead Plaintiffs"; "Pursuant to 15 U.S.C. §78u-4(a)(3)(B)(v), the court APPROVES the Lead Plaintiffs' selection of Robbins Geller Rudman & Dowd LLP and Bronstein Gewirtz & Grossman LLC, and APPOINTS those firms as Lead Counsel for the Lead Plaintiffs; and APPROVES the Lead Plaintiffs' selection of Wagner Law Group, S.C. as Local Counsel, and APPOINTS that firm as Local Counsel for the Lead Plaintiffs."

On December 27, 2016, Lead Plaintiffs and the then-existing defendants entered into a stipulation stating, *inter alia*, that "the Parties agree that the efficient prosecution of this case and administration of justice favors extending the time for lead plaintiffs to amend the complaint and for the Defendants to respond to the amended complaint until after the transaction closes" and that "Lead Plaintiffs shall file an amended complaint not later than 21 days from the date on which the transaction closes." The Court approved that stipulation, which also contained a briefing schedule for any subsequent motions to dismiss, on December 27, 2016.

Twenty-one days after the close of the Acquisition, on April 26, 2017, Lead Plaintiffs filed an Amended Complaint for Violations of §§14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Amended Complaint"). Defendants filed an omnibus Motion to Dismiss on June 26, 2017 (the "Motion to Dismiss"). In the Motion to Dismiss, Defendants argued that under Fed. R. Civ. P. 12(b)(6), the Amended Complaint failed to state a claim upon which relief could be granted and should be dismissed with prejudice. On August 10, 2017, Lead Plaintiffs filed a Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Amended Class Action Complaint. On September 11, 2017, Defendants filed a Reply Memorandum of Law in Support of

Defendants' Motion to Dismiss the Amended Class Action Complaint. While the Motion to Dismiss remained pending, the parties filed the following notices, responses, and motions to consider additional authority:

- October 6, 2017: Lead Plaintiffs filed a Notice of Recent Authority calling the Court's attention to a recent "Findings and Recommendations" issued by the Honorable Magistrate Judge Youlee Yim You of the United States District Court for the District of Oregon in *NECA-IBEW Pension Trust Fund v. Precision Castparts Corp*., No. 3:16-cv-01756-YY (Dist. Or. Oct. 3, 2017) ("*Precision Castparts*").
- October 13, 2017: Defendants responded to Lead Plaintiffs' Notice regarding *Precision Castparts*.
- January 30, 2018: Lead Plaintiffs filed a Supplemental Notice of Recent Authority regarding the district court's adoption of the *Precision Castparts* Findings and Recommendations.
- February 2, 2018: Defendants moved the Court, under Civil Local Rules 7(h) and 7(i), for an order permitting them to file supplemental authority concerning: *City of Hialeah Employees' Retirement Sys. v. FEI Co.*, Case No. 3:16-cv-1792-SI (D. Or. Jan. 25, 2018) ("*FEI*").
- February 9, 2018: Lead Plaintiffs responded to Defendants' motion regarding *FEI*.

In December 2017, the parties' counsel began discussing the potential for resolution of this matter. Arm's-length negotiations took place over the next approximately three months and on March 23, 2018, Defendants filed a Notice of Settlement with the Court stating that "the parties have reached a settlement in principle that would resolve all outstanding issues in this case among all parties."

Defendants expressly have denied and continue to deny that Lead Plaintiffs have asserted any valid claims as to any of them in the Litigation and maintain that their conduct was at all times proper and in compliance with all applicable provisions of law. Defendants expressly have denied and continue to deny any and all charges of fault, damages, wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied, *inter alia*, the allegations that they made a materially false statement or had any intent to make one, the allegations that Lead Plaintiffs or the Class has suffered damage, that Lead Plaintiffs or the Class were harmed by the conduct that was or could have been alleged in the Litigation, or that Defendants have any liability to the Class. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation.

3. Why is this a class action?

In a class action, one or more people called a plaintiff sues on behalf of people who have similar claims. All of the people with similar claims are referred to as a Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

4. Why is there a settlement?

The Court has not decided in favor of the Defendants or the Class. Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation, including trial and post-trial appeals. Lead Plaintiffs agreed to the Settlement in order to ensure that Class Members will receive compensation, and because Lead Plaintiffs (advised by Lead Counsel) considered the Settlement Amount to be a favorable recovery compared to the risk-adjusted possibility of recovery after trial and any appeals, in light of Defendants' legal argument that the statements at issue were not actionable at all by the Class, and its factual arguments that Defendants believed the Company was complying with all applicable laws. Lead Plaintiffs and Lead Counsel believe the Settlement is in the best interest of all Class Members in light of the real possibility that continued litigation could result in no recovery at all.

WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

5. How do I know if I am part of the Settlement?

The Court directed that everyone who fits this description is a Class Member: all those who purchased, sold or held Joy Global common stock during the period from and including September 1, 2016, the record date for Joy Global's special stockholder meeting regarding the acquisition of Joy Global by Komatsu Ltd. and certain of its subsidiaries, through and including April 5, 2017, the date the Acquisition closed. Under the Plan of Allocation proposed by Plaintiffs' Counsel and described below, only Class Members who were holders of record of Joy Global common stock at the close of business on September 1, 2016, and were thus holders of record entitled to vote on the Acquisition, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery – this aligns the recovery with those who have legal standing to bring the claims currently asserted in the Litigation.

6. Are there exceptions to being included?

Excluded from the Class are (i) Defendants; (ii) members of the immediate families of each Defendant; (iii) Joy Global's subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; and (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant. Also excluded from the Class are those Persons who properly exclude themselves by timely and validly requesting exclusion from the Class pursuant to this Notice.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at 1-866-637-9414 or visit the Settlement website www.JoyGlobalSecuritiesLitigation.com, or you can fill out and return the Proof of Claim enclosed with this Notice package, to see if you qualify.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the Settlement provide?

In exchange for the Settlement and the release of the Released Claims (defined below) as well as dismissal of the Litigation, Defendants have agreed that a payment of $20 million will be made by Defendants (or on their behalf) to be divided, after taxes, fees, and expenses, among all Authorized Claimants.

9. How much will my payment be?

Pursuant to the Settlement described herein, the Settlement Amount is $20 million. Under the Plan of Allocation proposed by Plaintiffs' Counsel and described below, only Class Members who were holders of record of Joy Global common stock at the close of business on September 1, 2016, and were thus holders of record entitled to vote on the Acquisition, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery – this aligns the recovery with those who have legal standing to bring the claims currently asserted in the Litigation. Lead Plaintiffs estimate that approximately 97.5 million shares of Joy Global common stock are in the Class. Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Class Members who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. If 100% of shares outstanding at the time of the Acquisition submit a claim, each share's average distribution under the Settlement will be approximately $0.20 per share, before deduction of any Taxes on any income earned on the Settlement Amount, Tax Expenses, Notice and Administration Costs, the attorneys' fee and the expenses of Lead Plaintiffs, as determined by the Court.

The Settlement Fund less Taxes, Notice and Administration Costs, any award of attorneys' fees of Plaintiffs' Counsel, and any award to Lead Plaintiffs made by the Court pursuant to the PSLRA for reasonable costs and expenses ("Net Settlement Fund") will be distributed to Class Members who submit valid, timely Proofs of Claim ("Authorized Claimants") on a *pro rata* basis. However, no distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00.

Defendants expressly deny that any damages were suffered by Lead Plaintiffs or the Class.

Payments shall be conclusive against all Authorized Claimants. No Person shall have any claim against Plaintiffs' Counsel, Lead Plaintiffs, the Claims Administrator, Defendants and their Related Parties, or any Person designated by Plaintiffs' Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Class Member shall have any claim against Defendants for any Released Claims. All Class Members who fail to complete and submit a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How can I receive a payment?

To be eligible to receive a payment, you must submit a Proof of Claim. A Proof of Claim is enclosed with this Notice or it may be downloaded at www.JoyGlobalSecuritiesLitigation.com. Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and return it so that it is postmarked, if mailed, or received, if submitted online, no later than January 14, 2019. The Proof of Claim may be submitted online at www.JoyGlobalSecuritiesLitigation.com.

11. When would I receive my payment?

The Court will hold a Final Approval Hearing on December 20, 2018, to decide whether to approve the Settlement. If the Court approves the Settlement, there might be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

12. What am I giving up to receive a payment or to stay in the Class?

Unless you exclude yourself, you will remain a Class Member, and that means that, if the Settlement is approved, you will give up all "Released Claims" (as defined below), including "Unknown Claims" (as defined below), against the "Released Persons" (as defined below):

- "Released Claims" means any and all claims that have been asserted, could have been asserted, or could be asserted in the future in this Litigation; and any and all claims, actions, potential actions, demands, losses, rights, causes of action, controversies, costs, damages, liabilities, obligations, judgments, suits, matters and issues of any nature for any remedy, known or unknown, suspected or unsuspected, accrued or unaccrued, whether class, individual, or otherwise, arising under the laws, regulations, or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract, or in equity, and regardless of legal theory, and including claims for indemnification, contribution, or otherwise denominated, that have been asserted, could have been asserted, or could be asserted in the future, by Lead Plaintiffs or any Class Member in his, her or its capacity as a purchaser, seller or holder of Joy Global stock, that have arisen from, could have arisen, or relate in any manner to, in whole or in part, the allegations, conduct, facts, events, transactions, acts, occurrences, statements, representations, omissions or any other matter related to, or arising out of, the Acquisition, the Proxy and the Supplements thereto, the projections and investor presentations referenced in the Amended Complaint, or to the purchase, sale, or holding of Joy Global's common stock in the period from and including September 1, 2016 through and including April 5, 2017. "Released Claims" includes "Unknown Claims" as defined below. Notwithstanding any other provision to the contrary herein, Released Claims shall not include Defendants' Insurance Claims. For the avoidance of doubt, nothing in the Stipulation is intended to, nor shall it be deemed to, release any claim that the Defendants have against any of Defendants' insurers.
- "Released Persons" means each and all of the Defendants and each and all of their Related Parties.
- "Related Parties" means, with respect to each Defendant, any and all of their related parties, including, without limitation, any and all of their past or present parents (direct or indirect), subsidiaries (direct or indirect), affiliates, predecessors, or successors, as well as any and all of

its or their current or former officers, directors, employees, associates, members of their immediate families, agents or other persons acting on their behalf, investment banks, including, but not limited to, Goldman Sachs Group, Inc., attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives. "Related Parties" also means any insurers of Defendants, but solely in the context of, and in respect to, any Released Claims that could be asserted directly against such insurers by Lead Plaintiffs.

- "Settled Defendants' Released Claims" means any and all claims, actions, potential actions, demands, losses, rights, causes of action, controversies, costs, damages, liabilities, obligations, judgments, suits, matters and issues of any nature for any remedy, known or unknown, suspected or unsuspected, accrued or unaccrued, whether class, individual, or otherwise, arising under the laws, regulations, or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract, or in equity, and regardless of legal theory, and including claims for indemnification, contribution, or otherwise denominated, that have been asserted, could have been asserted, or could be asserted in the future by the Released Persons or any of them against Lead Plaintiffs, Class Members, or Plaintiffs' Counsel, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Released Persons, except for claims related to the enforcement of the Settlement. In all events, Lead Plaintiffs, Plaintiffs' Counsel, and all Class Members shall have no liability or responsibility for Defendants' Insurance Claims.

- "Unknown Claims" means (i) any of the Released Claims which Lead Plaintiffs or any Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person's favor at the time of the release of the Released Claims, and (ii) any of the Settled Defendants' Released Claims that the Released Persons do not know or suspect to exist in his, her or its favor at the time of the release of the Settled Defendants' Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person's decision with respect to this Settlement, including, without limitation, such Person's decision not to object to this Settlement or not to exclude himself, herself or itself from the Class. Unknown Claims include those Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Released Claims and the Settled Defendants' Released Claims, upon the Effective Date, Lead Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived 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 Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Lead Plaintiffs, Class Members and the Released Persons may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of the Released Claims and the Settled Defendants' Released Claims, but Lead Plaintiffs and Defendants shall expressly, and each Class Member and Released Persons, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Released Claims, or the Settled Defendants' Released Claims, as the case may be, 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 that is negligent, reckless, 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, whether or not previously or currently asserted in any action. Lead Plaintiffs and Defendants acknowledge, and the Class Members and Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

If you remain a Member of the Class, all of the Court's orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE CLASS

If you do not want a payment from this Settlement, and you want to keep the right to potentially sue the Defendants and the other Released Persons, on your own, about the legal issues in this Litigation, then you must take steps to remove yourself from the Settlement. This is called excluding yourself.

13. How do I get out of the proposed Settlement?

To exclude yourself from the Class, you must send a letter by First-Class Mail stating that you "request exclusion from the Class in the *Joy Global Securities Litigation*." To be valid, your letter must include the number of shares of Joy Global common stock you held during the Class Period and at the close of business on September 1, 2016. In addition, you must include your name, address, telephone number, and your signature. You must submit your exclusion request so that it is ***received*** **no later than November 29, 2018** to:

Joy Global Securities Litigation
c/o Gilardi & Co. LLC
Claims Administrator
EXCLUSIONS
3301 Kerner Blvd.
San Rafael, CA 94901

If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this Litigation, you may want to consult an attorney and discuss whether any individual claim that you wish to pursue would be time-barred by the applicable statutes of limitations or repose.

14. If I do not exclude myself, can I sue the Defendants and the other Released Persons for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Persons for any and all Released Claims. If you have a pending lawsuit against the Released Persons, speak to your lawyer in that case immediately. You must exclude yourself from this Litigation to continue your own lawsuit. Remember, the exclusion deadline is November 29, 2018.

15. If I exclude myself, can I get money from the proposed Settlement?

No. If you exclude yourself, you should not send in a Proof of Claim to ask for any money. But, you may be able to sue or be part of a different lawsuit against the Defendants and the other Released Persons about the claims raised in this Litigation.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court ordered that the law firms of Robbins Geller Rudman & Dowd LLP and Bronstein Gewirtz & Grossman LLC represent the Class, including you. These lawyers are called Lead Counsel. They will be paid from the Settlement Fund to the extent the Court approves their application for fees. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Lead Counsel will move the Court for an award of attorneys' fees of 25% of the Settlement Amount, plus interest on such fees at the same rate as earned on the Settlement Fund. In addition, Lead Plaintiffs may seek

reimbursement for their time and expenses in pursuing the Litigation. Such sums as may be approved by the Court will be paid from the Settlement Fund.

The attorneys' fees requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this Litigation on behalf of Lead Plaintiffs and the Class nor for the litigation expenses Lead Counsel have incurred. The fee requested will compensate Plaintiffs' Counsel for their work in achieving the Settlement Fund and is within the range of fees awarded to class counsel under similar circumstances in other cases of this type.

OBJECTING TO THE SETTLEMENT

18. How do I tell the Court that I object to the proposed Settlement?

If you are a Class Member, you can write to the Court to object to the proposed Settlement, the proposed Plan of Allocation, Lead Counsel's fee application, and/or Lead Plaintiffs' time and expense request. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed Settlement, the proposed Plan of Allocation, the application for fees or Lead Plaintiffs' time and expense request in the *Joy Global Securities Litigation*, and the reasons you object. You must include your name, address, telephone number, and your signature. You must identify the date(s), price(s), and number(s) of shares of Joy Global common stock you held, purchased, or sold during the Class Period, and state the reasons why you object. You must also include copies of documents demonstrating such holding(s), purchase(s), and/or sale(s). Your objection must be filed with the Court ***and*** mailed or delivered to each of the following addresses such that it is ***received*** **no later than November 29, 2018:**

COURT
Clerk of the Court
United States District Court
Eastern District of Wisconsin
Milwaukee Division
United States Federal Building
and Courthouse
517 E. Wisconsin Avenue
Milwaukee, WI 53202

LEAD COUNSEL
David A. Knotts
ROBBINS GELLER RUDMAN &
DOWD LLP
655 West Broadway
Suite 1900
San Diego, CA 92101

COUNSEL FOR DEFENDANTS
Vincent A. Sama
ARNOLD & PORTER
KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019

Bryan B. House
FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202

Peter C. Hein
WACHTELL, LIPTON,
ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

19. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the proposed Settlement, the Plan of Allocation, the fee application or Lead Plaintiffs' time and expense request. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class.

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

20. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Final Approval Hearing at 2:00 p.m., on Thursday, December 20, 2018, at the United States District Court for the Eastern District of Wisconsin, Milwaukee Division, United States Federal Building and Courthouse, 517 E. Wisconsin Ave., Milwaukee, WI 53202. At the hearing the Court will consider whether the Settlement and proposed Plan of Allocation are fair, reasonable, and adequate, and whether Lead Counsel's fee application and Lead Plaintiffs' time and expense request should be granted. If there are

objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the Final Approval Hearing, the Court will decide whether to approve the Settlement, the Plan of Allocation and the amount of fees and expenses. We do not know how long these decisions will take. The Court may change the date and time of the Final Approval Hearing without another notice being sent to Class Members. If you want to attend the hearing, you may wish to check with Lead Counsel or the Settlement website beforehand to be sure that the date and/or time has not changed.

21. Do I have to come to the hearing?

No. Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

22. May I speak at the hearing?

If you object to the Settlement, the Plan of Allocation, the fee application or Lead Plaintiffs' time and expense request, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection (*see* Question 18 above) a statement saying that it is your "Notice of Intention to Appear in the *Joy Global Securities Litigation*." Persons who intend to object to the Settlement, the Plan of Allocation, the fee application, and/or Lead Plaintiffs' time and expense request and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and copies of any exhibits they intend to introduce into evidence at the Final Approval Hearing. You cannot speak at the hearing if you exclude yourself from the Class.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will get no money from this Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit or be part of any other lawsuit against the Released Persons about the legal issues in this case ever again.

GETTING MORE INFORMATION

24. Are there more details about the proposed Settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation. You can obtain answers to common questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at 1-866-637-9414. A copy of the Stipulation and other relevant documents are also available on the Settlement website at www.JoyGlobalSecuritiesLitigation.com.

