THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN BUSHANSKY, derivatively on behalf of ATHIRA PHARMA, INC.,

Plaintiff,

vs.

LEEN KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, and MARK LITTON,

Defendants,

and

ATHIRA PHARMA, INC.,

Nominal Defendant.

Case No. 2:22-cv-497-TSZ

PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO PLAINTIFFS

NOTED ON MOTION CALENDAR: JULY 12, 2024

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THOMAS HOULIHAN, derivatively on behalf of ATHIRA PHARMA, INC.,

Plaintiff,

vs.

LEEN H. KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, MARK LITTON, and KEVIN CHURCH,

Defendants,

and

ATHIRA PHARMA, INC.,

Nominal Defendant.

Case No. 2:22-cv-620-TSZ

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I. INTRODUCTION

Plaintiffs Stephen Bushansky ("Bushansky") and Thomas Houlihan ("Houlihan") respectfully present this Motion for Approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs as provided for in the Stipulation of Settlement and Release Agreement dated March 15, 2024 (the "Stipulation" or "Stip.").[1] The Settlement was reached after extensive arm's-length negotiations between well-informed, experienced counsel, with the assistance of a highly qualified mediator following substantial investigation. *See* Declaration of David C. Katz and Patrick Slyne ("Lead Counsel Decl."), ¶¶ 5, 19-24. The Settlement, including the agreed-upon Fee And Expense Amount, has been evaluated and approved by a Committee of independent directors appointed by the Athira Pharma, Inc. ("Athira" or the "Company") Board of Directors (the "Board"), with the assistance of its own independent counsel and in the exercise of its business judgment. The Board, in the exercise of its business judgment and upon the recommendation of the Committee also approved the Settlement, including the Fee and Expense Amount. Further, the Board issued a resolution that the Settlement and its terms provide a substantial benefit to, and are in the best interests of, the Company and its stockholders and agreed to enact the Governance Reforms within sixty (60) days of entry of Judgment if the Settlement is approved by the Court. Stip. at 5, §IV.

The Court preliminarily approved the Settlement on May 3, 2024. Pursuant to the Preliminary Approval Order, Notice is being disseminated to Current Athira Stockholders. The Final Approval Hearing is scheduled to be held on July 18, 2024. If approved, the Settlement would fully resolve this consolidated stockholder derivative action brought for the benefit of Athira and two separate litigation demands made upon the Board by Athira stockholders Ali Soofi ("Soofi") and Travis Vrana ("Vrana") alleging similar conduct as the consolidated derivative action.

The Settlement is an outstanding resolution and the product of extensive arm's-length

[1] Unless otherwise defined, capitalized terms will have the same meaning as set forth in the Stipulation attached as Exhibit A to the Declaration of David C. Katz in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement (ECF No. 18), all emphasis is added, and internal quotation marks and citations are omitted.

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negotiations between the Parties, overseen by Jed D. Melnik, Esq. of JAMS, an experienced mediator (the "Mediator"), who also separately mediated the resolution of the Securities Class Action. Stip. at 4. After reaching agreement in principle on the substantive consideration for the Settlement, the Settling Parties commenced good faith, arm's-length negotiations concerning attorneys' fees, expenses and service awards to plaintiffs, all overseen and assisted by the Mediator. In recognition of the substantial benefits the Settlement confers on Athira and its stockholders, Athira has agreed to pay and/or cause to be paid to Plaintiffs' Counsel the Fee and Expense Amount of $1,150,000, subject to this Court's approval. Plaintiffs respectfully submit that the Fee and Expense Amount is fair and reasonable in light of the substantial value conferred upon Athira and its stockholders by the Settlement and all other relevant factors.

Plaintiffs also seek approval of a modest $3,000 Service Award for each Plaintiff in the Derivative Actions, totaling $12,000, to be paid from the Fee and Expense Amount, to compensate them for stepping forward and dedicating their time and attention to the successful prosecution of this matter on behalf of Athira and Current Athira Stockholders.

II. THE AGREED-UPON FEE AND EXPENSE AWARD IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A. The Fee And Expense Amount Was Agreed To At Arm's-Length With The Assistance Of An Experienced Mediator

The U.S. Supreme Court has endorsed the consensual resolution of attorneys' fees as the ideal toward which litigants should strive. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee."); *see also Cohn v. Nelson*, 375 F. Supp. 2d 844, 861 (E.D. Mo. 2005) ("where, as here, the parties have agreed on the amount of attorneys' fees and expenses, courts give the parties' agreement substantial deference").

Where there is no evidence of collusion and no detriment to the parties, as here, the Court should give "substantial weight to a negotiated fee amount." *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695

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(N.D. Ga. 2001); *see Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) ("[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."); *In re Apple Computer, Inc. Derivative Litig.*, 2008 U.S. Dist. LEXIS 108195, at *12 (N.D. Cal. Nov. 5, 2008) ("A court should refrain from substituting its own value for a properly bargained-for agreement.").

A mediator's involvement in the negotiation of attorneys' fees ensures there was no collusion and that the fees reflect an agreement reached at arm's-length. *See In re Apple Inc. Device Performance Litig.*, 2021 U.S. Dist. LEXIS 50550, at *44 (N.D. Cal. Mar. 17, 2021) (highlighting that the settlement was reached "only after extensive arm's-length negotiations between experienced counsel, including several in-person mediation sessions and additional negotiations facilitated by [the mediator]" "demonstrates non-collusive conduct"); *In re AOL Time Warner S'holder Derivative Litig.*, 2009 U.S. Dist. LEXIS 124372, at *74 (S.D.N.Y. Feb. 1, 2010) (A "'mediator's involvement in ... settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.'") (quoting *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001)).

Here, the Court is not being called upon to fashion a fee and expense amount; rather, the Court is respectfully requested to determine whether the Fee and Expense Amount agreed to by well-represented parties at arm's-length, and with the assistance of an experienced mediator, is fair and reasonable under the circumstances. Unlike in class actions, where the diverging interests of class counsel and absent class members at the fee stage warrant close judicial scrutiny, in these stockholder Derivative Actions, Athira and the Defendants were parties to the negotiations, were represented by their own top-flight legal counsel, and had every incentive to pay no more than the lowest possible amount of attorneys' fees.

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After the principle terms of the Settlement were reached, Plaintiffs' Counsel negotiated with their adversaries, who witnessed their litigation efforts and results firsthand. Defendants' Counsel are employed by some of the finest and most respected firms in the country, have litigated complex stockholder actions for many years, and know the applicable law pertaining to attorneys' fees. The Settling Parties' negotiations were based upon a knowledgeable analysis of what fair and reasonable attorneys fees would be for the benefits achieved and were informed by their counsel's knowledge of fees in similar situations. In such circumstances, the end result of those negotiations—reflecting all Parties' experiences and the Mediator's efforts to reach an appropriate amount of attorneys' fees—is entitled to a great deal of judicial weight. *See Court Awarded Attorney's Fees*, 108 F.R.D. 237, 267 (3d. Cir. 1985); *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974) ("in cases of this kind, we encourage counsel on both sides to utilize their best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorneys' fees.").

The Ninth Circuit has enumerated several factors to consider when determining the reasonableness of attorneys' fees, including: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by plaintiffs' counsel; and (6) the awards made in similar cases. *In re MRV Commc'ns, Inc. Derivative Litig.*, 2013 U.S. Dist. LEXIS 86295, at *8 (C.D. Cal. June 6, 2013).[2] The Fee and Expense Amount is demonstrably fair and reasonable in light of these factors.

B. The Fee And Expense Amount Is Fair And Reasonable Considering The Results Obtained

"'[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained.'" *Klein v. City of Laguna Beach,* 810 F.3d 693, 698-99 (9th Cir. 2016) (quoting *Farrar*

[2] Athira is a Delaware corporation, and the courts of Delaware courts use similar factors: (1) the results accomplished for the benefit of the stockholders; (2) the efforts of counsel and the time spent on the case; (3) the contingent nature of the fee; (4) the difficulty of the litigation; (5) and the standing and ability of counsel involved. *In re Infinity Broad. Corp. S'holders Litig.*, 802 A.2d 285, 293 (Del. 2002) (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980)).

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v. Hobby, 506 U.S. 103, 114 (1992). Plaintiffs in representative actions such as the Derivative Actions are entitled to an award of attorneys' fees if their efforts confer a substantial benefit on the corporation and/or its stockholders. *See In re Nvidia Corp. Derivative Litig.,* 2009 U.S. Dist. LEXIS 24973, at *12 (N.D. Cal. Mar. 18, 2009) ("Under the 'substantial benefit' doctrine, counsel who prosecute a shareholders' derivative case which confers benefits on the corporation are entitled to an award of attorneys' fees and costs.") It is well established that the benefit to the company need not be pecuniary in nature, and that corporate governance reforms furnish a benefit to all stockholders. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395 (1970) ("[A] corporation may receive a 'substantial benefit' from a [stockholder's action], justifying an award of counsel fees, regardless of whether the benefit is pecuniary in nature.... "); *Lewis v. Anderson*, 692 F.2d 1267, 1271 (9th Cir. 1982) (finding that corporate governance reforms are "sufficiently beneficial to a corporation" to warrant settlement approval and an attorneys' fee award); *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1445-50 (N.D. Cal. 1994) (governance changes likely to produce monetary benefits or cost avoidance are "'fund creating actions'" meriting attorneys' fees and expenses) (quoting *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164-65 (Del. 1989)).

Here, the significant therapeutic benefits conferred upon Athira and Current Athira Stockholders as a result of the Settlement well-merit approval of the Fee and Expense Amount. *See Chrysler Corp. v. Dann*, 223 A.2d 384, 386-89 (Del. 1966) (holding that changes in corporate policy or a heightened level of protection for stockholders justifies an award of counsel fees); *see also Maher v. Zapata Corp.*, 714 F.2d 436, 466 (5th Cir. 1983) (approving fees in a therapeutic derivative settlement because "influencing the future conduct may serve the interests of the corporation as fully as a recovery for past misconduct […]."); *Seinfeld v. Robinson*, 246 A.D.2d 291, 298 (N.Y. App. 1st Dep't. 1998) (approving fees for settlement of a derivative action that resulted in the corporation "implementing procedures that will prevent the exact sequence of events from reoccurring, [therefore] plaintiffs have furnished a benefit to all shareholders").

As a result of the events at issue, the Company has agreed to pay $10 million to settle claims in the Securities Class Action; it's market capitalization over the course of the class period in that Action plunged by about $75 million. The Settlement's preventing, or at least reducing, the possibility of Athira suffering similar (or even greater) harm in the future has a value that likely exceeds any monetary damages Plaintiffs could recover through further litigation. Athira has agreed to maintain the Governance Reforms for a minimum of five (5) years, which is a meaningful amount of time to ensure that the Governance Reforms become embedded in the Company's policies, practices, and corporate culture. *See Cohn*, 375 F. Supp. 2d at 850 (finding that corporate governance enhancements that must be in place for no less than three years will "provide meaningful ways of avoiding the problems [the company] experienced in the recent past"). In light of the substantial benefits conferred upon Athira and Current Athira Stockholders, the agreed Fee and Expense Amount is eminently reasonable. Indeed, in the Order preliminarily approving the Settlement, the Court expressly held that "the corporate governance reforms on which the parties have agreed will immediately benefit Athira and its shareholders while avoiding the risks and costs of further litigation." ECF No. 21 at 7.[3]

The Fee and Expense Amount is also reasonable in light of attorneys' fees approved in other derivative settlements with comparable or less robust corporate governance reform packages. *See, e.g.*, *In re F5 Networks, Inc. Derivative Litig.*, 2011 U.S. Dist. LEXIS 169352, at *3 (W.D. Wash. Jan. 6, 2011) ($5 million fee in governance-only settlement); *In re Southern Company S'holder Litig.*, No. 117-cv-00725-MHC, slip op. (N.D. Ga. June 9, 2022) ($3.5 million fee for corporate therapeutics) Lead Counsel Decl., Ex. 6; *Nixon-Crenshaw derivatively for Dycom Industries, Inc.*, No. 18-25289-CIV-Singhal/Goodman (S.D. Fla. 2021) ($2.5 million fee in governance-only settlement); Lead Counsel Decl., Ex. 7; *In re MiMedx Group, Inc. S'holder Deriv. Litig.*, No. 1:18-cv-04486-WMR (N.D. Ga.)

[3] The Governance Reforms are attached as Exhibits 1-4 to the Stipulation and were extensively discussed in Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement. *See* ECF No. 17 at §III. As such, Plaintiffs incorporate that discussion herein.

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($3.5 million fee for corporate therapeutics) Lead Counsel Decl., Ex. 8; *In re HD Supply Holdings Inc. Deriv. Litig.*, No. 1:17-cv-02977-MLB (N.D. Ga. 2021) (granting attorneys' fees of $1.9 million) Lead Counsel Decl., Ex. 9; *In re RTI Surgical Deriv. Litig.*, No. 1:20-cv-3347-MFK (N.D. Ill. 2020) (granting attorneys' fees of $1.5 million) Lead Counsel Decl. Ex. 10; *Sciabacucchi et al v. Barton et al*, Docket No. 2:17-cv-01568 (W.D. Wash. Oct 23, 2017) (granting attorneys' fees of $1.3 million for corporate governance therapeutics) Lead Counsel Decl., Ex 11.

C. The Fee And Expense Amount Is Fair And Reasonable In Light Of Other Pertinent Factors

1. The Risks of Litigation, Skill Required, and Standing of Counsel

Plaintiffs believed and continue to believe that their claims are meritorious, but derivative litigation is highly complex, and inherently risky. Indeed, the Ninth Circuit has noted that "the odds of winning [a] derivative lawsuit [are] extremely small" because "derivative lawsuits are rarely successful." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1994); *see also Maher*, 714 F.2d at 455 ("Settlements of shareholder derivative actions are particularly favored because such litigation is notoriously difficult and unpredictable"). As such, the Delaware Court of Chancery has described the failure of a Board's duty to monitor as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *In re Caremark Int'l*, 698 A.2d 959, 967 (Del. Ch. Sept. 25, 1996).

The skill and experience required to successfully prosecute and resolve these inherently risky Derivative Actions are additional factors that support approval of the Fee and Expense Amount. *See MRV Commc'ns*, 2013 U.S. Dist. LEXIS 86295, at *8 (approving fee and finding that "the successful prosecution of this action required knowledge and expertise in the fields of shareholder derivative litigation and options backdating."). Here, Plaintiffs' Counsel are nationally recognized practitioners in the field of stockholder derivative litigation and have been responsible for many significant recoveries. *See* Lead Counsel Decl. at Exs. 1-5. Plaintiffs' Counsel provided extensive,

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high-quality representation throughout the pendency of the Derivative Actions, leveraging their substantial experience, informed by their substantial investigation, and armed with high-quality pleadings to negotiate the highly beneficial terms of the Settlement. *See* Lead Counsel Decl. ¶¶ 35-37.

The standing of opposing counsel may also be considered in determining an allowance of counsel fees. *See In re Warner Commun's Sec. Litig.,* 618 F. Supp. 735, 749 (S.D.N.Y. 1985). Defendants were represented in the Derivative Actions by experienced, skillful, and well-respected attorneys that vigorously defended their clients' interests. Defendants' Counsel were motivated to negotiate an attorneys' fee provision that was fair and in the best interests of their clients.

The quality of Plaintiffs' Counsel's efforts throughout the Derivative Actions while facing premier international defense firms demonstrates that the Fee and Expense Amount is fair and reasonable and should be approved. *Id.* ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

2. The Contingent Nature of Plaintiffs' Counsel's Representation Justifies the Fee and Expense Amount

Courts have long recognized that in reviewing fee agreements, the fact that Plaintiffs' Counsel's compensation is contingent upon recovery should be taken into account. *See Jones v. GN Netcom, Inc.* (*In re Bluetooth Headset Prods. Liab. Litig.*), 654 F.3d 935, 941 (9th Cir. 2011) ("[R]easonableness" factors, include "the quality of representation, the benefit obtained [], the complexity and novelty of the issues presented, and the risk of nonpayment . . ."). The contingency factor is based on elementary considerations of fairness and justice. As the Fourth Circuit explained in *McKittrick v. Gardner*, 378 F.2d 872, 875 (4th Cir. 1967), "[t]he effective lawyer will not win all of his cases, and any determination of the reasonableness of his fees in those cases in which his client prevails must take account of the lawyer's risk of receiving nothing for his services." *See also Chrysler*, 223 A.2d at 389 (Chancellor exercised "sound business judgment" by taking "the

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contingent nature of the litigation" into consideration in approving attorneys' fees); *In re Plains Res., Inc. S'holders Litig.*, 2005 Del. Ch. LEXIS 12, at *3 (Del. Ch. Feb. 4, 2005) (noting public policy "to reward this risk-taking in the interests of shareholders").

Non-payment in contingent-fee stockholder litigation is a real risk posed to plaintiffs' counsel. For example, in the well-known *Disney* derivative action, the plaintiffs' counsel devoted thousands of hours, and incurred millions of dollars in expenses, only to see judgment entered against them on all claims, which was affirmed on appeal. *Brehm v. Eisner (In re Walt Disney Derivative Litig.)*, 907 A.2d at 693, *aff'd*, 906 A.2d 27 (Del. 2006). Indeed, there are numerous examples of other stockholder actions that were dismissed outright on motion practice, whether at the pleading stage or on summary judgment or ultimately ended in post-trial defeat.[4] No fee of any sort is earned or awarded in such cases, nor do the plaintiffs' counsel recover their often-substantial out-of-pocket expenses.

Thus, the contingent nature of Plaintiffs' Counsels' undertaking, especially in light of the substantial inherent risks of the litigation, further supports approval of the Fee and Expense Amount.

3. The Lodestar "Cross-Check" Supports the Fee and Expense Amount

A so-called "lodestar cross-check"[5] also supports the reasonableness of the agreed-to Fee and Expense Amount. *See Roberti v. OSI Sys., Inc*, 2015 U.S. Dist. LEXIS 164312, at *19 (C.D. Cal. Dec. 8, 2015) ("The reasonableness of [the fee award] is confirmed by a cross-check with a lodestar comparison."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) ("Calculation of the lodestar, which measures the lawyers' investment of time in the litigation,

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[4] *See, e.g., In re Tesla Inc. S'holder Derivative Litig.* , 2023 U.S. Dist. LEXIS 165018 (N.D. Cal. 2023); *Emerald Partners v. Berlin*, 787 A.2d 85 (Del. 2001) (entering judgment for defendants on all claims after two trials); *Kahn v. Lynch Commc'n. Sys., Inc.,* 669 A.2d 79 (Del. 1995) (dismissal of all plaintiffs' derivative claims on appeal).

[5] The "lodestar" is produced by multiplying the number of hours expended by counsel's hourly rate. *Roberti*, 2015 U.S. Dist. LEXIS 164312, at *19.

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provides a check on the reasonableness of the percentage award."). Nonetheless, when considering a fee and expense amount in shareholder derivative actions, courts should look beyond a simple lodestar calculation in making a fee award. *Cohn*, 375 F. Supp. 2d at 862 (citing *Blum v. Stenson*, 465 U.S. 886 (1984)).

Plaintiffs' Counsel committed significant time and expense to prosecuting the Derivative Actions, including a collective lodestar of $1,388,774.75 and $29,687.02 in unreimbursed, out-of-pocket expenses. *See* Lead Counsel Decl. at ¶ 43. It is common in complex cases such as the Derivative Actions to award substantial multipliers to successful counsel's lodestar. *See, e.g.*, *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1051-54 (9th Cir. 2002) (affirming fee award equal to lodestar multiplier of 3.65, and citing 23 shareholder settlements and multipliers for each where the average multiplier was 3.28); *Destefano v. Zynga*, *Inc.*, 2016 U.S. Dist. LEXIS 17196, at *69 (N.D. Cal. Feb. 11, 2016) ("Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases."); *Buccellato v. AT&T Operations, Inc.*, 2011 U.S. Dist. LEXIS 85699, at *4 (N.D. Cal. June 30, 2011) (approving 4.3 lodestar multiplier and listing cases approving multipliers ranging from 4.3 to 9.3); *In re 3Com Corp. Sec. Litig.*, No. C-97-21083, slip op. at 7 (N.D. Cal. Mar. 9, 2001) (6.7 multiplier).

Here, however, Plaintiff's Counsel have a ***negative*** multiplier of 0.80.[6] Lead Counsel Decl. at ¶ 44. A "multiplier of less than one (sometimes called a negative multiplier) further suggests that the negotiated fee award is a reasonable and fair valuation of the services rendered [] by [] counsel." *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010); *see also In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.,* 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) ("[T]he lodestar cross-check results in a negative multiplier of less than 0.92 – a strong indication of the reasonableness of the proposed fee."); *In re NTL, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 13661,

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[6] $1,150,000 - $12,000 Service Awards - $29,687.02 expenses = $1,108,312.98 (Total Fee). Total Fee divided by $1,388,774.75 collective lodestar = 0.80 negative multiplier.

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at *30 (S.D.N.Y. Mar. 1, 2007); *adopted by* 2007 U.S. Dist. LEXIS 32285 (S.D.N.Y. May 2, 2007) (negative multiplier "is reasonable because it will not bring a windfall to co-lead plaintiffs' counsel"); *Jermyn v. Best Buy Stores, L.P.*, 2012 U.S. Dist. LEXIS 90289, at *27 (S.D.N.Y. June 27, 2012) ("negative" lodestar multiple indicates reasonableness of fee); *In re Marsh & McLennan Cos., Inc. Sec. Litig.,* 2009 U.S. Dist. LEXIS 120953, at *59 (S.D.N.Y. Dec. 23, 2009) (fee request constituting "deep discount" from lodestar "unquestionably" supports the award).

The time spent by Plaintiffs' Counsel is reasonable under the circumstances of the Derivative Actions. Plaintiffs' Counsel expended significant time and expenses in order to achieve the benefits of the Settlement, including, *inter alia*: (i) reviewing and analyzing the Company's filings with the Securities and Exchange Commission; (ii) reviewing and analyzing press releases, announcements, transcripts of conference calls with financial analysts and investors, news articles, media reports, and other publicly available information concerning matters alleged in the Derivative Actions; (iii) reviewing and analyzing documents produced by Athira pursuant to a books-and-records demand under Section 220 of the Delaware General Corporation Law and a confidentiality agreement consisting of Athira board minutes and related materials concerning the facts and circumstances at issue; (iv) reviewing and analyzing the pleadings and other papers filed in the Securities Class Action; (v) reviewing and analyzing the Company's Corporate Governance Guidelines, Code of Business Conduct. and Ethics, and the charters of the Audit Committee and the Nominating and Corporate Governance Committee of Athira's Board of Directors; (vi) researching relevant information available from Washington State University, the U.S. Patent and Trademark Office, and the National Institute of Health concerning the facts and circumstances at issue; (vii) researching, drafting, and filing derivative complaints and preparing and serving a books-and-records inspection demand and litigation demands; (viii) researching the applicable law with respect to the claims asserted in the Derivative Actions and the potential defenses thereto; (ix) preparing detailed

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settlement demands; and (x) engaging in substantive, protracted settlement discussions with Defendants' counsel under the auspices of the Mediator. *See* Lead Counsel Decl. at ¶45.

In addition, the hourly rates charged by Plaintiffs' Counsel are unquestionably reasonable. *See Roberti*, 2015 U.S. Dist. LEXIS 164312, at *19; *Seinfeld v. Coker*, 847 A.2d 330, 337-38 (Del. Ch. 2000) (awarding fee amounting to more than $1,300 per hour). Indeed, the hourly rates charged by Plaintiffs' Counsel are comparable to the fees charged by Defendants' counsel.[7] Accordingly, the lodestar "cross-check" confirms that the agreed-to Fee and Expense Amount is fair and reasonable compensation for the time and labor Plaintiffs' Counsel expended in achieving the benefits of the Settlement.

D. The Service Awards Should Be Approved

Plaintiffs respectfully request that the Court approve nominal service awards of $3,000 for each of the Plaintiffs - to be paid from the Fee and Expense Amount - in recognition of the substantial benefits achieved for Athira and Current Athira Stockholders (Stip., ¶V(D)(5)), which are well within the range approved by courts in derivative actions in this District and others as fair and reasonable. *See Stedman v. Progressive Direct Ins. Co.*, 2023 U.S. Dist. LEXIS 164860, at *13-14 (W.D. Wash. Sep. 14, 2023) ("[R]easonable [service] awards to class representatives are permitted."); *Lizondro–Garcia v. Kefi LLC*, 2014 U.S. Dist. LEXIS 143165, at *23 (S.D.N.Y. Oct. 7, 2014) (service awards common in stockholder representative actions); *In re Cendant Corp. Derivative Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002) (service awards recognize plaintiffs' public service); *Sauby v. City of Fargo*, 2009 U.S. Dist. LEXIS 70270, at *3 (D.N.D. July 16, 2009) (approving awards of $5,000 and $10,000 not "to 'compensate' plaintiffs, but instead serve to encourage people with legitimate claims to pursue the action"); *Geare v. Begley, et al.*, No. 11-

[7] *See* Brightflag, Hourly Rates in Am Law 100 Firms: Increases and Key Drivers, 2023 (available at https://brightflag.com/asset/law-firm-rates-report/?utm_source=press_release&utm_medium=press_release&utm_campaign=rate_report). In this report, billable rates for the top 100 U.S. law firms averaged $961 per hour in the first nine months of 2023 with a billable rate of between $321 and $1,433 per hour across all the firms.

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cv-09074, Final Order and Judgment, ¶3 (N.D. Ill. Jan. 23, 2015) (awarding $3,000 per plaintiff), Lead Counsel Decl., Ex. 12. In this district, five thousand dollars has been approved as a reasonable amount for a service award. *Stedman*, at *14. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015).

III. CONCLUSION

The agreed-to Fee and Expense Amount, including the Service Awards to be drawn therefrom, is entirely fair and reasonable in light of the substantial benefits achieved in the Derivative Actions for the benefit of Athira and Current Athira Stockholders, and all other relevant factors. Accordingly, for all of the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs.

Dated: May 17, 2024

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/s/ Joshua M. Rubin
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN BUSHANSKY, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, and MARK LITTON, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-497-TSZ **DECLARATION OF PLAINTIFFS' CO-LEAD COUNSEL IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO PLAINTIFFS**

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THOMAS HOULIHAN, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN H. KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, MARK LITTON, and KEVIN CHURCH, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-620-TSZ

David C. Katz and Patrick Slyne hereby declare as follows:

1. I, David C. Katz, am a Principal at Weiss Law. I am duly licensed to practice law in the State of New York and am admitted to practice pro hac vice before this Court.

2. I, Patrick Slyne, am a member of Slyne Law LLC. I am duly licensed to practice law in the States of New York, Connecticut, Colorado, Pennsylvania and Wyoming, and am admitted to practice pro hac vice before this Court.

3. Weiss Law and Slyne Law serve as Plaintiffs' Co-Lead Counsel in the above-captioned consolidated stockholder derivative action (the "Action") brought on behalf of Athira Pharma, Inc. ("Athira" or the "Company") and individually represent Stephen Bushansky and Thomas Houlihan. We respectfully submit this declaration in support of the Unopposed Motion for Approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs ("Plaintiffs' Motion"). We have personal knowledge of the matters stated herein and, should we be called upon, we could and would testify competently thereto.

4. Plaintiffs' Motion is made in connection with the proposed Settlement which fully resolves all derivative claims against all Defendants in the Action and two separate litigation demands made upon the Athira Board of Directors ("Board") by Athira stockholders Ali Soofi and Travis Vrana alleging similar conduct as the Action. The purpose of this declaration is to set forth the background and procedural history of the Derivative Actions[1], the negotiations that led to the Settlement, and the results achieved. For the reasons discussed herein, in Plaintiffs' Motion, and those set forth in the Parties' prior filings in support of the Settlement, Plaintiffs and Plaintiffs' Counsel respectfully submit that the agreed-upon Fee and Expense Amount is fair and reasonable in light of

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[1] Unless otherwise defined, capitalized terms will have the same meaning as set forth in the Stipulation of Settlement and Release Agreement dated March 15, 2024 (the "Stipulation" or "Stip.") attached as Exhibit A to the Declaration of David C. Katz in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement (ECF No. 18), all emphasis is added, and internal quotation marks and citations are omitted.

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the substantial value conferred upon Athira and its stockholders by the Settlement and all other relevant factors.

I. OVERVIEW

5. The Settlement is an outstanding resolution and the product of extensive arm's-length negotiations between the Parties, overseen by Jed D. Melnik, Esq. of JAMS, an experienced mediator (the "Mediator"), who also separately mediated the resolution of the Securities Class Action. Stip. at 4. After reaching agreement in principle on the substantive consideration for the Settlement, the Settling Parties commenced good faith, arm's-length negotiations concerning attorneys' fees, expenses, and service awards to plaintiffs all overseen and assisted by the Mediator. If approved, the Settlement would require the institution of comprehensive Governance Reforms that enhance Athira's current policies and internal controls as set forth in Exhibits 1-4 to the Stipulation.

6. In recognition of the substantial benefits the Settlement confers on Athira and its stockholders, Athira has agreed to pay and/or cause to be paid to Plaintiffs' Counsel the Fee and Expense Amount of $1,150,000, subject to this Court's approval. The Parties' agreement on the Fee and Expense Amount was also the product of arm's-length negotiations. *See* Stip.,¶ V (D) (1).

7. The consideration for the Settlement is the result of extensive, arm's-length negotiations conducted by experienced and well-informed counsel. The Parties agreed to settle the claims raised in the Derivative Actions based on their belief that it is in the best interests of the Company and its stockholders that the Company resolve the Derivative Actions on the terms presented in the Stipulation. See Stip. at 6, §IV.

8. Only after the Parties reached agreement on the material, substantive terms of the Settlement, the Parties separately negotiated the Fee and Expense Amount to be paid to Plaintiffs' Counsel in consideration for their efforts and risks taken in securing the substantial benefits for the Company on a wholly contingent basis. Stip. at 5.

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9. The Settlement and the agreed-upon Fee And Expense Amount has been evaluated and approved by a Committee of independent directors appointed by Athira's Board, with the assistance of independent counsel and in the exercise of its business judgment, and the Athira Board of Directors (the "Board"), in the exercise of its business judgment and upon the recommendation of the Committee. The Board issued a resolution that the Settlement and its terms provide a substantial benefit to, and are in the best interests of, the Company and its stockholders and agreed to enact the Governance Reforms within sixty (60) days of entry of Judgment if the Settlement is approved by the Court. Stip. at 5, §IV.

10. Plaintiffs also seek the approval of modest service awards in the amount of $3,000 each, to be paid from the Fee and Expense Amount for their participation and efforts in the Derivative Actions. *See* Stip.,¶ V (D) (1).

II. SUMMARY OF THE LITIGATION

A. Factual Background

11. Nominal defendant Athira is a late clinical-stage biopharmaceutical company focused on developing small molecules to treat a range of neurological and other diseases. ¶¶2, 41.[2] Athira is a Delaware corporation, and its common stock has traded on the Nasdaq Stock Market since the Company's September 18, 2020 Initial Public Offering ("IPO") of common stock. ¶¶3, 16, 45.

12. On June 17, 2021, the Company announced that the Athira Board had formed a Special Committee to review alleged misconduct by Leen Kawas, Ph.D. ("Dr. Kawas"), Athira's President, CEO, and Board member, that occurred when Dr. Kawas was a doctoral student at Washington State University. ¶¶4, 5, 67. The Special Committee review was reported to center on allegations that Dr. Kawas had improperly altered study images in published research related to Athira's then-lead drug candidate known as Dihexa or ATH-1017, a potential treatment for

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[2] Unless otherwise noted, all references to "¶__" or "¶¶__" are to the Verified Stockholder Derivative Complaint filed by Plaintiff Stephen Bushansky in Lead Case No. 2:22-cv-497-TSZ on April 14, 2022 (ECF No. 1).

neurological diseases such as Alzheimer's and Parkinson's. ¶¶69-72. Athira's common stock price spiraled down by 39% after these disclosures were made. ¶74.