25. How do I get more information?

For even more detailed information concerning the matters involved in this Litigation, reference is made to the pleadings, the Stipulation, the Orders entered by the Court and the other papers filed in the Litigation, which may be inspected at the Office of the Clerk of the United States District Court for the Eastern District of Wisconsin, Milwaukee Division, United States Federal Building and Courthouse, 517 E. Wisconsin Ave., Milwaukee, WI 53202, during regular business hours. For a fee, all papers filed in this Litigation are available at www.pacer.gov.

You can also call 1-800-449-4900 or write to Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, or visit www.JoyGlobalSecuritiesLitigation.com.

PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS

Plaintiffs' Counsel have proposed a plan of allocation described below in Question 26, which will be submitted for the Court's approval. The Net Settlement Fund (the Settlement Amount plus interest less taxes, tax expenses, Notice and Administration Costs, attorneys' fees, and Lead Plaintiffs' time and expense payment) will be distributed to Class Members who, in accordance with the terms of the Stipulation, are entitled to a distribution from the Net Settlement Fund pursuant to any plan of allocation or any order of the Court and who submit a valid and timely Proof of Claim under the Plan of Allocation described below.

26. How will my claim be calculated?

As discussed above, the Settlement provides $20 million in cash for the benefit of the Class. The Settlement Amount and any interest it earns constitute the "Settlement Fund." The Settlement Fund, after deduction of Court-approved attorneys' fees, Notice and Administration Costs, Taxes, and any other fees or expenses approved by the Court, is the "Net Settlement Fund." If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – *i.e.*, who were holders of record of Joy Global common stock at the close of business on September 1, 2016 and who submit a valid Proof of Claim to the Claims Administrator – in accordance with this proposed Plan of Allocation ("Plan of Allocation" or "Plan") or such other plan of allocation as the Court may approve. Only those stockholders holding Joy Global common stock as of the close of business on September 1, 2016 were considered record holders entitled to vote on the Acquisition. Given that the currently pending claims in the litigation challenge statements made in the Proxy related to that vote, Plaintiffs' Counsel believe that this proposed Plan of Allocation aligns the recovery with those who have legal standing to bring the claims currently asserted in the Litigation. Class Members who do not timely submit valid Proofs of Claim and/or who did not hold Joy Global common stock at the close of business on September 1, 2016 will not share in the Net Settlement Fund, but will otherwise be bound by the Settlement. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Class. Any order modifying the Plan of Allocation will be posted on the Settlement website, www.JoyGlobalSecuritiesLitigation.com.

The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Class Members who have legal standing to bring the claims currently asserted in the Litigation (as described above). The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Class Members might have been able to recover after a trial.

Pursuant to the Settlement described herein, the Settlement Amount is $20 million. Lead Plaintiffs estimate that approximately 97.5 million shares of Joy Global common stock are in the Class. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by its claim as compared to the total claims of all eligible Class Members who submit acceptable Proofs of Claim. A Class Member may receive more or less than the estimated average amount provided below depending on the number of claims submitted. If 100% of shares outstanding at the time of the Acquisition submit a claim, each share's average distribution under the Settlement will be approximately $0.20 per share, before deduction of any Taxes on any income earned on the Settlement Amount, Tax Expenses, Notice and Administration Costs, the attorneys' fee and the expenses of Lead Plaintiffs, as determined by the Court.

The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis. However, no distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00.

Payments shall be conclusive against all Authorized Claimants. No Person shall have any claim against Plaintiffs' Counsel, Lead Plaintiffs, the Claims Administrator, Defendants and their Related Parties, or any Person designated by Plaintiffs' Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Class Member shall have any claim against Defendants for any Released Claims. All Class Members who fail to complete and submit a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you purchased, sold, or held Joy Global common stock during the Class Period for the beneficial interest of an individual or organization other than yourself, the Court has directed that, WITHIN FIFTEEN (15) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased, sold, or held such common stock during such time period, or (b) request additional copies of this Notice and the Proof of Claim, which will be provided to you free of charge, and within fifteen (15) days mail the Notice and Proof of Claim directly to the beneficial owners of the common stock referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed and retain the names and addresses for any future mailings to Class Members. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

Joy Global Securities Litigation
c/o Gilardi & Co. LLC
Claims Administrator
P.O. Box 404067
Louisville, KY 40233-4067
1-866-637-9414
www.JoyGlobalSecuritiesLitigation.com

DATED: September 14, 2018

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

STEVEN DUNCAN, et al., Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

JOY GLOBAL INC., et al.,

Defendants.

Civil No. 2:16-cv-01229-PP

CLASS ACTION

PROOF OF CLAIM AND RELEASE

I. GENERAL INSTRUCTIONS

1. To recover as a Member of the Class based on your claims in the action entitled *Steven Duncan, et al. v. Joy Global Inc., et al.*, Civil No. 2:16-cv-01229-PP (the "Litigation"), you must complete and, on page 5 hereof, sign this Proof of Claim and Release. If you fail to submit a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, postmarked or received by the date shown below, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed Settlement of the Litigation.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of the Settlement.

3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN JANUARY 14, 2019, TO THE COURT-APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

Joy Global Securities Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 404067
Louisville, KY 40233-4067
Online Submissions: www.JoyGlobalSecuritiesLitigation.com

If you are NOT a Member of the Class (as defined in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice")), DO NOT submit a Proof of Claim and Release.

4. If you are a Member of the Class and you do not timely request exclusion in connection with the proposed Settlement, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE.

II. CLAIMANT IDENTIFICATION

Pursuant to the Plan of Allocation proposed by Plaintiffs' Counsel, only Class Members who were holders of record of Joy Global Inc. ("Joy Global") common stock at the close of business on September 1, 2016 and who submit a valid Proof of Claim and Release to the Claims Administrator may share in the recovery.

If you purchased, sold, or held Joy Global common stock during the period from and including September 1, 2016, through and including April 5, 2017 (the "Class Period"), and held the shares in your name, you are the beneficial holder as well as the record holder. If, however, you purchased, sold, or held Joy Global common stock during the Class Period and the shares were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial holder and the third party is the record holder.

Use Part I of this form entitled "Claimant Identification" to identify each holder of record ("nominee"), if different from the beneficial holder of the common stock which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL HOLDER(S) OR THE LEGAL REPRESENTATIVE OF SUCH HOLDER(S) OF THE JOY GLOBAL COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

All joint holders must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

If you are acting in a representative capacity on behalf of a Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. ***All Claimants MUST submit a manually signed paper Proof of Claim and Release listing all their transactions whether or not they also submit electronic copies.*** If you wish to file your claim electronically, you must contact the Claims Administrator at edata@gilardi.com to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgement of receipt and acceptance of electronically submitted data.

III. CLAIM FORM

Use Part II of this form entitled "Holdings in Joy Global Common Stock" to state the number of shares of Joy Global common stock that you held at the close of business on September 1, 2016.

You must provide copies of broker confirmations or other documentation of your holdings in Joy Global common stock as attachments to your claim. If any such documents are not in your possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

[redacted]

Must Be Postmarked (if Mailed) or Received (if Submitted Online) No Later Than January 14, 2019

Official Office Use Only

JOD

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

Steven Duncan, et al. v. Joy Global Inc., et al.

Civil No. 2:16-cv-01229-PP

PROOF OF CLAIM AND RELEASE

Please Type or Print in the Boxes Below
Do NOT use Red Ink, Pencil, or Staples

PART I: CLAIMANT IDENTIFICATION

Last Name | M.I. | First Name

Last Name (Co-Beneficial Owner) | M.I. | First Name (Co-Beneficial Owner)

◯ IRA ◯ Joint Tenancy ◯ Employee ◯ Individual ◯ Other_____ (specify)

Company Name (Beneficial Owner - If Claimant is not an Individual) or Custodian Name if an IRA

Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above)

Account#/Fund# (Not Necessary for Individual Filers)

Last Four Digits of Social Security Number

or

Taxpayer Identification Number —

Telephone Number (Primary Daytime) — —

Telephone Number (Alternate) — —

Email Address

MAILING INFORMATION

Address

Address

City | State | Zip Code

Foreign Province | Foreign Postal Code | Foreign Country Name/Abbreviation

FOR CLAIMS PROCESSING ONLY	OB	CB					MM/DD/YYYY	FOR CLAIMS PROCESSING ONLY
			◯ ATP ◯ KE ◯ ICI	◯ BE ◯ DR ◯ EM	◯ FL ◯ ME ◯ ND	◯ OP ◯ RE ◯ SH		

PART II. HOLDINGS IN JOY GLOBAL COMMON STOCK

A. Number of shares of Joy Global common stock you held at the close of business on September 1, 2016: | | | | | | | | | |

Proof Enclosed? ◯ Y ◯ N

YOUR SIGNATURE ON PAGE 5 WILL CONSTITUTE YOUR ACKNOWLEDGMENT OF THE RELEASE DESCRIBED IN PART V BELOW.

IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim and Release under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Eastern District of Wisconsin, Milwaukee Division, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim in connection with the holdings of Joy Global common stock during the Class Period and know of no other person having done so on my (our) behalf.

V. RELEASE

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever release, covenant not to sue, relinquish, and discharge each and all of the Released Persons from the Released Claims as provided in the Stipulation of Settlement.

2. "Related Parties" means, with respect to each Defendant, any and all of their related parties, including, without limitation, any and all of their past or present parents (direct or indirect), subsidiaries (direct or indirect), affiliates, predecessors, or successors, as well as any and all of its or their current or former officers, directors, employees, associates, members of their immediate families, agents or other persons acting on their behalf, investment banks, including, but not limited to, Goldman Sachs Group, Inc., attorneys, advisors, financial advisors, publicists, independent certified public accountants, auditors, accountants, assigns, creditors, administrators, heirs, estates, or legal representatives. "Related Parties" also means any insurers of Defendants, but solely in the context of, and in respect to, any Released Claims that could be asserted directly against such insurers by Lead Plaintiffs.

3. "Released Claims" means any and all claims that have been asserted, could have been asserted, or could be asserted in the future in this Litigation; and any and all claims, actions, potential actions, demands, losses, rights, causes of action, controversies, costs, damages, liabilities, obligations, judgments, suits, matters and issues of any nature for any remedy, known or unknown, suspected or unsuspected, accrued or unaccrued, whether class, individual, or otherwise, arising under the laws, regulations, or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract, or in equity, and regardless of legal theory, and including claims for indemnification, contribution, or otherwise denominated, that have been asserted, could have been asserted, or could be asserted in the future, by Lead Plaintiffs or any Class Member in his, her or its capacity as a purchaser, seller of holder of Joy Global stock, that have arisen from, could have arisen, or relate in any manner to, in whole or in part, the allegations, conduct, facts, events, transactions, acts, occurrences, statements, representations, omissions or any other matter related to, or arising out of, the Acquisition, the Proxy and the Supplements thereto, the projections and investor presentations referenced in the Amended Complaint, or to the purchase, sale, or holding of Joy Global's common stock in the period from and including September 1, 2016 through and including April 5, 2017. "Released Claims" includes "Unknown Claims" as defined below. Notwithstanding any other provision to the contrary herein, Released Claims shall not include Defendants' Insurance Claims. For the avoidance of doubt, nothing in the Stipulation is intended to, nor shall it be deemed to, release any claim that the Defendants have against any of Defendants' insurers.

4. "Released Persons" means each and all of the Defendants and each and all of their Related Parties.

5. "Settled Defendants' Released Claims" means any and all claims, actions, potential actions, demands, losses, rights, causes of action, controversies, costs, damages, liabilities, obligations, judgments, suits, matters and issues of any nature for any remedy, known or unknown, suspected or unsuspected, accrued or unaccrued, whether class, individual, or otherwise, arising under the laws, regulations, or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract, or in equity, and regardless of legal theory, and including claims for indemnification, contribution, or otherwise denominated, that have been asserted, could have been asserted, or could be asserted in the future by the Released Persons or any of them against Lead Plaintiffs, Class Members, or Plaintiffs' Counsel, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Released Persons, except for claims related to the enforcement of the Settlement. In all events, Lead Plaintiffs, Plaintiffs' Counsel, and all Class Members shall have no liability or responsibility for Defendants Insurance Claims.

6. "Unknown Claims" means (i) any of the Released Claims which Lead Plaintiffs or any Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person's favor at the time of the release of the Released Claims, and (ii) any of the Settled Defendants' Released Claims that the Released Persons do not know or suspect to exist in his, her or its favor at the time of the release of the Settled Defendants' Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person's decision with respect to this Settlement, including, without limitation, such Person's decision not to object to this Settlement or not to exclude himself, herself or itself from the Class. Unknown Claims include those Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Released Claims and the Settled Defendants' Released Claims, upon the Effective Date, Lead Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived 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 Plaintiffs and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Lead Plaintiffs, Class Members and the Released Persons may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of the Released Claims and the Settled Defendants' Released Claims, but Lead Plaintiffs and Defendants shall expressly, and each Class Member and Released Persons, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have fully, finally, and forever settled and released any and all Released Claims, or the Settled Defendants' Released Claims, as the case may be, 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 that is negligent, reckless, 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, whether or not previously or currently asserted in any action. Lead Plaintiffs and Defendants acknowledge, and the Class Members and Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

7. This release shall be of no force or effect unless and until the Court approves the Stipulation of Settlement and the Settlement becomes effective on the Effective Date.

8. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any claim or matter released pursuant to this release or any other part or portion thereof.

9. I (We) hereby warrant and represent that I (we) have included information (including supporting documentation) about the number of shares of Joy Global common stock held by me (us) at the close of business on September 1, 2016.

10. I (We) hereby warrant and represent that I am (we are) not a Defendant or other person excluded from the Class.

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

Executed this_____ day of _____ in _____
(Month/Year) (City/State/Country)

_____	_____
(Sign your name here)	(Sign your name here)
_____	_____
(Type or print your name here)	(Type or print your name here)
_____	_____
(Capacity of person(s) signing, *e.g.*, Beneficial Purchaser or Acquirer, Executor or Administrator)	(Capacity of person(s) signing, *e.g.*, Beneficial Purchaser or Acquirer, Executor or Administrator)

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above release and declaration.
2. If this claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of stock certificates or other documentation as they will not be returned.
5. Keep a copy of your Proof of Claim and Release and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your Proof of Claim and Release please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to the address below.
8. **Do not use red pen or highlighter** on the Proof of Claim and Release or supporting documentation.

THIS PROOF OF CLAIM AND RELEASE MUST BE SUBMITTED ONLINE BY JANUARY 14, 2019, OR, IF MAILED, POSTMARKED NO LATER THAN JANUARY 14, 2019, ADDRESSED AS FOLLOWS:

Joy Global Securities Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 404067
Louisville, KY 40233-4067
www.JoyGlobalSecuritiesLitigation.com

EXHIBIT 8

ROBBINS GELLER RUDMAN
& DOWD LLP
RANDALL J. BARON (150796)
A. RICK ATWOOD, JR. (156529)
DAVID T. WISSBROECKER (243867)
EDWARD M. GERGOSIAN (105679)
DANIELLE S. MYERS (259916)
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
randyb@rgrdlaw.com
ricka@rgrdlaw.com
dwissbroecker@rgrdlaw.com
egergosian@rgrdlaw.com
dmyers@rgrdlaw.com

Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In re HOT TOPIC, INC. SECURITIES LITIGATION	Lead Case No. 2:13-cv-02939-SJO(JCx)
This Document Relates To: ALL ACTIONS.	CLASS ACTION FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing pursuant to the Order of this Court, dated June 30, 2015, on the application of the parties for approval of the Settlement set forth in the Stipulation of Settlement dated April 30, 2015 (the "Stipulation"). Due and adequate notice having been given to the Class as required in the Order, the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise stated herein.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Class Members.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court previously certified a Class defined as all holders of Hot Topic, Inc. ("Hot Topic") common stock on the record date, May 3, 2013, who were allegedly harmed by defendants' violations of §14(a) and §20(a) of the Securities Exchange Act of 1934 in connection with the Merger of Hot Topic and Sycamore Partners as alleged in the litigation (the "Class"). Excluded from the Class are defendants, the officers and directors of the Company at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest, and any Person who timely and validly seeks exclusion from the Class.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, just, reasonable and adequate to the Class.

5. Except as to any individual claim of those Persons who have validly and timely requested exclusion from the Class (identified in Exhibit 1 hereto), the Litigation and all claims contained therein, as well as all of the Released Claims, are

dismissed with prejudice as to the Lead Plaintiff and the other Class Members, and as against each and all of the Released Persons. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

6. The Court finds that the Settlement is fair, just, reasonable and adequate as to each of the Class Members, and that the Settlement is hereby finally approved in all respects, and the Settling Parties are hereby directed to perform its terms.

7. Upon the Effective Date, the Lead Plaintiff and each of the Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally and forever released, relinquished, dismissed and discharged all Released Claims (including Unknown Claims) against the Released Persons with prejudice on the merits, whether or not the Lead Plaintiff or such Class Member executes and delivers the Proof of Claim and Release, and whether or not the Lead Plaintiff or any of the Class Members ever seeks or obtains any distribution from the Settlement Fund. Claims to enforce the Settlement are not released.

8. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished and discharged the Lead Plaintiff, each and all of the Class Members, and their attorneys (including, without limitation, Lead Counsel), employees, heirs, successors, and assigns from all claims (including, without limitation, Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or, resolution of the Litigation and/or the Consolidated State Action. Claims to enforce the Settlement are not released.

9. Upon the Effective Date, Lead Plaintiff and all Class Members and anyone claiming through or on behalf of any of them, are forever barred and enjoined from commencing, instituting, or continuing to prosecute any action or proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any of the Released Claims against any of the Released Parties, and each of them.

10. The distribution of the Notice and publication of the Summary Notice as provided for in the Preliminary Approval Order constituted the best notice practicable under the circumstances, including individual notice to 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 set forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable law, including the Private Securities Litigation Reform Act of 1995.

11. Any order entered regarding any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

12. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants, their Related Parties or any Released Person; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants, their Related Parties or any Released Person in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendants, their Related Parties or any Released Person may file the Stipulation and/or the Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. Without affecting the finality of this Judgment in any way, this 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; (c) hearing and determining applications for attorneys' fees and expenses in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing and administering the Settlement.

14. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

15. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or the conditions set forth in ¶7.7 of the Stipulation occur, then 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 herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

16. The Settling Parties shall bear their own costs and expenses, except as otherwise provided in the Stipulation or in this Judgment.

IT IS SO ORDERED.

DATED: October 26, 2015

S. James Otero

THE HONORABLE S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

ROBBINS GELLER RUDMAN
& DOWD LLP
RANDALL J. BARON (150796)
A. RICK ATWOOD, JR. (156529)
DAVID T. WISSBROECKER (243867)
EDWARD M. GERGOSIAN (105679)
DANIELLE S. MYERS (259916)
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
randyb@rgrdlaw.com
ricka@rgrdlaw.com
dwissbroecker@rgrdlaw.com
egergosian@rgrdlaw.com
dmyers@rgrdlaw.com

Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In re HOT TOPIC, INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Lead Case No. 2:13-cv-02939-SJO(JCx) CLASS ACTION NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION EXHIBIT A-1

IF YOU HELD HOT TOPIC, INC. ("HOT TOPIC") COMMON STOCK ON THE RECORD DATE, MAY 3, 2013 AND WERE DAMAGED THEREBY (THE "CLASS"), YOU COULD RECEIVE A PAYMENT FROM A CLASS ACTION SETTLEMENT. CERTAIN PERSONS ARE EXCLUDED FROM THE DEFINITION OF THE CLASS AS SET FORTH BELOW IN RESPONSE TO QUESTION 6.[1]

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The Settlement will provide $14,900,000 in cash to pay claims of all Class Members. For an estimate of how much you could receive from this Settlement, see the discussion at Question 9 of this Notice.
- The Settlement resolves a lawsuit claiming that Defendants issued a materially false and misleading Proxy Statement in violation of §14(a) and §20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78n(a) and §78t(a), in connection with the proposed acquisition of Hot Topic by Sycamore.[2] The lawsuit originally asserted additional claims for breach of fiduciary duty, which were previously dismissed by the Court. The Defendants deny they did anything wrong. The Settlement avoids the costs and risks associated with continued litigation (including the danger of no recovery), provides a monetary benefit to the Class, and releases Defendants from liability.
- The proposed Settlement should be compared to the risk of no recovery. The claims in this case involve numerous complex legal and factual issues that would require extensive and costly expert testimony. Among the many issues about which the parties do not agree are: (1) whether any of the Defendants violated the securities laws or otherwise engaged in any wrongdoing; and (2) the amount of damages (if any) that could be recovered at trial.
- For the past two years, Lead Plaintiff's counsel have not received payment for their work investigating the facts, prosecuting this Litigation, and negotiating the proposed Settlement on behalf of the Lead Plaintiff and the Class. Lead Plaintiff's counsel will ask the Court to award litigation expenses of no more than $120,000 from the Settlement Amount and an award of attorneys' fees of 25% of the Settlement Amount, plus interest earned at the same rate and for the same period as earned by the Settlement Fund. Lead Counsel also may apply for the reimbursement of the Lead Plaintiff's expenses pursuant to 15 U.S.C. §78u-4(a)(4).
- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

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[1] This Notice incorporates by reference the definitions in the Stipulation of Settlement dated as of April 30, 2015 ("Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation. The Stipulation can be obtained at www.hottopicsecuritiessettlement.com.

[2] The Defendants include: Hot Topic, Lisa M. Harper, Steven Becker, Matthew Drapkin, Evelyn D'an, Terri Funk Graham, John Kyees, Andrew Schuon and Thomas Vellios (collectively, the "Individual Defendants"; together with Hot Topic, the "Defendants").

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Proof of Claim and Release Form	The only way to get a payment.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.
Do Nothing	Get no payment. Give up your rights.
Exclude Yourself	Get no payment. This is the only option that allows you to ever bring a lawsuit against Defendants concerning the legal claims at issue in this case.
Object	Write to the Court about why you don't like the Settlement.

- The following **deadlines** apply to your rights and options in this Litigation:

  Submit Claim: _____, 2015
  Request Exclusion: _____, 2015
  File Objection: _____, 2015
  Court Hearing on Fairness of Settlement: _____, 2015

- The Court in charge of this case must decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and, if there are any appeals, after appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

25. How do I get more information?

BASIC INFORMATION

1. Why did I receive this notice package?

You may have held shares of Hot Topic common stock on the record date, May 3, 2013.

The Court directed that this Notice be sent to you because you have a right to know about a proposed Settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement.

If the Court approves the Settlement, and after any objections or appeals are resolved, the Claims Administrator appointed by the Court will make the payments that the Settlement allows.

This Notice explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is Judge S. James Otero of the United States District Court for the Central District of California, Western Division (the "Court"), and the case is known as *In re Hot Topic, Inc. Securities Litigation*, Lead Case No. 2:13-cv-02939-SJO(JCx).

2. What is this lawsuit about?

The Litigation claims that the Proxy Statement (the "Proxy") disseminated to shareholders in connection with the merger of Hot Topic and Sycamore contained materially false and misleading statements and failed to include information concerning the Company's long-range projections and revised projections in violation of §14(a) and §20(b) of the Securities Exchange Act of 1934. All Defendants deny they or their Related Parties did anything wrong or that Lead Plaintiff or other Members of the Class suffered any damage.

3. Why is this a class action?

In a class action, one or more people called plaintiffs (in this case the City of Livonia Employees' Retirement System, which was appointed by the Court as Lead Plaintiff) sue on behalf of people who have similar claims. Here, all these people are called the Class or Class Members. One court resolves the issues for all Class Members, except for those who timely and validly exclude themselves from the Class.

4. Why is there a settlement?

The Court did not decide in favor of Lead Plaintiff or the Defendants who are currently part of the case. Instead, all parties agreed to a Settlement. By agreeing to a Settlement, the parties avoid the cost and uncertainty of further litigation and a possible trial (including any appeals) and allow eligible Class Members who submit valid claims to receive a payment. Lead Plaintiff and its attorneys believe the Settlement is in the best interests of the Class.

WHO IS IN THE SETTLEMENT?

To see if you will receive money from this Settlement, you first have to determine if you are a Class Member.

5. How do I know if I am part of the Settlement?

The Class includes all Persons who held Hot Topic common stock on the record date, May 3, 2013, and were damaged thereby.

Defendants do not agree with the characterization that any damages were suffered by Lead Plaintiff or the Class.

6. What are the exceptions to being included?

You are not a Class Member if you are a Defendant, an officer or director of Hot Topic at any relevant time, a member of the immediate family, the legal representative, heir, successor or assign of a Defendant, or any entity in which a Defendant has or had a controlling interest. You are also not a Class Member if you timely and validly request exclusion from the Class pursuant to this Notice.

7. I'm still not sure if I am included.

If you are still not sure if you are included, you can ask for free help. You can call Rick Nelson of Robbins Geller Rudman & Dowd LLP at 1-800-449-4900 or visit www.hottopicsecuritiessettlement.com for more information.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the Settlement provide?

Defendants have agreed to pay $14,900,000 in cash. The balance of this fund after payment of Court-approved attorneys' fees and expenses, Lead Plaintiff expenses, and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper notice (the "Net Settlement Fund") will be divided among all eligible Class Members who send in valid claim forms.

9. How much will my payment be?

Your share of the fund will depend on the number of shares of Hot Topic common stock represented by valid claims made by Members of the Class and the amount of those claims and the number of shares of Hot Topic common stock you held on the record date. Assuming that all of the investors (other than Defendants or other excluded Persons) who held Hot Topic common stock on the record date, May 3, 2013, and suffered damages therefrom participate in this Settlement, Lead Plaintiff's counsel estimates that the estimated average distribution will be approximately $0.42 per share of Hot Topic common stock before the deduction of Court-approved fees and expenses, as described in Question 17 below (estimated to be

approximately $0.10 per share), and the cost of notice and claims administration. Historically, less than all eligible investors submit claims, resulting in higher average distributions per share.

The Settlement Fund less taxes, notice and administration costs, attorneys' fees, litigation expenses, and Lead Plaintiff expenses ("Net Settlement Fund") will be distributed to Class Members who submit valid, timely Proof of Claim and Release forms ("Claimants") on a *pro rata* basis. However, no distributions will be made to Claimants who would otherwise receive a distribution of less than $10.00.

Payment shall be conclusive against all Claimants. No Person shall have any claim against Lead Plaintiff's counsel, Lead Plaintiff, the Claims Administrator, Defendants and their Related Parties, or any Person designated by Lead Plaintiff's counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Class Member shall have any claim against any Released Persons for any Released Claims. All Class Members who fail to complete and file a valid and timely Proof of Claim and Release form shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

HOW YOU OBTAIN A PAYMENT – SUBMITTING A PROOF OF CLAIM AND RELEASE FORM

10. How will I obtain a payment?

To qualify for payment, you must be an eligible Class Member, send in a valid claim form, and properly document your claim as requested in the claim form. A claim form is enclosed with this Notice. You may also obtain a Proof of Claim and Release form at www.hottopicsecuritiessettlement.com. Read the instructions carefully, fill out the form, include all the documents the form asks for, sign it, and mail or submit it online no later than _____, 2015. The claim form can be submitted online at www.hottopicsecuritiessettlement.com.

11. When will I receive my payment?

The Court will hold a hearing on _____, 2015 to decide whether to approve the Settlement. If Judge Otero approves the Settlement, there may be appeals. It is always uncertain how these appeals will be resolved, and resolving them can take time, perhaps several years. Everyone who sends in a claim form will be informed of the determination with respect to their claim. Please be patient.

12. What am I giving up to receive a payment or stay in the Class?

Unless you timely and validly exclude yourself, you are staying in the Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against the Released Persons about the Released Claims in this case. It also means that all of the Court's orders will apply to you and legally bind you and you will release your claims in this case against the Released Persons. The terms of the release are included in the enclosed claim form.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue or continue to sue on your own for the Released Claims in this case, then you must take steps to get out of the Class. This is called excluding yourself or is sometimes referred to as opting out of the Class.

13. How do I get out of the Class?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from the class in *In re Hot Topic, Inc. Securities Litigation*, Lead Case No. 2:13-cv-02939-SJO(JCx). You must provide the following information: (a) name; (b) address; (c) telephone number; (d) amount of Hot Topic common stock held on the record date, May 3, 2013; and (e) a statement that you wish to be excluded from the Class. **You must mail your exclusion request postmarked no later than _____, 2015 to:**

Hot Topic, Inc. Securities Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8040
San Rafael, CA 94912-8040

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not receive any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

14. If I do not exclude myself, can I sue for the same thing later?

No. Unless you timely and validly exclude yourself, you give up any right to sue for the Released Claims in this Settlement. If you have a pending lawsuit against any of the Released Persons, speak to your lawyer in that case immediately. **Remember, the exclusion deadline is _____, 2015.**

15. If I exclude myself, can I receive money from this Settlement?

No. If you exclude yourself, do not send in a Proof of Claim and Release form. But, you may be able to sue, continue to sue, or be part of a different lawsuit against Defendants.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court appointed Robbins Geller Rudman & Dowd LLP to represent you and other Class Members. These lawyers are called Lead Counsel. You will not be charged directly for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

In the two years that this Litigation has been pending, Lead Counsel have not been paid for their services on behalf of Lead Plaintiff and the Class, nor for their substantial expenses. The fee requested is to compensate Lead Counsel for their work investigating the facts, litigating the case over the past two years, and negotiating the Settlement.

Lead Plaintiff's counsel will ask the Court to award litigation expenses of no more than $120,000 and a payment of 25% of the Settlement Amount for attorneys' fees, plus interest on both amounts. The fee requested is well within the range of fees awarded to class counsel in similar cases. Lead Counsel may also seek the Court's approval to pay the Lead Plaintiff reasonable costs and expenses directly relating to the representation of the Class. The Court may award less than these amounts.

OBJECTING TO THE SETTLEMENT OR THE REQUEST FOR FEES AND EXPENSES

You can tell the Court that you do not agree with the Settlement or the request for fees and expenses or some part of these matters.

18. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can object to the Settlement or the request for fees and expenses if you do not like any part of these matters. You can state the reasons why you think the Court should not approve any of the relief sought. The Court will consider your views. To object, you must send a letter saying that you object to the Settlement in *In re Hot Topic, Inc. Securities Litigation*, Lead Case No. 2:13-cv-02939-SJO(JCx). Be sure to include your name, address, telephone number, your signature, the number of shares of Hot Topic common stock you held on the record date, May 3, 2013, and the reason(s) why you object to the Settlement or the request for fees and expenses. **Mail the objection to the Court, Lead Counsel and Defense Counsel in time for it to be received no later than _____, 2015**:

COURT	LEAD COUNSEL	DEFENSE COUNSEL
Clerk of the Court U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION United States Courthouse 312 North Spring Street Los Angeles, CA 90012	Danielle S. Myers ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway Suite 1900 San Diego, CA 92101	Meryl L. Young GIBSON, DUNN & CRUTCHER LLP 3161 Michelson Drive Irvine, CA 92612

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement or the fee and expense request. You can object ***only*** if you stay in the Class.

Excluding yourself is telling the Court that you do not want to be paid and do not want to release any claims. If you exclude yourself, you cannot object to the Settlement because it does not affect you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a fairness hearing at __:__ __.m., on _____, 2015, before the Honorable S. James Otero at the U.S. District Court for the Central District of California, Western Division, United States Courthouse, 312 North Spring Street, Los Angeles, CA 90012. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Otero will listen to people who have asked to speak at the hearing. The Court will also consider whether to approve the fee and expense requests. The Court may decide the issues at the hearing or take them under consideration. We do not know how long these decisions will take.

21. Do I have to come to the hearing?

No. Lead Counsel will answer questions Judge Otero may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter saying that it is your intention to appear in *In re Hot Topic, Inc. Securities Litigation*, Lead Case No. 2:13-cv-02939-SJO(JCx). Be sure to include your name, address, telephone number, the number of shares of Hot Topic common stock you held on the record date, May 3, 2013, and your signature. **Your notice of intention to appear must be received no later than _____, 2015, by the Clerk of the Court, Lead Counsel, and Defendants' Counsel**, at the addresses listed above in Question 18.

You cannot speak at the hearing if you exclude yourself from the Class.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will not receive any money from this Settlement. In addition, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit about the Released Claims in this case.

GETTING MORE INFORMATION

24. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation dated as of April 30, 2015. You can obtain a copy of the Stipulation by writing to Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, or from the Clerk's office at the United States District Court for the Central District of California, Western Division, 312 North Spring Street, Los Angeles, CA 90012 during regular business hours. The Stipulation may also be downloaded at www.hottopicsecuritiessettlement.com.

25. How do I get more information?

You can call 1-800-449-4900 or write to Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101 or visit www.hottopicsecuritiessettlement.com.

SPECIAL NOTICE TO NOMINEES

The Court has ordered that if you held any Hot Topic common stock on the record date, May 3, 2013, as nominee for a beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

Hot Topic, Inc. Securities Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8040
San Rafael, CA 94912-8040

If you choose to mail the Notice and Proof of Claim and Release yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

DATED: _____, 2015

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EXHIBIT 9

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

LAWRENCE LANE, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. BARBARA PAGE, et al., Defendants.	No. Civ-06-1071-JB-ACT CLASS ACTION ~~[PROPOSED]~~ ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

12/13/11

12/13/11

WHEREAS, a class action is pending before the Court captioned *Lane v. Page*, No. Civ-06-1071-JB-ACT (the "Litigation");

WHEREAS, on January 10, 2011, the Court issued a Memorandum Opinion and Order (Dkt. No. 284) certifying a class consisting of all Persons who held the outstanding shares of Westland Development Co., no par value Class A common stock as of the close of business on September 18, 2006;

WHEREAS, the parties having made application for an order approving the settlement of the Litigation, in accordance with a Stipulation of Settlement dated as of November 11, 2011 (the "Stipulation"), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1.After a preliminary review, the settlement appears to be fair, reasonable, adequate, and in the best interests of the Class. The settlement: (a) resulted from extensive arm's-length negotiations; and (b) is sufficient to warrant (i) notice thereof as set forth below; and (ii) a full hearing on the settlement. Accordingly, the Court does hereby preliminarily approve the Stipulation and the settlement set forth therein, subject to further consideration at the Settlement Hearing described below.

2.The Court hereby modifies its January 10, 2011 Order and certifies a Class consisting of all Persons (other than those Persons who timely and validly requested exclusion from the

Class) who held the outstanding shares of Westland common stock as of the close of business on September 18, 2006. Excluded from the Class are Defendants, all of the officers and directors of Defendants, their immediate families[1] and their legal representatives, heirs, successors and/or assigns and any entity in which any Defendant has a controlling interest.

3.A hearing (the "Settlement Hearing") shall be held before this Court on March 15, 2012, at 9:00 a.m., at United States Courthouse, 333 Lomas Boulevard N.W., Albuquerque, New Mexico 87102, to determine: whether the proposed settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be approved by the Court; whether a Judgment as provided in §1.16 of the Stipulation should be entered herein; and whether to approve the reimbursement of Plaintiffs' Counsel's expenses and the payment of attorneys' fees as provided for in the Stipulation. The Court may continue or adjourn the Settlement Hearing without further notice to Members of the Class.

4.The Court approves, as to form and content, the Notice of Pendency of Settlement of Class Action (the "Notice"), the Summary Notice, and the Proof of Claim form, annexed hereto as Exhibits A-1, A-2 and A-3, respectively, and finds that the mailing publication and distribution of the Notice, substantially in the manner and form set forth in ¶¶6, 7 of this Order, meet the requirements of Federal Rule of Civil Procedure 23, and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

[1] As used herein, the term "immediate families" shall mean parents, spouses, siblings, and children.

5.The firm of Gilardi & Co. LLC is appointed and authorized to effectuate such notice and administer the settlement subject to such supervision and direction of Lead Counsel or the Court as may be necessary or the circumstances require as set forth in the Stipulation and below.