13. Four months later, on October 21, 2021, Athira announced that its Special Committee concluded that study images were altered in at least four research papers pertaining to Dihexa. ¶¶6, 76. The Company also announced that, effective October 18, 2021, Dr. Kawas resigned as Athira's President, CEO, and Board member. ¶¶6, 79.

14. In the wake of these disclosures, securities class action lawsuits were filed in the United States District Court for the Western District of Washington against Athira, Dr. Kawas, certain of the Company's directors and officers, and the IPO's underwriters for alleged material misrepresentations and omissions in registration statements for the Company's IPO and secondary offering of common stock consolidated under the caption Nacif, et al. v. Athira Pharma Inc., et al., No. 2:21-cv-00861-TSZ (W.D. Wash.) (the "Securities Class Action"). ¶¶7, 88. On July 29, 2022, the Court granted in part and denied in part a motion to dismiss in the Securities Class Action. *See* Securities Class Action, ECF No. 89. On February 15, 2024, the Court granted in part and deferred in part a motion for preliminary approval of a proposed settlement of the Securities Class Action on the basis of a payment of $10 million. *Id.*, ECF No. 128.

B. Procedural History

15. On April 14, 2022, Plaintiff Bushansky filed a Verified Stockholder Derivative Complaint on behalf of Athira, captioned Bushansky *v. Kawas, et al.*, Case No. 2:22-cv-497-TSZ (W.D. Wash.) (the "*Bushansky* Action"), asserting claims against defendants Kawas, Kelly A. Romano ("Romano"), Joseph Edelman ("Edelman"), John M. Fluke Jr. ("Fluke"), James A. Johnson ("Johnson"), Barbara Kosacz ("Koscaz"), and Mark Litton ("Litton") for: (i) violations of Section 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78n(a)(1) and SEC Rule 14a-9 promulgated thereunder; (ii) breach of fiduciary duty; (iii) contribution and indemnification; (iv) aiding and abetting; and (v) waste of corporate assets. The *Bushansky* Action

also sought declaratory relief, costs, and disbursements, and the institution of corporate governance reforms.

16. On May 6, 2022, Plaintiff Houlihan filed a Verified Stockholder Derivative Complaint on behalf of Athira, captioned *Houlihan v. Kawas, et al.*, Case No. 2:22-cv-620-TSZ (W.D. Wash.) (the "*Houlihan* Action"), asserting claims against defendants Kawas, Romano, Edelman, Fluke, Johnson and Kosacz for: (i) violations of Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a)(1) and SEC Rule 14a-9 promulgated thereunder; and against defendants Kawas, Romano, Edelman, Fluke, Johnson, Kosacz and Kevin Church for: (ii) breach of fiduciary duty, (iii) gross mismanagement; (iv) breach of the duty of loyalty; (v) contribution; (vi) breach of the duty of candor; and (vii) indemnification. The Houlihan Action also sought declaratory relief, costs, and disbursements, and the institution of corporate governance reforms.

17. On May 18, 2022, Plaintiff Bushansky, Plaintiff Houlihan, and the Defendants filed a stipulated Motion and proposed Order consolidating the Bushansky Action and Houlihan Action, appointing Co-Lead Counsel, and staying all proceedings and deadlines until the Court decided the motion to dismiss in the related Securities Class Action. On May 26, 2022, the Court entered an Order granting the stipulated motion, consolidating the Bushansky Action and Houlihan Action for all purposes under Case No. 2:22-cv-497-TSZ, appointing Weiss Law and Slyne Law LLC as Plaintiffs' Co-Lead Counsel, and staying the consolidated derivative action until further order of the Court.

18. On November 17, 2022, Athira stockholder Ali Soofi, served a stockholder litigation demand upon the Athira Board requesting that it investigate and initiate litigation against Defendant Kawas as well as any other responsible Athira directors and/or officers for breach of fiduciary duty, corporate waste, unjust enrichment, contribution, indemnification, and all other appropriate claims.

C. Settlement Negotiations

19. In January 2023, Plaintiffs Bushansky and Houlihan, and the Defendants agreed to mediate the claims asserted in the consolidated derivative action and on January 19, 2023, participated

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in a conference call with JAMS New York to agree on mediation protocols and procedures. On February 9, 2023, counsel for Plaintiffs Bushansky and Houlihan conveyed to Defendants' Counsel a detailed settlement demand, including a suite of proposed corporate governance reforms. On February 14, 2023, Athira's counsel responded by letter to that settlement demand. On February 16, 2023, the parties to the *Bushansky* Action and *Houlihan* Action attended a full-day, in-person mediation session at JAMS in New York with the Mediator, who was concurrently serving as the mediator in the Securities Class Action. The February 16, 2023 mediation session ended without reaching agreement.

20. On March 20, 2023, counsel for stockholder Ali Soofi served Defendants' Counsel a settlement demand, including a detailed analysis and proposed corporate governance reforms. After Mr. Soofi made and served his settlement demand, Plaintiffs Bushansky and Houlihan, and Ali Soofi agreed to work together cooperatively to ensure the best result for Athira and its stockholders.

21. On March 31, 2023, the Athira Board formed a Shareholder Demand & Derivative Lawsuits Committee comprised of directors Michael Panzara (Chair) and Grant Pickering, two independent directors who are not members of Athira's management, defendants in the Securities Class Action, or defendants or alleged wrongdoers in the Derivative Actions, and who are not alleged to have been involved in any way in the underlying alleged misconduct. The Committee was delegated the responsibility to oversee settlement negotiations of the aforementioned Derivative Actions and to provide a recommendation to the Board with respect thereto.

22. Plaintiffs Bushansky and Houlihan, and Mr. Soofi, on the one hand, and the Defendants, on the other hand, exchanged several written demands and responses after the first mediation session. When negotiations reached an impasse, they agreed to attend a second mediation session held on May 18, 2023. Plaintiffs Bushansky and Houlihan, and Mr. Soofi, on the one hand, and Defendants, on the other hand, engaged in several hours of frank discussion of the strengths and weaknesses of the claims and defenses at issue in the mediation. Ultimately, with the assistance of

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the Mediator, these parties reached agreement as to the principal terms of Settlement. On May 24, 2023, a term sheet was executed by Plaintiffs Bushansky and Houlihan, Mr. Soofi, and Defendants, setting forth the Governance Reforms, attached as Exhibits 1-4 to the Stipulation, to be enacted as a result of the proposed Settlement.

23. Plaintiffs Bushansky and Houlihan, and Mr. Soofi, on the one hand, and Defendants, on the other hand, did not discuss the payment of attorney fees prior to reaching the principal terms of the Settlement and executing the term sheet. Thereafter, Plaintiffs Bushansky and Houlihan, and Mr. Soofi, on the one hand, and Athira, on the other hand, commenced negotiations regarding attorney fees. When those negotiations reached an impasse, they agreed to a third session with the Mediator, which was held on September 11, 2023.

24. At that mediation session, Plaintiffs Bushansky and Houlihan, and Mr. Soofi, on the one hand, and Athira, on the other hand, negotiated in good faith but did not reach an agreement on the attorneys' fees. Plaintiffs Bushansky and Houlihan, and Mr. Soofi on the one hand, and Athira, on the other hand, continued to negotiate thereafter, with the assistance of the Mediator and ultimately reached an agreement on the Fee and Expense Amount, subject to ¶ V(D) of the Stipulation and approval by the Court. The agreed upon Fee and Expense Amount was approved by the Committee, with the assistance of independent counsel and in the exercise of its business judgment, and the Athira Board of Directors, in the exercise of its business judgment and upon the recommendation of the Committee.

D. Preliminary Approval

25. On May 3, 2024, the Court entered the Preliminary Approval Order, preliminarily approving the Settlement, approving distribution of the Notices to Current Athira Stockholders and scheduling a Final Approval Hearing hearing to be held on July 18, 2024. To date, Plaintiffs' Counsel have received no objections to the Settlement.

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III. SETTLEMENT TERMS

26. The proposed Settlement is an excellent result, reached after extensive, arm's- length negotiations. In connection with the Settlement, Athira will institute the Governance Reforms for a minimum of five (5) years, which will enhance Athira's current policies and internal controls and are designed to prevent the reoccurrence of the alleged misconduct at issue in the Derivative Actions, including the decision-making processes and oversight lapses Plaintiffs contend damaged Athira. In sum, Athira shall:

- Create a new senior management officer—the Chief Compliance Officer—to manage and oversee the Company's ethics and compliance program, implement procedures for monitoring and evaluating the program's performance, and communicate with and inform the newly-created Compliance Committee and the Audit Committee regarding progress towards meeting program goals.
- Create a Compliance Committee of the Board of Directors, consisting of at least two independent directors, to oversee compliance with healthcare, legal and regulatory requirements; the safety and effectiveness of the Company's products and product candidates in clinical and pre-clinical development; the integrity of scientific research and accuracy and completeness of the Company's scientific publications; the qualification and performance of candidates in clinical and preclinical development; and the qualification and performance of contract research and contract manufacturing organizations.
- Enhance the Audit Committee Charter to include oversight responsibilities relating to compliance with applicable law not already delegated to the newly created Compliance Committee, compliance risk analysis responsibilities, annual reporting from the newly-created Chief Compliance Officer concerning the design, implementation, and continuing operation of the Company's Enterprise Risk

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Management Program, periodic reports concerning risk management aspects of strategic initiatives of the Company and developments affecting the Company's business, operations, and affairs, and quarterly reporting pursuant to an annual agenda that includes substantive reports related to compliance matters; matters of implementation of existing compliance programs; monitoring and adjustment of such programs; the Company's processes for receiving and investigating compliance or ethics-related complaints; exceptions reporting; the allocation of resources to the compliance organization and compliance-related initiatives; and, at least annually, a strategic review of emerging trends (external or specific to the Company) affecting the Company's regulatory compliance and, as appropriate, plans of action to respond to such trends from a preventive compliance standpoint.

- Enhance the management-level Disclosure Committee Charter to require that the Chief Operating Officer, General Counsel and Chief Compliance Officer, Chief Medical Officer, and Chief Scientific Officer be members of the committee and to establish the responsibility of the committee to evaluate the effectiveness of the disclosure controls policies and procedures on at least an annual basis and amend the same as necessary to conform to best practices.
- Enhance the Company's newly enacted Compensation Recovery Policy to include provisions for the recovery of executive compensation in the event of a Retraction of Scientific Results.

See Stip., Exs. 1-4 and Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement. ECF No. 17 at §III.

27. Athira, its Board, and the Committee comprised of independent board members, acknowledge that Plaintiffs' efforts, including investigating, preparing, commencing, and prosecuting the Derivative Actions, were a material cause for the adoption, implementation, and maintenance of

the Governance Reforms. Further, Athira, its Board, and the Committee acknowledge and agree that the Governance Reforms confer substantial benefits upon, and serve the best interests of, Athira and its stockholders. Stip. at ¶ V (B) (1-2).

IV. THE NEGOTIATED FEE AND EXPENSE AMOUNT IS FAIR AND REASONABLE

A. The Fee And Expense Amount Was Agreed To At Arm's-Length With The Assistance Of An Experienced Mediator

28. Here, the Court is not being called upon the fashion a fee and expense amount rather, the Court is respectfully requested to determine whether the Fee and Expense Amount agreed to by well-represented parties at arm's-length, and with the assistance of an experienced mediator, is reasonable under the circumstances. Plaintiffs' Counsel have substantial experience in stockholder derivative litigation. *See* Firm Resumes of Plaintiffs' Counsel, attached to Exhibits 1-5 hereto. Unlike in class actions, where the diverging interests of class counsel and absent class members at the fee stage warrant close judicial scrutiny, in these stockholder Derivative Actions, Athira and the Individual Defendants were parties to the negotiations, were represented by their own top-flight legal counsel, and had every incentive to pay no more than the lowest possible amount of attorneys' fees.

29. Plaintiffs' Counsel have substantial experience in stockholder derivative litigation. *See* Firm Resumes of Plaintiffs' Counsel, attached to Exhibits 1-5 hereto. After the principle terms of the Settlement were reached, Plaintiffs' Counsel negotiated with their adversaries, who witnessed their litigation efforts and results firsthand. Defendants' Counsel are employed by some of the finest and most respected firms in the country, have litigated complex stockholder actions for many years, and know the applicable law pertaining to attorneys' fees. The Settling Parties' negotiations were based upon a knowledgeable analysis of what fair and reasonable attorneys fees would be for the benefits achieved and were informed by their counsel's knowledge of fees in similar situations. In such circumstances, the end result of those negotiations—reflecting all Parties' experiences and the Mediator's efforts to reach an appropriate amount of attorneys' fees—is entitled to a great deal of

judicial weight. In other words, the Fee and Expense Amount was negotiated by experienced counsel under market conditions with the oversight of a neutral – a process courts encourage. Accordingly, the Parties' conclusion that the agreed Fee and Expense Amount is fair and reasonable is entitled to substantial deference.

30. The Ninth Circuit has enumerated several factors to consider when determining the reasonableness of attorneys' fees, including: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by plaintiffs' counsel; and (6) the awards made in similar cases. *In re MRV Commc'ns, Inc. Derivative Litig.*, 2013 U.S. Dist. LEXIS 86295, at *8 (C.D. Cal. June 6, 2013). The Fee and Expense Amount is demonstrably fair and reasonable in light of these factors.

B. The Fee And Expense Amount Is Reasonable Considering The Results Obtained

31. Pursuant to the "substantial benefit" doctrine, counsel who prosecute a stockholder derivative action that generates substantial benefits for the corporation are entitled to reasonable attorneys' fees and expenses commensurate with the benefits' value.

32. "'[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained.'" *Klein v. City of Laguna Beach*, 810 F.3d 693, 698-99 (9th Cir. 2016) (*quoting Farrar v. Hobby*, 506 U.S. 103, 114 (1992). Here, the significant therapeutic benefits conferred upon Athira and Current Athira Stockholders as a result of the Settlement well-merit approval of the Fee and Expense Amount. *See* Plaintiffs' Motion at 5. In light of the substantial benefits conferred upon Athira and Current Athira stockholders, the agreed Fee and Expense Amount is eminently reasonable. Indeed, in the Order preliminarily approving the Settlement, the Court expressly held that "the corporate governance reforms on which the parties have agreed will immediately benefit Athira and its shareholders while avoiding the risks and costs of further litigation." ECF No. 21 at 7.

33. As a result of the events at issue, the Company has agreed to pay $10 million to settle claims in the Securities Class Action; it's market capitalization over the course of the class period in that Action plunged by about $75 million. The Settlement's preventing, or at least reducing, the possibility of Athira suffering similar (or even greater) harm in the future has a value that likely exceeds any monetary damages Plaintiffs could recover through further litigation. Athira has agreed to maintain the Governance Reforms for a minimum of five (5) years, which is a meaningful amount of time to ensure that the Governance Reforms become embedded in the Company's policies, practices, and corporate culture.

34. The Fee and Expense Amount is also reasonable in light of attorneys' fees approved in other derivative settlements with comparable or less robust corporate governance reform packages. *See* Plaintiffs' Motion at 6-7; Exs. 6-11.

C. The Fee And Expense Amount Is Fair And Reasonable Based On The Risks Of Litigation, Skill Required, And Standing Of Counsel

35. The proposed Settlement guarantees substantial benefits to Athira and Current Athira Stockholders, while avoiding the uncertainty, risks, costs, and delays in attempting to improve upon the result through further litigation. These concerns are amplified in complex shareholder derivative litigation which is notoriously difficult and unpredictable. Plaintiffs believed and continue to believe that their claims are meritorious, but derivative litigation is highly complex, and inherently risky. Indeed, the Ninth Circuit has noted that "the odds of winning [a] derivative lawsuit [are] extremely small" because "derivative lawsuits are rarely successful." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1994). As such, the Delaware Court of Chancery has described the failure of a Board's duty to monitor as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *In re Caremark Int'l*, 698 A.2d 959, 967 (Del. Ch. Sept. 25, 1996).

36. The skill and experience required to successfully prosecute and resolve these inherently risky Derivative Actions are additional factors that support approval of the Fee and

Expense Amount. Here, Plaintiffs' Counsel are nationally recognized practitioners in the field of stockholder derivative litigation and have been responsible for many significant recoveries. See Firm Resumes attached to Exs. 1-5. As discussed above (§II (A)-(D)) and in Plaintiffs' Motion, Plaintiffs' Counsel provided extensive, high-quality representation throughout the pendency of the Derivative Actions, leveraging their substantial experience, informed by their substantial investigation, and armed with high-quality pleadings to negotiate the highly beneficial terms of the Settlement. Defendants were represented in the Derivative Actions by experienced, skillful, and well-respected attorneys that vigorously defended their clients' interests. Defendants' Counsel were motivated to negotiate an attorneys' fee provision that was fair and in the best interests of their clients.

37. The quality of Plaintiffs' Counsels' efforts throughout the Derivative Actions while facing premier international defense firms demonstrate that the Fee and Expense Amount is fair and reasonable and should be approved. The record here reflects Plaintiffs' Counsel's quality, skill, and professionalism. This supports the fairness and reasonableness of the agreed-to Fee and Expense Amount.

D. The Contingency Risk Borne By Plaintiffs' Counsel Supports The Agreed Fee And Expense Amount

38. Courts have long recognized that in reviewing fee agreements, the fact that Plaintiffs' Counsel's is contingent upon recovery should be taken into account. See *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 941 (9th Cir. 2011) ("[R]easonableness" factors, include "the quality of representation, the benefit obtained [], the complexity and novelty of the issues presented, and the risk of nonpayment . . ."). Non-payment in contingent-fee stockholder litigation is a real risk posed to plaintiffs' counsel. See Plaintiffs' Motion at 9. Plaintiffs' Counsel faced tremendous litigation risks in pursing the Derivative Actions. Plaintiffs' Motion at 8; Stip. at 6. Thus, the contingent nature of Plaintiffs' Counsels' undertaking, especially in light of the substantial inherent risks of the litigation, further supports approval of the Fee and Expense Amount. The

Substantial Time and Expense Devoted to the Litigation Supports the Agreed Fee and Expense Amount

39. As set forth in greater detail in the attorney declarations filed therewith in Exhibits 1-5, Plaintiffs' Counsel devoted to the Derivative Actions 1,698.95 hours in connection with the prosecution and litigation of the Derivative Actions, for a total lodestar of $1,388,774.75.

40. In addition to lodestar, Plaintiffs' Counsel collectively incurred a total of $29,687.02 in expenses performing tasks in connection with the Derivative Actions. These expenses were reasonable and necessary to effectively prosecute and resolve the Derivate Actions on favorable terms, would have been billed in non-contingency matters, and are properly reimbursed. Plaintiffs' Counsel's compensation for services rendered and out-of-pocket expenses incurred in this case was and is entirely contingent on their success in providing Athira a substantial benefit, and on the Court's approval of the agreed Fee and Expense Amount. None of the attorneys' fees and expenses submitted to this Court has been paid from any source or has been the subject of any prior request or prior award in any litigation or other proceeding.

41. Derivative actions play an important role in protecting corporations from substantial harm arising from breaches of fiduciary duties and other violations of law by management and directors. The Derivative Actions substantially benefitted Athira and its stockholders, which would not have been possible had courts in previous cases not incentivized skilled and experienced counsel to focus their practice on high-risk derivative litigation.

E. The Substantial Time And Expense Devoted In The Derivative Action Supports The Fee And Expense Amount

42. As demonstrated herein and in Plaintiffs' Motion, the Fee and Expense Amount of $1,150,00 sought by Plaintiffs' Counsel is well within the range of reasonableness of attorneys' fees awarded in similar cases for similar therapeutic benefits. A lodestar cross-check further confirms the reasonableness of the agreed upon Fee and Expense Amount. Nonetheless, when considering a fee

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and expense amount in shareholder derivative actions, courts should look beyond a simple lodestar calculation in making a fee award. Cohn, 375 F. Supp. 2d at 862 (citing Blum v. Stenson, 465 U.S. 886 (1984)).

43. Plaintiffs' Counsel committed significant time and expense to prosecuting the Derivative Actions, including a collective lodestar of $1,388,774.75 and $29,687.02 in unreimbursed, out-of-pocket expenses. It is common in complex cases such as the Derivative Actions to award substantial multipliers to successful counsel's lodestar. See Plaintiffs' Motion at 10.

44. Here, however, deducting the above-referenced expenses and the proposed Service Awards of $3,000 for Plaintiffs Stephen Bushansky and Thomas Houlihan and Athira stockholders Ali Soofi and Travis Vrana, the resultant lodestar multiplier is approximately 0.80 (*i.e.*, a 20% discount from lodestar). This fractional, or "negative," multiplier is well below the range regularly approved by courts in this type of litigation and is eminently reasonable considering the complexity of the litigation, the skill and experience of counsel, the contingent nature of the litigation, and the valuable benefits achieved. *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010); see also *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) ("[T]he lodestar cross-check results in a negative multiplier of less than 0.92 – a strong indication of the reasonableness of the proposed fee."); *In re NTL, Inc. Sec. Litig.*, No. 02 Civ. 3013 (LAK), 2007 WL 1294377, at *8 (S.D.N.Y. May 2, 2007) (negative multiplier "is reasonable because it will not bring a windfall to co-lead plaintiffs' counsel"); *Jermyn v. Best Buy Stores, L.P.*, No. 08 Civ. 214 (CM), 2012 WL 2505644, at *9 (S.D.N.Y. June 27, 2012) ("negative" lodestar multiple indicates reasonableness of fee); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *20 (S.D.N.Y. Dec. 23, 2009) (fee request constituting "deep discount" from lodestar "unquestionably" supports the award).

45. The time spent by Plaintiffs' Counsel is reasonable under the circumstances of the Derivative Actions. Plaintiffs' Counsel expended significant time and expenses in order to achieve

the benefits of the Settlement, including, inter alia: (i) reviewing and analyzing the Company's filings with the Securities and Exchange Commission; (ii) reviewing and analyzing press releases, announcements, transcripts of conference calls with financial analysts and investors, news articles, media reports, and other publicly available information concerning matters alleged in the Derivative Actions; (iii) reviewing and analyzing documents produced by Athira pursuant to a books-and-records demand under Section 220 of the Delaware General Corporation Law and a confidentiality agreement consisting of Athira board minutes and related materials concerning the facts and circumstances at issue; (iv) reviewing and analyzing the pleadings and other papers filed in the Securities Class Action; (v) reviewing and analyzing the Company's Corporate Governance Guidelines, Code of Business Conduct. and Ethics, and the charters of the Audit Committee and the Nominating and Corporate Governance Committee of Athira's Board of Directors; (vi) researching relevant information available from Washington State University, the U.S. Patent and Trademark Office, and the National Institute of Health concerning the facts and circumstances at issue; (vii) researching, drafting, and filing derivative complaints and preparing and serving a books-and-records inspection demand and litigation demands; (viii) researching the applicable law with respect to the claims asserted in the Derivative Actions and the potential defenses thereto; (ix) preparing detailed settlement demands; and (x) engaging in substantive, protracted settlement discussions with Defendants' counsel under the auspices of the Mediator. Further, as noted in Plaintiffs' Motion at 11, the hourly rates charged by Plaintiffs' Counsel are unquestionably reasonable based on comparable rates charged by defense firms in the field of derivative litigation and approved by courts in connection with contingency fee applications by plaintiffs' counsel in similar derivative litigation matters.

46. Accordingly, the lodestar "cross-check" confirms that the agreed-to Fee and Expense Amount is fair and reasonable compensation for the time and labor Plaintiffs' Counsel expended in achieving the benefits of the Settlement.

F. The Modest $3,000 Service Awards Should Be Approved

47. Plaintiffs' Counsel was assisted throughout the course of this litigation, from inception through settlement, by Plaintiffs, each of whom had an active role in prosecuting and resolving the Derivative Actions. Among other things, Plaintiffs reviewed the pleadings and other materials filed in the Derivative Action, regularly communicated with Plaintiffs' Counsel and provided input concerning the litigation, and consulted with Plaintiffs' Counsel regarding the settlement terms and the rationale for settlement after the Derivative Actions entered the mediation phase. Plaintiffs also maintained their respective ownership of the Company's stock throughout the pendency of the Derivative Action.

48. Plaintiffs' respectfully request that the Court approve the nominal Service Awards in recognition of the substantial benefits achieved for Athira and its stockholders. Stip., ¶V (D) (5). The modest Service Awards are well within the range approved by courts in derivative actions in this District and others as fair and reasonable and should be approved. *See Stedman v. Progressive Direct Ins. Co.*, No. 2:18-cv-1254, 2023 U.S. Dist. LEXIS 164860, at *13-14 (W.D. Wash. Sep. 14, 2023) ("[R]easonable [service] awards to class representatives are permitted."); *Lizondro–Garcia v. Kefi LLC*, 2014 WL 4996248, at *9 (S.D.N.Y. Oct. 7, 2014) (service awards common in stockholder representative actions); *In re Cendant Corp. Derivative Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002) (service awards recognize plaintiffs' public service); *Sauby v. City of Fargo*, 2009 WL 2168942, at *1 (D.N.D. July 16, 2009) (approving awards of $5,000 and $10,000 not "to 'compensate' plaintiffs, but instead serve to encourage people with legitimate claims to pursue the action"); *Geare v. Begley, et al.*, No. 11-cv-09074, Final Order and Judgment, ¶3 (N.D. Ill. Jan. 23, 2015) (awarding $3,000 per plaintiff), Ex. 13 attached hereto. In this district, five thousand dollars has been approved as a reasonable amount for a service award. *Stedman*, at *14. *See, e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947-48 (9th Cir. 2015).

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49. Under the circumstances, Plaintiffs Stephen Bushansky and Thomas Houlihan and Athira stockholders Ali Soofi and Travis Vrana should each be granted a modest service award in the amount of $3,000, totaling $12,000, to be paid from the Fee and Expense Amount to compensate them for stepping forward and dedicating their time and attention to the successful prosecution of this matter on behalf of Athira and Current Athira Stockholders.

V. CONCLUSION

50. For the foregoing reasons, Plaintiffs ask this Court to approve the Fee and Expense Amount and Plaintiffs' Service Awards.

VI. EXHIBITS

51. Attached hereto are true and correct copies of the following exhibits:

Exhibit 1- Declaration of David C. Katz in support of Plaintiff's Motion for approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs, with its exhibits.

Exhibit 2- Declaration of Patrick Slyne in support of Plaintiff's Motion for approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs, with its exhibits.

Exhibit 3- Declaration of Brett M. Middleton in support of Plaintiff's Motion for approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs, with its exhibits.

Exhibit 4- Declaration of Rusty E. Glenn in support of Plaintiff's Motion for approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs, with its exhibits.

Exhibit 5- Declaration of Miles A. Yanick in support of Plaintiff's Motion for approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs, with its exhibits.

Exhibit 6- *In re Southern Company S'holder Litig.*, No. 117-cv-00725-MHC, slip op. (N.D. Ga. June 9, 2022).

Exhibit 7- *Nixon-Crenshaw derivatively for Dycom Industries, Inc.*, No. 18-25289-CIV-Singhal/Goodman (S.D. Fla. 2021)

Exhibit 8- *In re MiMedx Group, Inc. S'holder Deriv. Litig.*, No. 1:18-cv-04486-WMR (N.D. Ga December 21, 2020).

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Exhibit 9- *In re HD Supply Holdings Inc. Deriv. Litig.*, No. 1:17-cv-02977-MLB (N.D. Ga. 2021).

Exhibit 10- *In re RTI Surgical Deriv. Litig.*, No. 1:20-cv-3347-MFK (N.D. Ill. 2020)

Exhibit 11- *Sciabacucchi et al v. Barton et al*, Docket No. 2:17-cv-01568 (W.D. Wash. Oct 23, 2017)

Exhibit 12- *Geare v. Begley, et al*., No. 11-cv-09074, Final Order and Judgment, ¶3 (N.D. Ill. Jan. 23, 2015).

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 17th day of May 2024.

Dated: May 17, 2024

Respectfully submitted,

/s/ David C. Katz

David C. Katz
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/s/Patrick Slyne

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Co-Lead Counsel for Plaintiffs

EXHIBIT 1

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN BUSHANSKY, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, and MARK LITTON, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-497-TSZ **DECLARATION OF DAVID C. KATZ IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO PLAINTIFFS**

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THOMAS HOULIHAN, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN H. KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, MARK LITTON, and KEVIN CHURCH, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-620-TSZ

I, David C. Katz, declare as follows:

1. I am a Principal at Weiss Law. I make this declaration based on my personal knowledge and, if called as a witness, I could and would competently testify to the matters stated herein.

2. My firm has served as counsel for Plaintiff Stephen Bushansky and Plaintiffs' Co-Lead Counsel throughout the course of this litigation. The background and experience of my firm, Weiss Law, and its attorneys are summarized in the firm resume attached hereto as Exhibit A.

3. This declaration is based on my own personal knowledge, information, and belief and if called upon I could and would competently testify thereto.

4. I submit this Declaration in support of Plaintiff's Motion for Approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs.

5. During the pendency of the litigation, Weiss Law performed the following work: including, *inter alia*, (i) reviewing and analyzing the Company's filings with the Securities and Exchange Commission; (ii) reviewing and analyzing press releases, announcements, transcripts of conference calls with financial analysts and investors, news articles, media reports, and other publicly available information concerning matters alleged in the Derivative Actions; (iii) reviewing and analyzing the pleadings and other papers filed in the Securities Class Action; (iv) reviewing and analyzing documents produced by Athira pursuant to a confidentiality agreement consisting of Athira board minutes and related materials concerning the facts and circumstances at issue; (v) reviewing and analyzing the Company's Corporate Governance Guidelines, Code of Business Conduct, and Ethics, and the charters of the Audit Committee and the Nominating and Corporate Governance Committee of Athira's Board of Directors; (vi) researching relevant information available from Washington State University, the U.S. Patent and Trademark Office, and the National Institute of Health concerning the facts and circumstances at issue; (vii) researching, drafting, and

filing a derivative complaint; (viii) researching the applicable law with respect to the claims asserted in the Derivative Actions and the potential defenses thereto; (ix) preparing a detailed settlement demand; and (x) engaging in substantive, protracted settlement discussions with Defendants' counsel under the auspices of the Mediator.

6. Weiss Law has prosecuted this litigation solely on a contingent fee basis and has been at risk that it would not receive any compensation or reimbursement of expenses for prosecuting claims on behalf of nominal defendant Athira.

7. From the inception of the matter through the granting of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement on May 3, 2024, the total number of hours spent by Weiss Law was **783.30** with a corresponding lodestar of **$542,833.50**. The work was managed in an efficient manner and to avoid duplication. The schedule below was prepared from contemporaneous, daily time records prepared and maintained by Weiss Law. I am the attorney who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The hourly rates for the attorneys and professional support staff in my firm are based on comparable rates charged by defense firms in the field of derivative litigation and approved by courts in connection with contingency fee applications by plaintiffs' counsel in similar derivative litigation matters.

8. A breakdown of the lodestar is as follows:

NAME		HOURS	RATE	LODESTAR
David C. Katz	Pr	201	$1,100.00	$221,100.00
Mark D. Smilow	Pr	90.9	$990.00	$89,991.00
Joshua M. Rubin	Pr	26.4	$1,150.00	$30,360.00
Jonathan Meer	As	311.5	$450.00	$140,175.00
Mayer Kovacs	SA	14.3	$495.00	$7,078.50
Jerry Silver	Pl	31	$390.00	$12,090.00
Glenn Mariano	Pl	97.6	$375.00	$38,064.00
Miriam Green	Pl	3.6	$375.00	$1,350.00
Ruben Montilla	Pl	7	$375.00	$2,625.00
Totals		**783.80**		**$542,833.50**

FP=Founding Partner; Pr=Principal; OC=Of Counsel; As=Associate; SA=Staff Attorney; LC= Law Clerk; Pl=Paralegal

9. Weiss Law has expended a total of **$21,928.89** in unreimbursed costs and expenses in connection with the prosecution of this litigation. They were incurred on behalf of Plaintiff by my firm on a contingent basis and have not been reimbursed. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials, and represent an accurate record of the expenses incurred. These expenses include:

EXPENSE CATEGORY	**AMOUNT**
Factual and Legal Research	$3,176.35
Travel/Meals (estimated)	$900.00
Filing Costs	$1,986.00
Mediation	$15,660.44
Telephone	$206.45
Total Expenses	**$21,928.89**

10. An amount of $900 is estimated for the cost of airfare, taxi service, and hotel room, for travel to the Final Approval Hearing scheduled for July 18, 2024 in Seattle, Washington.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 17th day of May 2024 at Larchmont, New York.