6.Not later than January 3, 2023 (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and Proof of Claim form, substantially in the form annexed hereto as Exhibit A-1 and Exhibit A-3, respectively, to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort.

7.Not later than Jan. 13, 2023, the Claims Administrator shall cause the Summary Notice, substantially in the form annexed hereto as Exhibit A-2, to be published in the *Albuquerque Journal* and *Los Angeles Times*.

8.The Claims Administrator, subject to such supervision and direction of Lead Counsel as is necessary, shall use reasonable best efforts to identify and locate Unpaid Class Members. All Unpaid Class Members who are identified and located, and who tender their valid share certificates for compensation within 90 days of the date the Stipulation is executed will be paid pursuant to the terms of the Stipulation. In its discretion, Lead Counsel may accept valid share certificates tendered thereafter if doing so does not unnecessarily delay payment to Authorized Claimants.

9.At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall cause to be filed with the Court proof, by affidavit or declaration, of such mailing, publication and efforts to identify and locate Unpaid Class Members.

10.All Members of the Class shall be bound by all determinations and judgments in the Litigation concerning the settlement, whether favorable or unfavorable to the Class.

11.Any Class Member may enter an appearance in the Litigation, at their own expense, individually, or through counsel of their own choice. If they do not enter an appearance, they will be represented by Lead Counsel.

12.Pending the Effective Date, all proceedings in the Litigation other than those necessary to effectuate the settlement shall be stayed.

13.Pending the Effective Date, Lead Plaintiff and all Class Members, and any of them, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claim, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties.

14.Class Members who wish to assert a claim for any portion of the Escrow Account shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked no later than ninety (90) days from the Notice Date. Any Class Member who does not timely submit a Proof of Claim within the time provided for shall be barred from sharing in the distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the Court. Notwithstanding the foregoing, Lead Counsel may, in its discretion, accept untimely claims for processing by the Claims Administrator so long as the distribution of the Escrow Account to Authorized Claimants is not materially delayed.

15.Any Class Member may appear and show cause, if that Person has any reason why the proposed settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, or why the Judgment should or should not be entered thereon, or why the attorneys' fees and expenses should not be awarded to Plaintiffs' Counsel. However, no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed

settlement, or, if approved, the Judgment to be entered thereon approving the same unless that Person has delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs, such that they are received on or before Feb. 17, 2012, to Jeffrey D. Light, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101; and to at least one of: Paul R. Bessette, Greenberg Traurig, LLP 300 West 6th Street, Suite 2050, Austin, TX 78701; John D. Lovi, Steptoe & Johnson LLP, 750 Seventh Avenue, New York, NY 10019; Paul M. Fish, Modrall, Sperling, Roehl, Harris & Sisk, P.A., 500 Fourth Street, N.W., Suite, 1000, Albuquerque, NM 87103; Juan L. Flores, Stelzner, Winter, Warburton, Flores, Sanchez & Dawes, P.A., 302 Eighth Street, N.W., Suite 200, Albuquerque, NM 87102; and Mark F. Sheridan, Holland & Hart, LLP, P.O. Box 2208, Santa Fe, NM 87504-2208, and filed said objections, papers, and briefs with the Clerk of the United States District Court for the District of New Mexico, United States Courthouse, 333 Lomas Boulevard N.W., Albuquerque, New Mexico 87102, on or before Feb. 17, 2012. Any Class Member who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Stipulation unless otherwise ordered by the Court.

16.Any Person falling within the definition of the Class may, upon request, be excluded from the Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), postmarked no later than Feb. 2, 2012. A Request for Exclusion must state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the number of shares of Westland common stock held as of the close of business on September 18, 2006; and (c) that the Person wishes to be excluded from the Class. If the

Request for Exclusion does not include all of the required information set forth above, it will be deemed invalid and the Person submitting the invalid Request for Exclusion will not be excluded and will be deemed to continue to be a Member of the Class unless the Court orders otherwise. Any Person who submits a valid and timely Request for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Escrow Account, and shall not be bound by the Stipulation or the Judgment entered in the Litigation.

17. The Court orders that the Clerk of the Court pay the $2,278,702.41 (including any interest thereon) currently in the Registry of the Court by check made out to the Westland Settlement Fund and mailed to Darren J. Robbins, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101 for deposit into the Escrow Account within ten (10) calendar days following the date of this Order. Pursuant to §5.14 of the Stipulation, all funds held in the Escrow Account by the Escrow Agent shall be deemed and considered to be in *custodia legis*, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Federal Court. Pursuant to §5.15 of the Stipulation, prior to the Effective Date, the Escrow Agent may use the Escrow Account without further consent of the Defendants or order of the Federal Court to pay the costs and expenses reasonably and actually incurred in connection with providing notice to the Class, locating Class Members, soliciting claims, assisting with the filing of claims, and paying escrow fees and costs, if any. Pursuant to §5.7 of the Stipulation, payment to Unpaid Class Member(s) who were identified and located, and who tendered their valid share certificates for compensation within 90 days of the date the Stipulation was executed will be made only after the Effective Date or termination of the Stipulation pursuant to §10.3, §10.4, §10.5 and/or §10.6.

18.All papers including memoranda or briefs in support of the settlement or attorneys' fees and expenses shall be filed and served twenty-one (21) calendar days prior to the deadline for Class Members to object to the settlement; and reply briefs or other papers supporting the settlement or attorneys' fees shall be filed and served seven (7) calendar days before the Settlement Hearing.

19.Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind.

20.The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

IT IS SO ORDERED.

DATED: Dec. 13, 2017

THE HONORABLE JAMES O. BROWNING
UNITED STATES DISTRICT JUDGE

Submitted by:

LAW OFFICES OF NICHOLAS
KOLUNCICH III, LLC
NICHOLAS KOLUNCICH III
6501 Americas Parkway NE
One Park Square – Suite 820
Albuquerque, NM 87110
Telephone: 505/881-2228
505/881-4288 (fax)

Liaison Counsel

ROBBINS GELLER RUDMAN
& DOWD LLP
DARREN J. ROBBINS
JEFFREY D. LIGHT
DAVID W. MITCHELL
BRIAN O. O'MARA
ROBERT R. HENSSLER JR.
DANIELLE S. MYERS

DARREN J. ROBBINS

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiff

KENDALL LAW GROUP
JOE KENDALL
3232 McKinney, Ste 700
Dallas, Texas 75204
Telephone: 214/744-3000
214/744-3015 (fax)

JOHNSON & WEAVER, LLP
FRANK J. JOHNSON
501 W. Broadway, Suite 1720
San Diego, CA 92101
Telephone: 619/230-0063
619/238-0622 (fax)

Additional Counsel for Plaintiffs

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

LAWRENCE LANE, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. BARBARA PAGE, et al., Defendants.	No. Civ-06-1071-JB-ACT CLASS ACTION NOTICE OF PENDENCY OF SETTLEMENT OF CLASS ACTION Exhibit A-1

If you held Westland Development Company, Inc. common stock as of the close of business on September 18, 2006, you could get a payment from a class action settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- The Settlement will provide $3,778,702.41 to pay claims of Westland Development Co., Inc. ("Westland") investors who held shares as of the close of business on September 18, 2006. Pursuant to an Order by the U.S. District Court for the District of New Mexico, excluded from the class are Defendants, all of the officers and directors of the Defendants, their immediate families (*i.e.*, parents, spouses, siblings, and children) and their legal representatives, heirs, successors and/or assigns and any entity in which any Defendant has a controlling interest. For an estimate of how much per share you could receive from this Settlement, see the discussion at Question 9 on page __ of this Notice.

- The Settlement resolves a lawsuit claiming that, in connection with the sale of Westland to SCC Acquisition Corp. (which used the trade name "SunCal"), defendants (including Westland, its Board of Directors, its President and CEO, its Chairman, and various SunCal entities), disseminated a materially false and misleading proxy statement to shareholders in violation of federal securities laws. The lawsuit also claimed that various entities affiliated with the D.E. Shaw group (including D.E. Shaw Real Estate Portfolios 1, L.L.C.), controlled some of the defendants, and were therefore also liable for the same securities violations. All of the Defendants deny they did anything wrong. The Settlement avoids costs and risks from continuing the lawsuit; pays money to investors like you; and releases defendants from liability.

- The parties disagree on how much money could have been recovered if investors won at trial.

- Court-appointed Lead Counsel, Robbins Geller Rudman & Dowd LLP, will ask the Court to approve the reimbursement of expenses actually incurred of no more than $650,000 and a negotiated attorneys' fee payment of $3.1 million, for investigating the facts, litigating the case and negotiating the Settlement without payment over the past five years. **The fees and costs will not reduce the Escrow Account.**

- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Proof of Claim Form	The only way to get a payment.
Exclude Yourself	Get no payment. This is the only option that allows you to ever bring a lawsuit against Defendants concerning the legal claims at issue in this case.
Object	Write to the Court about why you don't like the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.
Do Nothing	Get no payment. Give up your rights.

- These rights and options – ***and the deadlines to exercise them*** – are explained in this Notice.

- The Court in charge of this case must decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and it becomes final.

What This Notice Contains

Basic Information

1.Why did I get this notice package?

You or someone in your family may have held Westland common stock as of the close of business on September 18, 2006, and held those shares through December 7, 2006, the date of the closing of the Merger of Westland with SCC Acquisition Corp., which used the trade name "SunCal."

The Court directed that this Notice be sent to you because you have a right to know about a proposed Settlement of a class action lawsuit, and about all of your options, before the Court decides whether it will approve the Settlement.

This Notice explains the lawsuit, the Settlement, Class Members' legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the District of New Mexico (the "Federal Court"), and the case is known as *Lane v. Page*, No. Civ-06-1071 (the "Federal Action"). The case is assigned to the Honorable James O. Browning.

2.What is this lawsuit about?

The Federal Action claims that, in connection with the merger of Westland with SCC Acquisition Corp. (which used the trade name "SunCal"), defendants (including Westland, its Board of Directors, its President and CEO, its Chairman, and SunCal), disseminated a materially false and misleading proxy statement to shareholders in violation of federal securities laws. The lawsuit also claimed that various entities affiliated with the D.E. Shaw group (including D.E. Shaw Real Estate Portfolios 1, L.L.C.), controlled some of the defendants, and were therefore also liable for the same securities violations. All of the Defendants deny they did anything wrong.

3.Why is this a class action?

In a class action, one or more people called Class Representatives (in this case Lawrence Lane, who was appointed by the Court as both the Lead Plaintiff and Class Representative) sue on behalf of people who have similar claims. Here, all these people are called a Class or Class Members. One court resolves the issues on behalf of all Class Members.

4.Why is there a settlement?

The Court did not decide in favor of the Class or Defendants. Instead, both sides agreed to a settlement, thereby avoiding the cost and risk of continued litigation, including a trial and possible appeals. Lead Plaintiff and his attorneys believe the Settlement is in the best interest of the Class.

Who is in The Settlement?

To see if you will receive money from this Settlement, you first have to determine if you are a Class Member.

5.How do I know if I am part of the Settlement?

The Court previously determined that everyone who fits the following description is a Class Member: all persons who held the outstanding shares of Westland Development Co. common stock as of the close of business on September 18, 2006, excluding the Defendants.

6.Are there exceptions to being included?

Yes. You are ***not*** a Class Member if you did not hold Westland common stock as of the close of business on September 18, 2006 (in other words, if you sold or disposed of the stock before September 18, 2006).

Pursuant to an Order by the U.S. District Court for the District of New Mexico, you are ***not*** a Class Member if you are a Defendant, an officer or director of any Defendant, an immediate family member of a Defendant (*i.e.*, parent, sibling, spouse or child), or any Defendant's legal representative, heir, successor and/or assign or any entity in which any Defendant has a controlling interest.

7.I'm still not sure if I am included.

If you are still not sure if you are included, you can ask for free help. You can call 1-800-449-4900 or visit www.gilardi.com for more information. Or you can fill out and return the Proof of Claim form described in Question 10, to see if you qualify.

The Settlement Benefits – What You Get

8.What does the Settlement provide?

Defendants have agreed to create a $3.78 million fund to be divided among all Class Members who send in a valid Proof of Claim form, after payment of the costs and expenses reasonably and actually incurred in connection with providing this Notice to the Class, locating Class Members, soliciting claims, assisting with the filing of claims, and paying escrow fees and costs, if any (including any taxes).

This $3.78 million fund (the "Escrow Account") consists of two portions: a $1.5 million portion and a $2,278,702.41 portion (the "Remaining Merger Consideration"). In connection with the Merger, certain Unpaid Class Members failed to tender their shares and/or were not located and

therefore did not receive cash consideration for their shares. As part of the Settlement of the Litigation, Lead Plaintiff and Lead Counsel will use reasonable best efforts to identify, locate, and make payment of the $315 per share cash consideration to such Unpaid Class Members from the Remaining Merger Consideration portion of the Escrow Account. In the event all such Unpaid Class Members cannot be identified and located, any balance of the Remaining Merger Consideration shall be added to the $1.5 million to be paid by the DESCO Defendants and the aggregate amount will be distributed to the Authorized Claimants on a *pro rata* basis.

9.How much will my payment be?

Your share of the fund will depend on the number of valid claim forms that Class Members send in, how many shares of Westland you held as of the close of business on September 18, 2006, as well as how many Unpaid Class Members are located and receive payment from the Remaining Merger Consideration portion of the Escrow Account.

For example, if 100% of the Unpaid Class Members are located and paid, and every eligible Class Member sends in a valid Proof of Claim form, the average payment will be approximately $2.00 per share of stock held as of the close of business on September 18, 2006.

If 50% of the Unpaid Class Members are located and paid, and every eligible Class Member sends in a valid Proof of Claim form, the average payment will be approximately $3.50 per share of stock held as of the close of business on September 18, 2006.

If no Unpaid Class Members are located and paid, and every eligible Class Member sends in a valid Proof of Claim form, the average payment will be approximately $5.25 per share of stock held as of the close of business on September 18, 2006.

You could receive more money depending on the amount of Unpaid Class Members located as well as the amount of eligible Class Members who send in a valid Proof of Claim form.

How You Can Get a Payment – Submitting a Proof of Claim Form

10.How can I get a payment?

To qualify for a payment, you must send in a Proof of Claim form. A Proof of Claim form is enclosed with this Notice. You may also get a Proof of Claim form on the Internet at www.gilardi.com. Read the instructions carefully, fill out the Proof of Claim form, include all the documents the form asks for, sign it, and mail it in the enclosed envelope postmarked no later than April 2, 2012, to the address listed on the Proof of Claim form.

11. When would I get my payment?

The Court will hold a hearing on March 18 @ 9:00 a.m., 2012 to decide whether to approve the Settlement. If the Settlement is approved and becomes final, it will take several months for all the Proof of Claim forms to be processed.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues in ***this*** case. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the Proof of Claim form, you will agree to a Release of claims, which describes exactly the legal claims that you give up if you get settlement benefits.

Excluding Yourself from the Settlement

If you don't want a payment from this Settlement, but you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called "excluding" yourself – referred to as "opting out" of the Class.

13. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Lane v. Page*, No. 06-Civ-1071-JB-ACT. Be sure to include your name, address, telephone number, the number of shares of Westland common stock that you held as of the close of business on September 18, 2006, and your signature. You must mail your exclusion request postmarked no later than Feb. 2, 2012 to:

Lane v. Page (Westland Development Co.) Exclusions
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8040
San Rafael, CA 94912-8040

If you ask to be excluded, you will not receive any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendants in the future.

14. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from ***this*** Class to continue your own lawsuit. Remember, the exclusion deadline is Feb. 2, 2012.

15.If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, do not send in a Proof of Claim form to ask for any money. But you may sue, continue to sue, or be part of a different lawsuit against Defendants.

The Lawyers Representing You

16.Do I have a lawyer in this case?

Yes. The Court previously appointed Robbins Geller Rudman & Dowd LLP to represent you and other Class Members. These lawyers are called Lead Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17.How will the lawyers be paid?

Lead Counsel will ask the Court to approve the reimbursement of expenses actually incurred of no more than $650,000 and a negotiated attorneys' fee payment of $3.1 million. Lead Counsel will also seek the Court's approval to award Lawrence Lane $4,725 for his service as Lead Plaintiff and Class Representative. **These amounts will not reduce the $3,778,702.41 available for Class Members and Class Members are not personally liable for any such fees or expenses.**

In the five years that this Litigation has been pending, Plaintiffs' Counsel have not been paid for their services on behalf of Lead Plaintiff and the Class, nor for their substantial expenses. The fee requested is to compensate Plaintiffs' Counsel for their work investigating the facts, litigating the case over the past five years, and negotiating the Settlement.

Objecting to the Settlement

You can tell the Court that you do not agree with the Settlement or some part of it.

18.How do I tell the Court that I don't like the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to Settlement in *Lane v. Page*, No. Civ-06-1071-JB-ACT. Be sure to include your name, address, telephone number, your signature, the number of shares of Westland common stock that you held as of the close of

business on September 18, 2006, and the reason(s) why you object to the Settlement. Mail the objection to the Court, Lead Counsel and at least one of the firms identified as Defense Counsel in time for it to be received no later than Feb. 17, 2012:

COURT

Clerk of the Court
U.S. DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO
333 Lomas Boulevard N.W.
Ste. 270
Albuquerque, NM 87102

LEAD COUNSEL

Jeffrey D. Light
ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway
Suite 1900
San Diego, CA 92101

DEFENSE COUNSEL

Paul R. Bessette
GREENBERG TRAURIG, LLP
300 West 6th Street
Suite 2050
Austin, TX 78701

John D. Lovi
STEPTOE & JOHNSON LLP
750 Seventh Avenue
New York, NY 10019

Paul M. Fish
MODRALL, SPERLING, ROEHL,
HARRIS & SISK, P.A.
500 Fourth Street, N.W.
Suite 1000
Albuquerque, NM 87103

Juan L. Flores
STELZNER, WINTER, WARBURTON,
FLORES, SANCHEZ & DAWES,
P.A.
302 Eighth Street N.W.
Suite 200
Albuquerque, NM 87102

Mark F. Sheridan
HOLLAND & HART, LLP
P.O. Box 2208
Santa Fe, NM 87504-2208

19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class.