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EXHIBIT A

weisslaw.

FIRM BIOGRAPHY

Over the past 40 years, Weiss Law (the "Firm") has gained the reputation of being amongst the nation's premier law firms representing shareholders in securities class and derivative litigation. The Firm has offices in New York, New Jersey, California and Georgia and has litigated hundreds of shareholder derivative actions brought for violations of corporate and fiduciary duties; stockholder class actions brought for violations of federal securities laws; and consumer fraud and unfair practices actions, in which, it has collectively recovered over a billion dollars for defrauded institutions and individuals and obtained important corporate governance reforms.

With outstanding attorneys based in offices on both coasts, Weiss Law has the experience, talent, and resources to tenaciously litigate on behalf of individuals and institutions. Its success in doing so has earned it the praise of clients and courts throughout the country.

NUMEROUS COURTS HAVE COMMENDED THE FIRM FOR ITS EXPERTISE AND ABILITY:

In In re Equifax, Inc. Deriv. Litig., No. 18-CV-00317-TWT, Northern District of Georgia, Weiss Law was Lead Derivative Counsel and recovered $32.5 million for Equifax from its insurance carriers, the then largest cash recovery in a derivative action premised on an underlying data breach, and was responsible for the Equifax's adoption and implementation of a comprehensive set of corporate governance and internal control reforms and meaningful and significant structural improvements to significantly strengthen the Company's cybersecurity, resulting in substantially increased executive and Board oversight of data security. In approving the settlement, the Court singled out Mr. Weiss to express its appreciation for his and Weiss Law's "professionalism and hard work in this case."

In In re Alphabet Inc. Shareholder Deriv. Litig., Lead Case No. 19CV341522, Santa Clara Superior Court, WeissLaw was a member of the Plaintiffs' Executive Committee, in a case where Plaintiffs' Counsel negotiated a settlement which included, among other things, a $310 million funding commitment by Alphabet, the parent company of Google, Inc., to diversity, equity and inclusion over 10 years, to resolve litigation related to sexual harassment and misconduct. The settlement, which also provided for significant changes to company policy, was the largest and most holistic settlement in a shareholder derivative case stemming from sexual misconduct or harassment.

In Spahn v. Edward D. Jones & Co., et al., No. 04 cv 00086, Eastern District of Missouri, Weiss Law was Co-Lead Counsel and obtained – in conjunction with a parallel state court case – a $127.5 million recovery for the class, representing in excess of 40% of the maximum recoverable damages. The complaints alleged that the defendants secretly received revenue sharing payments in exchange for selling preferred mutual funds to clients and misrepresenting the receipt of those payments in violation of the federal securities laws. Weiss Law prosecuted all aspects of the case including extensive motion practice, the review of nearly 2 million pages of documents, and protracted and contentious settlement negotiations, including two multi-day mediations and numerous multiple day settlement conferences.

In Bachman, et al., v. A.G. Edwards, Inc. et al., No. 22052-01266-03, 22nd Judicial Circuit Court, St. Louis, Mo, Weiss Law served on the Plaintiffs' Executive Committee and obtained a $60 million recovery for the class, representing nearly 25% of the estimated maximum recoverable damages. The complaint alleged that A.G. Edwards breached its fiduciary duties and was unjustly enriched as a result of receiving and retaining revenue sharing payments from mutual fund companies in exchange for its customers holding shares of mutual funds in their A.G. Edwards accounts. Weiss Law prosecuted all aspects of the nearly five-year litigation up to the eve of trial, which included defeating three complex and hotly contested SLUSA removal motions, certifying a national class of mutual fund shareholders, defeating numerous motions for summary judgment, reviewing nearly 100,000 pages of documents and conducting and defending 20 depositions.

In Brody v. Hellman, et al., (U.S. West Dividend Litigation), No. CV-4142 (Dist. Ct. for the City & Cty. of Denver, Colo.), Judge Coughlin observed that the case "was litigated by extremely talented lawyers" and "it took a great deal of skill to get to the point of trial." The case was aggressively litigated and the plaintiffs survived a motion to dismiss, two motions for summary judgment and successfully certified the class over vigorous opposition from defendants. In certifying the class, the court commented, "Defendants do not contest that Plaintiffs' attorneys are extremely well qualified to represent the putative class. This litigation has been ongoing for four years; in that time Plaintiffs' counsel has proven that they are more than adequate in ability, determination, and resources to represent the putative class." The case settled for $50 million on the day before trial was scheduled to commence. Judge Coughlin noted "there wasn't any other lawyer[] in the United States that took the gamble that these people did. Not one other firm anywhere said, 'I am willing to take that on.' I'll go five years. I'll pay out the expenses. I'll put my time and effort on the line . . . . [The class is] fortunate that they had some lawyers that had the guts to come forward and do it...I had the opportunity to watch these attorneys throughout this period of time when I had this case and the [lawyers'] ability is terrific."

In In re McLeodUSA Inc. Securities Litigation, No. C02-0001-MWB (N.D. Iowa), Chief Judge Mark Bennett stated at the final approval hearing: "I thought you all did a great job in this litigation" and "I think very highly of the work that all the lawyers did in the case, and [I am] pleased that you were able to get it resolved."

In In re Mutual Funds Investment Litigation, RS Investment Subtrack, MDL 1586, Case No. 04-MD-15863-JFM (Parthasarathy v. RS Investment Management, L.P., et al., 04-cv-3798-JFM), which was part of the historic market timing multi-district litigation pending in the District of Maryland that resulted in a recovery in excess of $300 million for investors in mutual funds allegedly involved in market timing activities, Weiss Law, in conjunction with co-counsel, served on the Plaintiffs' Steering Committee, and prosecuted all aspects of the case against the advisors to the RS Fund family of mutual funds and other related entities, including extensive motion practice, review, analysis and management of hundreds of thousands of pages of documents, conducting all key party and non-party witnesses and bringing the litigation to ultimate resolution.

In Ellison v. American Image Motor, et al., Civil Action No. 97-3608 (S.D.N.Y.), Judge Chin, approving the settlement and fee application, commented that "It has been many years. The case was hard fought, very capable counsel on both sides, and I saw counsel many times. It was a hard fought case. It was a difficult case."... "It's probably not said very often, but in this case I think plaintiffs' counsel are being under paid." ... "Counsel did a great job..."

In In re United Telecommunications, Inc. Securities Litigation, No. 90-2251-0 (D. Kan.), Judge O'Conner stated "the court finds that plaintiffs' counsel were experienced and qualified attorneys with outstanding professional reputations in securities litigation who ably and zealously prosecuted the instant case on behalf of the class."

In In re VeriFone Inc. Securities Litigation, No. C-93-3640 DCJ (N.D. Cal.), Judge Jensen stated: "I think the case was handled extremely well, extremely professionally, so I think you've done very well."

In In re Western Digital Securities Litigation, SACV 91-375(A) GLT (RWRx) (C.D. Cal.), Judge Taylor complimented plaintiffs' attorneys' work in the action, specifically noting "the caliber of the work involved [and] the quality of the attorneys involved."

In Georgallas v. Martin Color-Fi, Inc. Civil Action No. 6:95-06483 (D.S.C.), Judge Anderson expressed "the utmost respect" for the work of the firm.

In Bash v. Diagnostek, CV 94-794 M (D.N.M.), Judge Black said the case provided "a model for how commercial litigation should be conducted and can be resolved."

In In re National Medical Enterprises Litigation, CV 93-5223-TJH and CV 93-5313-TJH (C.D. Cal.), Judge Hatter summed up the settlement hearing by saying, "I want to again thank counsel for the work that you put into this and hopefully it's a settlement for which the claimants themselves will be appreciative of the results."

In In re Santa Fe Southern Pacific Corporation, Consold. Civ. No. 9523 (Del. Ch.), Chancellor Allen of the Delaware Chancery Court approved a settlement and cited the creativity and sophistication of plaintiffs' counsel.

In LR Trust v. Rogers, Jr., et al., (SunTrust Derivative Litigation), No. 16-CV-4132 (N.D. Ga.), Judge Steve C. Jones stated at the final approval hearing that "this is one of the few times I think everybody leaves happy. . . even the Court. So thank you all for everything you have done."

Some of the actions which highlight the firm's accomplishments are:

CASES IN WHICH WEISS LAW WAS LEAD OR CO-LEAD COUNSEL

Jordan v. California Department of Motor Vehicles (Sacramento Cal.): The California Court of Appeal, Third Appellate District, held that the State of California's $300 smog impact fee was unconstitutional, paving the way for the creation of a $665 million fund and full refunds, with interest, to 1.7 million motorists.

In re Geodyne Resources, Inc. Securities Litigation (Harris Cty. Tex.): A recovery (including related litigation) totaling over $200 million was obtained for the class.

Spahn v. Edward D. Jones & Co., et al., No. 04 cv 00086, (E.D. Mo.): A recovery (including related litigation) totaling $127.5 million was obtained for the class.

Freddie Mac Derivative Litigation (S.D.N.Y.): In the wake of one of the largest financial restatements in U.S. corporate history, Weiss Law served as Co-Lead Derivative Counsel and defeated Defendants' motions to dismiss. After conducting extensive discovery, including the review of millions of pages of documents and depositions of the members of the Board of Directors and management, Weiss Law successfully negotiated a recovery of $100 million and the enactment of significant corporate governance reforms.

Bachman, et al., v. A.G. Edwards, Inc. et al., No. 22052-01266-03, (22nd Jud. Cir. Ct., St. Louis, Mo): A recovery totaling $60 million was obtained for the class (Member of Plaintiffs' Executive Committee).

Brody v. Hellman, et al., (U.S. West Dividend Litigation), No. CV-4142 (Dist. Ct. for the City & Cty. of Denver, Colo.): A recovery of $50 million was obtained for the class.

In re Tenneco Securities Litigation (D. Tex.): A recovery of $50 million was obtained for the class.

In re Community Psychiatric Center Securities Litigation (C.D. Cal.): A recovery of $42.5 million was obtained for the class.

In re Crazy Eddie Securities Litigation (S.D.N.Y.): A recovery of $42 million was obtained for the class.

In re Apria Healthcare Group Securities Litigation (Orange County Cal.): A recovery of $42 million was obtained for the class.

Levitan v. McCoy, et al., (First Commerce Corporation), No. 00 C 5096 (N.D. Ill.): A recovery of $39.9 million was obtained for the class.

In re King Pharmaceuticals, Inc. Securities Litigation, No. 03 cv 77-TWP (E.D. Tenn.): A recovery of $38.25 million was obtained for the class.

In re Canon Group Securities Litigation (C.D. Cal.): A recovery of $33 million was obtained for the class.

In re Platinum Software Securities Litigation (C.D. Cal.): A recovery of $32 million was obtained for the class.

In re Equifax, Inc. Deriv. Litig., No. 18-CV-00317-TWT (N.D. Ga.): A recovery of $32.5 million from insurance carriers was obtained for the benefit of Equifax, the then largest cash recovery in a derivative action premised on an underlying data breach, and the Company adopted a comprehensive set of corporate governance and internal control reforms and meaningful and significant structural improvements to significantly strengthen the Company's cybersecurity, resulting in substantially increased executive and Board oversight of data security.

In re Martha Stewart Living Omnimedia, Inc. Securities Litigation, No. 02 cv 6273-JES (SDNY): A recovery of $30 million was obtained for the class.

In re McLeodUSA Inc. Securities Litigation, (N.D. Iowa): A recovery of $30 million was obtained for the class.

In re United Telecommunications Securities Litigation (D. Kan.): A recovery of $28 million was obtained for the class.

In re Bergen Brunswig Corp. Sec. Litig., (C.D. Cal.): A recovery of $27.9 million was obtained for the class.

In re Bank of New York Derivative Litigation (Sup. Ct. NY): A recovery of $26.5 million was obtained for the Company and significant corporate governance measures were adopted.

In re FirstEnergy Shareholder Derivative Litigation (N.D. Ohio): A recovery of $25 million was obtained for the Company and significant corporate governance measures were adopted.

In re Vodafone Group, PLC Securities Litigation (S.D.N.Y.): A recovery of $24.5 million was obtained for the class.

In re PurchasePro.com, Inc. Securities Litigation, (D. NV.): A recovery of $24.2 million was obtained for the class.

In re Arakis Energy Corporation Securities Litigation, No. 95-CV-3431 (ARR) (E.D.N.Y.): A recovery of $24 million was obtained for the class.

In re Abbey Healthcare Securities Litigation (C.D. Cal.): A recovery of $20.5 million was obtained for the class.

Feinberg v. Hibernia Corp. (D. La.): A recovery of $20 million was obtained for the class.

In re Southern Pacific Funding Corp. Sec. Litig., (D. Or.): A recovery of $19.5 million was obtained for the class.

In re Aura Systems, Inc. Securities Litigation (C.D. Cal.): A recovery of $18 million was obtained for the class.

In re MK Rail Securities Litigation (D. Idaho): A recovery of $14.65 million was obtained for the class.

In re California Microwave Securities Litigation (N.D. Cal.): A recovery of $14 million was obtained for the class.

In re KeySpan Corporation Securities Litigation (E.D.N.Y.): A recovery of $13.75 million was obtained for the class.

In re Elscint Ltd Securities Litigation (D. Mass.): A recovery of $12 million was obtained for the class.

In re Megafoods Securities Litigation (D. Ariz.): A recovery of $12 million was obtained for the class.

Bash v. Diagnostek (D.N.M.): A recovery of $11.7 million was obtained for the class.

In re GTECH Securities Litigation (D.R.I.): A recovery of $10.25 million was obtained for the class.

In re Complete Management, Inc. Securities Litigation (S.D.N.Y.): A recovery of $10.15 million was obtained for the class.

Berlinsky v. Alcatel (S.D.N.Y.): A recovery of $8.8 million was obtained for the class.

Lopez v. Checkers Drive-In Restaurants, Inc. (M.D. Fl.): A recovery of over $8.175 million was obtained for the class.

In re Mesa Airlines Securities Litigation (D.N.M.): A recovery of $8 million was obtained for the class.

In re Resound Securities Litigation (N.D. Cal.): A recovery of $8 million was obtained for the class.

In re Castle Energy Corp. Securities Litigation (C.D. Cal.) A recovery of $7.5 million was obtained for the class.

In re Western Digital, Inc. Securities Litigation (C.D. Cal.): A recovery of $6.75 million was obtained for the class.

In re Circle K Securities Litigation (D. Ariz.): A recovery of $6 million was obtained for the class.

In re Mutual Funds Investment Litigation, RS Investment Subtrack, MDL 1586, Case No. 04-MD-15863-JFM (Parthasarathy v. RS Investment Management, L.P., et al., 04-cv-3798-JFM): A recovery of $5.74 million was obtained for the class.

In re Aura Systems, Inc. Securities Litigation (C.D. Cal.): A recovery of $5.55 million was obtained for the class.

In re Ascend Communications Securities Litigation (C.D. Cal.): A recovery of $5.45 million was obtained for the class.

In re Southmark Securities Litigation (D. Tex.): A recovery of $5 million was obtained for the class.

In re WCT Securities Litigation (C.D. Cal.): A recovery of $5 million was obtained for the class.

In re Sumitomo Bank of California Securities Litigation (San Francisco Sup. Ct.): A recovery of $4.95 million was obtained for the class.

In re NextLevel Systems, Inc. Securities Litigation (N.D. Ill.): A recovery of $4.6 million was obtained for the class.

In re Shopping.com Securities Litigation (C.D. Cal.): A recovery of $4.5 million was obtained for the class.

In re Denver Bonds Securities Litigation (D. Colo.): A recovery of $4.5 million was obtained for the class.

In re Molecular Dynamics, Inc. Securities Litigation (N.D. Cal.): A recovery of $4 million was obtained for the class.

In re Party City Corp. Securities Litigation (D.N.J.): A recovery of $3.8 million was obtained for the class.

In re Iwerks Securities Litigation (C.D. Cal.): A recovery of approximately $3.5 million was obtained for the class.

In re Davstar, Inc. Securities Litigation (C.D. Cal.): A recovery of $3.4 million was obtained for the class.

In re Trident Securities Litigation (N.D. Cal.): A recovery of $3.15 million was obtained for the class.

In re Twinlab Corp. Securities Litigation (E.D.N.Y.): A recovery of $3 million was obtained for the class.

In re Offshore Pipelines Securities Litigation (S.D.N.Y.): A recovery of $3 million was obtained for the class.

Gorga v. Uniroyal Chemical Corp. (Sup. Ct. Conn.): A recovery of $3 million was obtained for the class.

In re Amylin Pharms. Securities Litigation (S.D. Cal.): A recovery of $2.1 million was obtained for class.

Class and Derivative Actions Handled by Weiss Law Where a Significant Benefit Was Obtained For The Company and/or the Shareholders

In re: LifeLock, Inc. Derivative Litigation (Ariz. Sup. Ct.)

Taylor v. Campanelli, et al., (Flagstar Bancorp, Inc.) (Mich. Cir. Ct.)

In re Santa Fe Southern Pacific Corporation (Del. Ch.).

In re Genentech Shareholder Litigation (N.D. Cal.).

In re Beverly Enterprises Shareholder Litigation (Del. Ch.).

In re Tandon Computer Shareholder Litigation (C.D. Cal.).

In re Sears Shareholder Litigation (D. Ill.).

In re Xoma Shareholder Litigation (N.D. Cal.).

In re Castle Energy Corp. Shareholder Litigation (C.D. Cal.).

In re Times-Mirror, Inc. Shareholder Litigation (C.D. Cal.).

In re Lockheed Corp. Shareholder Litigation (C.D. Cal.).

In re Nexgen Securities Litigation (N.D. Cal.).

In re GT Greater Europe Securities Litigation (N.D. Cal.).

In re Pairgain Securities Litigation (S.D. Cal.).

In re AMI Securities Litigation (L.A. Superior).

WALLACE V. FOX, ET AL. (NORTHEAST UTILITIES) (D. CONN.).

BRIEF BIOGRAPHIES OF WEISS LAW ATTORNEYS (ALPHABETICALLY)

JOEL E. ELKINS, Of-Counsel, manages Weiss Law's California office. He received a Bachelor of Economics from U.C.L.A. in 1986 and his J.D. from Southwestern School of Law in 2007. Mr. Elkins is admitted to the Bar of the State of California and the United States District Courts for the Central, Southern and Northern Districts of California.

Mr. Elkins has broad experience in class actions and derivative litigation, assisting in the successful prosecution of dozens of shareholder and consumer class actions, including serving as lead counsel in the published decision of *Kowalsky v. Hewlett-Packard Co.*, 771 F. Supp.2d 1156 (N.D. Cal. 2011). During and following law school, Mr. Elkins performed pro bono work at Bet Tzedek Legal Services and currently volunteers at Jewish Big Brothers Big Sisters of Los Angeles.

DAVID C. KATZ, Principal, has been an advocate of investors' rights for over twenty years. Currently, Mr. Katz serves as the chair of Weiss Law's Corporate Governance Group. He is a 1988 Graduate of Benjamin N. Cardozo School of Law. He is admitted to the New York State Bar, the United States District Courts for the Southern and Eastern Districts of New York, and the United States Courts of Appeal for the First, Second, Third, and Fourth Circuits.

Mr. Katz has successfully served as the firm's chief litigator in numerous derivative actions involving corporations and issues of national prominence. When Freddie Mac, the government-sponsored public corporation entrusted with maintaining liquidity in the United States' mortgage markets, announced one of the largest financial restatements in corporate history, he successfully spearheaded the effort to recover the company's damages, recouping more than $100 million (*Sadowsky Testamentary Trust v. Brendsel et al. f/b/o Federal Home Loan Mortgage Corporation*, 05 cv 2596). When Marsh & McLennan Companies, Inc. was implicated in a bid rigging and business steering scheme, Mr. Katz served as the firm's chief litigator pressing claims on behalf of the company, which efforts were a material factor in securing payment of $205 million, and were instrumental in obtaining payment of $35 million to the company from its insurers (*In re: Marsh & McLennan Companies, Inc. Derivative Litigation*, 753-VCS). Mr. Katz also represented shareholders seeking a recovery for First Energy Corp. in the wake of the nation's largest power-outage in history and the closure of the company's nuclear facility resulting from mismanagement and failures in oversight, recouping $25 million for the Company (*In re FirstEnergy Shareholder Derivative Litigation*, 03 cv 1826). Substantial corporate governance reforms were implemented for the benefit of the subject corporations and their shareholders in each of these cases.

In the securities class action field, Mr. Katz has successfully served as the firm's chief litigator in numerous actions as well. Mr. Katz was the firm's chief counsel in *Levitan v. McCoy et al. and Bank One Corp.*, 00 C 5096 (concerning Bank One's acquisition of First Commerce), securing approximately $40 million. Mr. Katz also served as the firm's chief counsel in *Daugherty v. Hastings Entertainment, Inc.* (2:00-CV-160-J), recovering over $6.3 million for the class. He won the remand of *In re Lernout & Hauspie Securities Litigation*, 99-10237 (NG), from the United States Court of Appeals for the First Circuit, subsequently recovering nearly $4 million for the class. Mr. Katz served on the team that won the Ninth Circuit's reversal of the directed verdict entered at trial in the United States District Court for the Northern District of California in an action concerning Everex Systems, Inc. (*Howard v. Everex Systems, Inc.*, et al., 92 cv 03742).

Mr. Katz is a father of two daughters and his wife is an elected member of the Town of Mamaroneck Town Council. He is active in his community and a member of the Larchmont Gardens Civic Association.

JONATHAN MEER, Associate, is admitted to the Bar of the State of New York.

Mr. Meer received a Bachelor and Masters of Talmudic Law from Beth Medrash Govoha and his J.D. from the Benjamin N. Cardozo School of Law in 2020. While at Cardozo, Mr. Meer was a recipient of the Dean's Merit Scholarship and was a member of the Journal of Equal Rights and Social Justice.

MICHAEL A. ROGOVIN, Principal, chairs Weiss Law's Mergers & Acquisitions Litigation Group. He received a B.A. in History from the University of Wisconsin-Madison in 1999 and his J.D. from Brooklyn Law School in 2003. Mr. Rogovin is admitted to the Bar of the States of New York and Georgia and the United States District Courts for the Southern and Eastern Districts of New York and the Northern District of Georgia.

Mr. Rogovin has litigated a broad spectrum of complex class actions including securities class actions and shareholder derivative actions in federal and state courts. He has served on the firm's litigation team in numerous derivative actions involving corporations and issues of national prominence. When Freddie Mac, the government-sponsored public corporation entrusted with maintaining liquidity in the United States' mortgage markets, announced one of the largest financial restatements in corporate history, he successfully assisted in the effort to recover the company's damages, recouping more than $100 million (*Sadowsky Testamentary Trust v. Brendsel et al. f/b/o Federal Home Loan Mortgage Corporation*, 05 cv 2596).

JOSHUA M. RUBIN, Partner, manages the Firm and takes an active role in the analysis and strategy of Weiss Law's varied cases. He received a Bachelor of Talmudic Law from Ner Israel Rabbinical College in 2002 and his J.D. from Benjamin N. Cardozo School of Law in 2005. Mr. Rubin is admitted to the New York and New Jersey State Bars, and the United States District Courts for the Southern and Eastern Districts of New York, the District of Colorado, and the United States Courts of Appeal for the Second and Tenth Circuits.

Mr. Rubin represents a broad spectrum of domestic and foreign clients in complex class actions including securities class actions and shareholder derivative actions in federal and state courts.

Mr. Rubin has played an important role in the recovery of millions of dollars for damaged investors, and derivatively on behalf of publicly traded companies. These actions include the successful class prosecution on behalf of investors of Converium Holding AG (*Sclater-Booth v. SCOR, S.A.*, 07 cv 3476 (GEL)) in the Southern District of New York and Keyspan Corp. (*In re Keyspan Corporation Securities Litigation*, 01 cv 5852 (ARR)) in the Eastern District of New York. He also participated in landmark litigation leading to the certification of a class of investors asserting securities fraud claims against research analysts, reported at *DeMarco v. Robertson Stephenson, Inc.*, 228 F.R.D. 468 (S.D.N.Y. 2005) ($3.1 million recovery).

Additionally, Mr. Rubin has had a significant role in successfully prosecuting derivative actions on behalf of Fortune 500 companies, including on behalf of Hewlett-Packard Company (*In re Hewlett-Packard Company Derivative Litigation*, C.A. No. 2428-VCN, Court of Chancery of the State of Delaware), Southwest Airlines

Co. (*Carbon County Employees Retirement System et al., v. Kelly, et al. f/b/o Southwest Airlines Co.*, No. 08-086292, District Court of Dallas County, Texas) and BP p.l.c. (*In re BP p.l.c. Derivative Litigation*, No. 06 cv 6168 (HB) (S.D.N.Y.)).

Mr. Rubin has also litigated shareholder actions in connection with mergers and acquisitions and successfully represented shareholders in a an action seeking to enforce the application of U.S. tender offer rules to a foreign corporation.

Mr. Rubin oversees the Firm's various systems used to monitor the stock portfolios of its institutional clients, as well as the maintenance of the firm's document retrieval database and Electronic Discovery platforms.

Mr. Rubin also devotes time to charity and pro bono work. He is a member of the Board of Directors of Give Chesed Corp., a volunteer led organization devoted to the empowerment of young women, and the Passaic Clifton Passover Fund, Inc., which provides food assistance to needy families. He also volunteers as an active member of the Passaic Clifton Jewish Burial Society. Mr. Rubin also enjoys road cycling, completing his first Century Ride in the summer of 2021 in support of Chai Lifeline, an organization dedicated to helping families with children battling cancer and other serious illnesses.

MARK D. SMILOW, Principal, graduated Benjamin N. Cardozo School of Law in 1993, *magna cum laude*, where he was an Alexander Fellow and a Staff Editor of the Cardozo Law Review. He is admitted to the New York and New Jersey State Bars, and the United States District Courts for the Southern and Eastern Districts of New York. He has also been admitted in other courts throughout the nation for particular cases. He has litigated all aspects of numerous class, shareholder, derivative and consumer class actions in both trial and appellate courts.

Mr. Smilow concentrates on shareholder, derivative and consumer class actions in both trial and appellate courts. He has obtained significant recoveries for stockholders in numerous cases brought under the federal securities statutes. Among the more prominent, he represented shareholders of Jones Pharma

Incorporated who exchanged their shares for those of King Pharmaceuticals, Inc., which culminated in a total settlement of $38.25 million (*In re King Pharmaceuticals, Inc. Securities Litigation*, 03 cv 77) in the Eastern District of Tennessee; shareholders of Martha Stewart Living Omnimedia, Inc. in the Southern District of New York, which culminated in a $30 million settlement (*In re Martha Stewart Living Omnimedia, Inc. Sec. Litig.*, 02 cv 6273 (JES)); and the shareholders of KeySpan Corporation in a securities fraud case culminating in a $13.75 million settlement (*In re KeySpan Corp. Sec. Lit.*, 2001 cv 5852) in the Eastern District of New York. Moreover, many of Mr. Smilow's cases produced reported opinions of great interest to practitioners, including *Baum v. Keystone Mercy Health Plan*, 826 F. Supp. 2d 718 (E.D. Pa. 2011); *Minzer v. Keegan*, 218 F.3d 144 (2d Cir.2000), *cert. denied*, 531 U.S. 1192, 121 S.Ct. 1190, 149 L.Ed.2d 106 (2001); *Sedighim v. Donaldson, Lufkin & Jenrette, Inc.*, 167 F. Supp. 2d 639 (S.D.N.Y. 2001); and *Rosenfeld v. Port Auth.*, 108 F. Supp. 2d 156 (E.D.N.Y. 2000).

In representing investors against corporate officers and directors for breaches of fiduciary duty, Mr. Smilow has successfully prosecuted many cases involving corporate takeovers, buyouts and reorganizations in which claims of self-dealing, corporate waste and improper disclosure were asserted. Some of the more recent are *Shaev v. Sidhu*, No. 0983 (C.C.P. Philadelphia Co. PA); *Brody v. Catell*, Index No. 008835/06 (Sup. Ct. Kings Co. NY); and *Rosenfeld Fam. Found. Trust v. Ace Cash Express Inc.*, 06 cv 1100-G (N.D. Tex. Dallas Div.).

Finally, as the chair of the Consumer Litigation Practice Group at the firm, Mr. Smilow represented millions of veterans and active members of the United States Armed Services for privacy law violations (*In re Department of Veterans Affairs Data Theft Litigation*, Misc. Action No. 06-0506 (JR), MDL Docket No. 1796) in the District of Columbia District Court, which culminated in a then record recovery of $20 million. In another privacy litigation reported in *The Legal Intelligencer* on December 11, 2014, entitled *Court Reopens Door to Class Action in Flash Drive Case*, Mr. Smilow successfully argued for reversal of the denial of class certification under Pennsylvania's Unfair Trade Practices and Consumer Protection Law catch-all. Superior Court Judge Sally Mundy wrote in her decision that the trial court erred when concluding that class certification failed due to issues of reliance as to the deceptive conduct alleged. Judge Mundy vacated the decision and directed the trial court to address the other Pennsylvania Rule 1702 class certification factors. The case is *Baum v. Keystone Mercy Health Plan*, 2677 EDA 2013 (Super. Ct. Dec. 9, 2014). In an unusual litigation, Mr. Smilow also secured full refunds for one hundred sixty-two small businesses in upstate New York in an administrative proceeding before the New York State Public Service Commission deriving from their utility's improper billing for electric demand (*KLCR Land Corp. and Har-Nof, Inc. vs. NYSEG*, Case No. 00-E-1678 (PSC June 20, 2003)).

JOSEPH H. WEISS is the Founder of Weiss Law. He has been recognized by courts throughout the nation as one of the leading practitioners representing investors in securities class and derivative litigation. Moreover, he has earned the respect of his peers and adversaries as possessing the highest professional standards and outstanding legal acumen. In fact, he has been recognized in the Class Action category of New York Super Lawyers. Weiss Law has consistently ranked as amongst the leading plaintiffs law firms in the United States.

Mr. Weiss is a 1972 graduate of Columbia University Law School, where he was an editor of the Law Review. He is also a 1972 graduate of Columbia University Graduate School of Business from which he obtained a master's in business administration. Mr. Weiss is a member of the Bar of the State of New York and is admitted to practice in the Southern District of New York, the Eastern District of New York, the Courts of Appeal for the First, Second, Third, Fifth, Ninth and Federal Circuits, and has been admitted to practice in numerous other federal and state courts.

Among the more prominent of Mr. Weiss' cases is *Jordan v. California Department of Motor Vehicles*, No. 95 AS 03903 (Sacramento, Cal.), where the firm recovered $665 million – payment in full plus interest – on behalf of motorists who paid a "smog impact fee." Mr. Weiss also recovered $42 million in cash for Apria investors after more than four years of vigorous litigation regarding a sophisticated accounting fraud (*In re Apria Healthcare Group Securities Litigation*, No. 797060) in California Superior Court.

Mr. Weiss has been involved in the litigation of numerous other cases of national stature such as *In re Martha Stewart Living Omnimedia, Inc. Securities Litigation*, No. 02 cv 6273 (JES) and *In re Global Crossing,* *Ltd. Securities and "ERISA" Litigation*, No. 02 cv 910 (GEL), both in the Southern District of New York. He has also spearheaded derivative litigations on behalf of his clients aimed at reforming corporate malfeasance, breaches of fiduciary duties and other wrongdoing by the boards of some of the largest corporations in the world, including Hewlett Packard Company (*In re Hewlett-Packard Company Derivative Litigation*, C.A. No. 2428 (VCN), Court of Chancery of the State of Delaware), BP p.l.c. (*In re BP p.l.c. Derivative Litigation*, No. 06 cv 6168 (HB), Southern District of New York), Royal Dutch Shell (*Soojian et al. v. Jacobs et al. f/b/o Royal Dutch Petroleum Company*, No. 04 cv 03603, District of New Jersey), The Bank of New York (*Zucker v. Bacon et al. f/b/o The Bank of New York Company Inc.*, No. 00/106275, New York County Supreme Court) and Freddie Mac (*Sadowsky Testamentary Trust v. Brendsel et al. f/b/o Federal Home Loan Mortgage Corporation*, No. 05 cv 2596, Southern District of New York).

The firm led by Joseph Weiss has also taken a lead in prosecuting market timing and secret revenue sharing cases. A prime example is the class action against Edward Jones and certain other defendants, alleging violations of federal securities laws and state laws by secret receipt of revenue sharing payments in exchange for selling Preferred Funds to their clients, while misleading them about the payments. (*Spahn v. Edward D. Jones & Co.*, et al., No. 04 cv 00086, District of Missouri). As a result of the litigation, a recovery valued at $127.5 million was obtained for the class, more than 40% of the maximum recoverable damages.

Mr. Weiss is active in community, educational and philanthropic causes and is a member of the International Board of Governors of the Mesorah Heritage Foundation.

EXHIBIT 2

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN BUSHANSKY, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, and MARK LITTON, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-497-TSZ **DECLARATION OF PATRICK SLYNE IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO PLAINTIFFS**

SLYNE LAW LLC
800 Westchester Ave., N-641
Rye Brook, New York 10573
Telephone: (914) 279-7000

THOMAS HOULIHAN, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN H. KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, MARK LITTON, and KEVIN CHURCH, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-620-TSZ

SLYNE LAW LLC
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I, Patrick Slyne, declare as follows:

1. I am a member of Slyne Law LLC ("Slyne Law"). I make this declaration based on my personal knowledge and, if called as a witness, I could and would competently testify to the matters stated herein.

2. My firm has served as counsel for Plaintiff Thomas Houlihan and Plaintiffs' Co-Lead Counsel throughout the course of this litigation. The background of Slyne Law and my experience are summarized in the firm resume attached hereto as Exhibit A.

3. This declaration is based on my own personal knowledge, information, and belief and if called upon I could and would competently testify thereto.

4. I submit this Declaration in support of Plaintiff's Motion for Approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs.

5. During the pendency of the litigation, Slyne Law performed the following work: including, *inter alia*, (i) reviewing and analyzing the Company's filings with the Securities and Exchange Commission; (ii) reviewing and analyzing press releases, announcements, transcripts of conference calls with financial analysts and investors, news articles, media reports, and other publicly available information concerning matters alleged in the Derivative Actions; (iii) reviewing and analyzing the pleadings and other papers filed in the Securities Class Action; (iv) reviewing and analyzing documents produced by Athira pursuant to a confidentiality agreement consisting of Athira board minutes and related materials concerning the facts and circumstances at issue; (v) reviewing and analyzing the Company's Corporate Governance Guidelines, Code of Business Conduct, and Ethics, and the charters of the Audit Committee and the Nominating and Corporate Governance Committee of Athira's Board of Directors; (vi) researching relevant information available from Washington State University, the U.S. Patent and Trademark Office, and the National Institute of Health concerning the facts and circumstances at issue; (vii) researching, drafting, and

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filing a derivative complaint; (viii) researching the applicable law with respect to the claims asserted in the Derivative Actions and the potential defenses thereto; (ix) preparing a detailed settlement demand; and (x) engaging in substantive, protracted settlement discussions with Defendants' counsel under the auspices of the Mediator.

6. Slyne Law has prosecuted this litigation solely on a contingent fee basis and has been at risk that it would not receive any compensation or reimbursement of expenses for prosecuting claims on behalf of nominal defendant Athira.

7. From the inception of the matter through the granting of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement on May 3, 2024, the total number of hours spent by Slyne Law was **495.15** with a corresponding lodestar of **$499,278.75**. The work was managed in an efficient manner and to avoid duplication. The schedule below was prepared from contemporaneous, daily time records prepared and maintained by Slyne Law. I am the attorney who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The hourly rates for myself and professional support staff for my firm are based on comparable rates charged by defense firms in the field of derivative litigation and approved by courts in connection with contingency fee applications by plaintiffs' counsel in similar derivative litigation matters.

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8. A breakdown of the lodestar is as follows:

NAME		HOURS	RATE	LODESTAR
Patrick Slyne	FM	485.15	$1,025.00	$497,278.75
Eyleen Lydick	LC	10	$200.00	$2,000
Totals		**495.15**		**$499,278.75**

FM=Founding Member; Pr=Principal; OC=Of Counsel; As=Associate; SA=Staff Attorney; LC= Law Clerk; Pl=Paralegal

9. Slyne Law has expended, or will expend, a total of **$2,372.24** in unreimbursed costs and expenses in connection with the prosecution of this litigation. They were incurred on behalf of Plaintiff by my firm on a contingent basis and have not been reimbursed. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials, and represent an accurate record of the expenses incurred. These expenses include:

EXPENSE CATEGORY	AMOUNT
Factual and Legal Research	$832.24
Travel/Meals (estimated)	$900.00
Filing Costs	$640.00
Total Expenses	**$2,372.24**

10. An amount of $900 is estimated for the cost of airfare, taxi service, and hotel room, for travel to the Final Approval Hearing scheduled for July 18, 2024 in Seattle, Washington.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 17th day of May 2024 at Greenwich, Connecticut.

PATRICK SLYNE

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EXHIBIT A

SLYNE LAW LLC

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FIRM BIOGRAPHY

Patrick Slyne founded Slyne Law LLC in 2021. The firm's focus is the representation of investors in complex corporate litigation.

For 32 years before founding Slyne Law, Mr. Slyne litigated class and derivative actions throughout the U.S. at Stull, Stull & Brody, a law firm nationally recognized for its representation of investors, often serving as SS&B's principal litigator in its role as lead or co-lead counsel, achieving more than $2 billion in total recoveries. Below is a summary of matters Mr. Slyne litigated at SS&B.

SECURITIES FRAUD

***In Re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation,* Case No. 05-cv-1151 (SRC) (D.N.J.)**

$1,062,000,000 recovered prosecuting a securities class action that alleged Merck & Co., Inc. and certain of its officers and directors made materially false and misleading public statements about the safety profile of its prescription pain-killer drug trade named Vioxx that artificially inflated the market price of Merck stock in violation of Section 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j and 15 U.S.C. § 77o, and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, as well as Exchange Act Section 20A, 15 U.S.C § 78t–1, for selling Merck stock while in possession of material, nonpublic information.

***In re Initial Public Offering Securities Litigation*, Case No. 21-MC-92 (SAS) (S.D.N.Y.)**

$586,000,000 recovered prosecuting 310 consolidated securities class actions that alleged IPO issuers, officers and directors of issuers, and IPO underwriters, made materially false statements in registration statements stemming from an alleged undisclosed scheme to solicit or require the customers of IPO underwriters who were allocated pre-market IPO stock during a "hot issues market" to commit to make additional aftermarket purchases to artificially inflate market prices of those IPO stocks in violation of Sections 11 and 15 of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77k and 15 U.S.C. § 77o, and Sections 10(b) and 20(a) of the Exchange Act.

***In re Computer Associates Class Action Securities Litigation*, Case No. 98-cv-4839 (TCP) (E.D.N.Y)**

$133,000,000 recovered prosecuting a securities class action that alleged Computer Associates International, Inc. and certain of its officers and directors engaged in improper revenue recognition practices to make demand for the company's products appear more robust than in fact they were to boost the market price of the company's stock above $53.33 for 60 days during a 12-month period in order to trigger a $1 billion stock incentive award to three key executives in violation of Exchange Act Sections 10(b) and 20(a) and Rule 10b-5.

***In re Ikon Office Solutions, Inc. Securities Litigation*, Case No. 98-cv-4286 (MK) (E.D. Pa.)**

$111,000,000 recovered prosecuting a class action that alleged Ikon Office Solutions, Inc. and certain of its officers and directors engaged in accounting practices that materially understated the company's doubtful accounts, lease defaults among other accounting errors in public financial statements and falsely represented that internal controls over the company's financial reporting were reliable in violation of Exchange Act Sections 10(b) and 20(a) and Rule 10b-5.

SHAREHOLDER DERIVATIVE ACTIONS

***In re Federal Home Loan Mortgage Corp. Deriv. Litig.*, Case No. 05-cv-2596 (JES) (S.D.N.Y.)**

$100,000,000 in losses recovered and corporate governance improvements achieved from derivative lawsuit that alleged certain Freddie Mac officers and directors breached their fiduciary duties by engaging in improper acts intended to artificially smooth the company's publicly reported earnings by valuing Freddie Mac's holdings in derivative securities in a manner and in amounts that materially violated GAAP.

***Molloy v. Boynton, et al.*, No. 3:17-cv-01157-TJC-MCR (M.D. Fla.)**

Corporate governance improvements achieved prosecuting a derivative lawsuit that alleged former officers and directors of Rayonier, Inc., a timber real estate investment trust, breached their fiduciary duties by overharvesting the company's timberlands, misrepresenting the sustainability of its timber harvesting practices and overstating its merchantable timber inventory in the company's public financial statements.

ANTITRUST AND RICO

***In re Salomon Brothers Treasury Litigation*, Case No. 91-cv-5471 (RPP) (S.D.N.Y.)**

$100,000,000 recovered prosecuting a class action that alleged Salomon Brothers Inc. and co-conspirators bid for and purchased securities in U.S. Treasury auctions in quantities that exceeded regulatory limits and in collusion with others coordinated their trading to manipulate market prices to the detriment of other market participants in violation of federal securities laws, the Racketeer Influenced and Corrupt Organization Act and the antitrust laws.

DATA BREACH

***In re Anthem, Inc. Consumer Data Breach Security Litigation*, Case No. 15-MD-02617 (LHK) (N.D. Cal.)**

$115,000,000 recovered in addition to Anthem, Inc.'s commitment to substantially enhance the security of its computer systems prosecuting a class action complaint that alleged breach of contract, negligence and other claims after hackers exfiltrated the personal and confidential information of 80 million persons that Anthem had stored on its computers.

APPEALS

***Howard* v. *Everex Sys.*, *Case No. 98-17324* (*9th Cir.*)**

Achieved reversal of a judgment as a matter of law at trial in a seminal ruling that places responsibility in corporate officers under Section 10(b) of the Exchange Act and Rule 10b-5 to ensure the validity of public statements company officers sign but did not participate in preparing and establishes the pleading standard for control person status under Section 20(a) of the Exchange Act.

***In Re: Funko Inc. Sec. Litig.*, Case No. 81811-2-I (Wash. Ct. App.)**

Achieved complete reversal of trial court dismissal of a securities class action complaint pursuant to Wash. CR 12(b)(6) that alleged material misrepresentations in an IPO registration statement in violation of Securities Act Sections 11, 12(a)(2), and 15.

Example of a Current Slyne Law Matter

***Terrie E. Newkirk IRA v. Gary C Kelly, et.al.*, Case No. 3:23-cv-01339-E (N.D. Tex.)**

Prosecuting a shareholder derivative complaint that alleges certain directors and officers of Southwest Airlines Co. breached their fiduciary duties to Southwest and its stockholders by causing the company to operate with inadequate crew scheduling and communications infrastructure that led to a companywide operations meltdown in December 2022 and caused Southwest to incur substantial losses and liabilities.

Education

B.A. and J.D., University of Wyoming

Admissions

State Courts:

Colorado
Connecticut
New York
Pennsylvania
Wyoming

United States District Courts:

District of Colorado
District of Connecticut
Northern District of Illinois
Eastern District of New York
Southern District of New York
Eastern District of Pennsylvania
District of Wyoming

United States Court of Appeals:

First Circuit
Second Circuit
Third Circuit
Seventh Circuit
Ninth Circuit

MEMBERSHIPS AND AFFILIATIONS

COLORADO BAR ASSOCIATION
Investment Committee Member, overseeing investment of the Colorado Bar Association Endowment Fund.

NEW YORK CITY BAR ASSOCIATION
Small Law Firm Committee Member, addressing issues that impact firms with ten or fewer attorneys.

PHILADELPHIA BAR ASSOCIATION
Volunteer Investigator, Committee on Judicial Selection and Retention, vetting candidates that seek to serve as a judge in Pennsylvania courts.

PROFESSIONAL STAFF

Aleene Lydick, Law Clerk

Rising 3rd year law student, University of Wyoming
Legal extern, U.S. Department of Veterans Affairs (Fall 2023)
Judicial extern to the Honorable Nancy D. Freudenthal, United States Senior District Judge for the District of Wyoming (Summer 2023)
Senior Intelligence Analyst, United States Navy with six combat deployments. Currently serving as a Senior Chief Petty Officer in the U.S. Navy Reserve (2012-2022)
B.A., Central Washington University, *magna cum laude* (2010)

EXHIBIT 3

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN BUSHANSKY, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, and MARK LITTON, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-497-TSZ **DECLARATION OF BRETT M. MIDDLETON IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO PLAINTIFFS**

JOHNSON FISTEL, LLP
501 W. Broadway, Suite 800
San Diego, California 92101
Telephone: (619) 230-0063

THOMAS HOULIHAN, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN H. KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, MARK LITTON, and KEVIN CHURCH, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-620-TSZ

JOHNSON FISTEL, LLP
501 W. Broadway, Suite 800
San Diego, California 92101
Telephone: (619) 230-0063

I, Brett M. Middleton, declare as follows:

1. I am a Principal at Johnson Fistel, LLP ("Johnson Fistel"). I make this declaration based on my personal knowledge and, if called as a witness, I could and would competently testify to the matters stated herein.

2. My firm has served as counsel to Athira Pharma, Inc. ("Athira" or the "Company") stockholder, Ali Soofi ("Soofi" or the "Stockholder"), in connection with a pre-suit litigation demand (the "Soofi Demand") issued under Delaware law to the Board of Directors (the "Board") of nominal defendant Athira. The background and experience of my firm, Johnson Fistel, and its attorneys are summarized in the firm resume attached hereto as Exhibit A.

3. This declaration is based on my own personal knowledge, information, and belief and if called upon I could and would competently testify thereto.

4. I submit this Declaration in support of Plaintiffs' Motion for Approval of Attorneys' Fees and Expenses and Service Awards to Plaintiffs.

5. In connection with the Soofi Demand, Johnson Fistel performed the following work including, *inter alia*: (i) reviewing and analyzing the Company's filings with the Securities and Exchange Commission; (ii) reviewing and analyzing press releases, announcements, transcripts of conference calls with financial analysts and investors, news articles, media reports, and other publicly available reports, filings, and information concerning matters alleged in the Derivative Actions; (iii) reviewing and analyzing documents produced by Athira pursuant to a books-and-records demand under Section 220 of the Delaware General Corporation Law and a confidentiality agreement consisting of Athira board minutes and related materials concerning the facts and circumstances at issue; (iv) reviewing and analyzing the pleadings and other papers filed in the related Securities Class Action; (v) reviewing and analyzing the Company's Corporate Governance Guidelines, Code of Business Conduct. and Ethics, and the charters of the Audit Committee and the

Nominating and Corporate Governance Committee of Athira's Board of Directors; (vi) preparing and serving a books-and-records inspection demand; (vii) preparing and serving the Soofi Demand; (viii) negotiating and preparing a deferral agreement; and (ix) engaging in substantive, protracted settlement discussions with Defendants' counsel along with the Mediator.

6. Johnson Fistel asserted the Soofi Demand solely on a contingent fee basis and has been at risk that it would not receive any compensation or reimbursement of expenses for pressing claims on behalf of nominal defendant Athira.

7. From the inception of the matter through the granting of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement on May 3, 2024, the total number of hours spent by Johnson Fistel was **385.30** with a corresponding lodestar of **$321,855.00**. The work was managed in an efficient manner and to avoid duplication. The schedule below was prepared from contemporaneous, daily time records prepared and maintained by Johnson Fistel. I am the attorney who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The hourly rates for the attorneys and professional support staff in my firm are based on comparable rates charged by defense firms in the field of derivative litigation and approved by courts in connection with contingency fee applications by plaintiffs' counsel in similar derivative litigation matters.

8. A breakdown of the lodestar is as follows:

NAME		HOURS	RATE	LODESTAR
Brett M. Middleton	Pr	166.7	$1,125.00	$187,537.50
Michael I. Fistel, Jr.	FP	37.1	$1,125.00	$41,737.50
Jonathan M. Scott	As	138.3	$555.00	$76,756.50
Serena Lee	Pl	16.8	$425.00	$7,140.00
Luz Lopez	Pl	5.7	$325.00	$1,852.50
Jennifer Sanders	Pl	10.5	$330.00	$3,465.00
Savannah Vasquez	Pl	10.2	$330.00	$3,366.00
Totals		**385.30**		**$321,855.00**

FP=Founding Partner; Pr=Principal; OC=Of Counsel; As=Associate; SA=Staff Attorney; LC= Law Clerk; Pl=Paralegal

9. Johnson Fistel has expended a total of **$5,040.01** in unreimbursed costs and expenses in connection with the prosecution of this litigation. They were incurred on behalf of Stockholder by my firm on a contingent basis and have not been reimbursed. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials, and represent an accurate record of the expenses incurred. These expenses include:

EXPENSE CATEGORY	**AMOUNT**
Online Research and Publishing	$1,673.55
Mediation	$2,825.00
Document Management	$454.96
FedEx Delivery	$86.50
Total Expenses	$5,040.01

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 17th day of May 2024 at San Diego, California.

BRETT M. MIDDLETON

EXHIBIT A

JF JOHNSON FISTEL

FIRM RESUME

SAN DIEGO, CALIFORNIA • NEW YORK, NEW YORK
MARIETTA, GEORGIA • DENVER, COLORADO
WWW.JOHNSONFISTEL.COM

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SELECT JUDICIAL ACCOLADES

Hon. Yvonne Gonzalez Rogers
U.S. District Court Judge
Northern District of California.

"The Court rarely comments on counsel's performance. Here, such commentary is appropriate… Counsel performed excellent work…for the benefit of the shareholders."

Hon. Ed Kinkeade
U.S. District Court Judge
Northern District of Texas

"…articulate, high quality, and successful pleadings…excellent efforts in this case…"

Hon. Mark H. Cohen
U.S. District Court Judge
Northern District of Georgia

"Skilled, and experienced counsel … nationally recognized leaders in shareholder litigation."

Hon. Laura S. Taylor
U.S. Bankruptcy Court Judge
Southern District of California

"I want to compliment on the successful recovery…outstanding work…"

Hon. Edward M. Chen
U.S. District Court Judge
Northern District of California

"…they are qualified and experienced and are capable of acting as lead counsel…The Court is favorably impressed…"

*For the full text of these testimonials, and others, please see the Testimonials page.

INTRODUCTION

Johnson Fistel is a law firm built on the following five core values: Professionalism, Respect, Integrity, Determination, and Excellence in everything we do. These core values are more than words on a piece of paper; every attorney and staff member at Johnson Fistel embraces them and has PRIDE in everything they do. All of the firm's members affirmatively agree to these core values on an annual basis and have a plaque in their workspace describing what they mean to them, as stated below.

Professionalism

At Johnson Fistel, we believe professionalism—through trust, transparency, and reliability—is critical to developing long-lasting and successful relationships. Not only must our clients trust us to provide excellent legal services in a professional manner, but we must also trust each other to always do the right thing and to zealously advance our clients' interests. Moreover, we share a collective mission to act professional and build trust with judges, juries, and our adversaries so that our professional reputation remains synonymous with our core values.

Respect

We strive to demonstrate high regard for our clients, one another, partners within the legal community, and our ethical obligations as advocates. We value the ideas and beliefs of each of our team members. This principle includes valuing differing opinions and allowing others to express themselves to work together toward common goals.

Integrity

There's never a wrong time to do the right thing. At Johnson Fistel, we consistently do the right thing, in the right way, for the right reasons. We take pride in our reputation for having integrity when zealously advocating for our clients. By always acting with integrity, we build trust and confidence with our clients, colleagues, and juries, and respect with judges and adversaries.

Determination

Determination is key to our success. At Johnson Fistel, we do not give up when faced with well-financed opponents or difficult arguments; instead, we rise to the challenge and meet it head on by relentlessly pursuing innovative and persuasive solutions to advance the best interests of our clients. It is our determination—our will to succeed and never give up—that separates us from most lawyers. To succeed, we know that we must exercise the strength of mind and the willingness to exceed client and industry expectations and provide exceptional advocacy, every time.

Excellence

Simply put, we hold ourselves to a higher standard. Average is easy. Excellence is hard. Perfection is always the goal. Whether it's writing persuasive legal arguments, maintaining a strong and prompt communication line with our clients, or vigorously advocating in a courtroom on their behalf, we wholly reject mediocrity and strive for a competitive edge by delivering excellence in everything we do.

We believe we are only as good as our people, and Johnson Fistel recruits only the best and brightest and most determined candidates possible. Our lawyers include those who started their training by working for esteemed judges in both state and federal courts and have also worked at the largest law firms in the world. We pride ourselves on providing the same level of service with a greater level of efficiency. As a result, we have developed the reputation for delivering big-firm results with the efficiency and personal touch one would expect at a small law firm.

OUR ATTORNEYS

PARTNERS

FRANK J. JOHNSON

Mr. Johnson is one of the founding partners of Johnson Fistel and has nearly thirty years of experience as a trial attorney focusing on complex civil litigation. Prior to starting his own law firm in 2004, Mr. Johnson was a partner in the law firm Sheppard, Mullin, Richter & Hampton, LLP, a full-service Global 100 law firm with over 1,000 attorneys in 15 offices located around the world.

While at Sheppard Mullin, Mr. Johnson represented some of the largest companies in the country in complex business disputes conducting trials in state and federal court. He brings this "Big Law" experience to his current practice where he can offer the efficiency and personal touch of a smaller law firm. With the trust and confidence of his colleagues and clients over the past 20 years, the law firm that Mr. Johnson started with just one lawyer has now grown to a full-service law firm with 17 lawyers and offices in California, Georgia, New York, and Colorado.

Mr. Johnson is also the Founder and Chief Executive Officer of Esq. Wealth Management, Inc., a wealth management firm that, in conjunction with its affiliated professionals and alliances, is made up of experienced lawyers and financial professionals with advanced degrees, certifications, and first-hand life-experience in taxation, asset protection, and high-net-worth wealth management. For more information, please visit https://www.esqwealth.com/.

Representative Matters: Mr. Johnson's experience representing publicly traded companies at Sheppard Mullin has carried over to his current practice. Mr. Johnson has been and continues to be retained by private and publicly-traded companies. For example, the court appointed U.S. Chapter 7 Trustee overseeing the bankruptcy of Powerwave Technologies, Inc. retained Mr. Johnson as lead counsel to pursue claims for breach of fiduciary duty against the company's wayward officers and directors. Mr. Johnson helped the Trustee recover $5.5 million for the estate. *In re Powerwave*

Technologies, Inc., (Bankr. D. Del.). Mr. Johnson obtained a similar result in *In re Artes Medical, Inc.*, (Bankr. S.D. Cal.) when the U.S. Chapter 7 Trustee of Artes Medical, Inc. retained Mr. Johnson as lead counsel. Mr. Johnson helped the estate recover a multi-million-dollar settlement. When deciding whether to approve the settlement, the Honorable Laura S. Taylor stated "[t]here's no question in my mind that this settlement is in the best interest of this Estate . . . I want to compliment Mr. Johnson, and I want to compliment on the successful recovery for the Estate. The creditors thank you, and I thank you." *See also International Real Estate PLC v. Oaktree Capital Management, LLC*, (Cal. Super. Ct. Los Angeles Cnty.) (a public company with shares listed on the London Stock Exchange retained Mr. Johnson as lead counsel to pursue claims for breach of fiduciary duty against former directors of a joint venture company for damages in excess approximately $20 million; the case ultimately settled on favorable terms to International Real Estate) (*See* testimonial from the firm's client under Testimonials).

Mr. Johnson has also continued to represent individual clients and small companies through jury verdicts in complex civil litigation. By way of example, in *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.* (Cal. Super. Ct. San Diego Cnty.), Mr. Johnson helped his client recover a seven-figure verdict following a week-long jury trial. *See* testimonial from the firm's client below. Similarly, in *DCI Solutions v. Urban Outfitters* (S.D. Cal.), Mr. Johnson served as lead trial counsel for a small local consulting firm in a case against one of the nation's largest clothing retailers in a matter that would have forced the company into bankruptcy if it lost. Following a week-long trial in federal court, the jury returned a verdict rejecting the retailer's $1.5 million damage claim in its entirety.

In addition to his complex civil litigation practice, Mr. Johnson has served as lead or co-lead counsel in scores of representative matters (class actions and derivative actions) throughout the country, including: *In re Motorola, Inc. Derivative Litigation*, (Ill. Cir. Ct. Cook Cnty.) (derivative action settled after six years of litigation on terms that required the implementation of comprehensive corporate therapeutic changes valued by one expert at over $1 billion); *In re the Titan Corp. Derivative Litigation*, (Cal. Super. Ct. San Diego Cnty.) (derivative action resulting in $29 million in increased consideration to Titan's shareholders in the all-cash merger acquisition); *Bagot v. Bracken, et al.*, (Tenn. Cir. Ct., 6th Cir.) (derivative action resulting in a payment of $19 million to the company, believed to be among the largest recoveries in a derivative case in the State of Tennessee, and implementation of significant corporate therapeutics); *Englehart v. Brown*, *et al.* (Wash. Super. Ct. King Cnty.) (shareholder class action resulting in what is believed to be the largest recovery ever obtained in a class action challenging the price of a merger or acquisition of a public company in a Washington court, $12.75 million additional consideration for class members); and *Baker v. Visa International Corp.*, (Cal. Super. Ct. San Diego Cnty.) (consumer class action against Visa for wrongfully assessing undisclosed fees by manipulating the currency conversion rates when consumers used their Visa Card for purchases in other countries and ultimately coordinated with *In re Currency Conversion Fee Antitrust Litigation* which resulted $336 million for the class members).

Areas of Practice: Mr. Johnson's practice focuses on complex civil litigation. Mr. Johnson has extensive experience in all aspects of trial practice, mediation, trial preparation, and non-jury and jury trials in state and federal court. In addition to his general trial practice, Mr. Johnson has both prosecuted and defended a number of cases involving securities fraud in class actions and derivative cases.

Professional Qualifications and Activities: Mr. Johnson was admitted to the State Bar of California in 1994. He is currently admitted in good standing with the following courts:

- The Supreme Court of the United States of America
- All courts in the State of California
- The United States Courts of Appeals for the Third and Ninth Circuits
- The United States District Courts for the Southern, Central, Eastern, and Northern Districts of California
- The United States Court of Federal Claims
- The United States District Court for the Northern District of Illinois
- The United States District Court for the District of Colorado

Mr. Johnson is currently, or has been previously, a member of the following professional organizations:

- Association of Business Trial Lawyers, Member of the Board of Governors (2018-present)
- The San Diego County Bar Association (1996-present)
- The Federal Bar Association
- The Litigation Section of the State Bar of California
- SD Regional Chamber of Commerce, Vice Chair Tech Comm. (2002-05,)

Mr. Johnson completed the following trial advocacy programs:

- San Diego County District Attorney one-month misdemeanor jury trial program
- Louis M. Welsh American Inn of Court, one-year program
- San Diego Inn of Court College of Advocacy, multi-week trial course
- San Diego Inn of Court College of Advocacy, multi-week evidence course

Following graduation from law school in 1994, Mr. Johnson served as a judicial law clerk for one year for the Honorable John S. Rhoades, a federal trial judge in the U.S. District Court for the Southern District of California.

Awards and Peer Recognition:

- *Martindale-Hubbell*: Martindale-Hubbell Peer Review Ratings, the gold standard in attorney ratings, has recognized lawyers for their strong legal ability and high ethical standards for more than a century. Mr. Johnson has received an AV rating for more than 20 consecutive years, awarded to only those lawyers with the highest ethical standards and professional ability, as established by confidential opinions from members of the Bar.

- *Super Lawyers*: Mr. Johnson has been recognized as a Super Lawyer in Business and Securities Litigation for the past 5 consecutive years. Thomson Reuters awards this recognition to the top 5% of attorneys who have obtained a high-level of professional achievement and are highly regarded by their peers.

- *San Diego Magazine Top Lawyers*: In its March 2022 edition, San Diego Magazine included Mr. Johnson as one of the 2022 Top Lawyers in business litigation in San Diego. This year is the ninth consecutive year that the publication recognized Mr. Johnson as a Top Lawyer.

- *America's Most Honored Lawyers Top 1%*: In 2024, The American Registry again honored Frank J. Johnson with this award. Each year, The American Registry certifies qualifying public recognitions of excellence including significant mentions in the press, honors by recognized trade groups, and acclaimed recognitions by peers or clients. It reserves this award for only the Top 1% of American Lawyers.

Education: Mr. Johnson completed Yale School of Management's Certified Private Wealth Advisor® (CPWA®) curriculum and obtained the CPWA® certification administered by Investments & Wealth Institute® in 2021. The program includes a series of advanced financial advisor courses presented by leading Yale faculty and industry experts covering the most advanced knowledge and techniques to address the sophisticated needs of high-net-worth clients with a minimum net worth of $5 million. Mr. Johnson received his Juris Doctor degree from Washington University School of Law in 1994, where he was in the top 10% of his class while in attendance. At both Washington University School of Law and the University of San Diego School of Law (where Mr. Johnson was a visiting student in his third year), Mr. Johnson won first place awards in each school's Moot Court Competition. He received his Bachelor of Science degree in Business Administration with an emphasis in Finance from San Diego State University in 1990, where he graduated second in his class major, with honors and *summa cum laude*.

Community and Volunteer Activities: Mr. Johnson serves on the Board of Governors for the San Diego Chapter of the Association of Business Trial Lawyers. For the past several years, Mr. Johnson has spearheaded his firm's efforts to be the leading fund raiser for Feeding San Diego's annual challenge to help fight summer hunger throughout San Diego County. Mr. Johnson also donated time with several members of the firm to organize food for distribution to the needy. Also, for several years, Mr. Johnson served as a volunteer at Voices for Children, where he acted as a CASA (Court Appointed Special Advocate) meeting several times each month with a foster child and attending court hearings to advocate for the child's best interests.

MICHAEL I. FISTEL, JR.

Mr. Fistel is one of the founding partners of Johnson Fistel and manages the firm's Georgia office. For more than two decades, Mr. Fistel has dedicated his practice to protecting investor and consumer rights in complex class action and derivative litigation nationwide. In so doing, Mr. Fistel has been instrumental in obtaining millions of dollars for aggrieved shareholders, consumers, and businesses in class action litigation. Through his derivative practice, Mr. Fistel has secured significant cash recoveries and caused sweeping corporate governance reforms on behalf of numerous publicly traded companies, including at Southern Company, Twitter (n/k/a X), FirstEnergy Corp., and CoreCivic, Inc.