Excluding yourself is telling the Court that you don't want to be paid and don't want to release any claims you think you may have against Defendants. If you exclude yourself, you can't object to the Settlement because it won't affect you.

The Court's Fairness Hearing

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Settlement hearing at 9:00 a.m., on March 13, 2012, before the Honorable James O. Browning at the U.S. District Court for the District of New Mexico, 333

Lomas Boulevard N.W., Albuquerque, New Mexico. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court will also consider whether to approve Lead Counsel's fee and expense request and whether to approve a service award request by the Lead Plaintiff. We do not know how long these decisions will take. You should be aware that the Court may change the date and time of the hearing. If you want to come to the hearing, you should check with the Court or Lead Counsel to be sure that the date and/or time has not changed.

21. Do I have to come to the hearing?

No. Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Lane v. Page*, No. Civ-06-1071." Be sure to include your name, address, telephone number, the number of shares of Westland common stock that you held as of the close of business on September 18, 2006, and your signature. Your notice of intention to appear must be received no later than Feb. 17, 2012, by the Clerk of the Court, Lead Counsel, and one of Defendants' Counsel, at the addresses listed above in question 18.

You cannot speak at the hearing if you excluded yourself.

If You Do Nothing

23. What happens if I do nothing at all?

If you do nothing, you'll get no money from the Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants covering the legal claims at issue in this case ever again.

Getting More Information

24. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation of Settlement dated as of November 11, 2011 (the "Stipulation"). You can get a copy of the Stipulation during business hours at the Clerk of the Court, U.S. District Court for the District of New Mexico, 333 Lomas Boulevard N.W., Albuquerque, New Mexico, or by calling or writing

Rick Nelson, c/o Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, toll free at 1-800-449-4900. The Stipulation may also be downloaded at www.gilardi.com.

25. How do I get more information?

You can call 1-800-449-4900 or write to Rick Nelson, c/o Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101. Or you can visit www.gilardi.com.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

DATED: _____, 2012

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

LAWRENCE LANE, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. BARBARA PAGE, et al., Defendants.	No. Civ-06-1071-JB-ACT CLASS ACTION SUMMARY NOTICE Exhibit A-2

If you held Westland Development Company, Inc. ("Westland") common stock as of the close of business on September 18, 2006, you could get a payment from a class action settlement.

Para una notificación en Español, llamar o visitar nuestro website.

A settlement has been proposed in a class action lawsuit concerning Westland Development Co., Inc. ("Westland") common stock. The settlement will provide $3,778,702.41 to pay claims from Westland investors who held stock as of the close of business on September 18, 2006. If you qualify, you may send in a claim form to get benefits, or you can exclude yourself from the settlement, or object to it.

The United States District Court for the District of New Mexico authorized this Notice. Before any money is paid, the Court will have a hearing to decide whether to approve the settlement.

Who is Included?

You are a Class Member and could get benefits if you held Westland common stock as of the close of business on September 18, 2006.

Pursuant to an Order by the Court, you are ***not*** a Class Member if you are a defendant, an officer or director of a defendant, an immediate family member of a defendant (*i.e.*, a parent, sibling, spouse or child), or a legal representative, heir, successor or assign of any entity in which any defendant has a controlling interest.

If you are not sure you are a Class Member, you can get more information, including a detailed notice, at www.gilardi.com or by calling toll free 1-800-449-4900.

What IS This Lawsuit About?

The lawsuit claimed that, in connection with the merger of Westland with SCC Acquisition Corp. (which used the trade name "SunCal"), defendants (including Westland, its Board of Directors, its President and CEO, its Chairman, and SunCal), disseminated a materially false and misleading proxy statement to shareholders in violation of the federal securities laws. The lawsuit also claimed that various entities affiliated with the D.E. Shaw group (including D.E. Shaw Real Estate Portfolios 1, L.L.C.), controlled some of the defendants, and were therefore also liable for the same securities violations. All of the defendants deny they did anything wrong. The Court did not decide which side was right. But both sides agreed to the settlement to resolve the case. The two sides disagree on how much money, if any, could have been recovered if the investors had won at a trial.

What Does The Settlement Provide?

The parties agreed to create a fund of approximately $3.78 million to be divided among all Class Members who send in valid claim forms. The fund includes $2.2 million in unpaid shareholder proceeds from the Merger. The Stipulation of

Settlement, available at the website below, describes all of the details about the proposed settlement.

Your share of the fund will depend on the number of valid claim forms that Class Members send in, how many shares of Westland you held as of the close of business on September 18, 2006, as well as how many Unpaid Class Members are located and receive payment from the Remaining Merger Consideration portion of the Escrow Account.

If 100% of the Unpaid Class Members are located and paid, and every eligible Class Member sends in a valid claim form, the average payment will be approximately $2.00 per share of stock held as of the close of business on September 18, 2006.

If 50% of the Unpaid Class Members are located and paid, and every eligible Class Member sends in a valid claim form, the average payment will be approximately $3.50 per share of stock held as of the close of business on September 18, 2006.

If no Unpaid Class Members are located and paid, and every eligible Class Member sends in a valid claim form, the average payment will be approximately $5.25 per share of stock held as of the close of business on September 18, 2006.

How Do you Ask for Payment?

A detailed notice and claim form package contains everything you need. Just call or visit the website below to get one. To qualify for a payment, you must send in a claim form. **Claim forms are due by** April 2, **2012.**

What Are Your Other Options?

If you do not wish to be legally bound by the settlement, you must exclude yourself by Feb. 1, 2012, or you won't be able to sue, or continue to sue, defendants for the legal claims in this case. If you exclude yourself, you can't get money from this settlement. If you stay in the settlement, you may object to it by Feb. 17, 2012. The detailed notice explains how to exclude yourself or object.

The Court will hold a hearing in this case (*Lane v. Page*, No. Civ-06-1071 (D.N.M.)) on March 13, 2012, at 9:00 a.m./p.m. to consider whether to approve the settlement and a request by the law firms representing Class Members for reimbursement of their costs up to $650,000 and an award of $4,725 to Lawrence Lane for his service as Lead Plaintiff and Class Representative. In addition, the lawyers will seek $3.1 million in attorneys' fees for investigating the facts, litigating the case for the past five years, and negotiating the settlement. The fees and costs won't reduce the Escrow Account. You may ask to appear at the hearing, but you don't have to. For more information, call toll free 1-800-449-4900, visit www.gilardi.com, or write to Rick Nelson, c/o Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Dated: _____

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

LAWRENCE LANE, On Behalf of Himself and All Others Similarly Situated, Plaintiff, vs. BARBARA PAGE, et al., Defendants.	No. Civ-06-1071-JB-ACT CLASS ACTION PROOF OF CLAIM AND RELEASE EXHIBIT A-3

I. GENERAL INSTRUCTIONS

1.To recover as a Member of the Class based on your claims in the action entitled *Lane v. Page*, No. Civ-06-1071-JB-ACT (the "Litigation"), you must complete and, on page ___ hereof, sign this Proof of Claim and Release. If you fail to file a properly addressed (as set forth in ¶3 below) Proof of Claim and Release, your claim may be rejected and you may be precluded from any recovery in connection with the proposed settlement of the Litigation.

2.Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of the settlement of the Litigation.

3.YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE POSTMARKED ON OR BEFORE _____, 2012, ADDRESSED AS FOLLOWS:

Westland Shareholder Litigation
Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8040
San Rafael, CA 94912-8040

If you are NOT a Member of the Class (as defined below and in the Notice of Pendency of Settlement of Class Action ("Notice")) DO NOT submit a Proof of Claim and Release form.

4.If you are a Member of the Class and you do not timely request exclusion from the Class in connection with the proposed settlement, you are bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE FORM.

II. DEFINITIONS

1."Class" means all Persons (other than those Persons who timely and validly requested exclusion from the Class) who held the outstanding shares of Westland common stock as of the

close of business on September 18, 2006. Pursuant to an Order by the U.S. District Court for the District of New Mexico, excluded from the class are Defendants, all of the officers and directors of the Defendants, their immediate families[1] and their legal representatives, heirs, successors and/or assigns and any entity in which any Defendant has a controlling interest.

2."Merger" means the transaction which closed on December 7, 2006, whereby Westland common stock was acquired by SCC Acquisition Corp. for consideration of $315 per share and Class A unit(s) in Atrisco Oil & Gas LLC.

III. CLAIMANT IDENTIFICATION

If you held Westland Development Company, Inc. common stock as of the close of business on September 18, 2006, please fill out Part I of this form entitled "Claimant Identification."

THIS CLAIM MUST BE FILED BY THE ACTUAL HOLDER(S) OR THE LEGAL REPRESENTATIVE OF SUCH HOLDER(S) OF THE WESTLAND COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

All joint purchasers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of Persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

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[1] As used herein, the term "immediate families" shall mean parents, spouses, siblings, and children.

IV. CLAIM FORM

1.Use Part II of this form entitled "Holdings in Westland Common Stock" to state the number of shares of Westland common stock that you held as of the close of business on September 18, 2006.

2.Documents indicating that you held Westland common stock as of the close of business on September 18, 2006 should be attached to your claim. Failure to do so could delay verification of your claim or result in rejection of your claim.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Lane v. Page, No. Civ-06-1071-JB-ACT

PROOF OF CLAIM AND RELEASE

Must Be Postmarked No Later Than: _____, 2012

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

_____
Owner's Name (First, Middle, Last)

_____
Street Address

_____ _____
City State or Province

_____ _____
Zip Code or Postal Code Country

_____ _____ Individual
Social Security Number or _____ Corporation/Other
Taxpayer Identification Number

_____ _____
Area Code Telephone Number (work)

_____ _____
Area Code Telephone Number (home)

PART II: HOLDINGS IN WESTLAND COMMON STOCK

State how many shares of Westland common stock you held as of the close of business on September 18, 2006: _____

V. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim and Release under the terms of the Stipulation of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the District of New Mexico, with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation.

VI. RELEASE

1.I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the "Released Parties," defined as each and all of Defendants and their Related Persons.

2."Defendants" means (i) Barbara Page, Sosimo S. Padilla, Joe S. Chavez, Josie Castillo, Charles V. Peña, Georgia Baca, Troy K. Benavidez, Ray Mares, Jr., and Randolph M. Sanchez; (ii) Westland Development Company, Inc.; (iii) SCC Acquisition Corp., SunCal Companies Group,[2] SCC Acquisitions, Inc., SCC NM Member LLC, SCC Westland Venture LLC, Westland DevCo, LLC, Westland DevCo, LP, Westland Holdco, Inc., and Westland SPE GP LLC; and (iv) The D.E. Shaw Group,[3] D.E. Shaw & Co. L.P., D.E. Shaw Real Estate Portfolios 1, L.L.C., D.E. Shaw & Co., LLC, D.E. Shaw & Co., Inc., D.E. Shaw Investment Group, LLC, D.E. Shaw & Co. II, Inc., George Rizk and Anne Dinning.

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[2]These entities were named as defendants, in one or more of the Federal and State Actions. The SunCal Defendants have asserted that SunCal Companies Group was never a legal entity and that one or more of these entities no longer exist.

[3]The DESCO Defendants assert that although Plaintiff named "The D. E. Shaw Group" as a defendant in the Federal and *Rael* Actions, no such legal entity exists. Instead, the DESCO Defendants assert that "The D. E. Shaw group" is an informal term sometimes used to refer to one or more affiliated entities.

3."Released Claims" shall collectively mean all claims, which have been or could have been asserted by any Class Member arising from or relating in any way to the facts that were or could have been alleged in the Litigation challenging the Merger or the related disclosures in the Proxy materials disseminated in connection with the Merger (including all amendments thereto and the additional agreements and transactions described therein) or other disclosures, for damages, injunctive relief, or any other remedies, whether based in state or federal law and whether the claim could have been brought in state or federal court against the Released Parties, including, without limitation, any allegations of violations of state or federal securities laws or rules.

4."Related Persons" means each of a Defendant's respective predecessors, successors, parents, subsidiaries, affiliates, agents, partners, limited partners, investment bankers, accountants, insurers, reinsurers, attorneys, controlling shareholders, assigns, spouses, heirs, related or affiliated entities, any past, present or future officers, directors and employees of any of the foregoing, and their predecessors, successors, parents, subsidiaries, affiliates, partners, limited partners, agents and their subsidiaries, affiliates and agents, and any entity which controls a Defendant or in which any Defendant has a controlling interest, or any members of their immediate families.[4]

5.This release shall be of no force or effect unless and until the Court approves the Stipulation of Settlement and the Stipulation becomes effective on the Effective Date (as defined in the Stipulation).

[4] As used herein, the term "immediate families" shall mean parents, spouses, siblings, and children.

6.I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

7.I (We) hereby warrant and represent that I (we) have included information about all of my (our) holdings in Westland common stock requested in this claim form.

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

Executed this_____ day of_____
(Month/Year)

in _____
(City) (State/Country)

_____
(Sign your name here)

_____
(Type or print your name here)

_____
(Capacity of person(s) signing,
e.g., Beneficial Purchaser,
Executor or Administrator)

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above release and declaration.

2. Remember to attach supporting documentation, if available.

3. Keep a copy of your claim form and all supporting documentation for your records.

4. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested.

5. If you move, please send the Claims Administrator your new address.

EXHIBIT 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re Wells Real Estate Investment Trust, Inc. Securities Litigation	Civil Action No. 1:07-cv-00862-CAP

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing on April 18, 2013 (the "Settlement Hearing") pursuant to the Order Preliminarily Approving Settlement and Providing for Notice dated January 2, 2013 ("Order"), on the application of the parties for approval of the Stipulation of Settlement dated December 31, 2012 (the "Stipulation"). Whereas Wells Real Estate Investment Trust, Inc. is now known as Piedmont Office Realty Trust, Inc. ("Piedmont" or the "Company"); the Court has considered all matters submitted to it at the Settlement hearing and otherwise and the entire matter of the Settlement; it appears that a Notice of Proposed Settlement of Class Action ("Notice") substantially in the form approved by the Court was mailed to all Class Members (as defined below) as shown by the records of Piedmont's transfer agent, at the respective addresses set forth in those records; the Settling Parties have appeared by their attorneys of record; the attorneys for the

Settling Parties have been heard in support of the Settlement; and an opportunity to be heard was given to all other persons desiring to be heard as provided in the Notice; IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order and Final Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Class Members.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, reasonable, and adequate to the Class.

4. The Court finds that the Stipulation and the Settlement are fair, reasonable, and adequate as to each of the Settling Parties, and that the Stipulation and the Settlement are hereby finally approved in all respects.

5. Accordingly, the Court authorizes and directs implementation of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. Except as to any individual claim of those persons (identified in Exhibit 1 attached hereto) who had validly and timely requested exclusion from the Class,

the Court hereby dismiss the Litigation with prejudice and without costs (except as otherwise provided in the Stipulation).

6. Upon the Effective Date hereof, Lead Plaintiff, each and all of the Class Members and Plaintiff's Counsel shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against any and all Released Persons, and shall forever be enjoined from prosecuting the Released Claims, regardless of whether such Class Member executes and delivers a Proof of Claim and Release.

7. Upon the Effective Date hereof, each of the Defendants shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiff, each and all of the Class Members, and Plaintiff's Counsel from all Settled Defendants' Claims, and shall forever be enjoined from prosecuting such claims.

8. Lead Plaintiff, Plaintiff's Counsel, each and all of the Class Members, the successors and assigns of any of them, and anyone claiming through or on behalf of any of them, are hereby permanently barred, enjoined, and restrained forever from instituting, commencing, prosecuting, or continuing to prosecute, either directly or in any other capacity, the Litigation or any other action or

proceeding in any court of law or equity, arbitration tribunal, or administrative forum of any kind, asserting against any of the Released Persons, and each of them, any of the Released Claims.

9. The Court hereby awards the payment of attorneys' fees to Plaintiff's Counsel in the amount of 25% of the Settlement Amount, and the payment of $1,574,891.21 to Plaintiff's Counsel as reimbursement of expenses incurred in prosecuting this action. The Court finds that these amounts are fair and reasonable in light of the work performed and expenses expended by Plaintiff's Counsel, and the work performed and expenses incurred by the Lead Plaintiff, on behalf of the Class Members.

10. The Court hereby finds that the Notice provided to the Class was the best notice practicable under the circumstances, including the individual notice to all Class Members who could be identified through reasonable effort. The form and method of notifying the Class of the terms and conditions of the proposed Settlement fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

11. Any appeal from the Court's order(s) approving the Plan of Allocation and/or the Fee and Expense Award shall in no way disturb or affect this Order and Final Judgment or its Finality and shall be considered separate from this Order and Final Judgment.

12. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as evidence of any presumption, concession, or admission by any of the Defendants or their respective Related Parties with respect to the truth of any allegations by the Plaintiff or the validity of any Released Claim, or of any wrongdoing, liability, negligence, or fault of Defendants or their respective Related Parties, or (b) is or may be deemed to be or may be used as evidence of any presumption, concession, or admission of any fault, misrepresentation, or omission of any of the Defendants or their respective Related Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendants and/or their respective Related Parties may file the Stipulation and/or this Order and Final Judgment from this action in any other action in which they are parties or that may be brought against them in order to support a defense, claim, or counterclaim based on principles of *res judicata*, collateral estoppel, release, good

faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. Without affecting the Finality of this Order and Final Judgment in any way, this Court hereby retains continuing exclusive jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; and (c) all parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

14. Pursuant to 15 U.S.C. § 78u-4(c)(1), the Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

15. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Order and Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

16. The administration and distribution of the Net Settlement Fund will be done on a coordinated basis with the administration and distribution of the net settlement fund in the *In re Piedmont Office Realty Trust Securities Litigation* (Civil Action Number 1:07-cv-2660, USDC ND GA) ("*Piedmont* Litigation") because of the substantial overlap between the members of the Class in this Settlement and the members of the proposed class or classes in the *Piedmont* Litigation, and because of the substantial efficiencies and monetary savings that will inure to the material benefit of the members of such classes. In addition to the $150,000 used to establish the Notice and Administration Fund for the *Wells* and *Piedmont* Litigations under ¶ 2.9 of the *Wells* Stipulation, the Court authorizes up to $200,000 to be reserved from the Settlement Fund and paid to the Claims Administrator (upon the presentation of invoices satisfactory to Co-Lead Counsel) for Claims Administration Fees and Expenses without further Court approval. In the event that the proposed settlement in the *Piedmont* Litigation does not become effective at or around the same time as this Settlement's Effective Date, Co-Lead Counsel, at its sole discretion, has the right to reasonably delay the distribution of the Net Settlement Fund.

17. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

IT IS SO ORDERED.

DATED: 8 April 2013

The Honorable Charles A. Pannell, Jr.
United States District Judge

Exhibit A-1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re Wells Real Estate Investment Trust, Inc. Securities Litigation --- In re Piedmont Office Realty Trust Inc. Securities Litigation	Civil Action No. 1:07-cv-862-CAP CLASS ACTION Civil Action No. 1:07-cv-02660-CAP CLASS ACTION

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTIONS

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS CONCERNING PROPOSED CLASS ACTION SETTLEMENTS.
A Federal Court Authorized this Notice. This is not a solicitation from a lawyer.

This Notice concerns two lawsuits that were filed on behalf of certain shareholders of Piedmont Office Realty Trust, Inc. ("Piedmont") (formerly known as Wells Real Estate Investment Trust, Inc. ("Wells REIT")), who owned Piedmont stock at various times throughout 2007. The *In re Wells Real Estate Investment Trust, Inc. Securities Litigation* is referred to as the "Wells Action" and the *In re Piedmont Office Realty Trust Inc. Securities Litigation* is referred to as the "Piedmont Action" (collectively, the "Actions"). The Actions were presided over by the same judge ("Court").[1]

This Notice is to inform you that the Plaintiffs in the Actions, on behalf of themselves and the classes consisting of certain Piedmont shareholders defined in Paragraph 5 below the ("Classes"), have reached agreements to settle the Actions (the "Settlements"). If the Settlements are approved by the Court, all claims in the Actions against all the Defendants and Released Parties (defined in Paragraphs __ below) will be resolved. This is the second notice you may have received concerning the Wells Action and the first notice concerning the Piedmont Action.[2] Shareholders who are members of the Piedmont Settlement Classes in the Piedmont Action (defined in Paragraph 5 below) are also hereby notified of their right to request exclusion from the Piedmont Settlement Classes, in the manner described herein.

Overview of the Actions and Settlements: This notice relates to two separate lawsuits, both of which are being settled. Both Actions are class action lawsuits filed in 2007 by Piedmont shareholders alleging that they suffered damages as a result of violations of state law and the federal Securities Exchange Act of 1934. After over four years of litigation, extensive motion practice, fact and expert discovery and trial preparation, the Court entered judgment dismissing the Piedmont Action in its entirety on August 27, 2012 and entered judgment dismissing the Wells Action in its entirety on September 26, 2012. Plaintiffs appealed the judgments to the Eleventh Circuit Court of Appeals.

Notwithstanding the dismissals of the Actions, the parties engaged in settlement discussions with the assistance of an impartial mediator and agreed to the settlement of all claims asserted in the Actions pursuant to which Defendants will pay or cause to be paid $4,900,000 with respect to the Wells Action and $2,600,000 with respect to the Piedmont Action, and Defendants will withdraw their court costs taxed against Plaintiffs in the amount of $213,733.30. The proposed Settlements provide for the release of claims by the members of the Classes against all the Defendants and Released Parties (defined below). The Settlements are subject to Court approval. More detailed descriptions of the Actions and Settlements are set forth herein.

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[1] Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulations of Settlement dated December 31, 2012, which are available on the website established for the Settlements at www._____.com.

[2] A Notice of Pendency of Class Action in the Wells Action was mailed to Wells class members on October 7, 2011 and advised them of the pendency of the Wells Action and permitted them to exclude themselves from the Wells damages class. The time for such exclusion expired on December 22, 2011.

Because Piedmont stock was neither listed nor traded on any national securities exchange at the time of the events giving rise to the Actions, and because such events occurred within several months of each other, the parties believe that there is significant overlap among the Classes and that most members of the Class in the Wells Action are also members of the Piedmont Settlement Classes in the Piedmont Action. Because of that, and because of the substantial efficiencies and monetary savings that will inure to the material benefit of the members of the Classes, the Notice is being done, and administration of the Settlements if approved by the Court will be done, on a coordinated basis.

Statement of the Recovery: The Plaintiffs have agreed to settle all claims asserted in the Actions and grant Defendants and Released Parties a full and complete release in exchange for payment of $4,900,000 with respect to the Wells Action and $2,600,000 with respect to the Piedmont Action (collectively the "Settlement Amounts"). The sum of the Settlement Amounts is referred to as the "Settlement Fund." The "Net Settlement Fund" (the Settlement Fund less any taxes, attorneys' fees, expert fees, Notice and Administration Costs, litigation expenses, or other costs and expenses approved by the Court) will be distributed in accordance with the plan of allocation that is approved by the Court (the "Plan of Allocation"), which will determine how the Net Settlement Fund shall be allocated among members of the Classes who are eligible to participate in the distribution of the Net Settlement Fund and who submit a timely and valid proof of claim form ("Claim Form"). The proposed Plan of Allocation is included in this Notice at page __ below.

Based on the information currently available to Plaintiffs and the analysis performed by their damages expert, the estimated average recovery per share (accounting for the share recapitalization that occurred in January 2010 which had the effect of a 1-for-3 reverse stock split) for a member of all the Classes from the Settlement Fund (before the deduction of any Court-approved fees, expenses and costs as described herein) would be approximately $0.045 per share, or approximately $60 per 1,300 shares which is the estimated, average number of shares held by members of the Classes. The per share amounts assume all eligible members of the Classes submit valid and timely Claim Forms. If fewer than all members of the Classes submit timely and valid Claim Forms, this may result in higher distributions per share. If you are not a member of all the Classes, your estimated recovery per share will be less. A Class member's actual recovery will be a proportion of the Net Settlement Fund determined by the number of that Class member's Eligible Shares (as defined below) as compared to the total Eligible Shares of all Class members who submit timely and valid Claim Forms. *See* the Plan of Allocation beginning on page __ for details and more information.

Plaintiffs intend to seek attorneys' fees not to exceed 25% of the Settlement Fund, plus costs and expenses incurred in connection with the prosecution of the Actions in the approximate amount of $1,900,000. Such requested attorneys' fees and expenses would amount to an average of approximately $0.022 per share of Piedmont stock (accounting for the share recapitalization that occurred in January 2010). In addition, the distribution will be reduced by notice and administration costs. **Please note that these amounts are only estimates.** Because of the duration and procedural posture of the Actions at the time of their dismissal, the attorneys' fees and expenses incurred substantially exceed the amount of the attorneys' fees and expense reimbursement that will be sought.

The Parties disagree on both liability and damages and do not agree on the average amount of damages per share of Piedmont stock that would be recoverable if Plaintiffs were to prevail in the Actions. The issues on which the Parties disagree include, without limitation: (1) whether Defendants made any materially false or misleading statements; and (2) the appropriate methodology for determining and to what extent (if at all) Piedmont shareholders were damaged, in the event Plaintiffs could prove Defendants made any false or misleading statements. Plaintiffs believe that the proposed Settlements represent a fair and reasonable recovery and are in the best interests of the members of the Classes principally because the Settlements' benefits are payable now, at a time when the Court has entered judgments dismissing the Actions in full.

Identification of Attorneys' Representatives: Plaintiffs and the Classes are represented by Co-Lead Plaintiffs' Counsel identified in paragraph ___in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS WITH REGARD TO THIS SETTLEMENT

SUBMIT A CLAIM FORM POSTMARKED BY _____	This is the only way to be eligible to get a payment from the Settlements. If you wish to participate in the Settlements, you will need to complete and submit the enclosed proof of claim form. Class members who do not complete and submit the proof of claim form in accordance with the instructions on the proof of claim form and do not submit it within the time required, will be bound by the Settlements but will not participate in any

	distribution of the Net Settlement Fund.
EXCLUDE YOURSELF FROM THE PIEDMONT SETTLEMENT CLASSES BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN _____.	If you are a member of the Piedmont Settlement Classes in the Piedmont Action, you have the right to request exclusion (or "opt-out") from the Piedmont Settlement Classes. If you opt-out of the Piedmont Settlement Classes, you will not be bound by the Piedmont Settlement, but you will also not receive any Settlement amount from the Piedmont Action applicable to your shares. The time to request exclusion from the Wells Action expired on December 22, 2011.
OBJECT TO THE SETTLEMENTS BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____.	If you believe that the Settlements are objectionable in any respect, you may submit a written statement explaining your objections to the Court and counsel. You cannot object to a Settlement unless you are a Class member and have not excluded yourself from any of the Classes corresponding to that Settlement.
ATTEND THE SETTLEMENT HEARING ON _____, 2013 at ___ AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN _____	The hearing on whether to approve the Settlements is scheduled for _____ at ___ _.m. and is open to the public. You do not need to attend the hearing unless you wish to speak either in support of the Settlements or in support of any objection you may have filed, and have filed a Notice of Intention to appear so that it is received no later than _____. The Court may postpone the Settlement Hearing without prior notice on the date scheduled for the hearing.
DO NOTHING.	If you are a member of the Classes in either the Wells Action or the Piedmont Action and you do not submit a Claim Form postmarked by _____you will not be eligible to receive any payment from the Settlement Fund. You will, however, be bound by the Settlements, unless you previously requested exclusion from the Wells Action.

These rights and options, and the deadlines to exercise them, are explained in further detail later in this Notice.

WHAT THIS NOTICE CONTAINS

[Table of Contents]

The court in charge of the Actions is the United States District Court for the Northern District of Georgia, and the Judge presiding over the Actions is the Hon. Charles A. Pannell, United States District Judge. The Court authorized this Notice to be sent to you because your name appeared on Piedmont's records as having been a shareholder of Piedmont (formerly Wells) at the relevant times.

The Court has directed us to send you this Notice because, as a potential member of one or more of the Classes (discussed below), you are entitled to notice of the proposed Settlements. The purpose of the Notice is to inform you of the existence of the Actions, how you might be affected and how to exclude yourself from the Piedmont Settlement Classes in the Piedmont Action if you wish to do so. The Notice is also sent to inform you of the terms of the proposed Settlements, and of a hearing to be held by the Court to consider the fairness, reasonableness and adequacy of the Settlements, and plaintiffs' motion for an award of attorneys' fees and reimbursement of costs and expenses (the "Settlement Hearing").

The Settlement Hearing will be held on _____, 2013 at _____ before the Hon. Charles A Pannell at the United States District Court for the Northern District of Georgia, 75 Spring Street, S.W., Courtroom ____, Atlanta, Georgia 30303 to determine:

a. whether the proposed Settlements are fair, reasonable and adequate, and should be approved by the Court;
b. whether the proposed Plan of Allocation is fair and reasonable, and should be approved by the Court; and
c. whether Plaintiffs' motion for an award of attorneys' fees and reimbursement of costs and expenses should be approved.

THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE A FINDING OF A VIOLATION OF THE LAW OR THAT RECOVERY COULD BE HAD IN ANY AMOUNT IF THE ACTION WERE NOT SETTLED. **BOTH ACTIONS HAVE BEEN DISMISSED BY THE COURT**.

2. Why are the Actions called "class actions"?

A class action is a type of lawsuit in which similar claims of a large number of individuals or entities are resolved together thereby allowing for the efficient and consistent resolution of common claims among a group of persons in a single proceeding. In a class action, the court appoints one or more people, known as the class representatives, to sue on behalf of all people with similar claims, commonly known as the class members. A class action allows the claims of all class members to be heard even though the amount involved may not be large enough for the individual class member to incur the expense of bringing his or her own action. In the Wells Action, the Court appointed Washtenaw County Employees' Retirement System ("Washtenaw") as the class representative, and in the Piedmont Action, the Court appointed Washtenaw and Clara R. Smith as the class representatives, collectively "Class Representatives." The Court approved the law firms of Chimicles & Tikellis LLP, Labaton Sucharow LLP and Chitwood Harley Harnes LLP as Co-Lead Counsel in the Actions.

3. What are the Actions about and what has happened?

This Notice relates to two separate actions, both of which are being settled.

The Wells Action: The Wells Action was filed on March 12, 2007, in the United States District Court for the District of Maryland as a putative class and derivative action on behalf of Piedmont shareholders who were entitled to vote on a Schedule 14A Proxy Statement that was filed with the Securities and Exchange Commission ("SEC") on February 26, 2007, by Piedmont and was thereafter supplemented (the "Wells Proxy"). The case was transferred to the United States District Court for the Northern District of Georgia on April 17, 2007, and on June 7, 2007, the Court appointed Washtenaw, a Piedmont shareholder, as the Lead Plaintiff and approved Lead Plaintiff's selection of Co-Lead Counsel.

The Wells Proxy sought the shareholders' approval of the acquisition of businesses owned by Piedmont's founder and then-President Leo F. Wells III ("Leo Wells") and certain other officers and/or directors of Piedmont (the "Owners") in order to transition Piedmont from being run and advised by the Owners' businesses into an internally managed business with its own employees. The transaction was referred to by the Defendants as an "Internalization." The Wells Proxy proposed that Piedmont shares valued at $175 million be issued to the Owners to consummate the Internalization. The Defendants in the Wells Action are: Piedmont; Wells Capital, Inc.; Wells Management Company, Inc.; Wells Real Estate Funds, Inc.; Wells Real Estate Advisory Services, Inc.; Wells Advisory Services I, LLC; Wells Government Services, Inc.; Leo F. Wells, III; Douglas P. Williams; Donald A. Miller; Bud Carter; Donald S. Moss; Neil H. Strickland; Michael R. Buchanan; Richard W. Carpenter; William H. Keogler, Jr.; and W. Wayne Woody.

The Wells Action alleged, among other things, that the Wells Proxy omitted to disclose material information about the value of the Internalization, including information about the alternatives to the Internalization considered by Piedmont's board of directors ("Board") prior to their approving the Internalization and recommending that the shareholders approve the Internalization. The amended complaints filed in the Action also alleged that Defendants failed to disclose that, prior to the shareholders voting on April 11, 2007, as to whether to approve the Internalization, Lexington Realty Trust ("LXP"), an unrelated real estate investment trust listed on the New York Stock Exchange, had sent letters to the Board, stating that LXP would purchase all of the outstanding shares of Piedmont at a purchase price that would be higher per share if the Internalization did not occur and would be less per share if the Internalization did occur (the "two-tiered pricing"). The Wells Action alleged that LXP's proposals and the two-tiered pricing were material information that shareholders were entitled to know before voting on whether to approve the Internalization. The Wells Action alleged that such conduct violated Sections 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and SEC Rule 14a-9 promulgated thereunder, Section 20(a) of the Exchange Act and the Defendants' fiduciary duties under state law.

On August 13, 2007, Defendants moved to dismiss Lead Plaintiff's claims, and on March 31, 2008, the Court granted in part and denied in part Defendants' motion, leaving only Section 14(a) and 20(a) Exchange Act claims concerning the LXP proposals. On September 16, 2009, the Court certified the Wells Action as a class action under Federal Rule of Civil Procedure 23 ("Rule 23"). Subsequently, the parties conducted extensive discovery. The parties to the Wells Action and third parties produced, reviewed and analyzed millions of pages of documents, and the depositions of more than 30 witnesses occurred. Several experts on the issues of liability and damages, for both Lead Plaintiff and Defendants, were retained by the parties, issued extensive reports and were deposed. On December 4, 2009, the parties filed cross-motions for summary judgment on the issues of liability and damages, and, on August 2, 2010, the Court granted in part and denied in part Lead Plaintiff's motion and denied Defendants' motion. Thereafter, the Court placed the Wells Action on the trial calendar and the parties initiated pre-trial proceedings which included: the filing, briefing and arguing of evidentiary motions and motions to disqualify experts; the preparation of three pre-trial orders; and, extensive preparation for a jury trial, among other things.

On October 7, 2011, the Notice of Pendency of Class Action was sent to the Wells Class members which provided them the opportunity to exclude themselves from the Rule 23(b)(3) portion of the class by December 22, 2011, and only 20 persons requested exclusion, one of which was withdrawn and one of which was untimely.

Following a pretrial conference with the Court on February 23, 2012, the Wells Action was removed from the trial calendar, and on March 20, 2012, the Court granted Defendants leave to file a second motion for summary judgment. On September 26, 2012, the Court entered judgment dismissing the Wells Action in its entirety. On October 12, 2012, Lead Plaintiff filed a notice of appeal to the Eleventh Circuit Court of Appeals.

The Piedmont Action: The second action, the Piedmont Action, arose after the vote on the Internalization and around the time that Wells REIT changed its name to Piedmont. The Piedmont Action was filed on October 25, 2007, in the United States District Court for the Northern District of Georgia as a class action alleging violations of Sections 14(a) and 14(e) of the Exchange Act on behalf of two proposed classes of Piedmont shareholders. On May 2, 2008, the Court appointed Washtenaw as the Lead Plaintiff (who was later joined by Clara Smith as an additional named plaintiff in the Action), and the Court approved Lead Plaintiff's selection of Co-Lead Counsel.

The Piedmont Action alleged that in response to the Lex-Win tender offer, which began on May 25, 2007 and ended on July 20, 2007, pursuant to which Lex-Win sought to acquire up to 9.3% of Piedmont's shares at $9.30 per share ("Tender Offer"), Piedmont's Board omitted material information from its recommendation that Piedmont shareholders should reject the Tender Offer and not tender their shares to Lex-Win. Specifically, Plaintiffs alleged that Defendants failed to disclose that their financial advisors indicated Piedmont shares would, if listed on a national stock exchange, be listed in a range lower than the $9.30 per share offer that Defendants were urging the shareholders to reject. The Piedmont Action also alleged that in the October 16, 2007 proxy solicitation ("Proxy"), Defendants solicited shareholder approval to extend for up to three years the January 30, 2008 charter-mandated deadline by which Piedmont was to list its shares on a national exchange or commence a liquidation ("Liquidity Deadline") based on false and misleading information about the Defendants' reasons for extending the Liquidity Deadline, the value purportedly placed on Piedmont by potential buyers, and Piedmont's share redemption plan, which was portrayed as a viable alternate liquidity vehicle. The Defendants in the Piedmont Action are Piedmont; W. Wayne Woody; Michael R. Buchanan; Wesley E. Cantrell; William H. Keogler, Jr.; Donald S. Moss and Donald A. Miller.