Representative Matters: Mr. Fistel's success in protecting investor rights in shareholder class action and derivative litigation is exemplified in *Gendrich v. Anderson et al.*, Civil Action No. CV-2020-07-2107 (Ct. of Common Pleas, Summit Cnty., Ohio) ("FirstEnergy, Inc. Derivative Litig."), where Johnson Fistel, serving as co-lead counsel and Mr. Fistel serving as primary negotiator on behalf of the state court plaintiffs, helped to secure a historic settlement for the benefit of FirstEnergy, a company whose fiduciaries led the Company into a political maelstrom described by the United States Attorney for the Southern District of Ohio as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio." The settlement included a cash payment to the Company of $180 million (less court-approved attorneys' fees) and substantial corporate reforms, including the agreement that six of the company's then-directors who were on the board a minimum of five years would not stand for re-election, as well as additional reforms relating to the Company's political spending and lobbying. In addition, in *In re: Twitter, Inc. Shareholder Derivative Litigation (n/k/a X),* C.A. No. 18-062 (D. Del.), Johnson Fistel serving as co-lead counsel and Mr. Fistel serving as one of the chief negotiators, secured a $38 million payment to Twitter and successfully negotiated robust corporate reforms tailored to address alleged disclosure deficiencies concerning the company's user growth and user engagement prospects. Similarly, in *Alex v. McCullough, et al.*, No. 1:12-cv-08834 (N.D. Ill.), Mr. Fistel helped to secure a $20 million recovery and sweeping management and board-level corporate governance reforms for Career Education Corporation. And finally, in *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.), following more than five years of litigation, Mr. Fistel, as one of the chief negotiators, secured reforms valued by one expert as having the potential to contribute hundreds of millions of dollars in value to the Company. In approving the settlement, U.S. District Judge Mark H. Cohen praised Johnson Fistel for its diligence and efforts in the case and described the settlement as "the product of hard-fought, arm's-length negotiations by prepared, skilled, and experienced counsel" who are "nationally recognized leaders in shareholder litigation."

Mr. Fistel has had similar success in the securities class action arena. Specifically, in *Benson v. D-Market Elektronik Hizmetler ve Ticaret Anonim Sirketi et al.*, Index No. 655701/2021 (N.Y. Sup. Ct. New York Cnty.), a securities class action lawsuit where Johnson Fistel served as co-lead counsel, Mr. Fistel helped to secure a $13.9 million class-wide settlement. Similarly, in *Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC (D. Mass.), with Johnson Fistel serving as co-lead counsel, Mr. Fistel helped to secure an $18.75 million class-wide settlement on behalf of injured investors. Yet another example of where Mr. Fistel played an instrumental role in recovering money for a class of aggrieved shareholders is *In Re Flowers Foods, Inc. Securities Litigation*, No. 7:16-CV-00222-WLS (M.D. Ga.), where he helped secure a $21 million class settlement.

Areas of Practice: Mr. Fistel devotes his practice to representing individuals, institutions, and businesses in shareholder and other complex litigation. Specifically, a substantial portion of Mr. Fistel's practice is focused on representing shareholders in securities fraud class action litigation and shareholder derivative litigation. In addition to shareholder litigation, Mr. Fistel also represents aggrieved consumers and businesses in other complex litigation arising out of financial and consumer fraud.

Professional Qualifications: Mr. Fistel was admitted to the State Bar of Georgia in 2001, and is currently admitted in good standing with the following courts:

- All courts in the State of Georgia
- The Supreme Court of the United States of America
- The United States Courts of Appeals for the First, Second, Third, Fourth, Tenth, and Eleventh Circuits
- The United States District Courts for the Northern and Middle Districts of Georgia
- The United States District Court for the District of Colorado
- The United States District Court for the Northern District of Illinois
- The United States District Court for the District of Maryland

Mr. Fistel has also been invited to speak at the Georgia State University School of Law in the area of corporate governance and shareholder rights and has served as an invited panelist for the Securities and Corporate Litigation Sub-Section of the Atlanta Bar Association.

Awards and Peer Recognition: In 2011, 2013, 2014, 2015, and 2016, Mr. Fistel was recognized as a Georgia Super Lawyer—Rising Star by Atlanta Magazine, an honor bestowed on just 2.5% of the attorneys in the State of Georgia. Additionally, since 2017, Mr. Fistel has received an AV rating with Martindale-Hubbell, which indicates very high to preeminent legal ability and very high ethical standards as established by confidential opinions from members of the Bar.

Education: Mr. Fistel attended New England Law in Boston, Massachusetts, earning his Juris Doctor degree in 2001. While at New England Law, Mr. Fistel was repeatedly named to the Dean's List and received the CALI Award for Excellence in Trial Practice and Sports Law. Prior to attending New England Law, Mr. Fistel attended Florida State University as a Florida Undergraduate Scholar, and graduated with a Bachelor of Arts degree in English.

Community and Volunteer Activities: Mr. Fistel is an active member of his local Hickory Flat, Georgia community, having served as an Executive Board Member and as Secretary of the Board of Directors of East Cherokee Baseball, a total volunteer youth sports organization where approximately 500 boys and girls ages 3-17 are provided a safe, fun, and educational baseball experience. Mr. Fistel and his family are members of St. Peter Chanel Catholic Church in Roswell, Georgia.

BRETT M. MIDDLETON

Brett M. Middleton is a partner in Johnson Fistel's San Diego office. He has over two decades of experience representing institutional and individual investors in stockholder corporate governance derivative litigation, merger-related class action litigation, and securities fraud class action litigation. Working with the firm's stockholder clients, he strives to hold management of publicly traded companies accountable by achieving significant financial recoveries and meaningful corporate governance reforms.

Representative Matters: Mr. Middleton currently serves as the partner in charge of the following stockholder derivative actions in the Delaware Court of Chancery where Johnson Fistel was recently appointed as Lead Counsel: *In re Nikola Corp. Derivative Litigation* (C.A. No. 2022-0023-KSJM); *In re FibroGen, Inc. Derivative Litigation* (C.A. No. 2022-0331-SG); *In re QuantumScape Corp. Stockholder Derivative Litigation* (C.A. No. 2022-0490-JTL); *In re Array Technologies Inc. Derivative Litigation* (C.A. No. 2022-0683-LWW); *and In re LoanDepot, Inc. Derivative Litigation* (C.A. No. 2023-0613-MTZ). He is also currently serving as the partner in charge in *In re Exxon Mobil Corp. Derivative Litigation* in the U.S. District Court for the Northern District of Texas, Dallas Division (Lead Case No. 3:19-cv-01067-K), where Johnson Fistel was appointed Lead Counsel.

Mr. Middleton was also a senior member of the teams responsible for the prosecution of a wide variety of high-profile securities class action cases that have achieved substantial recoveries for investors. Notable cases include: *Lehman Brothers Equity/Debt Securities Litigation* (S.D.N.Y.) (recovered $615 million for investors from multiple defendants, which is considered one of the largest total recoveries for stockholders in any case arising from the financial crisis), *Williams Securities Litigation* (N.D. Okla.) ($311 million combined settlement for alleged accounting fraud, which was the largest settlement at the time without a company restatement), *Lehman Brothers/Ernst & Young Securities Fraud Class Action* (S.D.N.Y.) (resulted in the $99 million settlement with Lehman's former auditor, Ernst & Young, arising from the financial crisis, which at the time was one of the 10 highest public auditor settlements ever achieved), *Lumber Liquidators Securities Litigation* (E.D. Va.) (obtained over $40 million for class members arising from alleged scheme to inflate margins by importing cheap and illegal flooring products as exposed by the CBS news show *60 Minutes*), *Accredo Health Securities Litigation* (W.D. Tenn.) ($33 million for investors arising from accounting fraud claims), *Accredited Home Lenders Securities Litigation* (S.D. Cal.) ($22 million recovered for investors for fraud claims relating to mortgage lending practices), *FTSI Securities Litigation (Glock v. FTS International, Inc.)* (S.D. Tex.) ($10 million recovered for investors for alleged violations of Sections 11 and 15 of the Securities Act of 1933), and *Clarent Corp. Securities Litigation* (N.D. Cal.) (after a four-week jury trial, obtained rare jury verdict in favor of plaintiffs and against the company's former CEO for knowingly making false and misleading statements in violations of federal securities laws).

He also has extensive experience representing stockholders in derivative litigation where he recovered money for the company and/or helped to improve corporate governance practices and enforce the fiduciary obligations of corporate boards and officers. Among others, he successfully prosecuted and settled stockholder derivative actions on behalf of Activision Blizzard, Inc., (ATVI), Applied Opto Electronics, Inc. (AAOI), Apollo Education Group, Inc. (APOL), CV Sciences, Inc. (CVSI), Geron Corp. (GERN), News Corp. (NWSA), Resideo Technologies, Inc. (REZI), The Ryland Group, Inc. (RYL), Workhorse Group, Inc. (WKHS), and Zuora, Inc. (ZUO).

Moreover, Mr. Middleton has contributed significantly to successful mergers and acquisitions ("M&A") transactional litigation efforts to challenge the improper use of defensive measures and deal protections for management's benefit, including M&A transactional litigation actions involving Alberto-Culver and Unilever, Caremark and CVS, Emulex and Broadcom, Long Drugs and CVS, Medco and Express Scripts, Ticketmaster and Live Nation, and Yahoo! and Microsoft. More recently, he has served as Additional Counsel in important post-closing damages class actions, which recovered significant amounts for stockholders as a result of mergers allegedly closing at an unfair price and pursuant to an inadequate process, including: *Morrison v. Berry*, *et al.,* (Del. Ch.) ($27.5 million recovered for The Fresh Market stockholders), *Baum v. Harman Int'l Industries, Inc*. (D. Conn.) ($28 million recovered for Harman Int'l stockholders), and *Goldstein v. Denner, et al.,* (Del. Ch.) ($84 million recovered for Bioverativ, Inc. stockholders).

Before joining Johnson Fistel, Mr. Middleton served as an Associate and Senior Counsel with Bernstein Litowitz Berger & Grossmann LLP for 15 years, where he was instrumental in the prosecution of securities fraud class actions, stockholder derivative litigation, and M&A transactional actions.

Recognition: For his professional achievements, Mr. Middleton has received multiple industry and national recognitions, including "San Diego Super Lawyer" by Super Lawyers, "Best of the Bar" by the San Diego Business Journal, and "Recommended Lawyer in M&A Related Shareholder Litigation" by Legal 500 USA Guide.

Professional Qualifications and Associations: Mr. Middleton was admitted to the State Bar of California on December 8, 1998, and is admitted in good standing with all courts in the State of California. He is also admitted in good standing with the U.S. District Courts for the Central, Northern, and Southern Districts of California.

Mr. Middleton is a member of the following professional associations:

- Association of Business Trial Lawyers
- California Lawyers Association, Litigation and Business Law
- UCLA Alumni Association, San Diego Network
- University of San Diego School of Law Alumni Association

Education: On June 18, 1993, Mr. Middleton graduated from the University of California, Los Angeles (UCLA) where he majored in History with an emphasis in Business Administration. He earned his Juris Doctor degree from the University of San Diego School of Law on May 23, 1998.

MARY ELLEN CONNER

Ms. Conner is a partner in the Georgia office of Johnson Fistel with extensive experience in shareholder, complex commercial, and class action litigation and appeals. As part of her shareholder litigation practice, Ms. Conner has recovered significant cash payments and negotiated comprehensive corporate governance reforms on behalf of numerous *Fortune 500* companies, including FirstEnergy, Inc. and Twitter. Ms. Conner has also successfully represented investor and consumer classes throughout litigation and appeals in federal and state courts nationwide.

Prior to joining Johnson Fistel, Ms. Conner practiced law at JONES DAY, a full-service law firm with more than 2,500 lawyers and 43 offices around the world, representing companies in complex commercial and securities litigation and defending corporate officers and directors against allegations of breach of fiduciary duty and insider trading. Ms. Conner also previously represented numerous businesses, healthcare providers, and individuals in connection with government investigations and litigation brought by the Department of Justice and Office of Inspector General for alleged violations of the False Claims Act, federal securities and commodities fraud statutes, and insider trading prohibitions. In addition to her prior practice experience, Ms. Conner also previously served on the faculty of Atlanta's John Marshall Law School teaching Civil Procedure I and II; Legal Research, Writing, and Analysis I; and Legal Communications and Process.

Representative Matters: Ms. Conner's experience in shareholder litigation is exemplified by her active role in *Gendrich v. Anderson et al.*, Civil Action No. CV-2020-07-2107 (Ct. of Common Pleas, Summit Cnty., Ohio) ("FirstEnergy, Inc. Derivative Litig."), where Johnson Fistel, serving as co-lead counsel on behalf of the state court plaintiffs, helped to secure a historic settlement for the benefit of FirstEnergy, a company whose fiduciaries caused the Company to engage in the largest bribery and money laundering scheme in Ohio. The settlement included a cash payment to the Company of $180 million (less court-approved attorneys' fees) and substantial corporate reforms, including the agreement that six of the company's then-directors who were on the board a minimum of five years would not stand for re-election, as well as additional reforms relating to the Company's political spending and lobbying.

Ms. Conner was also instrumental in *In re: Twitter, Inc. Shareholder Derivative Litigation (n/k/a/ X),* C.A. No. 18-062 (D. Del.), where she assisted in the recoupment of $38 million and the negotiation of robust corporate governance reforms for Twitter arising out of certain Twitter directors' and officers' alleged breaches of fiduciary duties by issuing materially false and misleading statements about Twitter's user growth and user engagement metrics. In addition, Ms. Conner was a key player in *Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC (D. Mass.), securing an $18.75 million settlement on behalf of a proposed class of investors alleging the biopharmaceutical company Chiasma, Inc. misled investors in its 2015 initial public offering about the prospects for regulatory approval of the company's drug candidate, Mycapssa, in violation of §§ 11 and 15 of the Securities Act of 1933.

Ms. Conner's fiduciary duty litigation experience is further highlighted by her work in negotiating a favorable settlement for her client in the *In re International Textile Group Merger Litigation*, brought by Safety Components International ("SCI") minority shareholders against WL Ross & Co., certain current and former officers and directors of International Textile Group ("ITG"), and others, arising out of the merger of ITG and SCI in which minority shareholders alleged breach of fiduciary duties by controlling shareholders.

Areas of Practice: Ms. Conner concentrates her practice on securities and shareholder litigation and complex commercial disputes, representing businesses and individuals who have been wronged by corporate fraud, including in direct and derivative actions.

Professional Qualifications: Ms. Conner was admitted to the State Bar of Georgia in 2011 and is admitted to practice and in good standing with the following courts:

- All courts in the State of Georgia
- The United States District Court for the Northern District of Georgia
- The United States Court of Appeals for the Eleventh Circuit

Education and Awards: Ms. Conner graduated from the University of North Carolina at Chapel Hill as a Public Service Scholar with Bachelor of Arts degrees in English and Psychology. She received her Juris Doctor degree from the University of North Carolina School of Law with Honors in 2011, where she served on the editorial board for The North Carolina Law Review and received the Gressman-Pollitt Award for Excellence in Oral Advocacy from the Holderness Moot Court. While in law school, Ms. Conner also served as a summer clerk to The Honorable Judge Robert J. Conrad, Jr., Chief Judge for the Western District of North Carolina.

Awards and Peer Recognition: For her professional achievements, Ms. Conner has received multiple industry and national recognitions, including 2022 and 2023 Georgia Rising Star status by *Super Lawyers*, as well as the Martindale-Hubbell AV Preeminent peer rating—the highest possible rating in both legal ability and ethical standards based upon peer reviews—for consecutive years spanning 2019 through 2024. Ms. Conner was also recognized as a member of the General Litigation Department of the Year, awarded by *The Daily Report*, for the years 2013 and 2014. She also received the Safe Haven Award for Excellence in Pro Bono Representation in 2012.

Publications and Speaking Engagements:

"The 'Advice-of-Counsel' Defense: Cautionary Tales for Counsel in False Claims Act Cases," American Health Lawyers Association.

"Buyers Beware: The Drug Supply Chain Security Act and the False Claims Act," American Health Lawyers Association Fraud & Abuse, April 2017.

Speaker, "Responding to Governmental Civil Investigative Demands and Government Subpoenas," Clear Law Institute, February 21, 2017.

Community and Volunteer Activities: Ms. Conner remains active in legal education. She has served as an instructor at Emory University's School of Law Keissler Eidson Trial Techniques Program and volunteers as an instructor for Empire Mock Trial.

KRISTEN O'CONNOR

Ms. O'Connor is a partner in the San Diego office of Johnson Fistel. Prior to joining the firm, she served as Managing Counsel at a life sciences contract research organization (CRO), where she negotiated clinical trial agreements with preeminent research institutions and provided market clearance submission development and support for global medtech and pharmaceutical industry clients.

Representative Matters: Among prominent representations, Ms. O'Connor played an active role in *Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC (D. Mass.), securing an $18.75 million settlement on behalf of a proposed class of investors alleging the biopharmaceutical company, Chiasma, Inc., misled investors in its 2015 initial public offering about the prospects for regulatory approval of the company's drug candidate, Mycapssa, in violation of §§ 11 and 15 of the Securities Act of 1933. She also acted as the lead attorney in procuring an $875,000 settlement against a grocery chain owned by a global investment firm on behalf of six plaintiff workers alleging sexual harassment and related claims.

Areas of Practice: Ms. O'Connor has spent her litigation career representing individuals in shareholder and complex litigation, as well as a diverse clientele in federal and state employment civil rights actions for harassment and discrimination. Ms. O'Connor is an experienced first-chair trial attorney and is deeply committed to serving as a principled and aggressive advocate for workers' rights. Ms. O'Connor has handled high-stakes civil matters at all stages, from prelitigation investigations and discovery through trial.

Professional Qualifications and Activities: Ms. O'Connor was admitted to the State Bar of California in 2015, and is currently admitted in good standing with the following courts:

- All courts in the State of California
- The United States District Courts for the Northern, Southern, and Central Districts of California

Ms. O'Connor is also a member of the following professional organizations:

- North County Bar Association
- Lawyers Club of San Diego

Awards and Peer Recognition: Ms. O'Connor was named by Thomson Reuters' Super Lawyers as a leading San Diego, California lawyer in 2020, 2021, 2022, and 2023. For each of those years, she was also selected by the organization as a Rising Star, a designation awarded to no more than 2.5% of attorneys in each state.

Publications and Speaking Engagements:

Speaker, "Elimination of Bias," The Association of Business Trial Lawyers, February 2017

Mock Trial Presenter, Mini-Annual Seminar on Trial Presentation, The Association of Business Trial Lawyers, January 2019

Going Solo: Harmonizing Judicial Treatment of the Work-for-Hire Preclusion to Music Copyright Termination (2014) 36 T. Jefferson L. Rev. 373

Developments in Political Spending Disclosures, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), Sept. 2017, at 1

Equifax Executives Made $1.77 Million from Stock Sales While Your Data Was Stolen, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), Dec. 2017, at 1

AT&T-Time Warner: Will This Open the Merger Floodgates? THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), September 2018, at 3

No-Rehire Provisions Given the Pink Slip in California, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), March 2020, at 1

Assembly Bill 9: Sexual Harassment and Discrimination Litigation in California, THE MONITOR (Johnson Fistel, LLP, San Diego, Cal.), Nov. 2020, at 1

Same-Sex Harassment Under Title VII: Broadly Actionable Under Developing Jurisprudence, THE ABTL REPORT (The Association of Business Trial Lawyers), October 2021, at 12

Education: Ms. O'Connor holds an LL.M. degree in Securities and Financial Regulation from Georgetown University Law Center. Ms. O'Connor received her Juris Doctor degree from the Thomas Jefferson School of Law, where she graduated *summa cum laude* and third in her class, received the CALI Award for Excellence in Legal Writing I, Legal Writing II, Civil Practice, Contracts I, Property II, Entertainment Law Transactions, and Wills and Trusts, and received the Jefferson Medal for Mediation and Negotiation. During law school, Ms. O'Connor had the distinct honor of serving as both a faculty teaching and research assistant. She also served as an editor for the Thomas Jefferson Law Review, where her work in intellectual property was published.

Ms. O'Connor received a Bachelor of Arts degree from California Lutheran University, where she received academic scholarships. During her senior year, she studied Eastern European history and the Czech language as a visiting student at Charles University in Prague, Czech Republic.

Community and Volunteer Activities: Ms. O'Connor is a proud Partner in Hope at St. Jude Children's Research Hospital, part of a special group of monthly donors committed to saving children with cancer and other life-threatening diseases.

ASSOCIATES

STEPHEN DOLAR

Mr. Dolar is an associate attorney in the San Diego office of Johnson Fistel. He has experience in all phases of litigation, from discovery through trial, in a broad array of disputes, including mass tort cases and representative actions. Prior to joining Johnson Fistel, Mr. Dolar secured over $7.4 million on behalf of his clients in cumulative settlements, including over $6.1 million in his first year of practice.

Areas of Practice: Mr. Dolar's practice focuses on complex litigation including shareholder derivative suits, securities class actions, consumer class actions, and employment civil rights actions for harassment and discrimination. In his short time as a licensed attorney, Mr. Dolar has already been through a jury trial, from voir dire to verdict, and taken numerous depositions.

Professional Qualifications: Mr. Dolar was admitted to the State Bar of California in 2021. He is currently admitted in good standing with all courts in the State of California. Mr. Dolar is currently, or has been previously, a member of the following professional organizations:

- Enright Inn of Court
- Consumer Attorneys of San Diego
- San Diego County Bar Association
- Association of Business Trial Lawyers
- Tom Homann LGBT Law Association
- Filipino American Lawyers of San Diego
- Pan Asian American Lawyers of San Diego
- National Asian Pacific American Bar Association

Experience: After law school, Mr. Dolar sharpened his trial skills by completing a 4-week trial advocacy program with the San Diego Inn of Court. In 2020, while in law school, Mr. Dolar served as a judicial extern for the Honorable Joel R. Wohlfeil, a trial judge in the San Diego Superior Court. This invaluable experience allowed him to work directly with one of the most active superior court judges in California. Judge Wohlfeil provided Mr. Dolar direct feedback on his legal research, helped improve his persuasive legal writing skills, and gave him guidance on trials and advocacy. Mr. Dolar's experience observing trials and oral argument in Judge Wohlfeil's courtroom provides him with significant insight in preparing the strongest possible case for his clients.

Education and Awards: Mr. Dolar received his Bachelor of Science degree in economics, summa cum laude, from California Polytechnic State University in 2018. He attended law school at the University of San Diego School of Law and earned his Juris Doctor degree in 2021.

ENOCH P. HICKS

Mr. Hicks serves as an associate attorney based in the Marietta office of Johnson Fistel. Specializing in complex commercial litigation, his primary focus lies in handling securities class actions and shareholder derivative actions, showcasing a dedication to resolving intricate legal issues.

Beyond his litigation practice, Mr. Hicks is a trusted resource for outside counsel services. He offers valuable guidance on issues including corporate governance matters, dispute resolution, and administrative panel proceedings, contributing to the holistic support he provides to clients.

Before joining Johnson Fistel, Mr. Hicks held the role of an Assistant Attorney General for the State of Georgia, where he consistently delivered the highest quality legal representation to state government agencies, officers, and employees.

Representative Matters: Mr. Hicks has been intricately involved in numerous high-stakes actions, securing favorable outcomes for clients across the nation.

Notably, he played a pivotal role in reaching a settlement exceeding $150 million on behalf of one of the nation's largest investor-owned electric utility companies. He also aided in crafting substantial corporate governance reforms to safeguard shareholder value for one of the country's leading microcontroller manufacturers.

Furthermore, Mr. Hicks has a demonstrated ability to provide pragmatic solutions as outside counsel, while also being ready to litigate matters to conclusion. For example, Mr. Hicks led the defense of an executive officer who was facing a barrage of ethics complaints, culminating in the unanimous dismissal of all the complaints by an ethics panel.

Before joining Johnson Fistel, in his role as an Assistant Attorney General for the State of Georgia, Mr. Hicks served as lead counsel for numerous state government agencies, officers, and employees, effectively safeguarding millions of dollars in government funds.

In every client engagement, Mr. Hicks leverages his comprehensive trial preparation and presentation skills. His expertise spans a broad spectrum, including the means to implement an effective factual investigation, the skillful drafting of pleadings and substantive motions, and both bench and jury trials.

Areas of Practice: Mr. Hicks centers his practice on complex commercial litigation, specializing in securities class actions and shareholder derivative actions. Beyond this, Mr. Hicks also offers outside counsel services, covering corporate governance matters, dispute resolution, and administrative panel proceedings.

Professional Qualifications: Mr. Hicks is a member in good standing with the State Bar of Georgia and is admitted to practice in the following courts:

- The United States District Courts for the Northern, Middle, and Southern Districts of Georgia
- The Georgia Supreme Court
- The Georgia Court of Appeals
- All State and Superior Courts of Georgia

Education and Awards: Mr. Hicks earned his Juris Doctor degree from the University of South Carolina School of Law. During law school, Mr. Hicks was a competing member of the Mock Trial Bar where he achieved a first-place victory at the Carolinas Competition. Mr. Hicks also developed a passion for giving back by serving as a Student Board Member of the Pro Bono Program and providing his time to causes such as the My Wills program, the Ask-a-Lawyer program, and acting as the eFile Administrator for the Volunteer Income Tax Assistance program.

Additionally, Mr. Hicks is a graduate of the University of Georgia Terry College of Business where he earned a Bachelor of Business Administration degree in Risk Management and Insurance.

In recognition of his professional achievements, Ms. Hicks was named by Thomson Reuters' Super Lawyers as a 2023 Rising Star, a designation awarded to no more than 2.5% of attorneys in each state.

ANTHONY E. MANCE

Mr. Mance is an associate in the Atlanta office of Johnson Fistel. Mr. Mance has been an attorney for 14 years. He has over a decade of experience working on complex discovery and trial preparation matters on multiple high-profile shareholder derivative and securities class action cases.

Areas of Practice: Mr. Mance focuses his practice on shareholder derivative suits and securities class actions.

Professional Qualifications: Mr. Mance was admitted to the State Bar of California in 2009. He is currently admitted in good standing to practice in the following courts:

- All courts in the State of California

Education and Awards: In 2009, Mr. Mance received his Juris Doctor degree from California Western School of Law. While attending California Western, Mr. Mance was repeatedly named to the Dean's List and received two American Jurisprudence Awards in Professional Responsibility and Wrongful Conviction Seminar. Mr. Mance also served as a law and philosophy research assistant, was a member of the International Law Society, and completed professional training in cross-cultural alternative dispute resolution.

Prior to completing his legal studies, Mr. Mance attended Purdue University where he earned a Bachelor of Arts degree in Political Science with dual minors in English and History.

JONATHAN M. SCOTT

Mr. Scott is an associate in the San Diego office of Johnson Fistel. During law school, Mr. Scott took an interest in business and securities law, interning at the California Department of Business Oversight, Enforcement Division and one of the largest plaintiff's firms in the United States specializing in securities litigation. Prior to attending law school, Mr. Scott worked for a large financial institution in Montana where he was in charge of analyzing and restructuring troubled assets in the wake of the 2008 economic recession.

Areas of Practice: Mr. Scott focuses his practice on complex commercial and business litigation, securities class actions, and shareholder derivative suits.

Professional Qualifications: Mr. Scott was admitted to the State Bar of California in 2018. He is currently admitted and in good standing to practice in the following courts:

- All courts in the State of California
- The United States District Court for the Southern District of California

Mr. Scott is also a member of the following professional organizations:

- American Bar Association
- Gonzaga Alumni Association, San Diego Network
- University of Montana Alumni Association, San Diego Network

Education and Awards: In 2018, Mr. Scott received his Juris Doctor degree from California Western School of Law, where he graduated cum laude and was awarded an honors distinction in business law. Mr. Scott earned three American Jurisprudence awards for receiving the highest grade in the following courses: legal writing I, legal writing II, and business entity finance. In recognition of his excellent writing skills, Mr. Scott received the 2018 National Order of the Scribes award and was further recognized as a California Western student of distinction. Mr. Scott served as the Executive Lead Articles Editor for the California Western Law Review and was a teaching assistant for legal writing I. Prior to law school, Mr. Scott earned his MBA degree from Gonzaga University and his Bachelor of Science degree in Business Management from the University of Montana.

Community and Volunteer Activities: After receiving his MBA degree, Mr. Scott tutored elementary school students in math and reading in Missoula, Montana. During law school, Mr. Scott was admitted to the Public Service Honors Society. Mr. Scott further enjoys participating in community runs to raise money for various causes, and volunteering and attending California Western Law School events.

WILLIAM W. STONE

Mr. Stone has litigated cases in both federal and state courts throughout the country and has over a dozen years of experience with all aspects of trial practice and discovery, including trial preparation, factual investigation, drafting and responding to pleadings and discovery, expert discovery, depositions, motion practice, trial, and appeals.

Representative Matters: Some of Mr. Stone's representative matters include:

- *In Re Flowers Foods, Inc. Securities Litigation*, No. 7:16-CV-00222-WLS (M.D. Ga.). In a securities class action case alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934, Johnson Fistel's client was appointed Lead Plaintiff and the firm was appointed Co-Lead Counsel under the Private Securities Litigation Reform Act of 1995. The complaint filed in the action alleges that defendants made false and misleading statements in connection with the Company's labor strategy. As a result of these false and misleading statements, Flowers Foods stock traded at artificially inflated prices during the Class Period. A $21 million class settlement became final on January 10, 2020. At the hearing on final approval of the settlement, Judge W. Louis Sands expressed his satisfaction with the settlement and offered the following commentary: "I'd also just like to acknowledge just really the professional way you all handled this case . . . and I think it is that type of substantial work from opposing sides that I think that is what we look at a settlement that both sides of this case have been well represented and represented so the Court is satisfied that it has been in the hands of people who knew what they were doing . . . ."

- *Gerneth v. Chiasma, Inc.*, No. 1:16-cv-11082-DJC (D. Mass.). Johnson Fistel served as co-lead counsel and represented the lead plaintiff in a securities class action alleging violations of Sections 11 and 15 of the Securities Act of 1933. The complaint alleged that defendants made false and misleading statements in connection with the company's IPO regarding the company's business and the prospects for approval of a pharmaceutical drug. A class-wide settlement in the amount of $18.75 million was approved on June 27, 2019.

- *Glock v. FTS International, Inc., et al.*, No. 4:20-cv-03928 (S.D. Tex.). Johnson Fistel served as co-lead counsel and represented the lead plaintiff in a securities class action alleging violations of Sections 11 and 15 of the Securities Act of 1933. A class-wide settlement in the amount of $9.875 million was approved on April 13, 2021.

- *Cobb EMC Litigation*: In 2007 and 2008, Mr. Stone prosecuted class and derivative state court claims brought by customer-members of the non-profit Cobb Electric Management Corporation ("EMC") addressing conflicts of interest, transfer of the EMC's employees and assets to a for-profit entity, improper by-laws, and breach of by-laws. The cases resulted in a recovery of over $120 million of assets, return of the employees to the EMC, revision of the by-laws, replacement of the board via elections conducted pursuant to the revised bylaws, dissolution of the for-profit entity, and the resignation of the CEO.

- *In re: Checking Account Overdraft Litigation,* No. 1:09-md-02036 (S.D. Fla.). Mr. Stone was instrumental in establishing groundbreaking consumer contract law requiring banks to order transactions and impose overdraft charges in a manner consistent with their implied duty of good faith and fair dealing, leading to over $1 billion in settlements. Reported decisions: 563 F. Supp. 2d 1358 (N.D. Ga. 2008); 694 F.Supp.2d 1302 (S.D. Fla. 2010).

- *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.). Johnson Fistel served as Lead Counsel in this shareholder derivative action filed in the U.S. District Court for the Northern District of Georgia against certain current and former officers and directors of Southern Company for breaches of fiduciary duties, unjust enrichment, and corporate waste. After over five years of hard-fought litigation, the action settled on terms including corporate reforms valued by one expert as having the potential to contribute hundreds of millions of dollars in value to the company. In approving the settlement on June 9, 2022, U.S. District Judge Mark H. Cohen praised Johnson Fistel for its diligence and efforts in the case and described the settlement as "the product of hard-fought, arm's-length negotiations by prepared, skilled, and experienced counsel" who are "nationally recognized leaders in shareholder litigation."

Areas of Practice: Mr. Stone practices complex civil litigation with a focus on securities and consumer fraud class action litigation and shareholder derivative litigation.

Professional Qualifications: Mr. Stone was admitted to the State Bar of Georgia in 2007. He is currently admitted to practice before the following courts:

- The United States Court of Appeals for the Eleventh Circuit
- The United States District Courts for the Middle and Northern Districts of Georgia
- All courts in the State of Georgia

Education and Awards: Mr. Stone received his Juris Doctor degree from the Georgia State University College of Law in 2007. During law school, he received CALI Awards for Excellence in Trial Practice in Research, Writing, Advocacy, and Criminal Law, clerked for a judge, and studied for a term at Johannes Kepler University in Linz, Austria, completing courses focusing on arbitration. Prior to law school, Mr. Stone was a legal assistant for a large law firm in Atlanta during breaks from college. He received his Bachelor of Arts degree with Honors from the University of Georgia's Honors Program in Athens, Georgia, where Mr. Stone published his honors thesis comparing American and European antitrust enforcement.

Community and Volunteer Activities: Mr. Stone volunteers with the Atlanta Community Food Bank and serves on the board of his local homeowners association.

OLIVER S. TUM SUDEN

Mr. tum Suden is an associate in the Atlanta office of Johnson Fistel. He is part of the firm's commercial, shareholder derivative, and securities class action practices and has experience with all aspects of trial practice and discovery, including drafting factual investigation, litigation demands, shareholder inspection demands, drafting and responding to pleadings and discovery, motion practice, and alternative dispute resolution.

Representative Matters: Mr. tum Suden has played key roles in several high-stakes actions and achieved favorable results for clients. For example, in *Benson v. D-Market Elektronik Hizmetler Ve Ticaret Anonim Sirketi et. al.*, Index No. 655701/2021 (N.Y. Sup. Ct, New York Cnty.), Mr. tum Suden played a key role in successfully resolving IPO litigation alleging violations of §§ 11 and 15 of the Securities Act of 1933 when a Turkish e-commerce platform company negligently failed to disclose negative growth trends that were affecting the company before the IPO. The resulting class action settlement totaled $13.9 million.

Mr. tum Suden has also materially contributed to the successful resolution of several derivative class action cases, including *Hines v. Gowen, et al*., No. 2:20-cv-04673-CMR (E.D. Penn.) (Trevena Inc. Derivative Litig.), *In re CoreCivic, Inc. Shareholder Derivative Litigation*, No. 3:16-CV-03040 (M.D. Tenn.), *Zhang v. Sarig et al*., No. 1:21-cv-08657 (S.D.N.Y.) (Aterian, Inc. Derivative Litig.), *Guzzo v. Gunderman et al*., No. 1:22-CV-00366-GLR (D. Md.) (Uniti Grp., Inc. Derivative Litig.), and other actions. These cases involved allegations of false and misleading statements about business models, financial and operational prospects, mergers and acquisitions, and compliance policies and resulted in material changes to corporate governance and compliance.

Areas of Practice: Mr. tum Suden focuses his practice on complex commercial litigation, including securities class actions and shareholder derivative actions, representing investors wronged through fraud and other violations of law. Mr. tum Suden has a wide base of knowledge and experience, litigating numerous issues in banking and finance, technology, pharmaceutical and healthcare, automotive, and e-commerce.

Mr. tum Suden has also served as a panelist on the Atlanta Bar Association's Securities and Corporate Litigation sub-section's presentation on cryptocurrency and is a member of State Bar of Georgia's Business Law subsection.

Prior to joining Johnson Fistel, Mr. tum Suden served as Assistant Attorney General in the Commercial Transactions and Litigation Division of the Georgia Office of the Attorney General, where he represented state government clients by prosecuting and defending breach of contract actions, tax issues, administrative law issues, and *mandamus* actions through providing counsel, motion practice, oral argument, and settlement. Notably, Mr. tum Suden wrote an *amicus curiae* brief on behalf of the Georgia Department of Revenue in *Heron Lake II Apartments, LP et al. v. Lowndes County Board of Tax Assessors*, 306 Ga. 816 (2019) which was influential in overturning the trial court's decision.

During law school, Mr. tum Suden served an Honors Clerk at the U.S. Securities and Exchange Commission in the Enforcement Division's Complex Financial Instruments Unit, focusing on fraud in connection with sophisticated financial instruments. While at the SEC, Mr. tum Suden investigated an insider trading ring and built a successful case against a hedge fund manager for misrepresenting the fund's assets under management and financial operation.

Professional Qualifications: Mr. tum Suden was admitted to the State Bar of Georgia in 2018 and is currently admitted in good standing with the following courts:

- All courts in the State of Georgia
- The United Stated District Court for the Northern District of Georgia

Awards and Peer Recognition: Mr. tum Suden was selected to the 2024 Georgia Rising Stars by Super Lawyers. Mr. tum Suden has also provided his expertise as a panelist at the Atlanta Bar Association Securities Law Section's discussion on cryptocurrency. During law school, Mr. tum Suden received an individual award recognizing his outstanding contributions to the Journal of Intellectual Property.

Education: Mr. tum Suden graduated in 2018 from the University of Georgia School of Law in the top half of his class, served as Notes Editor on the Journal of Intellectual Property, President of the Asian Law Students Association, member of Phi Alpha Delta A.H. Stephens Chapter, and Hearing Officer for the Honor Court. Mr. tum Suden graduated cum laude from West Virginia University with a Bachelor of Science in Business Administration where he was a member of Alpha Kappa Psi.

Community and Volunteer Activities: Mr. tum Suden is a member of the Japan-America Society of Georgia and has supported several community-based programs, including Helping Hands of Paulding County and Second Harvest Food Bank in Atlanta, Georgia. Mr. tum Suden continues his involvement with Georgia Law's networking events for law students, the Federalist Society, and is a member of the Tellus Science Museum and Southern Museum.

BRYAN WYMAN

Mr. Wyman is an associate at Johnson Fistel's San Diego office. He has significant pre-trial experience, including stockholder books and records inspection demands, litigation demands, preparing complaints, opposing motions to dismiss, discovery, and summary judgment motions.

Areas of Practice: Mr. Wyman's practice focuses on complex civil litigation, primarily stockholder derivative actions and other representative matters.

Experience: During law school, Mr. Wyman sharpened his legal skills as a judicial extern for U.S. District Court Judge Todd Robinson in the U.S. District Court for the Southern District of California, where he drafted bench memoranda and observed numerous court proceedings, including multiple jury trials. Following his time in Judge Robinson's chambers, Mr. Wyman was an extern for the U.S. Attorney's Office for the Southern District of California in the Civil Division, where he assisted assistant U.S. Attorneys in representing the United States in various civil matters. These experiences have provided Mr. Wyman valuable insight into preparing the best case possible.

Education and Awards: Mr. Wyman received his Bachelor of Arts degree in Ecology and Evolutionary Biology from the University of Colorado at Boulder in 2017. During his time at Boulder, Mr. Wyman was also a member of the school's Division 1-A football team. Following his time at Boulder, Mr. Wyman completed a program focused on sustainability in Berlin, Germany. Mr. Wyman received his Juris Doctor degree from the University of San Diego School of Law in 2022.

SPECIAL COUNSEL & TRIAL ATTORNEY

TIFFANY R. JOHNSON

Mrs. Johnson has years of trial experience as both a Deputy Attorney General for the State of California and a Judge Advocate General in the United States Navy. She now focuses her practice on complex business litigation and civil rights matters. She also has experience representing clients in family law matters.

Prior to joining Johnson Fistel, Mrs. Johnson was a Deputy Attorney General for the State of California for over twelve years where she primarily litigated civil rights cases through trial. In addition, Mrs. Johnson served as a Judge Advocate General in the United States Navy for close to ten years where she achieved the rank of Lieutenant Commander. While in the Navy, Mrs. Johnson represented hundreds of sailors and marines in criminal proceedings through verdict, administrative boards, and disability hearings.

Professional Qualifications and Activities: Mrs. Johnson was admitted to the bar for the State of Minnesota in May of 2000, and to the bar of the State of California in 2005. Additionally, Mrs. Johnson is admitted to practice in the following courts:

- All courts in State of California
- All courts in State of Minnesota
- The United States Court of Appeals for the Ninth Circuit
- The United States District Court for the Southern, Central, Eastern, and Northern Districts of California

Education: Mrs. Johnson received her Juris Doctor degree from Chicago-Kent College of Law in 2000. She received her Bachelor of Arts degree in Education from Concordia University, St. Paul, Minnesota, in 1996.

OF COUNSEL

JEFFREY A. BERENS

Jeffrey A. Berens is an accomplished securities litigator, having made a career of prosecuting violations of federal securities laws on behalf of defrauded stockholders, pursuing derivative claims under state corporate law to redress misconduct committed by corporate officers and directors, and seeking to maximize shareholder value in merger and acquisition litigation. In addition to his securities litigation practice, Mr. Berens litigates a wide variety of other complex matters including cases involving consumer fraud, state and federal RICO violations, antitrust claims, unfair trade practices, and employment law violations.

Between 2007 and 2016, Mr. Berens was a principal of Dyer & Berens LLP, a Colorado-based shareholder rights law firm. Prior to founding Dyer & Berens, he was an associate and later a partner in a boutique law firm which recovered hundreds of millions of dollars for aggrieved investors nationwide. Before entering law school, Mr. Berens worked as a corporate accountant, during which time he passed the Certified Public Accountant examination.

Representative Matters: Mr. Berens has successfully litigated shareholder class and derivative lawsuits against more than one hundred public and private companies including, among others, BancorpSouth, Inc. ($29.25 million recovered), Tele-Communications, Inc. ($26.5 million recovered), FirstWorld Communications, Inc. ($25.925 million recovered), Transcrypt International, Inc. (approximately $25 million recovered), Molycorp, Inc. ($20.5 million recovered), ICG Communications, Inc. ($18 million recovered), Rhythms NetConnections Inc. ($17.5 million recovered), One-Stop Wireless of America, Inc. (approximately $11 million recovered), Fidelity Management & Research Company ($7.5 million recovered), Carrier Access Corporation ($7.4 million recovered), and State Street Corporation ($6.25 million recovered). Early in his career, Mr. Berens successfully argued to the Colorado Court of Appeals that the trial court had erred in failing to allow thousands of victims of a nationwide boiler room fraud to band together and prosecute their claims in a single class action. The Court of Appeals' opinion in *Toothman v.*

Freeborn & Peters established new law, making it more difficult for dishonest promoters to evade the reach of the securities laws. Mr. Berens later won entry of a $75 million summary judgment against the alleged ringleader of the scheme.

Areas of Practice: Mr. Berens devotes his practice to representing individuals, institutions, and businesses in securities fraud class action litigation and shareholder derivative litigation.

Education: Mr. Berens attended Marquette University Law School, from which he graduated *cum laude* in 1996. While at Marquette, he served as a judicial extern to the Honorable John L. Coffey of the U.S. Court of Appeals for the Seventh Circuit and was a member of the Marquette University Law Review. Mr. Berens received his undergraduate degree in business and accounting from the University of Wisconsin.

Admissions: Mr. Berens was admitted to the state bar of Wisconsin in 1996 and the state bar of Colorado in 1997. He is also admitted to practice before the U.S. District Courts for Colorado and the Eastern District of Wisconsin, the Tenth Circuit Court of Appeals, and has been admitted to practice, on a case by case basis, in various state and federal jurisdictions throughout the country.

Publications: Mr. Berens is the author of Pleading Scienter Under The Private Securities Litigation Reform Act of 1995, which was published in *The Colorado Lawyer*.

RICHARD A. NERVIG

Mr. Nervig is a tenacious litigator with practical securities industry experience obtained from working as both a Dean Witter stockbroker prior to attending law school and as a compliance attorney after graduation. Mr. Nervig has successfully recovered in excess of $20 million dollars on behalf of his clients.

Areas of Practice: For over 23 years, Mr. Nervig's practice has focused primarily upon the representation of investors in securities litigation matters in FINRA arbitration proceedings, as well as matters in both state and federal court. Mr. Nervig is experienced handling all manner of securities sales practice claims ranging from suitability violations, churning, unauthorized trading, and fraud. Mr. Nervig is particularly adept at pursuing secondary liability claims arising from Ponzi schemes, unregistered securities sales, and anti-money laundering violations. Mr. Nervig also routinely represents creditors in bankruptcy adversary proceedings involving securities violation discharge avoidance matters pursuant to §523(a)(19) of the Bankruptcy Code.

Professional Qualifications and Activities: Mr. Nervig is currently admitted in good standing with the following courts:

- All courts in the State of Arizona (1997)

- All courts in the State of California (2003)
- All courts in the State of Colorado (1993)
- The United States District Court for the District of Arizona
- The United States District Courts for the Southern and Central Districts of California
- The United States District Court for the District of Colorado
- The United States Court of Appeals for the Tenth Circuit

Mr. Nervig is also a member of the following organizations:

- American Bar Association (Member Sections of Business Law and Litigation)
- Denver Bar Association
- San Diego County Bar Association
- San Diego North County Bar Association
- Southwest Riverside County Bar Association
- Public Investors Arbitration Bar Association
- Arbitrator, Financial Industry Regulatory Authority (FINRA) and San Diego County Bar Association Fee Arbitration Committee
- Former Member New York Stock Exchange and National Association of Securities Dealers

Education: Mr. Nervig received his Juris Doctor degree from the Claude W. Petit College of Law at Ohio Northern University in 1992. He received a Bachelor of Arts degree in 1988 from the Metropolitan State University of Denver.

SETH SCHECHTER

Seth Schechter has extensive experience counseling high net worth clients with specialized asset protection strategies, wealth preservation ideas, tax mitigation, and estate planning. He has a passion for positive causes, and he loves helping clients seamlessly integrate their business, personal and philanthropic goals.

Mr. Schechter started his legal career over 20 years ago working as a Special Assistant United States Attorney in San Diego. After spending two years defending the United States against civil actions, he spent several years at a prestigious law firm in San Diego providing estate planning services and strategizing with clients on forming the best business structures based upon a number of financial considerations to protect them from personal liability and reduce their tax obligations.

This experience led billionaire Sidney Frank, creator of the Grey Goose and Jagermeister brands, to hire Mr. Schechter as his personal lawyer and in-house counsel for Mr. Frank's enterprises. In that role, Mr. Schechter handled virtually all of Mr. Frank's legal matters including managing his wine brand, real estate development, and the record-setting sale of Grey Goose to Bacardi for $2 billion. Mr. Schechter has since served as general counsel for both established companies and start-ups. In addition, Mr. Schechter has held leadership roles at large nonprofit organizations in San Diego.

Areas of Practice: Mr. Schechter has three primary practice areas:

- Estate Planning: Mr. Schechter combines his practical knowledge and technical expertise to create effective, efficient, and tax sensitive wealth planning and asset transfer arrangements. He provides advice and guidance on trust and gift planning, estate tax mitigation, life insurance strategies, philanthropic and charitable integration, and personalized asset protection. He has counseled clients from across the wealth spectrum, including individuals, families, and business entities in planning and managing estates of varying size and complexity.
- Asset Protection: Combining his education (LLM in Taxation) and his work experience (representing clients such as billionaire Sidney Frank and other high net worth individuals), Mr. Schechter takes estate planning to the next level by ensuring that his clients' assets are insulated from litigation concerns and other potential threats. Schechter helps clients create an individualized Asset Protection Plan designed to make sure that all current and potential personal and professional risks and threats are identified.
- Business Law: Mr. Schechter has a broad range of skills and experience in the fields of commercial, corporate, and securities law. He has counseled domestic and international clients in a wide variety of transactional matters.

Education: Mr. Schechter received his Bachelor of Arts degree from Cornell University in 1990, his Juris Doctor degree from California Western in 1995, and his Master of Laws (LLM) in Taxation from the University of San Diego in 2001.

Community and Volunteer Activities: Mr. Schechter is involved with several nonprofits, including the Jackson Hole Technology Partnership and the Surfrider Foundation.

RALPH M. STONE

Ralph M. Stone is recognized as a leading lawyer in the securities litigation, investor rights, and international discovery fields. He has represented public and private companies, hedge funds, and other institutional investors in a wide variety of commercial litigation in courts around the country and in FINRA and American Arbitration Association arbitrations, on creditor committees in international bankruptcies, and in various other forums. He actively represents and advises private banks and other non-U.S. institutions in major securities litigation, and he regularly represents and advises them in various hedge fund disputes and matters arising from collapsed funds. He also represents securities industry whistleblowers before the SEC and CFTC, helping whistleblowers maintain their anonymity in presenting tips and helping them to secure financial awards as a result of their whistleblowing.

Prior Experience: From 1990 to 1992, Mr. Stone was associated with the international law firm Mayer, Brown & Platt, where he was involved in a variety of commercial litigation. He was an associate at the law firm of Milberg Weiss from 1992 until 1997. At Milberg Weiss, he focused on the representation of investors and consumers in litigation involving the federal securities laws, consumer fraud statutes, and the fiduciary obligations of corporate officers and directors. From 1997 through 2018, Mr. Stone was a partner at the firm of Shalov Stone & Bonner LLP, which he co-founded, and which later became Stone Bonner & Rocco LLP.

Representative Matters: Mr. Stone has been involved in a large number of mass actions, collective actions, and class actions. Among other achievements, Mr. Stone obtained the first-ever class certification against a foreign government in Urban GmbH v. Republic of Argentina, in which he represented holders of defaulted Republic of Argentina bonds. He has represented a group of more than 100 bondholders of an Uruguayan bank in claims against the bank's former directors who reside in New York. Also, he has represented high-profile hedge funds as well as European and Asian funds in major securities fraud actions.

The significant securities class actions in which he has played a principal role as one of the lead counsel include: *In re Winstar Communications Inc. Securities Litigation* (S.D.N.Y.) (over $40 million in recoveries, including a substantial recovery secured in connection with the pursuit of innovative claims brought against a business partner of a securities issuer); *In re Baan Company Securities Litigation* (D.D.C.) (settlement with bankrupt Dutch software company and its executives totaling $32 million, which amounted to nearly all of the damages claimed by class members); *In re TEAM Communications Securities Litigation* (C.D. Cal.) (settlement with bankrupt American television licensing company predominantly traded on a German stock exchange and its executives totaling $12.5 million); *In re Crayfish Inc. Securities Litigation* (S.D.N.Y.) (recoveries from Japanese software company and its executives totaling $9 million); *In re Intershop Communications AG Securities Litigation* (N.D. Cal.) (recovery of more than $3 million from bankrupt German software company and its executives); *In re Workstream, Inc., Securities Litigation* (recovery of $3.9 million); *Cooper v. CPS Systems, Inc.* (N.D. Tex.) (recovery of $3.44 million); *In re Mitcham Industries Securities Litigation* (S.D. Tex.) (recovery of $2.7 million); *Yuan v. Bayard Drilling Technologies, Inc.* (W.D. Okla.) (recovery of $3.1 million); and *Varljen v. H.J. Meyers & Co., Inc.* (S.D.N.Y.) (recovery of more than $5 million).

Mr. Stone has also served as lead class counsel on behalf of participants in certain companies' retirement plans in a number of ERISA class actions, including: *In re Ferro Corp. ERISA Litigation* (N.D. Ohio) (recovery of $4 million for retirement plan participants); *In re Comerica, Inc. ERISA Litigation* (E.D. Mich.) (recovery of $2.2 million for plan participants).

He also has been involved in a wide variety of securities arbitrations and other commercial cases relating to the securities industry. He has represented a listed company in a dispute with an investment banking firm before the American Arbitration Association and has represented investors with fraud, suitability, and deceptive practice claims against both electronic brokerage firms and traditional brokerages in FINRA arbitrations.

He has, on several occasions, served as a court-appointed receiver or fiduciary to protect and distribute funds in various insider-trading disgorgement and other cases brought by the SEC.

In addition to the wide variety of matters relating to securities and financial services, Mr. Stone has also played an active role representing victims of terrorism, including participating in the *Linde v. Arab Bank Litigation* (E.D.N.Y.) on behalf of victims of terrorism who obtained the first verdict ever against a financial institution for providing material support to a terrorist organization's attacks on Americans, and participating in briefing in connection with various actions seeking to enforce terrorism-based judgments against Iran, including in *Peterson v. Bank Markazi*, which resulted in a recovery of over $1.8 billion for victims of the 1983 Marine Barracks bombing in Beirut, Lebanon.

Mr. Stone has actively litigated consumer protection class actions in courts around the country. For example, he played a principal role as lead counsel in *In re Cablevision Consumer Litigation* (E.D.N.Y.), recovering benefits of more than $28 million for cable TV subscribers who were denied access to certain Fox network-affiliated channels during a 2010 carriage dispute between Cablevision and News Corp., and *Health Science Products LLC v. Sage Software SB, Inc.* (N.D. Ga.), recovering $5.5 million on behalf of a class asserting that software was buggy and defective. He has also served as a lead counsel and made substantial recoveries for classes in many consumer protection cases, including in cases alleging that various finance charges imposed by banks, credit card companies, and other lenders are deceptive or unfair, electronics products were defective, software was defective or invasive of privacy rights, sports memorabilia products were not genuine as represented, insurance products were improperly or deceptively marketed, and that insurance contracts were breached.

Mr. Stone's reported decisions include: *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76 (2d Cir. 2012); *In re Cablevision Consumer Litigation*, 864 F.Supp.2d 258 (E.D.N.Y. 2012); *In re Ferro Corp. ERISA Litigation*, 422 F.Supp.2d 850 (N.D. Ohio 2006); *In re Baan Company Securities Litigation*, 245 F.Supp.2d 117 (D.D.C. 2003); *Macomber v. Travelers Property and Casualty Co.*, 261 Conn. 620 (Conn. 2002); *In re Baan Company Securities Litigation*, 81 F.Supp.2d 75 (D.D.C. 2000); *Milman v. Box Hill Systems Corp.*, 72 F.Supp.2d 220 (S.D.N.Y. 1999); *Varljen v. H.J. Meyers & Co.,* [1998 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 90,259 (S.D.N.Y. 1998); *Saddle Rock Partners, Ltd. v. Hiatt*, [1996.97 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 99,413 (W.D. Tenn. 1996); and *Sikes v. American Telephone & Telegraph Co.*, 841 F. Supp. 1572 (S.D. Ga. 1993).

Areas of Practice: Mr. Stone's practice focuses on complex litigation, investor rights, and whistleblower protection. Mr. Stone has extensive experience in all aspects of complex civil litigation and securities and consumer fraud class actions.

Professional Qualifications and Activities: Mr. Stone was admitted to the Bar of the State of New York in 1991. He is currently admitted in good standing with the following courts:

- The Supreme Court of the United States of America
- All New York State courts
- The United States Courts of Appeals for the Second, Fifth, Sixth and Eleventh Circuits
- The United States District Courts for the Southern and Eastern Districts of New York

Mr. Stone is currently, or has been previously, a member of the following professional organizations:

- American Bar Association (ABA)
- Association of the Bar of the City of New York (ABCNY)
- Former Secretary, Consumer Affairs Committee
- Public Investors Advocate Bar Association (PIABA)

Awards and Peer Recognition:

Martindale-Hubbell: Martindale-Hubbell Peer Review Ratings, the gold standard in attorney ratings, have recognized lawyers for their strong legal ability and high ethical standards for more than a century. Mr. Stone has an AV rating which is awarded to only those lawyers with the highest ethical standards and professional ability, as established by confidential opinions from members of the Bar.

Super Lawyers: Mr. Stone is recognized as a Super Lawyer in Securities Litigation. Thomson Reuters awards this recognition to the top 5% of attorneys who have obtained a high-level of professional achievement and are highly regarded by their peers.

Education: Mr. Stone received his Juris Doctor degree from the University of Texas School of Law in 1990, where he was an editor of The Review of Litigation. He received an A.B. in Philosophy from Columbia College, Columbia University in 1987.

Publications: Contributor of chapter "United States" in Shareholder Claims (Jordans 2012), describing U.S. law relating to investor and shareholder rights.

SELECTED EXAMPLES OF REPRESENTATIVE MATTERS

Johnson Fistel aggressively pursues complex litigation matters for both plaintiffs and defendants on an hourly or contingency fee basis depending upon the circumstances of the matter. Below are just a few of the cases the firm has undertaken. To respect the privacy of some of the firm's clients who prefer we do not mention their names involved in litigation and to honor confidentiality provisions in certain settlement agreements, some of the matters are described below without identifying the parties' names.

Business and Commercial Litigation

- *International Real Estate PLC v. Oaktree Capital Management, LLC*, Case No. BC 324973 (Cal. Super. Ct. Los Angeles Cnty.). International Real Estate (a public company with shares listed on the London Stock Exchange) retained Johnson Fistel to pursue claims for breach of fiduciary duty against former directors of a joint venture company. That case involved alleged damages of approximately $20 million, and after years of aggressive litigation and a mediation, ultimately settled on favorable terms to International Real Estate. *See* testimonial from the firm's client, Rolf L. Nordstrom, under Testimonials.

- *Doe Shipping Company v. John Doe* (Cal. Super. Ct. San Diego Cnty.). A national shipping company retained Johnson Fistel after a former employee left the company with customer lists, other employees, and other confidential information. Johnson Fistel filed a complaint alleging claims for fraud, breach of contract, and misappropriation of trade secrets, among others. After a series of depositions and the threat of putting the defendants out of business, Johnson Fistel assisted the company in obtaining a resolution that restricted the former employee from doing business with certain of the company's clients, protected the company's trade secrets, and provided for a significant monetary payment to the company.

- *Liebsohn, et al. v. Augme Technologies, Inc., et al.*, Case No. 13-2-40007-3 SEA (Wash. Super. Ct. King Cnty.). Johnson Fistel represented a group of 47 high net worth investors who were defrauded into trading their stock in a privately-held company for stock in a publicly-traded company. After defeating several motions to dismiss and a petition for discretionary review by the Washington Court of Appeals, Johnson Fistel obtained a highly-favorable confidential settlement from the defendants' insurance carrier on February 2, 2016.

- *John Doe v. Doe Hedge Fund* (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel defended one of the world's most successful hedge funds and its manager against meritless claims of fraud. After aggressively defending the matter, the plaintiff accepted a nuisance value settlement that was less than the cost of defense.

Trials & Arbitrations

- *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.*, Case No. GIC822927 (Cal. Super. Ct. San Diego Cnty.). On behalf of a marketing firm, Johnson Fistel pursued claims for breach of contract and fraud against the manufacturer of a weight loss product. After a week-long jury trial, the jury returned a seven-figure verdict in favor of J Johnson Fistel's client, including actual and punitive damages. *See* Noteworthy Success Stories and testimonials from the firm's client, Ronald T. Fricke, and the firm's co-counsel Gerald J. Stubenhofer, Esq. under Testimonials.

- *DCI Solutions v. Urban Outfitters*, (S.D. Cal). Johnson Fistel represented a small local consulting firm in a case against one of the nation's largest clothing retailers in a matter that would have forced the company into bankruptcy if it lost. Following a week-long trial in federal court, the jury returned a verdict rejecting the retailer's $1.5 million damage claim in its entirety. Johnson Fistel also prevailed on all of Urban Outfitter's post-trial motions. *See* testimonial from the firm's client, James Baker, under Testimonials.

- *Timeshare Resale Alliance v. Fleming, et al.*, (San Diego Cnty. Arbitration). Johnson Fistel successfully defended a real-estate broker accused of stealing her former employer's alleged trade secrets. Following a week-long arbitration, the arbitrator issued an order completely exonerating Johnson Fistel's client.

- *Mary Joe v. Jane Doe* (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel represented the minority shareholder of a small family corporation to pursue claims against the other shareholders who wasted millions of dollars of corporate assets by using those assets to pay for their personal expenses. The client retained Johnson Fistel to substitute into the case just two months before trial. On day four of a five-day trial, defendants agreed to settle the case.

Shareholder Derivative Actions

- *In re Powerwave Technologies, Inc.*, Case No. 13-10134 (MFW) (Bankr. D. Del.). On behalf of a shareholder client, Johnson Fistel filed a shareholder derivative action in a California Superior Court alleging that certain of Powerwave's officers and directors had affirmatively engaged in improper accounting to conceal the company's true financial condition. Shortly after filing this action, Powerwave filed for bankruptcy and the U.S. Bankruptcy Court appointed a Chapter 7 Trustee. The Bankruptcy Court appointed Johnson Fistel as special counsel to represent the Trustee to prosecute these claims as assets of the estate. After nearly two years of litigation, Johnson Fistel secured a settlement that included payment of $5.5 million for the benefit of the estate in bankruptcy.

- *Rubin v. Reinhard*, Case No. 37-2008-00091039-CU-NP-CTL (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel was sole Lead Counsel in this derivative lawsuit. After the company filed a petition for relief under Chapter 7 of the Bankruptcy Code, the Bankruptcy Trustee retained Johnson Fistel as special litigation counsel to prosecute claims for breach of fiduciary duty against certain officers and directors. After several years of hard-fought litigation, the Estate in Bankruptcy settled recovering $3 million. In approving the settlement, the Bankruptcy Court judge remarked: "The Court thanks [Johnson Fistel] for its outstanding work on behalf of the Chapter 7 Trustee and the Estate." *See* full testimonial from the Honorable Laura S. Taylor under Testimonials.

- *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.). Johnson Fistel served as Lead Counsel in this shareholder derivative action filed in the U.S. District Court for the Northern District of Georgia against certain current and former officers and directors of Southern Company for breaches of fiduciary duties, unjust enrichment, and corporate waste. After over five years of hard-fought litigation, the action settled on terms including corporate reforms valued by one expert as having the potential to contribute hundreds of millions of dollars in value to the company. In approving the settlement on June 9, 2022, U.S. District Judge Mark H. Cohen praised Johnson Fistel for its diligence and efforts in the case and described the settlement as "the product of hard-fought, arm's-length negotiations by prepared, skilled, and experienced counsel" who are "nationally recognized leaders in shareholder litigation."

- *In re HD Supply Holdings, Inc. Derivative Litigation*, Lead Case No. 1:17-cv-02977-MLB (N.D. Ga.). Johnson Fistel was appointed Co-Lead Counsel in a stockholder derivative action brought on behalf of HD

Supply alleging, among other things, that certain executives and directors of HD Supply violated federal and state law by making false and misleading statements to investors, thereby artificially inflating the stock price. The complaint filed in the action also alleges that while the price of HD Supply stock was artificially inflated, certain corporate insiders engaged in unlawful insider trading of their personally-held HD Supply stock holdings. In its role as Co-Lead Counsel, Johnson Fistel helped to secure a settlement which provided HD Supply with significant benefits, including helping to preserve tens of millions of dollars in corporate assets in connection with the company's settlement of a related securities class action that was funded exclusively by insurance proceeds rather than corporate funds, as well as causing the adoption of important corporate reforms, including reforms to the company's insider trading policy.

- *In re CoreCivic, Inc. Shareholder Derivative Litigation*, Lead Case No. 3:16-cv-03040 (M.D. Tenn.). Johnson Fistel was appointed Co-Lead Counsel in a shareholder derivative action brought on behalf of CoreCivic, Inc. alleging, among other things, that certain officers and directors of CoreCivic violated federal and state law by making false and misleading statements to investors concerning CoreCivic's history of quality, savings, and compliance at Federal Bureau of Prisons facilities, causing its common stock to be traded at artificially inflated levels. Following six years of litigation, Johnson Fistel as co-lead counsel was able to negotiate a global resolution of this multi-jurisdictional litigation whereby the Company would adopt for a period of no less than four years significant operational and board-level reforms related to the Company's staffing policies and procedures, inmate safety and security policies and procedures, and healthcare services policies and procedures; improves risk and compliance controls and oversight; improves disclosure procedures and controls designed to ensure Board- and appropriate management-level oversight and the issuance of timely and accurate SEC filings, press releases, and other public disclosures; enhances Board independence requirements to ensure effective and disinterested decision-making and oversight by the Board; improves the Company's Whistleblower and Recoupment Policies; and overall increases transparency concerning the Company's corporate governance, policies, practices, and procedures. In approving the settlement, The Hon. Aleta A. Trauger stated that she was "impressed with the overall settlement terms" and that she knew the negotiations were "hard fought."

- *Gendrich v. Anderson et al.*, Civil Action No. CV-2020-07-2107 (Ct. of Common Pleas, Summit Cnty., Ohio) (FirstEnergy, Inc. Derivative Litig.). Johnson Fistel was appointed as Co-Lead Counsel in this shareholder derivative litigation brought on behalf of FirstEnergy, Inc.