On March 30, 2009, the Court granted in part and denied in part Defendants' motion to dismiss the Piedmont Action, and subsequently, discovery commenced pursuant to which hundreds of thousands of pages of documents were produced and several depositions were taken. In addition, the parties engaged in substantial motion practice related to discovery disputes, including proceedings before a Court-appointed special master. On March 10, 2010, the Court certified the Piedmont Action as a class action under Rule 23 ("Certification Order"). However, on April 11, 2011, after Defendants sought and were granted permission to appeal the Certification Order to the Eleventh Circuit Court of Appeals, the Appeals Court vacated the Certification Order. On remand, Plaintiffs filed a third amended complaint to address the certification issues and incorporated relevant evidence produced as of that time by Defendants and other third parties. On August 27, 2012, pursuant to a motion to dismiss by the Defendants, the Court entered judgment dismissing the Piedmont Action in its entirety. On September 26, 2012, Plaintiffs filed a notice of appeal to the Eleventh Circuit Court of Appeals.

Mediation of the Actions: To assist them in exploring a potential negotiated resolution of the pending appeals of the Actions, the Plaintiffs and Defendants agreed to retain Jed D. Melnick, Esq. as a neutral mediator ("Mediator") who is with the organization JAMS, a private alternative dispute resolution provider that specializes in mediating and arbitrating complex, multi-party, business/commercial cases. The parties exchanged certain information and met under the auspices of the Mediator in September and October of 2012, which included a two-day, intensive face-to-face mediation session held in New York City, in an effort to determine whether the dismissed claims, which plaintiffs had appealed to the Eleventh Circuit, could be settled. After vigorous arm's length negotiations, on October 12, 2012, the parties agreed in principle to the Settlements of the Actions. On December 31, 2012, the parties signed Stipulations of Settlement setting forth the terms and conditions of the proposed Settlements.

Preliminary Approval of the Settlements. On _____, 2013, the Court entered orders preliminarily approving the proposed Settlements, authorizing the mailing of this Notice to potential class members, and scheduling the Settlement hearing to consider whether to grant final approval of the Settlements.

4. What are Plaintiffs' reasons for the Settlements?

The Court has dismissed both Actions. Plaintiffs and Co-Lead Counsel believe that the dismissed claims have merit, and that their legal advocacy and diligent factual investigation have led to fair and reasonable Settlements notwithstanding that the Actions are dismissed. Plaintiffs and Co-Lead Counsel recognize the difficulty and risk of getting the Court's dismissals reversed on appeal, and the expense and length of continued proceedings necessary to prosecute the Actions against Defendants through the appeals, and, if the dismissals were reversed, the expense and length of further proceedings. Plaintiffs and Co-Lead Counsel have taken into account the uncertain outcome and the risk of litigation, especially in complex actions such as these Actions, and are mindful of the problems of proof and possible defenses to the violations asserted in the Actions. In light of the foregoing, Plaintiffs and Co-Lead Counsel believe that the Settlements confer substantial benefits upon the Classes with respect to claims that the Court has dismissed and adjudicated in Defendants' favor, and believe that the Settlements are fair, adequate, reasonable and in the best interests of the Classes.

5. Who is included in the Classes?

You may be a member of one or more of the following classes which are collectively referred to as the "Classes."

Class in the Wells Action: The Court certified the Wells Action to proceed as a class action on behalf of: All Piedmont shareholders (including their heirs, successors, and assigns) who were entitled to vote on the proposals in Piedmont's Schedule 14A Proxy Statement dated February 26, 2007, as amended or supplemented. If you previously excluded yourself from the Wells Rule 23(b)(3) Class you are no longer a Wells Class member.

Classes in the Piedmont Action: The Court has preliminarily certified the Piedmont Action to proceed as a class action on behalf of Piedmont shareholders (including their heirs, successors, and assigns):

(a) who held shares of Piedmont at the time of the tender offer by Lex-Win Acquisition LLC ("Lex-Win") between May 25, 2007 and July 20, 2007, and who did not tender their shares to Lex-Win (the "Tender Offer Class"); and,

(b) of record as of October 2, 2007 who were entitled to vote on the proposals in Piedmont's Schedule 14A Proxy Statement dated October 16, 2007 (as amended and supplemented on October 19, 2007 and November 2, 2007) (the "Proxy Class").

The Proxy Class and the Tender Offer Class are collectively referred to as the "Piedmont Settlement Classes."

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A MEMBER OF ONE OR ALL OF THE CLASSES OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENTS. IF YOU ARE A MEMBER OF ANY OF THE CLASSES AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENTS, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS INCLUDED WITH THIS NOTICE POSTMARKED NO LATER THAN _____.

6.	**Who is not included in the Classes?**

Excluded from the Wells Class are: Piedmont; Wells Capital, Inc.; Wells Management Company, Inc.; Wells Real Estate Funds, Inc.; Wells Real Estate Advisory Services, Inc.; Wells Advisory Services I, LLC; Wells Government Services, Inc.; Leo F. Wells, III; Douglas P. Williams; Donald A. Miller; Bud Carter; Donald S. Moss; Neil H. Strickland; Michael R. Buchanan; Richard W. Carpenter; William H. Keogler, Jr.; W. Wayne Woody; Wesley E. Cantrell; excluded from the Piedmont Settlement Classes are: Piedmont; W. Wayne Woody; Michael R. Buchanan; Wesley E. Cantrell; William H. Keogler, Jr.; Donald S. Moss and Donald A. Miller; excluded from all Classes are officers and directors of Defendants, members of each individual Defendant's immediate family, any entity in which any Defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party. Excluded from the Wells Class is any Wells Class member who submitted a written request for exclusion (opted out) from the class in accordance with the instructions in the Notice of Pendency previously sent to Wells Class members. Excluded from the Piedmont Settlement Classes will be any member of the Tender Offer Class and/or the Proxy Class who submits a request for exclusion in accordance with this Notice.

7.	**If I am not sure whether I'm included in the Classes, is there someone I can contact?**

If after viewing the prior sections regarding who is included in the Classes and reading all of this Notice, you are still not sure whether you are included, you may contact Class Counsel at the addresses and telephone numbers listed in paragraph __ in this Notice.

8.	**What are the Settlements' benefits?**

The Settlements provide benefits to the members of the Classes even though the Actions were dismissed by the Court. Pursuant to the Settlements, Defendants will pay or cause to be paid $4,900,000 with respect to the Wells Action and $2,600,000 with respect to the Piedmont Action into the Settlement Fund, and Defendants will withdraw their court costs that were taxed against Plaintiffs in the amount of $213,733.30. After deducting the payment of expenses and fees awarded by the Court, the Net Settlement Fund will be distributed to the members of the Settlement Classes in accordance with a Plan of Allocation that will take into account factors including the relative strength of the claims, the total claimed damages arising from the conduct complained of in the respective Actions, the number of Class Members in each of the Classes and the Released Claims in each of the Actions. For a more complete description of the Plan of Allocation, see the section headed "Plan of Allocation" in this Notice.

Moreover, subsequent to the filing of the Wells Action, on March 29, 2007, Defendants issued a supplement to the Wells Proxy which included additional material information about the Internalization and the strategic alternatives Piedmont could pursue after the Internalization. The Wells Action was a substantial factor in the issuance of such additional disclosures.

9.	**Am I giving up anything in order to participate in the Settlements?**

As a member of the Classes, in consideration for the benefits of the Settlement, you will be bound by the terms of the Settlements, you will release the Defendants and other Released Parties (collectively, the "Released Parties" as defined below) from the Released Claims as defined below, and the appeals of the dismissals of the Actions will be dismissed.

Released Parties in the Wells Action means, with respect to each Defendant listed in paragraph 3 above regarding the Wells Action, the immediate family members, heirs, executors, administrators, successors, assigns, present and former employees, officers, directors, general partners, limited partners, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them, and any person or entity which is or was related to or affiliated with any Defendant or in which any Defendant has or had a controlling interest, and the present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, general partners, limited partners, employees, officers, directors, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them, as well as all current and former directors and officers of Piedmont, Wells Capital, Inc., Wells Management Company, Inc., Wells Real Estate Funds, Inc., Piedmont Office Management, LLC (formerly known as Wells Real Estate Advisory Services, Inc.), Wells Advisory Services I, LLC,

Piedmont Government Services, LLC (formerly known as Wells Government Services, Inc.), and each of their immediate family members, heirs, executors, administrators, successors, assigns, present and former employees, officers, directors, general partners, limited partners, attorneys, assigns, legal representatives, insurers, reinsurers, and agents.

Released Parties in the Piedmont Action means, with respect to each Defendant listed in paragraph 3 above regarding the Piedmont Action, the immediate family members, heirs, executors, administrators, successors, assigns, present and former employees, officers, directors, general partners, limited partners, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them, and any person or entity which is or was related to or affiliated with any Defendant or in which any Defendant has or had a controlling interest, and the present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, general partners, limited partners, employees, officers, directors, attorneys, assigns, legal representatives, insurers, reinsurers, and agents of each of them, as well as all current and former directors and officers of Piedmont, and each of their immediate family members, heirs, executors, administrators, successors, assigns, present and former employees, officers, directors, general partners, limited partners, attorneys, assigns, legal representatives, insurers, reinsurers, and agents.

"Released Claims" in the Wells Action means any and all rights, debts, demands, claims (including "Unknown Claims" defined below) or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory, common law, foreign law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class and/or individual in nature, whether direct or derivative in nature, including both known claims and unknown claims which arise out of, are based upon, or are in any way related, directly or indirectly, to any of the facts, matters, allegations, transactions, events, disclosures, statements, acts or occurrences, representations or omissions involved, set forth, or referred to in any pleading in the Wells Action that (a) Plaintiffs or any member of the Wells Class asserted, or could have asserted in the Wells Action against any of the Released Persons; or (b) could have been asserted in the complaint, in the Wells Action, or in any other action or forum by Lead Plaintiff and/or the Class Members or any of them against any of the Released Persons; ***provided however***, that the Released Claims do not include (i) any claims to enforce the terms of the Stipulation in the Wells Action, and (ii) any claims by Defendants or any of their present or former directors, officers, or employees related to indemnification, insurance, or claims between or among the Defendants.

"Released Claims" in the Piedmont Action means any and all rights, debts, demands, claims (including "Unknown Claims" defined below) or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory, common law, foreign law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class and/or individual in nature, whether direct or derivative in nature, including both known claims and unknown claims which arise out of, are based upon, or are in any way related, directly or indirectly, to any of the facts, matters, allegations, transactions, events, disclosures, statements, acts or occurrences, representations or omissions involved, set forth, or referred to in any pleading in the Piedmont Action that (a) Plaintiffs or any member of the Piedmont Settlement Classes asserted, or could have asserted in the Piedmont Action against any of the Released Persons; or (b) could have been asserted in the complaint, in the Piedmont Action, or in any other action or forum by Lead Plaintiff and/or the members of the Piedmont Settlement Classes or any of them against any of the Released Persons; ***provided however***, that the Released Claims do not include (i) any claims to enforce the terms of the Stipulation in the Piedmont Action, and (ii) any claims by Defendants or any of their present or former directors, officers, or employees related to indemnification, insurance, or claims between or among the Defendants.

"Unknown Claims" in both the Wells Action and Piedmont Action means any of the respective Released Claims in each Action which Plaintiffs or any Class Member does not know or suspect to exist in such party's favor at the time of the release of the Released Persons which, if known by such party, might have affected such party's decisions concerning the Settlement. With respect to any and all Released Claims, upon the Effective Date, the Plaintiffs and the Class Members shall expressly waive, and by operation of the Order and Final Judgment in each Action shall have expressly waived, 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.*

The Class Members, by operation of the Order and Final Judgment in each Action, shall have expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. The Class Members may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of the Released Claims, but the Class Members, upon the Effective Date, by operation of the Order and Final Judgment in each Action, shall have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that 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 that is negligent, reckless, 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.

10. Can I exclude myself from the Classes? How do I exclude myself?

You cannot exclude yourself from the Wells Class. Pursuant to the Notice of Pendency of Class Action that was previously mailed to members of the Wells Class, the deadline for requesting exclusion (opting out) of the Wells Class and Action was December 22, 2011, which has already passed.

With respect to the Piedmont Action, the Court has preliminarily certified the Tender Offer Class and the Proxy Class, collectively, the "Piedmont Settlement Classes," pursuant to Federal Rule of Civil Procedure 23. The members of the Piedmont Settlement Classes will be bound by the Settlement and all determinations and judgments in the Piedmont Action, whether favorable or unfavorable, unless such person or entity mails or delivers a written "Request for Exclusion" from the Tender Offer Class and/or the Proxy Class, addressed to *In re Piedmont Office Realty Trust Securities Litigation,* EXCLUSIONS, c/o Heffler Claims Administration, PO Box 470, Philadelphia, PA 19105. The Request for Exclusion must be received no later than _____. You will not be able to exclude yourself from the Piedmont Settlement Classes after that date. Each Request for Exclusion must (1) state that you request exclusion from the Piedmont Tender Offer Class and/or Proxy Class; (2) state the name, address and telephone number of the person or entity requesting exclusion; (3) state the date(s), price(s) and number of shares of Piedmont common stock that the person or entity requesting exclusion purchased or otherwise acquired, and the sale date(s); and (4) be signed by such person or entity requesting exclusion or an authorized representative. A Request for Exclusion will 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.

By requesting exclusion from the Piedmont Settlement Classes, you would retain the right to sue or commence a proceeding against any of the Defendants or released parties in connection with any of the claims asserted in the Piedmont Action described above, but you will not receive any portion of the Settlement Fund relating to the Piedmont Action. **Anyone considering requesting exclusion should consult with their personal attorney, since the time for bringing your own action may have expired and you may be bound by the Court's adverse rulings in the Actions. The Actions have been dismissed in their entirety by Orders of the Court.**

11. How will the Net Settlement Fund be distributed among Class Members? What is the Plan of Allocation?

At this time, it is not possible to make any determination as to how much the members of the Classes may receive from the Settlement. After approval of the Settlements by the Court and upon satisfaction of the other conditions to the Settlement, the Settlement Fund will be distributed to the Authorized Claimants in accordance with the Plan of Allocation approved by the Court. Under the terms of the Settlements and the proposed Plan of Allocation, your share of the Net Settlement Fund will depend on: (1) your membership in any, some or all of the Settlement Classes; (2) the number of shares you held; (3) the expense of administering the claims process; (4) any attorneys' fees and expenses awarded by the Court; (5) interest income received and taxes paid by the Settlement Fund; and (6) the number of Eligible Shares held by other members of the Settlement Classes who submit timely and valid Proof of Claim Forms.

The Net Settlement Fund will not be distributed until the Court has approved a plan of allocation, and the time for petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired. Neither the Defendants nor any other person or entity that paid any portion of the Settlement Fund on any of their behalves are entitled to get back any portion of the Settlement Fund once the Court's orders or judgments approving the Settlements become final.

The Net Settlement Fund will be distributed in accordance with a Plan of Allocation. The purpose of the Plan of

Allocation is to divide the Settlement proceeds equitably among the members of the Wells Class and the members of the Piedmont Settlement Classes, taking into account such factors as the relative strength of the claims, the total claimed damages arising from the conduct complained of in the respective Actions, the number of members in each of the Classes, the released claims in each of the Actions and, with respect to members of the Piedmont Settlement Classes, whether the class member tendered shares in response to the Lex-Win tender offer, and other relevant data. The Plan of Allocation is described in more detail here:

PLAN OF ALLOCATION

The Plan of Allocation has been prepared by Plaintiffs and Co-Lead Counsel. It reflects the allegations in the Actions that Defendants omitted material information and made materially untrue and misleading statements resulting in violations of the Exchange Act and reflects the opinions of Plaintiffs' experts on liability and damages that were caused by Defendants' alleged omissions and misleading statements. The Plan of Allocation also reflects Plaintiffs and Co-Lead Counsel's assessments, based in part on the Court's orders, of the relative strength of the Tender Offer and Proxy Claims in the Piedmont Action. The objective of the Plan of Allocation is to equitably distribute the Settlement proceeds to the members of the Classes who suffered losses as a result of the alleged violations of the law.

The Defendants have agreed to pay or cause to be paid $4,900,000 in cash in the settlement of the Wells Action and $2,600,000 in cash in the settlement of the Piedmont Action. The Settlement Amounts will be deposited into an interest bearing escrow account. If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to the members of the Classes in accordance with the following principles:

A. Determination of Authorized Claimants: Authorized Claimants are members of the following Settlement Classes who also submit timely and valid Proofs of Claim as provided for in paragraph __, below.

(1) Class in the Wells Action: All Piedmont Shareholders including their heirs, successors, and assigns, who were entitled to vote on the proposals in Piedmont's Schedule 14A Proxy Statement dated February 26, 2007, as amended or supplemented. If you previously excluded yourself from the Wells Rule 23(b)(3) Class you are not an Authorized Claimant.

(2) Settlement Classes in the Piedmont Action:

a. The Tender Offer Class: Piedmont shareholders who held shares of Piedmont at the time of the tender offer by Lex-Win between May 25, 2007 and July 20, 2007, and who did not tender their shares to Lex-Win.

b. The Proxy Class: Piedmont shareholders who were shareholders of record as of October 2, 2007, who were entitled to vote on the proposals in Piedmont's Schedule 14A Proxy Statement dated October 16, 2007 (as amended and supplemented on October 19, 2007 and November 2, 2007) and their heirs, successors, and assigns.

Members of the Piedmont Settlement Classes who submit a Request for Exclusion are ***not*** Authorized Claimants.