The case arose out of what the United States Attorney for the Southern District of Ohio described as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio." Johnson Fistel served as lead negotiator on behalf of the state court derivative action and helped achieve a historic settlement on behalf of FirstEnergy which included a cash payment to the Company of $180 million (less court-approved attorneys' fees) and substantial corporate reforms including the agreement that six of the company's then directors who were on the board a minimum of five years would not stand for re-election to the board as well as additional reforms relating to the Company's political spending and lobbying.

- *In re: Twitter, Inc. Shareholder Derivative Litigation (n/k/a X),* C.A. No. 18-062 (D. Del.). Johnson Fistel was appointed Co-Lead Counsel in a shareholder derivative action brought on behalf Twitter, Inc., alleging, among other things, that certain officers and directors of Twitter caused the company to make false and misleading statements concerning the metrics used by the company to measure user growth and engagement, causing its common stock to be traded at artificially inflated levels. In addition, the complaint filed in the action alleges that while the price of Twitter stock was artificially inflated, certain corporate insiders engaged in unlawful insider trading, unloading approximately $281 million worth of their personally-held Twitter stock holdings. In its role as Co-Lead Counsel, Johnson Fistel helped to secure $38 million for the company and successfully negotiated robust governance reforms tailored to address and prevent the reoccurrence of directors and officers of Twitter from issuing materially false and misleading statements about the company's user growth and user engagement prospects. *See* Noteworthy Success Stories and full testimonial from the firm's client, Jim Porter, under Testimonials.

- *In re RH Shareholder Derivative Litigation*, No. 4:18-cv-02452-YGR (N.D. Cal). Johnson Fistel was appointed Lead Counsel in a shareholder derivative action brough on behalf of RH, Inc. alleging, among other things, that certain officers and directors of RH violated federal and state laws by making false and misleading statements concerning RH's business operations, financial condition, and growth prospects, as well as that certain defendants engaged in improper insider trading. On RH's behalf, Johnson Fistel negotiated sweeping and innovative corporate governance reforms to benefit the company, including installation of a new Chief Compliance Officer and adoption of a Disclosure Committee Charter. *See* Noteworthy Success Stories and testimonial from the Honorable Yvonne Gonzalez Rogers under Testimonials.

- *In re Motorola, Inc. Derivative Litigation*, Case No. 07CH23297

(Ill. Cir. Ct. Cook Cnty.). Johnson Fistel was appointed Co-Lead Counsel in a shareholder derivative action filed against current and former officers and directors of Motorola, Inc. The derivative claims charged certain officers with making misrepresentations about the company's financial statements and prospects of success in order to artificially inflate the company's stock price while they personally sold shares and while causing the company to simultaneously purchase shares on the open market. After six years of hard-fought litigation, the action settled on terms that required the implementation of significant corporate therapeutic changes throughout the company—changes that were valued by one expert at over $1 billion. *See* Noteworthy Success Stories.

- *In re Heelys Inc. Derivative Litigation*, Case No. 07-CV-1682 (N.D. Tex.). Johnson Fistel's predecessor firm was appointed Co-Lead Counsel in this shareholder derivative action filed against current and former officers and directors of Heelys Inc. After prevailing on defendants' motion to dismiss, and more than a year of litigation including multiple mediations, this matter settled on terms that required the implementation of significant corporate therapeutic changes that benefitted the company and its shareholders for years to come. *See* testimonial from the Honorable Ed Kinkeade under Testimonials.

- *In re MannKind Corporation Derivative Litigation*, Lead Case No. 11-cv-05003-GAF-SSx (C.D. Cal.). Johnson Fistel was appointed sole Lead Counsel in this shareholder derivative action filed against current and former officers and directors of MannKind, alleging that the defendants had misled shareholders about the FDA approval process for MannKind's core product. After more than two years of litigation and a mediation, this matter settled on terms that required the implementation of significant corporate therapeutic changes, including the creation of a new Board-level Disclosure & Controls Committee and significant enhancements to financial reporting requirements.

- *Singh v. Hsu*, Case No. 1-13-cv-243247 (Cal. Super. Ct. Santa Clara Cnty.) (Impax Laboratories, Inc. Derivative Litigation). Johnson Fistel was appointed sole Lead Counsel in this shareholder derivative action against certain current and former officers and directors of Impax Laboratories, Inc. for allegedly failing to correct systemic problems at the company's manufacturing centers and for misleading shareholders about FDA sanctions related to these problems. After two years of litigation and a mediation, the matter settled on terms requiring the implementation of company-wide corporate governance reforms, significantly enhancing reporting and oversight at the Board, officer, and employee level.

- *In re LHC Group, Derivative Litigation*, No. 6:13-CV-02899-JTT-CBW (W.D. La.). Johnson Fistel, as Co-Lead Counsel in this shareholder derivative action, was able to resolve the action for substantial corporate governance reforms at LHC Group which included, among other reforms, amendments to the company's compliance policies designed to address allegations concerning the company's Medicare home health program and to the Audit Committee Charter to provide greater oversight of the company's compliance-related activities, Medicare and Medicaid reimbursement policies, compliance audits, handling of anonymous complaints, and the effectiveness of the company's Code of Conduct. The settlement also caused changes to be made to the company's insider trading and preclearance policies to provide more clarity and transparency, as well as additional restrictions, on insider sales of company stock.

- *Weitzman v. Ullman, et al.*, Civ. No. 4:13-cv-00585 (E.D. Tex.) (J.C. Penney Company, Inc. Derivative Litigation). In its role as Lead Counsel, and after almost five years of litigation and nearly two years of protracted settlement negotiations, Johnson Fistel was able to secure a settlement that provided for a series of material reforms to JCPenney's corporate governance systems, which were designed to strengthen the Company's internal control functions and board accountability, and ultimately prevent the recurrence of the events that led to the alleged harm to the company and the filing of the derivative lawsuit.

- *Orrego & Kim v. Lefkosky, et al.*, Case No.: 12 CH 12420 (Consolidated with 12 CH 19431) (Ill. Cir. Ct., Cook Cnty., Ch. Div.) (*Groupon, Inc. Derivative Litigation*). Johnson Fistel, serving as Co-Lead Counsel, negotiated a settlement which included extensive and detailed measures designed to improve corporate governance at Groupon and restore and maintain investor confidence in the Company. Groupon's Board of Directors agreed to implement these sweeping corporate governance reforms designed to improve decision-making and legal-regulatory compliance in the critical areas of accounting and financial disclosure, earnings guidance, and committee oversight at the company.

- *In re World Acceptance Corporation Derivative Litigation*, Lead Case No. 6:15-cv-02796-MGL (D.S.C.). Johnson Fistel, as Co-Lead Counsel, was able to resolve the action for the benefit of World Acceptance even though the District Court granted defendants' motions to dismiss the case, and that order was being appealed to the U.S. Court of Appeals for the Fourth Circuit. Johnson Fistel, its co-counsel, and our clients never gave up, and fought to achieve a significant settlement despite significant obstacles. Specifically, the settlement, among other things, preserved corporate resources by ensuring that the related securities class action was resolved within insurance policy limits and without monetary contribution from the company, and caused significant corporate governance reforms designed to increase shareholder control and provide for improved operational oversight at the company. The settlement will have a lasting, positive impact on the Company and its shareholders for years to come.

- *In re Marrone Bio Innovations, Inc. Derivative Litigation*, Lead Case No. CV14-1481 (Cal. Super. Ct., Yolo Cnty.). Johnson Fistel, in its role as Co-Lead Counsel, negotiated a settlement on behalf of Marrone Bio Innovations which reformed its governance practices in order to prevent the misconduct alleged in case from reoccurring again in the future. The case stemmed from the criminal misconduct of the company's former Chief Operating Officer and the control and oversight environment at the company that allowed such misconduct to occur in the first place causing harm to Marrone Bio Innovations. Specifically, the reforms put into place by the settlement created more transparency in connection with stockholder proposals, created more extensive oversight of management by the Audit Committee, revised the company's Code of Business Conduct and Ethics and added responsibilities to the company's Compliance Officer to foster a corporate environment of legal and ethical compliance, revised the company's policies with respect to expense recognition policies and training in connection therewith, and formalized the company's Disclosure and Controls Committee and defined the responsibilities of it.

- *Bagot v. Bracken, et al.*, Case No. 11C5133 (Tenn. Cir. Ct., 6th Cir.). Johnson Fistel was appointed Lead Counsel in this shareholder derivative action against certain current and former officers and directors of HCA Holdings, Inc., the largest private hospital chain in the country. The parties litigated the action for more than four years and attended multiple mediations, after which Johnson Fistel secured an extremely favorable settlement for HCA and its shareholders, including a payment of $19 million to HCA, the appointment of a new independent director, and implementation of significant corporate therapeutics. *See* Noteworthy Success Stories.

- *In re Brocade Communications, Systems, Inc. Derivative Litigation*, Case No. 1:05cv41683 (Cal. Super. Ct. Santa Clara Cnty.). Johnson Fistel was initially appointed Co-Lead Counsel in state court in one of the highest-profile options backdating cases in the country. Johnson Fistel helped prevent an inadequate settlement of a related federal action from being approved, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme which would have resulted in no money to the company and only a payment of attorney's fees for the lawyers in that case. Brocade then formed a Special Litigation Committee and retained Johnson Fistel as co-counsel to assist in litigating claims against ten former officers and directors of the company. After years of litigation, over $24 million was recovered for Brocade. *See* Noteworthy Success Stories.

- *In re 3D Sys. Corp. Deriv. Litig.*, Lead Case No. 0:15-cv-03756-MGL (D.S.C.). Johnson Fistel, as Co-Lead Counsel, served as lead negotiator in this multi-jurisdictional shareholder derivative litigation alleging, among other things, that between 2008 and 2015, 3D Systems acquired over 40 companies at a cost of over $700 million, without: (i) conducting adequate due diligence to confirm the value of their offerings; (ii) devoting the management systems or supervisory resources necessary to properly integrate operations and establish internal controls over accounting and financial reporting; or (iii) building out sufficient manufacturing capacity to leverage the acquisitions and meet the then-CEO's aggressive sales and revenue projections. The Complaint also alleged that certain of the Company's executives and directors engaged in insider selling while the price of the Company's stock was artificially-inflated. Johnson Fistel successfully negotiated a significant corporate reform package calling for, among other things, an independent chairperson of the board, director term limits, enhancements to director independence and compliance functions, and the establishment of disclosure and merger and acquisition working groups.

<u>Corporate Takeover Litigation</u>

- *Goldstein v. Denner*, Case No. 2020-1061 (Del. Ch.). Johnson Fistel serves as additional counsel in a securities class action involving allegations that former officers and directors of Bioverativ breached their fiduciary duties in the sale of Bioverativ to Sanofi S.A. in 2018. The settling defendants agreed to have $84 million paid to former Bioverativ shareholders in exchange for dismissal of claims that those defendants failed to maximize the value of Bioverativ in the sale. The court approved the partial settlement on September 13, 2023. The court also previously upheld, at the pleading stage, claims that Bioverativ director Alexander Denner and his hedge fund, Sarissa Capital, engaged in insider trading in violation of Delaware law by trading on material non-public information about Sanofi's desire to buy the company. Johnson Fistel, together with lead counsel, is continuing to litigate those claims, seeking disgorgement of Denner's and Sarissa Capital's substantial ill-gotten profits plus interest. Trial on those claims is scheduled for April 2024. "We are pleased to deliver this substantial result for Bioverativ shareholders, and we look forward to holding Dr. Denner and Sarissa accountable at trial," said lead plaintiff Dr. Stewart N. Goldstein, M.D., an investor and physician in California.

- *Morrison et al. v. Berry et al.,* (The Fresh Market) Case No. 12808, (Del. Ch.). Johnson Fistel helped obtain $27.5 million for shareholders in a class action over the 2016 $1.4 billion take-private sale of specialty grocery chain Fresh Market to Apollo Global Management LLC. Plaintiffs accused Fresh Market's former CEO and Chairman, of acting disloyally in concealing his private communications on terms of Fresh Market's sale to Apollo, along with the rollover of his equity as part of the deal. Fresh Market's former President and CEO, and former Chief Legal Officer and Senior Vice President, were accused of fiduciary duty breaches and were also parties to the settlement. Johnson Fistel litigated alongside fellow class attorneys in opposition to the defendants' multiple attempts to dismiss the suit. Efforts by class counsel helped secure an appeal to and reversal by the Delaware Supreme Court in 2018 of the lower court's granting of the first motion to dismiss in which the high court agreed with the plaintiffs that the defendant had disclosure deficiencies in its Schedule 14D-9 and was effectively misleading as a result, only to face yet another motion to dismiss by the defendants on remand. Vice Chancellor Sam Glasscock III, who watched the parties exchange blows both times the suit came through the Court of Chancery, described the case as full of "extraordinarily heavy [and] hard-fought litigation." For example, class attorneys fought for and subsequently analyzed some 286,000 documents in total, amounting to roughly 1.5 million pages, before arriving at the $27.5 million settlement through mediation. Vice Chancellor Glasscock , evidently impressed by the resounding outcome of the novel post-closing damages deal case, described the settlement amount as an "excellent result" for the shareholders, stating that the additional payout of $0.75 per share was over half of what was potentially achievable in additional merger consideration.

- *Englehart v. Brown*, Case No. 13-2-33726-6-KNT (Wash. Super. Ct. King Cnty.). Johnson Fistel was appointed as Co-Lead Counsel in a case arising out of the 2014 acquisition of Flow by American Industrial Partners which resulted in a $12.75 million settlement, believed to be the largest recovery ever obtained in a class action challenging the price of a merger or acquisition of a public company in a Washington court. *See* Noteworthy Success Stories.

- *In re the Titan Corp. Derivative Litigation*, Case No. GIC 832018 (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel was appointed Co-Lead Counsel in a derivative lawsuit that involved claims against the officers and directors of Titan Corporation for breach of fiduciary duty. During the pendency of the litigation, Titan announced that it would be acquired, in a deal that would have undervalued the Company's worth, harming its stockholders being cashed out by the deal. To prevent this from happening, Johnson Fistel quickly coordinated with counsel in a related derivative action pending in Delaware Chancery Court to negotiate a settlement that resulted in $29 million in increased consideration to Titan's shareholders in connection with the all-cash merger acquisition. *See* Noteworthy Success Stories.

- *Azar v. Blount International, Inc., et al.*, No. 3:16-CV-00483-SI (D. Or.). Johnson Fistel was appointed as Co-Lead Counsel in a case arising out of the 2016 acquisition of Blount International Inc. by a group comprised of a private equity firm, Blount's largest stockholder, and two Blount insiders. The plaintiffs allege, among other things, that the proxy statement Blount disseminated in connection with the deal failed to disclose a set of financial projections that best reflected Blount's long-term prospects and, instead, disclosed only later, artificially reduced projections. The plaintiffs allege that misleading proxy statement tainted the stockholder approval of the merger, and they are seeking an unspecified amount of monetary damages. This matter recently settled resulting in millions of dollars in additional consideration for Blount's shareholders and is pending final approval.

<u>Securities Class Actions</u>

- *Mollik v. Adomani, Inc., et al.*, No. RIC-1817493 (Cal. Super. Ct. Riverside Cnty.). The co-founder and former Chief Technology Officer of a publicly traded company retained Johnson Fistel on an hourly basis to defend him in a class action alleging violations of §§12(a)(2) and 15 of the Securities Act filed against Adomani, Inc., certain of its current and former executives, and two firms that underwrote Adomani's initial public offering. Johnson Fistel aggressively fought the allegations in the complaint and ultimately negotiated for and achieved a full dismissal of all claims and financial liabilities against the firm's client. Additionally, on July 1, 2021, the Court entered an order forever barring the remaining defendants from pursuing any claims for contribution or indemnity against the firm's client, pursuant to an agreement Johnson Fistel negotiated with co-defendants in order to maximize protections for the firm's client.

- *Desrocher v. Covisint Corporation, et al.*, Case No. 1:14-CV-03878-AKH (S.D.N.Y.). In a case alleging violations of §§11 and 15 of the Securities Act of 1933, the Court appointed Johnson Fistel Co-Lead Counsel and certified the firm as Co-Lead Class Counsel. The class action complaint alleged that there were misrepresentations or omissions in documents filed with the SEC in connection with the company's IPO. Under the settlement, defendants agreed to create an $8 million common fund to compensate Covisint stockholders who were harmed by the alleged misrepresentations or omissions, which amount represented a substantial percentage of the maximum potential recovery. The Court approved the settlement in its entirety on December 13, 2016. *See* Noteworthy Success Stories.

- *Gerneth v. Chiasma, Inc., et al.*, No. 1:16-cv-11082-DJC (D. Mass.). Johnson Fistel served as Co-Lead Counsel and represented the Lead Plaintiff in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. The complaint alleged that defendants made false and misleading statements in connection with the company's IPO regarding the company's business and the prospects for approval of a pharmaceutical drug. A class-wide settlement in the amount of $18.75 million was approved on June 27, 2019. *See* Noteworthy Success Stories.

- *In re Flowers Foods, Inc. Securities Litigation*, No. 7:16-cv-0022-WLS (M.D. Ga.). In a securities class action case alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934, Johnson Fistel's client was appointed Lead Plaintiff and the firm was appointed Co-Lead Counsel under the Private Securities Litigation Reform Act of 1995. The complaint filed in the action alleges that defendants made false and misleading statements in connection with the Company's labor strategy. As a result of these false and misleading statements, Flowers Foods stock traded at artificially inflated prices during the Class Period. The $21 million class settlement became final on January 10, 2020. *See* Noteworthy Success Stories and testimonial from the Honorable W. Louis Sands under Testimonials.

- *Glock v. FTS International, Inc., et al.*, Civil Action No. 4:20-cv-03928 (S.D. Tex.). Johnson Fistel served as Co-Lead Counsel in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. The complaint alleged that defendants failed to disclose in the Company's offering documents that market dynamics impacting FTSI had significantly deteriorated, that the Company's dedicated contracts could be prematurely terminated by FTSI's customers, and that the growth in revenues in the lead up to the IPO attributable to Chesapeake Energy, one of the Company's largest customers, would not be maintained. Eventually, FTSI would file for bankruptcy protection, devastating shareholder value and the Company's investors. A class-wide settlement in the amount of $9.875 million was reached while the Company was seeking protection from creditors in bankruptcy court. The settlement was approved on April 13, 2021. *See* Noteworthy Success Stories.

- *Benson v. D-Market Elektronik Hizmetler ve Ticaret Anonim Sirketi et al.*, Index No. 655701/2021 (N.Y. Sup. Ct. New York Cnty.). Johnson

Fistel served as Co-Lead Counsel in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. The complaint alleges that Defendants violated the Securities Act of 1933 by making materially false and misleading statements, as well as failing to disclose material information that was required to be disclosed, in the Company's Registration Statement for its IPO. Specifically, Plaintiffs alleged that Defendants failed to disclose material information regarding (i) Hepsiburada's substantial slowdown in growth in 2Q21, i.e., before the IPO; (ii) the negative impact to Hepsiburada's business and operations as of the IPO caused by Turkey's easing of COVID-19 lockdown restrictions, particularly the weekday reopening of marketplaces and shopping malls in May 2021; and (iii) Hepsiburada's need to make significant investments and customer discounts prior to the IPO to offset these negative developments. As a result, the complaint alleged that Plaintiff and the Class suffered damages in connection with their purchases of publicly traded Hepsiburada American Depository Shares ("ADSs" or "shares") sold in the IPO. The case was resolved on a class-wide basis for $13.9 million, which was approved on August 1, 2023.

- *In re EverQuote, Inc. Securities Litigation*, Index No. 651177/2019 (N.Y. Sup. Ct., New York Cnty.). Johnson Fistel served as Co-Lead Counsel in a securities class action alleging violations of §§11 and 15 of the Securities Act of 1933. EverQuote is an online marketplace where consumers looking for insurance submit information to EverQuote's website. The operative Complaint filed in the case alleged strict liability and negligence claims against for misstatements and omissions in the Company's Registration Statement regarding quote requests. Specifically, the Complaint alleged that EverQuote was purposefully moderating quote requests, the Company's sole product, as of the IPO because increased quote requests had been causing pricing compression, and that the Registration Statement not only failed to disclose these material facts, but it was replete with statements attesting to the importance to EverQuote's finances of growing quote requests. Johnson Fistel, along with Co-Lead Counsel, was able to negotiate a $4.75 million settlement, representing a significant portion of estimated damages, on behalf of investors who purchased shares in the EverQuote IPO. The settlement was approved on June 11, 2020. *See* Noteworthy Success Stories.

- *Mohanty v. Avid Technology, Inc., et al.*, No. 1:16-cv-12336-IT (D. Mass.). Johnson Fistel served as Lead Counsel and represented the Lead Plaintiff in a securities class action alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934. The plaintiff alleged that the defendants made false and misleading statements concerning the company's business, operations, and financial outlook. A class-wide settlement in the amount of $1.325 million was approved on May 2, 2018.

- *Crystal v. Medbox, Inc., et al.*, No. 2:15-cv-00426-BRO-JEM (C.D. Cal.). Johnson Fistel served as Lead Counsel and represented the Lead Plaintiffs in a securities class action alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934. The complaint alleged that defendants made numerous and repeated false and misleading statements concerning Medbox's accounting, finances, internal controls, business, prospects, and outlook throughout the Class Period. A class-wide settlement in the amount of $1.850 million in cash and 2.3 million shares of company stock was approved on May 2, 2018.

- *In re American Realty Capital Properties, Inc. Litigation*, Case 1:15-mc-00040-AKH (S.D.N.Y.). Johnson Fistel represented one of the class representatives in a securities fraud class action arising from the allegedly shady accounting practices at the real estate business formerly known American Realty Capital Partners (now known as Vereit Inc.). The case, which spanned five years of hard-fought litigation, was resolved in 2019 in a deal that saw Vereit pay $738.5 million into a common fund for the investor class, while other defendants, including AR Capital and former ARCP CEO Nicholas Schorsch, would be responsible for $225 million. Former manager Grant Thornton would pay $49 million, and former CFO Brian Block would pay $12.5 million, for a total recovery to the investor class of $1.025 billion. The settlement was approved by the court on January 4, 2020.

- *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658-MAS-LHG (D.N.J.). Johnson Fistel filed the initial case and thereafter worked with court-appointed lead counsel in this securities fraud class action arising from Valeant's alleged concealment of, among other things, Valeant's unsustainable and deceptive price gouging practices wherein Valeant acquired pre-existing drugs, some of them life-saving medicines, and then dramatically raised prices to boost short-term profitability. After more than five years of litigation, the case was resolved for $1.21 billion. The court approved the settlement on January 31, 2021

<u>Consumer Class Actions</u>

- *Novotny v. Massage Heights Franchising, LLC,* Case No. 27-2020-00017688 (Cal. Super. Ct. San Diego Cnty.). On June 16, 2022, the San Diego Superior Court granted final approval of a consumer class action settlement resolving allegations that Massage Heights' membership agreements with thousands of its California members caused them to forfeit prepaid massage services upon membership termination in violation of California law. Johnson Fistel, court-appointed class counsel, negotiated the settlement following years of investigation and hard-fought litigation with the goal of obtaining a real and direct economic benefit for the class and providing them the opportunity to reinstate their lost massage credits. The settlement provided class members the right to approximately 75% reinstatement, carrying a potential value in the several millions, and with no condition that a new membership be purchased or money otherwise be spent out-of-pocket. Johnson Fistel's creative and persistent advocacy on behalf of the class throughout the case ultimately led to the court's final approval and confirmation that the settlement fairly, reasonably, and adequately resolved the claims of the class in a manner that serves their best interests. This recent settlement follows a long line of cases in which Johnson Fistel has been a leader in consumer advocacy, and after the firm previously succeeded in similar claims against well-known, national massage chain franchisor, Massage Envy.

- *Eagle Canyon Owners' Association v. USA Waste of California, Inc.,* Case No. 37-2018-00005897 (Cal. Super. Ct. San Diego Cnty.). Eagle Canyon Owners' Association retained Johnson Fistel to pursue a class action against USA Waste for allegedly overbilling its California open market commercial and industrial customers in breach of its service agreements. Following years of investigation, discovery, and hard-fought litigation in both federal court and state court, Johnson Fistel negotiated a $7.85 million settlement, representing approximately 50% – 90% of the total, potential class-wide damages, according to Eagle Canyon's expert. The firm also insisted upon an all-cash, non-reversionary, and non-claims made settlement so that individual cash payments would be automatically being mailed to eligible class members without them needing to submit a claim form. *See* testimonial from the firm's client, Jillian Ibave, under Testimonials.

- *Baker v. Visa International Corp.*, Case No. 06cv0376 (Cal. Super. Ct. San Diego Cnty.). Johnson Fistel was appointed Co-Lead Counsel for this nationwide consumer class action that was filed in 2006 against Visa International Corp. for wrongfully assessing undisclosed fees on consumers by manipulating the currency conversion rates when consumers used their Visa Card for purchases in other countries. This matter was removed to federal court, and transferred by the Judicial Panel on Multidistrict Litigation to the U.S. District Court for the Southern District of New York to be coordinated with the *In re Currency Conversion Fee Antitrust Litigation.* The Court approved a settlement that provided for $336 million for the class members. While the *Baker* case was not the driving force leading to the $336 million for the class members, it was coordinated with that matter and the firm played a material role in the ultimate settlement.

- *Giancola v. Lincare Holdings Inc.*, Case No. 8:17-cv-2427-T-33AEP (M.D. Fla.). Serving as Class Counsel in this action, Johnson Fistel represented a class of current and former employees of Lincare, who were exposed to an unlawful data breach and the potential disclosure of their personal information. After Johnson Fistel filed an amended complaint and engaged in preliminary discovery, the parties agreed to mediation. Johnson Fistel was ultimately able to achieve a class-wide settlement that provided multiple forms of relief to class members, including: (i) a Settlement Fund totaling $875,000 in cash that was used to pay claims of class members impacted by the data breach; (ii) enhanced credit and identity monitoring protection services for the class, which was valued at more than $972,000; and (iii) Lincare's agreement to implement certain enhanced data security measures to protect the company from future data breaches and safeguard the personal information of its employees.

- *In re: Apple Inc. Device Performance Litigation*, Case No. 18-md-02827-EJD (N.D. Cal.). In December 2017, Johnson Fistel filed a class action complaint against Apple Inc. ("Apple"), alleging that Apple knowingly designed the batteries of certain iPhones to prematurely degrade, causing them to unexpectedly shut down. After the matter was consolidated with numerous other lawsuits filed against Apple for similar alleged misconduct, Johnson Fistel was appointed to the Steering Committee of the consolidated action. The litigation concerns one of the largest consumer frauds in history, affecting hundreds of millions of mobile devices around the world. The Court approved a class-wide settlement pursuant to which Apple will make a minimum, non-revisionary payment of $310,000,000 and a maximum payment of up to $500,000,000, depending on the number of claims submitted. The approval of that settlement is currently on appeal.

Employment and Labor Cases

- *Alcantar, et al. v. Cardenas Markets, LLC,* JAMS Ref. No. 1240022966 (2019) (Brisco, Arb.). Johnson Fistel was retained by six plaintiff grocery workers alleging sexual harassment and related claims. The former employees alleged that the supermarket-employer, which is backed by a leading global investment firm and is a member store of one of the largest Hispanic supermarket chains in the country, permitted and engendered a norm of unwanted and violent sexual interaction between supervisors and their employees. The firm's aggressive prosecution in the multi-plaintiff action, which included extensive discovery practice and arbitration hearings, precipitated a substantial civil rights settlement in the amount of $875k.

- *Call v. Stillwater Hospitality LLC,* Case No. 30-2017-00961765 (Cal. Super. Ct. Orange Cnty.). Johnson Fistel represented a former employee in a lawsuit against the Stillwater restaurant companies seeking civil penalties under and pursuant to the Private Attorneys General Act ("PAGA") for alleged violations of the California Labor Code for, among other things, failure to properly calculate and pay overtime compensation. PAGA allows aggrieved employees to sue over alleged labor code violations on behalf of themselves and other aggrieved employees by stepping into the shoes of state regulators to recover civil penalties. Following extensive investigation and hard-fought litigation, Johnson Fistel negotiated a significant settlement on behalf of its client and all other aggrieved employees.

- *Jane Doe v. Bad Employer*: Johnson Fistel represented a business development employee who instituted suit against her former employer, an industrial supply company. The plaintiff alleged, inter alia, that she was subjected to severe discrimination and harassment, and ultimately terminated, based on her medical condition. Johnson Fistel's tenacious advocacy procured a confidential settlement in favor of its client at an early stage of the litigation.

NOTEWORTHY SUCCESS STORIES

Johnson Fistel aggressively pursues complex litigation matters for both hourly paying clients and for contingency fee clients. While not an exhaustive list, below are a few of the cases for which the firm has achieved noteworthy successful results for its clients.

A Happy Client Following Trial

On behalf of a marketing firm, Johnson Fistel pursued claims for breach of contract and fraud against the manufacturer of a weight loss product. After a week-long jury trial, the jury returned a seven-figure verdict in favor of Johnson Fistel's client, including actual and punitive damages. *See* testimonials from the firm's client, Ronald T. Fricke, and the firm's co-counsel Gerald J. Stubenhofer, Esq. under Testimonials. *Healthy Life Marketing, LLC, et al. v. Jaime Brenkus' Sound Body, Inc.*, Case No. GIC822927 (Cal. Super. Ct. San Diego Cnty.).

Record Setting Class Action Settlement in Washington

In what is believed to be the largest recovery ever obtained in a class action challenging the price of a merger or acquisition of a public company in a Washington court, on January 20, 2017, the court approved a $12.75 million settlement for the benefit of former Flow shareholders. Specifically, the case challenged the fairness of the price shareholders received from the 2014 acquisition of Flow by American Industrial Partners. Johnson Fistel served as court-appointed Co-Lead Class Counsel.

After three years of hard-fought litigation, which included 26 depositions taken throughout the country, defeating defendants' motions to dismiss, defeating defendants' motion for summary judgment, and obtaining an order certifying the class, the parties reached an agreement to settle the case just before trial. "I am proud to be part of a settlement that achieved what is now a rarity, more money for the shareholders in a merger case," said Frank Johnson, one of the founding partners of Johnson Fistel. Cornerstone Research recently published a report regarding M&A shareholder suits in 2015 and the first half of 2016, reporting that amongst the hundreds of merger-related lawsuits identified, only six of those cases resulted in any monetary recovery for shareholders. The report concluded that in merger-related litigation, "monetary consideration paid to shareholders has remained relatively rare." *Englehart v. Brown*, Case No. 13-2-33726-6-KNT (Wash. Super. Ct. King Cnty.).

Recovering Cash for and Reforming Practices at a Global Social Media Company

Johnson Fistel, as Co-Lead Counsel served as a lead negotiator in this stockholder derivative action against certain current and former officers and directors of Twitter, Inc., recovering $38 million for the company and successfully negotiating robust governance reforms tailored to address and prevent the reoccurrence of directors and officers of Twitter from issuing materially false and misleading statements about the company's user growth and user engagement prospects, a central allegation in the case. In reflecting on Johnson Fistel's efforts, Jim Porter, one of the shareholder plaintiffs that stepped up to prosecute the claims on behalf of Twitter, referred to the settlement as an "excellent result achieved for the company and its stockholders" and lauded Johnson Fistel's lawyers and staff as "professional, responsive, and personable….I would use them again and recommend them without hesitation." *In re: Twitter, Inc. Shareholder Derivative Litigation (n/k/a X),* C.A. No. 18-062 (D. Del.).

One of the Largest Recoveries in a Derivative Case in Tennessee

Johnson Fistel was appointed sole Lead Counsel in this shareholder derivative action against certain current and former officers and directors of HCA Holdings, Inc., the largest private hospital chain in the country. The derivative claims related to similar facts that resulted in the company paying $215 million to settle a class action lawsuit filed by shareholders who alleged the company used false and misleading information to sell stock during its 2011 initial public offering.