***B. Determination of Eligible Shares*:** An Authorized Claimant's actual recovery will be a proportion of the Net Settlement Fund determined by the number of that Authorized Claimant's Eligible Shares as compared to the total Eligible Shares of all Authorized Claimants for **each** of the Classes.

(1) Eligible Shares in the Wells Action: The number of Piedmont shares that were held by each Authorized Claimant at the close of business on February 20, 2007.

(2) Eligible Shares in the Piedmont Action:

a. For the Tender Offer Claim, the number of Piedmont shares held by each Authorized Claimant on May 25, 2007 through July 20, 2007 that were not tendered to Lex-Win.

b. For the Proxy Claim, the number of Piedmont shares held at the close of business on October 2, 2007.

C. Allocation of the Settlement Fund: **One check will be issued to each Authorized Claimant representing their distribution from the Net Settlement Fund allocable to all of their Eligible Shares.**

(1) Wells Action: $4,900,000, plus any interest and dividends earned thereon, *less* any attorneys' fees and any other costs and expenses as awarded by the Court, including the costs of the Notice, claims administration and distribution of the Net Settlement Fund, is allocated to the Wells Class and will be distributed to the Authorized Claimants *pro rata* determined by the number of that Authorized Claimant's Eligible Shares in the Wells Class as compared to the total Eligible Shares of all Authorized Claimants in the Wells Class.

(2) Piedmont Action: $1,560,000 and $1,040,000, plus any interest and dividends earned thereon, *less* any attorneys' fees and any other costs and expenses as awarded by the Court, including the costs of the Notice, claims administration and distribution of the Net Settlement Fund, are allocated to the Tender Offer Class and the Proxy Class, respectively, and will be distributed to the Authorized Claimants in the *pro rata* determined by the number of that Authorized Claimant's Eligible Shares in each of the Tender Offer and Proxy Classes as compared to the total Eligible Shares of all Authorized Claimants in the Tender Offer and Proxy Classes.

D. Approximate Allocation Per Eligible Share. A Class member's actual recovery will be a proportion of the Net Settlement Fund determined by the number of that Class member's Eligible Shares as compared to the total Eligible Shares of all Class members who submit timely and valid Claim Forms. Based on the information currently available to plaintiffs and the analysis performed by their damages expert, the estimated average recovery per share (accounting for the share recapitalization that occurred in January 2010 which had the effect of a 1-for-3 reverse stock split) for a member of all the Classes from the Settlement Fund (***before*** the deduction of any Court-approved fees, expenses and costs as described herein) would be approximately $0.045 per share, *if* all eligible Class members submit valid and timely Claim Forms. If fewer than all Class members submit timely and valid Claim Forms, this may result in higher distributions per share. If you are not a member of all the Classes, your estimated recovery per share will be less.

E. Coordination of Distribution. Because of the substantial overlap between the members of the Classes, and because of the substantial efficiencies and monetary savings that will inure to the material benefit of the members of such classes, the administration and distribution of the Net Settlement Fund will be done on a coordinated basis. **One check will be issued to the Authorized Claimants for the distribution from the Net Settlement Fund allocable to their Eligible Shares.** In the event that the proposed Settlement in either the Piedmont Action or the Wells Action does not become effective at or around the same time, Co-Lead Counsel, at its sole discretion, has the right to reasonably delay the distribution of the Net Settlement Fund.

F. Minimum Distribution. No distribution will be made and no distribution check will be sent to any Authorized Claimant for any Eligible Shares in any amount less than $10. Such Authorized Claimants will be bound by the terms of the Settlement.

G. Remaining Balance in the Settlement Fund. Any amounts remaining in the Net Settlement Fund after all distributions of the Net Settlement Fund to Authorized Claimants have been made pursuant to this Plan of Allocation, including without limitation such Authorized Claimants' uncashed or returned distributions, shall be disbursed per Co-Lead Counsel's direction, as approved by the Court, in the form of an additional distribution to members of the Classes or pursuant to *cy pres* principles. Defendants retain no interest in or right to any residual amount remaining in the Settlement Fund.

12. What do I have to do to receive my portion of the Net Settlement Fund?

In order to receive a portion of the Net Settlement Fund you must complete and return the Proof of Claim form that accompanied this Notice. Your completed and signed Proof of Claim form must be mailed to the claims administrator at the address indicated on the Proof of Claim form on or before _____. **More complete instructions are included on the Proof of Claim**. Keep in mind that if the portion of the Net Settlement Fund to which you would otherwise be entitled is less than $10 no distribution will be made due to the cost of distributing and accounting for small settlement amounts. If a Proof of Claim form did not accompany this Notice you may obtain a copy by contacting the claims administrator at 800-379-6239 or www._____.com.

Each Authorized Claimant is required to submit a Proof of Claim, which form will indicate the number of Eligible Shares owned by the Authorized Claimant based on Piedmont's records. If the Authorized Claimant disputes the information contained therein, the Authorized Claimant may provide documents as are designated therein, including proof of the transactions claimed, or such other documents or proof as the Claim Administrator, in its discretion, may deem acceptable to demonstrate the number of Eligible Shares owned by the Authorized Claimant. **The Claims Administrator will have the discretion to determine the adequacy of the documentation supporting a requested change in or modification to the Eligible Shares and if such information has been filed in a timely manner. The Claims Administrator will determine the eligibility of each Authorized Claimant who submits credible information to correct or modify the Eligible Shares to receive a distribution of the Net Settlement Fund and to calculate the distributions to each Authorized Claimant.**

Any Class Member who fails to submit a Proof of Claim by _____ shall be forever barred from receiving any payment pursuant to the Settlements (unless, by order of the Court, a later-submitted Proof of Claim and Release Form by such Class Member is approved), but shall in all other respects be bound by all of the terms of the Settlements, including the terms of the Order and Final Judgment to be entered in each Action, and will be barred from bringing any action against the Released Persons concerning the Released Claims (see paragraph __).

13. Do I have a lawyer in these cases?

Yes. Chimicles & Tikellis LLP, Labaton Sucharow LLP and Chitwood Harley Harnes LLP are Co-Lead Counsel for Plaintiffs and the Classes.

Kimberly M. Donaldson, Esq.
Chimicles & Tikellis LLP
361 West Lancaster Avenue
Haverford, PA 19041
Phone: (610) 642-8500
Website: www.chimicles.com

Lawrence A. Sucharow, Esq.
Labaton Sucharow LLP
140 Broadway
New York, NY 10005
Phone: (212) 907-0700
Website: www.labaton.com

Krissi T. Gore, Esq.
Chitwood Harley Harnes LLP
2300 Promenade II
1230 Peachtree Street NE
Atlanta, GA 30309
Phone: (404) 873-3900
Website: www.chitwoodlaw.com

There is no need to retain your own lawyer. If you want to be represented by your own lawyer you may hire one at your own expense and your lawyer must file with the Court an appearance on your behalf on or before _____, and must serve copies of such appearance on the attorneys listed in this paragraph.

14. Will being a member of the Classes cost me anything?

You will not be charged by Class Counsel for representation and will not be asked to pay anything. Class Counsel will ask the Court to award them reasonable attorneys' fees and expenses (described in paragraph ___) which amount will be deducted from the Settlement Fund, before the Net Settlement Fund is distributed to the Classes.

15. How much will Class Counsel be paid?

Plaintiffs intend to ask the Court to approve an award of reasonable attorneys' fees in an amount not to exceed 25% of the Settlement Fund, plus costs and expenses incurred in connection with the prosecution of this Action in the approximate amount of $1,900,000. Because of the duration and procedural posture of the Actions at the time of their dismissal, the attorneys' fees and expenses incurred substantially exceed the amount of the attorneys' fees and expense reimbursement that will be sought. Defendants do not oppose the award of reasonable attorneys' fees and expenses to Plaintiffs' Counsel.

16. Can I object to all or part of the Settlements?

If you believe that you have reason to do so, as a member of one or all of the Classes, you may make a written submission to the Court setting out the nature of your objection to any aspect of the Settlements or to the Settlements as a whole. Your objection may also address the fees and expenses being requested by Class Counsel. In order for your

objection to be considered, you must comply with the following procedures.

On or before _____, you must file with the Clerk of the Court a statement or letter setting forth what you are objecting to and the reasons for your objection, and including copies of any supporting documentation. Your filing should include:

(a) The case names and numbers: *In re Wells Real Estate Investment Trust, Inc. Securities Litigation*, Civil Action No. 1:07-cv-862-CAP; *In re Piedmont Office Realty Trust Inc. Securities Litigation*, Civil Action No. 1:07-cv-02660-CAP;

(b) Your name, address, telephone number and signature;

(c) Which of the Classes (Wells or Piedmont, or both) you are a member of, the number of shares of Piedmont stock that you owned during 2007 prior to the reverse split and when;

(d) Whether your objection concerns the Wells Settlement or the Piedmont Settlement, or both, and the reason(s) you object to the Settlement(s) (or to a particular part of the Settlement); and

(e) All legal support or documentation you wish to bring to the Court's attention in support of your objection.

If you wish to appear in person at the Settlement Hearing you must also file a Notice Of Intention To Appear.

You must also, on or before _____, provide to counsel for the Parties, either in person or by mail, copies of all papers you are filing with the Clerk of the Court at the following addresses.

To Class Counsel	**To Defendants' Counsel**
Kimberly M. Donaldson, Esq.	Michael R. Smith, Esq.
Chimicles & Tikellis LLP	King & Spalding LLP
361 West Lancaster Avenue	1180 Peachtree Street
Haverford, PA 19041	Atlanta, GA 30309

17. Waiver of objections.

Any person who fails to comply with the requirements for objecting to the Settlements will be deemed to have waived all such objections and will be foreclosed from raising any objection to the proposed Settlements or to any part thereof. Any Class Member may attend the Settlement Hearing, but only those Class Members who comply with the provisions hereof will be permitted to raise any objection to the proposed Settlements and only those who have filed with the Clerk and sent to Counsel a Notice of Intention to Appear will be allowed to speak at the Settlement Hearing.

18. When and where will the Court consider whether to approve the Settlements and the Request For Attorneys' Fees And Expenses?

The Court will hold a Settlement Hearing on _____ at ____ _.m. in Courtroom ___, United States District Court for the Northern District of Georgia, 75 Spring Street, S.W., Atlanta, Georgia 30303. At the Settlement Hearing, the Court will consider whether the Settlements, including the Plan of Allocation, are fair, reasonable and adequate. At or after the Settlement Hearing, the Court will also consider whether to approve the Request for Attorneys' Fees and the Reimbursement of Expenses. If there are objections, the Court will also consider such objections. The Court has discretion to listen to people who have asked to speak at the hearing. Counsel do not know how long the Settlement Hearing will last or how long it will take for the Court to decide whether to approve the Settlements and Request For Attorneys' Fees and the Reimbursement of Expenses. The Court may postpone or reschedule the Settlement Hearing without prior notice.

19. Do I have to attend the Settlement Hearing?

No. Class Counsel will answer any questions the Court may have on behalf of Plaintiffs and the Classes. However, you are welcome to attend the Settlement Hearing at your own expense, or to pay your own attorney to attend the Settlement Hearing on your behalf, but you do not need to attend. If you do hire your own attorney and want your attorney to speak at the Settlement Hearing, or if you want to speak at the Settlement Hearing, you must file a Notice of Intention to Appear as described above. The Court may decide to reschedule the Settlement Hearing without sending a further notice to the Settlement Classes. If you plan to come to the Settlement Hearing, you may want to contact one of the Counsel listed above to make sure that it has not been rescheduled.

20. Are there more details about the Settlements?

Yes. This Notice summarizes the proposed settlements. More details (including definitions of various terms used in this Notice) are contained in the pleadings and other papers in these Actions, including the formal Stipulations of Settlement, which have been filed with the Court. Plaintiffs' submissions in support of the Settlements and Class Counsel's fee and expense application will be filed with the Court prior to the Settlement Hearing. In addition, information about the Settlements may be posted on the websites of Class Counsel. If you have any further questions you may contact Class Counsel identified in paragraph __ above.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you hold or held shares of stock of Piedmont (formerly known as Wells REIT) as a nominee for a beneficial owner who is a member of one or all of the Classes, then within 10 days after you receive this Notice you must either: (1) mail copies of this Notice by first class mail to each such beneficial owner; or (2) send a list of the names and addresses of such beneficial owners to:

[NAME AND ADDRESS OF CLAIMS ADMINISTRATOR]

PLEASE DO NOT CALL THE COURT OR COURT CLERK FOR INFORMATION

Dated: _____
By order of the United States District Court, Northern District of Georgia

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re Wells Real Estate Investment Trust, Inc. Securities Litigation --- In re Piedmont Office Realty Trust Inc. Securities Litigation	Civil Action No. 1:07-cv-862-CAP CLASS ACTION Civil Action No. 1:07-cv-02660-CAP CLASS ACTION

PROOF OF CLAIM

GENERAL INSTRUCTIONS

To recover as a Member of the Class based on your claim in these actions (the "Litigation"), you must complete, sign and return this Proof of Claim. If you fail to file a properly addressed (as set forth below) Proof of Claim, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed Settlements of the Litigation.

Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of the Settlements of this Litigation.

YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM POSTMARKED ON OR BEFORE _____, 2013, ADDRESSED AS FOLLOWS:

In re Wells Real Estate Investment Trust, Inc. Securities Litigation
In re Piedmont Office Realty Trust Inc. Securities Litigation
c/o Heffler Claims Administration
PO Box 470
Philadelphia, PA 19105
800-379-6239

If you are NOT a Member of the Classes as defined in the Notice of Pendency and Proposed Settlement of Class Actions ("Notice"), DO NOT submit a Proof of Claim.

If you are a Member of the Classes and have not validly requested to be excluded from the Settlements, you are bound by the terms of any Judgments entered in the Litigation, including the Release included in the Stipulations of Settlement, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM FORM.

CLAIMANT IDENTIFICATION

If you purchased Piedmont shares and held the securities in your name, you are the beneficial owner as well as the record owner. If, however, the securities were registered in the name of a third party, such as a nominee or brokerage firm through which you purchased the stock, you are the beneficial purchaser and the third party is the record purchaser.

Use Part I of this form entitled "Claimant Identification" to identify each beneficial owner and record owner (if different from the beneficial owner) of Piedmont shares on whose behalf the claim is submitted. This Claim must be filed by the actual beneficial owner(s) or the legal representative of such owner(s).

All joint owners must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of Persons represented by them and evidence of their authority must accompany this claim and their titles or capacities must be stated. The last four digits of the Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

CLAIM FORM

Use Part II of this form entitled "Schedule of Ownership in Piedmont Securities" to supply all required details of your transaction(s) in Piedmont shares.

Broker confirmations, brokerage statements reflecting your purchases or ownership or other documentation of your transactions in Piedmont shares should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

The above requests are designed to provide the minimum amount of information necessary to process the simplest claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate the amount of your claim. In some cases where the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Classes with the information provided, the Claims Administrator may condition acceptance of the claim upon the production of additional information that it may, in its discretion, require to process the claim.

PROOF OF CLAIM

Must Be Postmarked No Later Than:

_____, 2013

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

_____

Beneficial Owner's Name (First, Middle, Last)

_____

Joint Owner's Name (First, Middle, Last)

If you are a bank or other institution filing on behalf of a third-party, and an account is needed to identify the Claimant for your records, indicate the account number here: _____

Attn: _____

Street Address:

_____

_____

City: _____ **State:**_____ **Zip:**_____

Country:_____

Telephone No. (day) **Telephone No. (evening)**

(_____)_____ (_____)_____

Email:_____

_____ - ____ - _____ OR _____ - _____

Social Security Number (for individuals) **Employer Identification Number (for estates, trusts, corps, etc)**

Check appropriate entity:

____Individual ____Corporation ____Joint Owners ___IRA ___Trust ____Estate

Other_____

Record Owner's Name (if different from beneficial owner(s) listed above)

_____

PART II: SCHEDULE OF OWNERSHIP IN PIEDMONT SECURITIES

REMINDER: **In January 2010, Piedmont completed a share recapitalization which had the effect of a 1-for-3 reverse stock split. For example, if you held 300 shares of Piedmont as of February 20, 2007, in January 2010, those shares were converted to 100 shares of Piedmont. This form requests the number of shares you held as of various dates in 2007, without you giving effect to the recapitalization.**

A. WELLS ACTION:

Number of Piedmont shares held at the close of business on February 20, 2007:

_____ (must be documented)

B. PIEDMONT ACTION – TENDER OFFER CLASS:

i) Number of shares held at the close of business on May 25, 2007: _____

ii) Number of shares listed above that were sold, transferred or redeemed between May 25, 2007 and July 20, 2007: _____

iii) Number of shares held at the close of business on July 20, 2007: _____

C. PIEDMONT ACTION – PROXY CLASS:

Number of Piedmont shares held at the close of business on October 2, 2007:_____

PART III: SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim under the terms of the Stipulations of Settlement described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Northern District of Georgia, Atlanta Division, with respect to my (our) claim as a Class Member (as defined in the Notice). I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgments that may be entered in the Litigation. I (We) agree to furnish additional information to Lead Counsel or the Claims Administrator to support this claim if required to do so. I (We) have not submitted any other claim covering the same Piedmont shares and know of no other Person having done so on my (our) behalf.

I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this Release or any other part or portion thereof**.**

I (we) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(c) of the Internal Revenue Code.

Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

I declare under penalty of perjury under the laws of the State of _____ that the foregoing information supplied by the undersigned is true and correct and that this Proof of Claim was executed this _____ day of _____ 2013 in _____.

(City, State)

(Sign you name here) _____ (Type of Print your name here) _____

(Joint Owner sign your name here) _____ (Joint Owner type or print your name here) _____

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please remember to sign the Proof of Claim form.
2. Remember to attach supporting documentation, and please sign and print/type your name on each additional sheet.
3. Do not send original or copies of stock certificates.
4. Keep a copy of your claim form for your records.
5. If you desire an acknowledgment of receipt of your Proof of Claim form, please send it Certified Mail, Return Receipt Requested.
6. If you move after submitting your Proof of Claim form, please send your new address to the Claims Administrator.