The parties litigated the action for more than four years and attended multiple mediations, after which Johnson Fistel secured an extremely favorable settlement for HCA and its shareholders, including a payment of $19 million to HCA (believed to be among the largest recoveries in a derivative case in the State of Tennessee), the appointment of a new independent director, and implementation of significant corporate therapeutics. *Bagot v. Bracken, et al.*, Case No. 11C5133 (Tenn. Cir. Ct., 6th Cir.).

Helped Secure $24 million for the Company

Johnson Fistel was initially appointed Co-Lead Counsel in state court in one of the highest-profile cases in the country challenging the award of backdated stock options by executive officers of Brocade. For years, Brocade's insiders engaged in a secret stock option backdating scheme designed to reward executives and recruit engineers with stock options priced below their fair market value as of the date of the grants. The U.S. Government pursued and ultimately won criminal convictions against the responsible executives.

On behalf of its client, Johnson Fistel helped prevent an inadequate settlement of a related federal action from being approved, which would have released the officers, directors, and agents of the company responsible for the criminal backdating scheme resulting in no money to the company and only a payment of attorney's fees for the lawyers. Brocade then formed a Special Litigation Committee and retained Johnson Fistel as co-counsel to Brocade to help litigate claims against ten former officers and directors of the company. After years of litigation, over $24 million was recovered for Brocade. *In re Brocade Communications, Systems, Inc. Derivative Litigation*, Case No. 1:05cv41683 (Cal. Super. Ct. Santa Clara Cnty.).

Helped Secure $29 Million for Shareholders

Johnson Fistel was appointed Co-Lead Counsel in a derivative lawsuit that involved claims against the officers and directors of Titan Corporation for breach of fiduciary duty. During the pendency of the litigation, Titan announced that it would be acquired, threatening to cause the shareholders in the derivative action to lose standing. Johnson Fistel then coordinated with counsel in a related derivative action pending in Delaware to negotiate a settlement that resulted in $29 million in increased consideration to Titan's shareholders in the all-cash merger acquisition. *In re the Titan Corp. Derivative Litigation*, Case No. GIC 832018 (Cal. Super. Ct. San Diego Cnty.).

Keeping Corporate America Accountable

Johnson Fistel, as court-appointed Co-Lead Counsel pursuant to the Private Securities Litigation Reform Action of 1995 ("PSLRA"), recovered $21 million for a class of shareholders who invested in Flowers Foods, Inc. The detailed, 154 page, 352 paragraph complaint withstood defendants' motions to dismiss and for reconsideration, and alleged that defendants made false and misleading statements in connection with the Company's labor strategy, resulting in the price of Flowers Foods stock to trade at artificially inflated prices during the Class Period. The $21 million class settlement is believed to be the largest securities fraud class action recovery since the passage of the PSLRA in the Middle District of Georgia. *In re Flowers Foods, Inc. Securities Litigation*, No. 7:16-cv-0022-WLS (M.D. Ga.).

Creating Shareholder Value Through Innovative Corporate Reforms

Johnson Fistel was appointed Lead Counsel in a shareholder derivative action brought on behalf of RH, Inc. alleging, among other things, that certain officers and directors of RH violated federal and state laws by making false and misleading statements concerning RH's business operations, financial condition, and growth prospects, as well as that certain defendants engaged in improper insider trading. On RH's behalf, Johnson Fistel negotiated sweeping and innovative corporate governance reforms to benefit the company, including installation of a new Chief Compliance Officer and adoption of a Disclosure Committee Charter. On December 18, 2020, the Honorable Yvonne Gonzalez Rogers granted final approval, noting that "the Court rarely comments on counsel's performance. Here, such commentary is appropriate. . . . Counsel performed excellent work in not only investigating and analyzing the core of the issues, but in negotiating and demanding the necessary reforms to prevent malfeasance for the benefit of the shareholders and the consumers. The Court complements counsel for its excellence." *In re RH Shareholder Derivative Litigation*, No. 4:18-cv-02452-YGR (N.D. Cal).

Likewise, as Co-Lead Counsel, Johnson Fistel helped bring about reformative change at Motorola, Inc. The derivative claims there charged certain officers with making misrepresentations about the company's financial statements and prospects of success in order to artificially inflate the company's stock price while they personally sold shares and while causing the company to simultaneously purchase shares on the open market. After six years of hard-fought litigation, the action settled on terms that required the implementation of significant corporate therapeutic changes throughout the company—***changes that were valued by one expert at over $1 billion***. *In re Motorola, Inc. Derivative Litigation*, Case No. 07CH23297 (Ill. Cir. Ct. Cook County).

Helped Investors Harmed In Connection with Public Offerings

Johnson Fistel has extensive experience representing investors who purchased shares and suffered losses in connection with public offerings. In that regard, Johnson Fistel has successfully brought claims under the Securities Act of 1933 and helped investors recover many millions of dollars, including in the following class action cases: *Gerneth v. Chiasma, Inc., et al.*, No. 1:16-cv-11082-DJC (D. Mass.) ($18.75 million settlement achieved on behalf of investors who purchased shares in the Chiasma IPO); *Glock v. FTS International, Inc., et al.*, Civil Action No. 4:20-cv-03928 (S.D. Tex.) ($9.875 million settlement achieved on behalf of investors who purchased shares in the FTSI International IPO); *Desrocher v. Covisint Corporation, et al.*, Case No. 1:14-CV-03878-AKH (S.D.N.Y.) ($8 million settlement achieved on behalf of investors who purchased shares in the Covisint IPO); and *In re EverQuote, Inc. Securities Litigation*, Index No. 651177/2019 (N.Y. Sup. Ct., New York Cnty.) ($4.75 million settlement achieved on behalf of investors who purchased shares in the EverQuote IPO).

TESTIMONIALS

The Honorable Mark H. Cohen
United States District Court Judge
Northern District of Georgia

"The Court finds that the Settlement is the product of hard-fought, arm's-length negotiations by prepared, skilled, and experienced counsel conducted over the course of months through in-person, telephonic and written exchanges, and that there is no evidence of collusion. Federal Derivative Action Plaintiffs' Counsel include nationally recognized leaders in shareholder litigation." *In re Southern Company Shareholder Derivative Litigation*, No. 1:17-cv-00725-MHC (N.D. Ga.) (granting final approval of a settlement agreement that court-appointed Lead Counsel Johnson Fistel negotiated for the company after more than five years of litigation).

The Honorable Laura S. Taylor
United States Bankruptcy Court Judge
Southern District of California

"There's no question in my mind that this settlement is in the best interest of this Estate. So I'm prepared to approve it. . . . But I want to compliment Mr. Johnson, and I want to compliment on the successful recovery for the Estate. The creditors thank you, and I thank you." *In re Artes Medical, Inc.*, (Bankr. S.D. Cal., Case No. 08-12317-LT7) (approving a $3 million settlement recovered for the estate of a bankrupt public company after the Chapter 7 Trustee retained Johnson Fistel to pursue claims for breach of fiduciary against the directors). In approving the final award of attorneys' fees, Judge Taylor further stated: "The Court thanks [Johnson Fistel] for its outstanding work on behalf of the Chapter 7 Trustee and the Estate."

The Honorable Ed Kinkeade
United States District Court Judge
Northern District of Texas

"The quality of representation by the Derivative Plaintiffs' Counsel was witnessed first-hand by this Court through their articulate, high quality, and successful pleadings. Moreover, as shown by their excellent efforts in this case, Derivative Plaintiffs' Counsel are dedicated to vindicating the rights of shareholders." *In re Heelys, Inc. Derivative Litigation*, Case No. 3:07-CV-1682 (N.D. Tex.) (granting final approval of a settlement agreement that required the company to implement sweeping improvements to its governance).

The Honorable Edward M. Chen
United States District Court Judge
Northern District of California

Johnson Fistel's predecessor firm, Johnson & Weaver ("J&W"), has "demonstrated that they are qualified and experienced and are capable of acting as lead counsel." "The Court is favorably impressed by J&W's presentation and knowledge" and "J&W's experience litigating shareholder derivative actions gives it a certain amount of pre-existing expertise." *In re Oclaro, Inc. Derivative Litigation*, Case No. C-11-3176 EMC (N.D. Cal.) (appointing J&W, Lead Counsel in a complex shareholder derivative litigation in which three separate lawsuits were filed).

The Honorable W. Louis Sands
United States District Court Judge
Middle District of Georgia

"I'd also just like to acknowledge just really the professional way you all handled this case . . . and I think it is that type of substantial work from opposing sides that I think that is what we look at a settlement that both sides of this case have been well represented and represented so the Court is satisfied that it has been in the hands of people who knew what they were doing, and therefore the Court could well adopt and accept the representations made that are supported by the record with regard to just the settlement here." *In re Flowers Foods Inc. Derivative Litigation,* No. 7:18-cv-00084 (M.D. Ga.) (approving a $21 million class action settlement).

The Honorable Yvonne Gonzalez Rogers
United States District Court Judge
Northern District of California

"The Court rarely comments on counsel's performance. Here, such commentary is appropriate . . . . Counsel performed excellent work in not only investigating and analyzing the core of the issues, but in negotiating and demanding the necessary reforms to prevent malfeasance for the benefit of the shareholders and the consumers. The Court complements counsel for its excellence. . . ." *In re RH Shareholder Derivative Litig.*, No. C 18-02452YGR (granting final approval of a settlement agreement that required the company to implement innovative and comprehensive corporate governance reforms).

The Honorable Layn R. Phillips
Retired United States District Court Judge
Western District of Oklahoma

"The settlement was reached through hard fought, arm's-length negotiations conducted by skilled counsel in good faith…. Plaintiffs' Lead Counsel, [Johnson Fistel], is a firm I know and respect, and is a law firm which I count among the finest shareholder rights advocates." *Crystal v. Medbox, Inc.*, No. 2:15-CV- 00426-BRO (C.D. Cal.) (declaration in support of plaintiff's motion for approval of a securities fraud class action settlement which provided for millions of dollars worth of shares of stock and cash to be paid to injured class members).

The Honorable Howard B. Wiener
Retired Associate Justice
California Court of Appeal

"It is worth reiterating that the advocacy on both sides of the case was outstanding. I have decades of experience with attorneys from the law firms on both sides of this case, which are nationally recognized for their work prosecuting and defending large, complex class actions such as this. All counsel displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients. The settlement is the direct result of all counsel's experience, reputation, and ability in these types of complex class actions." *Eagle Canyon Owners' Association v. USA Waste of California, Inc.,* Case No. 37-2018-00005897 (declaration in support of plaintiff's motion for final approval of a class action settlement providing $7.85 million in cash payments made to class members, an amount which represented approximately 50% – 90% of the total, potential class-wide damages).

Michelle Yoshida
Attorney & Mediator
Phillips ADR Enterprises

"Counsel for the parties were highly experienced in derivative litigation, well informed on the current law, and had performed considerable work to prepare the case for mediation…. The advocacy on both sides of the case was of the highest caliber and counsel for both parties exhibited great effort, creativity, and zeal in advocating their positions." *Weitzman v. Ullman, et al.*, Civ. No. 4:13-cv-00585 (E.D. Tex.) (declaration in support of plaintiff's motion for final approval of a settlement in a derivative action which provided for a series of material reforms to JC Penney's corporate governance systems, designed to strengthen the company's internal control functions and board accountability, and ultimately prevent the recurrence of the events that led to the alleged harm to the company and the filing of the lawsuit).

Jim Porter
Client

"Throughout five years of litigation, Johnson Fistel delivered thoughtful analysis, aggressive lawyering, and excellent service. As a stockholder of a large publicly traded company, I became concerned about the performance and integrity of the company's officers and directors. I retained Johnson Fistel to investigate potential wrongdoing and ultimately file a derivative lawsuit for the benefit of the company and its shareholders. Throughout the entire litigation, from my initial contact with the firm through the excellent result achieved for the company and its stockholders, the lawyers and staff at Johnson Fistel have been professional, responsive, and personable. I would use them again and recommend them without hesitation."

Rolf L. Nordström
Chairman of the Board
International Real Estate PLC

"As chairman of the board of a public company, my company was represented by Johnson Fistel to pursue claims for breach of fiduciary duty for millions of dollars against former directors of a company formed in England. I have retained law firms throughout the world and found Johnson Fistel's services to be superb. They were very responsive and grasped complex corporate matters involving international real estate transactions. The firm aggressively litigated my company's claims against several defendants who were represented by one of the largest law firms in the world. This case was very complex and complicated and involved three jurisdictions (U.S., Europe, and Sweden). The firm played an instrumental role in bringing the whole case to a successful settlement out of court. We ultimately reached a resolution short of trial with which I was very pleased."

James Baker
Chief Cost Reduction Officer
DCI Solutions

"While I was the Executive Vice President and Chief Financial Officer for a publicly traded company, I consulted Frank Johnson on various legal issues. As CFO I was responsible for SEC reporting requirements and compliance with GAAP. In addition, I successfully completed the public offering of the company's stock which was a consistent top performer on the NASDAQ from 1998 to 1999. During the ten years I've known him, I've been very impressed with Mr. Johnson's integrity, business acumen, and understanding of complex securities issues. Based upon these factors, I retained Johnson Fistel to represent me in matters where it appeared that a public company's officers or directors engaged in fraudulent conduct to the detriment of the company's shareholders (of which I was one). As a former CFO for a public company and as a shareholder, I can say with confidence that this firm has proven to be aggressive and astute in identifying claims for fraudulent conduct in connection with the sale of publicly traded securities."

Gerald J. Stubenhofer, Esq.
Partner
McGuire Woods LLP

"While I was assistant general counsel for GNC Corporation, a publicly traded company at the time, I had the good fortune of working with Frank Johnson as GNC's lawyer. While he was at Sheppard Mullin, he successfully defended GNC in several matters, including a consumer class action and various business litigation matters. I have since left GNC Corporation and am now a partner at one of the largest law firms in the country. I have worked with Mr. Johnson on various matters, including a jury trial in San Diego, California. Mr. Johnson proved to be an exceptional trial lawyer who assisted my firm in obtaining an outstanding verdict in our client's favor. I have recommended him without reservation to both clients and lawyers who need highly skilled and effective representation."

Sean H. Mallean
President & CEO
Axeus, Inc.

"In 2004, Axeus, Inc. was using Sheppard Mullin, a large law firm, for nearly all of its legal matters. When Frank Johnson, who was then a partner at Sheppard Mullin, announced that he was departing to start his own law firm, I did not hesitate in my decision to send all of Axeus's litigation work to Mr. Johnson. At the time, Axeus was embroiled in a huge legal battle involving more than 20,000 pages of evidence and millions of dollars. Mr. Johnson helped Axeus successfully resolve that matter and has since handled several litigation matters for Axeus, all with outstanding results. I have worked with many different law firms over the years and I can say with confidence that Mr. Johnson is one of the best lawyers I've worked with. He understands what is important to his clients: excellent legal work and value. While other firms may be less expensive, Johnson Fistel provides value for its fees."

Ted Mount
Owner
Natural Energy

"I am the owner of Natural Energy, which was established in 1977 and is the largest solar energy company in the western United States. Although we have an exceptional reputation, as with any large company, legal disputes are sometimes inevitable. After using a number of law firms, for the past several years Natural Energy has used Johnson Fistel for all of its business litigation matters, from general business disputes to successfully getting a baseless class action dismissed. They are aggressive, have a strong work ethic and, of utmost importance to me, have unquestionable integrity. I have the utmost faith and confidence in them."

Jean Marie Cinotto
Client

"I first retained Johnson Fistel when my husband and I became concerned with what I thought looked like wrongful conduct by executive management at one of the publicly traded companies in which we had invested. They always clearly communicated their strategy and the underlying legal reasons why it needed to be done that particular way. Most importantly, they always responded to any questions or concerns in a timely manner and consistently updated us without overwhelming us with complicated details. We were very happy with the outcome of the securities case. When I needed a lawyer again to help me with employment matters, I retained the firm again. They demonstrated that they were well informed and helped me get a settlement with which I was very pleased. I highly recommend Johnson Fistel and I would not hesitate to use them again."

Trudy York
Client

"I recently had the pleasure of working with the attorneys at Johnson Fistel in connection with a motion to have me appointed the lead plaintiff in a class action alleging claims for securities fraud. Throughout the process, Brett Middleton (the partner in charge at Johnson Fistel) did a fantastic job of explaining everything to me and made himself available for all questions. Unfortunately, I was not selected as the lead plaintiff because the court found other shareholders had even greater losses arising out of what appeared to me to be a fraud on the market. I truly regret not being able to work with Johnson Fistel on this case because I had a great deal of confidence in the firm and its lawyers based upon their attention to detail and representation of me up to that point. I highly recommend Johnson Fistel to anyone looking for excellent representation."

Jillian Ibave
Secretary
Eagle Canyon Owners' Association

"I've worked with law firms in the past and found the lawyers and paralegals at Johnson Fistel to be first-rate. They kept me informed at every stage of this matter, they were responsive, I found their ideas to be creative, and their relentless approach caused me to believe they were passionate about having my best interest and the best interest of the class in mind."

Ronald T. Fricke
President
Healthy Life Marketing, LLC

"They were Awesome! They were professional, organized and as evidenced by juror testimonials following a one-week jury trial ... extremely effective. On claims for breach of contract and fraud, the firm helped me win a 7-figure verdict for me and my company and I will forever be grateful. You never realize how important it is to have a good attorney until you need one!"

Peter Czuczor
Client

"You guys are truly amazing. We've only worked together for a short period of time, but I already have an amazing opinion of you. The support, the detailed answers, your insights, the transparency, your prompt responses, everything. Please keep up the good work. I think the quality of your service is really unique in this world."

Tyler Martin
Client

"The team at Johnson Fistel far exceeded our expectations from the very beginning. We honestly didn't know what to expect but this team made each step so easy to understand. If we ever need legal counsel for anything else again, we will definitely be using them again. Thank you for everything."

EXHIBIT 4

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN BUSHANSKY, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, and MARK LITTON, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-497-TSZ **DECLARATION OF RUSTY E. GLENN IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO PLAINTIFFS**

SHUMAN, GLENN & STECKER
600 17th Street, Ste. 2800 S
Denver, CO 80202
Telephone: (303) 861-3003

THOMAS HOULIHAN, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN H. KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, MARK LITTON, and KEVIN CHURCH, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-620-TSZ

SHUMAN, GLENN & STECKER
600 17th Street, Ste. 2800 S
Denver, CO 80202
Telephone: (303) 861-3003

I, Rusty E. Glenn, declare as follows:

1. I am a partner of Shuman, Glenn & Stecker ("SGS"). I make this declaration based on my personal knowledge and, if called as a witness, I could and would competently testify to the matters stated herein.

2. My firm has served as counsel to Athira Pharma, Inc. stockholder Travis Vrana ("Mr. Vrana") in connection with a pre-suit litigation demand (the "Vrana Demand") issued under Delaware law to the Board of Directors (the "Board") of nominal defendant Athira Pharma, Inc. ("Athira" or the "Company"). The background and experience of my firm, SGS, and its attorneys are summarized in the firm resume attached hereto as Exhibit A.

3. This declaration is based on my own personal knowledge, information, and belief and if called upon I could and would competently testify thereto.

4. I submit this Declaration in support of Plaintiffs' Motion for Final Approval of Proposed Settlement, an Award of Attorneys' Fees and Expenses, and Service Awards to Plaintiffs.

5. In connection with the Vrana Demand, SGS performed the following work including, *inter alia*, (i) reviewing and analyzing the Company's filings with the Securities and Exchange Commission; (ii) reviewing and analyzing press releases, announcements, transcripts of conference calls with financial analysts and investors, news articles, media reports, and other publicly available information concerning matters alleged in the above-captioned Derivative Actions; reviewing and analyzing the pleadings and other papers filed in the Securities Class Action; (iii) reviewing and analyzing the Company's Corporate Governance Guidelines, Code of Business Conduct and Ethics, and the charters of the Audit Committee and the Nominating and Corporate Governance Committee of Athira's Board; (iv) researching relevant information available from Washington State University, the U.S. Patent and Trademark Office, and the

National Institute of Health concerning the facts and circumstances at issue; and (v) researching, drafting, and serving the Vrana Demand on behalf of Mr. Vrana to Athira's Board.

6. SGS asserted the Vrana Demand solely on a contingent fee basis and has been at risk that it would not receive any compensation or reimbursement of expenses in connection with the Vrana Demand and/or for prosecuting claims on behalf of nominal defendant Athira.

7. From the inception of the matter through the granting of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement on May 3, 2024, the total number of hours spent by SGS was **24.90** with a corresponding lodestar of **$22,342.50**. The work was managed in an efficient manner and to avoid duplication. The schedule below was prepared from contemporaneous, daily time records prepared and maintained by SGS. I am the attorney who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. As a result of this review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The hourly rates for the attorneys in my firm are based on comparable rates charged by defense firms in the field of derivative litigation and approved by courts in connection with contingency fee applications by plaintiffs' counsel in similar derivative litigation matters.

8. A breakdown of the lodestar is as follows:

Name	Role	Hours	Rate	Lodestar
Kip B. Shuman	Partner	2	$900	$1,800.00
Rusty E. Glenn	Partner	4.5	$825	$3,712.50
Brett D. Stecker	Partner	20.4	$825	$16,830.00
Total		**24.90**		**$22,342.50**

9. SGS has expended a total of $45.53 in unreimbursed costs and expenses in connection with the Vrana Demand. They were incurred on behalf of Mr. Vrana by my firm on a contingent basis and have not been reimbursed. The expenses incurred in this matter are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials, and represent an accurate record of the expenses incurred. These expenses include:

EXPENSE CATEGORY	AMOUNT
Federal Express	$45.53
Total Expenses	**$45.53**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 17th day of May, 2024 at Denver, Colorado.

Rusty E. Glenn

Rusty E. Glenn

SHUMAN, GLENN & STECKER
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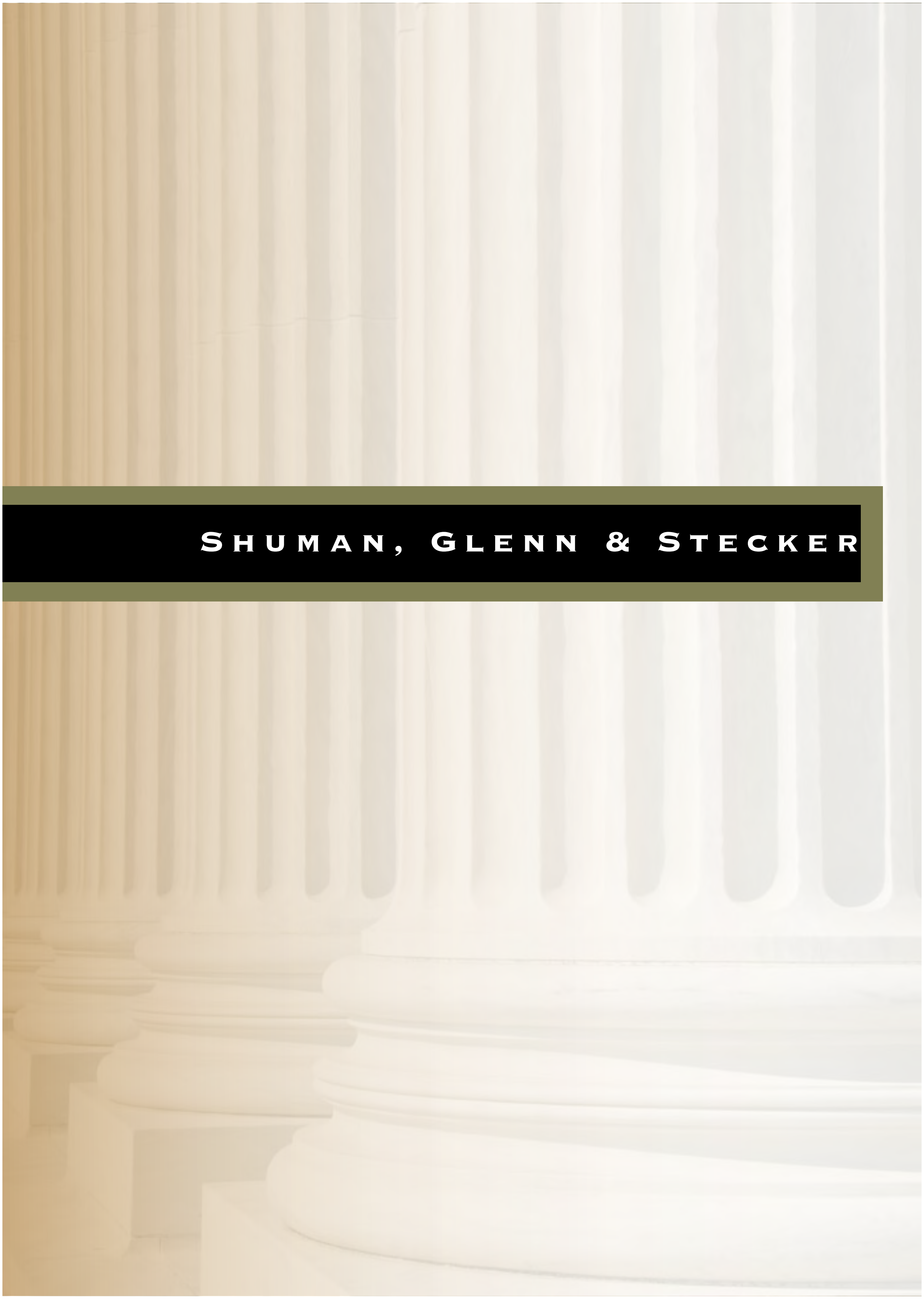
Exhibit A



SHUMAN, GLENN & STECKER

Shuman, Glenn & Stecker prides itself with its unwavering dedication to serving clients at the highest legal and ethical standards in the prosecution of corporate securities fraud throughout the United States. We are passionate about advancing the rights of defrauded shareholders and work steadfastly to redress

MISSION STATEMENT

clients. We take great pleasure in our commitment to two fundamental principles - client communication and satisfaction. We view our size as an asset which facilitates communication and enables us to better serve our clients. We believe our success as a law firm cannot only be measured by the amount of money we recover, but also the trust we develop with our clients and their approval of our work done on their behalf.

We are proud to acknowledge that RiskMetrics Group's Securities Class Action Services division recognized the Shuman Law Firm as one of the top 50 plaintiffs' law firms in the United States, ranked by total dollar amount of final securities class action settlements in 2008 in which the law firm served as lead or co-lead counsel.

Shuman, Glenn & Stecker is a nationally recognized law firm with offices in San Francisco, Denver and Philadelphia. We specialize in representing shareholders who have suffered financial losses from corporate securities fraud or other corporate malfeasance.

Since its inception in 1994, Kip B. Shuman, principal of Shuman, Glenn & Stecker has worked to recover hundreds of millions of dollars on behalf of defrauded investors. Shuman, Glenn & Stecker attorneys have acted as class counsel for institutional investors, including public pension funds, labor unions, as well as thousands of individual investors in securities class actions and derivative litigation.

FIRM BACKGROUND

Shuman, Glenn & Stecker served as counsel in over forty derivative lawsuits emanating from the well-publicized stock option backdating scandal that came to light in 2006. In these cases, corporate executives of publicly-traded companies manipulated company stock options in a manner that allowed the executives to enrich themselves to the tune of hundreds of millions of dollars at the expense of the companies and shareholders. Shuman, Glenn & Stecker has played a central role in causing many corporate executives who received manipulated stock options to return their ill-gotten profits to the companies they served.

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In many instances, Shuman, Glenn & Stecker has caused the manipulated stock options to be either rescinded or re-priced to ensure that executives cannot profit from their wrong doing. In addition, Shuman, Glenn & Stecker has caused the boards of directors of these companies to adopt robust corporate governance changes that are specifically designed to create a system of checks and balances which ensure that stock option manipulation will not occur in the future. These cases provide one recent example of Shuman, Glenn & Stecker's commitment to protecting the rights of shareholders. See pages 6-8 for a partial list of stock option backdating derivative cases and the results achieved.

ACCOLADES

In comparison with the thousand-plus attorney mega-firms commonly seen today, Shuman, Glenn & Stecker and its predecessor firms, has been frequently recognized by the courts for the high quality of its work and results achieved.

- At a hearing to appoint lead plaintiffs, lead counsel, and liaison counsel in In Re Rhythms Securities Litigation, United States District Court Senior Judge John L. Kane complimented Mr. Shuman on having done an "excellent job" in all of the class action securities matters held in his court to date.

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- In *In re Qwest Communications International, Inc., Securities Litigation,* which is believed to be the largest securities fraud case in the history of the State of Colorado, the Court in granting approval of the final settlement of the action stated: "I have for my duration as the presiding judge in this case respected and admired your competent counsel, because as I have commented and as my lead law clerk have commented repeatedly, the quality of your brief-ing and your argument and authority was exemplary and something that I would hope would be emulated by other counsel in the same or similar circumstances."

- In *Queen Uno v. Coeur D'Alene Mines Corporation,* the Court recognized the "skill and experience, reputation and ability" of plaintiffs' counsel, stating that counsel are "well respected litigators in the securities field," "highly skilled in class action litiga-tion and federal securities law," and that " the substantial amount recovered is testament to their skill."

- Likewise, in approving the final settlement of another national securities fraud class action, *Schaffer v. Evolving Systems, Inc.,* the court recognized the effort and ability of plaintiffs' counsel, stating that "the $10 million settlement ... is a good recovery, in fact, almost extraordinarily good. And I commend counsel for having achieved that result."

Shuman, Glenn & Stecker attorneys have exceptional success in prosecuting shareholder class actions and derivative actions. Below is a sample of their more notable cases.

- *Rasner v. FirstWorld Communications Inc.*, Case No. 00-K-1376 (D. Colo.) (co-lead counsel) ($25.925 million recovered).

- *In re Tele-Communications, Inc. Sec. Litig.*, Case No. 97CV421 (Colo.) (co-lead counsel) ($26.5 million recovered).

NOTABLE CASES

- *Muhr v. Transcrypt Int'l, Inc.*, Case No. CI98-333 (Neb.) (co-lead counsel) (approximately $25 million recovered).

- *In re Samsonite Corp. Sec. Litig.*, Case No. 98-K-1878 (D. Colo.) (co-lead counsel) ($24 million recovered).

- *Queen Uno Ltd. Partnership. v. Coeur D'Alene Mines Corp.*, Case No. 97-WY-1431 (D. Colo.) (co-lead counsel) ($13 million recovered).

- *In re Secure Computing Corp. Sec. Litig.*, Case No. C-99-1927 (N.D. Cal.) (co-lead counsel) ($10.1 million recovered).

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- *Angres v. Smallworldwide PLC,* Case No. 99-K-1254 (D. Colo.) (co-lead counsel) ($9.85 million recovered).

- *In re Qwest Comms. Int'l Sec. Litig.*, Case No. 01-cv-1451 (D. Colo.) (liaison counsel) ($450 million recovered).

- *In re First American Corporation Shareholder Derivative Litigation,* Case No. SACV-06-1230 (C.D. Cal.) (corporate reforms obtained included, separating roles of the Chairman of the Board and CEO, enhanced Chairman of the Board duties, the creation of lead independent director, and revised compensation guidelines).

- *In re Quest Software, Inc. Derivative Litigation,* Case No. SACV-06-751 (C.D. Cal.) (corporate reforms obtained included, separating roles for Chairman of Board and CEO, enhanced Chairman of the Board duties, amendments to stock option plans, revisions to compensation committee and audit committee charters, and revised compensation guidelines).

- *In re NVIDIA Corp. Derivative Litigation,* Case No. C-06-06110 (N.D. Cal.) (payments, re-pricing and other benefits to the company for mispriced stock options valued at over $15 million; corporate reforms obtained included, enhanced board of director duties and independence requirements, creation of lead independent director with specified duties, and revised compensation and stock option policies).

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- *In re Newpark Resources, Inc. Derivative Litigation,* Case No. 06-7340 (E.D. La.) (payment of $8.3 million to the company for mispriced stock options; creation and implementation of code of ethics for senior officers and directors, creation and implementation of policy on reporting, cooperating with investigation and discipline in connection with policy violations, modifications to company policy regarding remediation actions related to material weaknesses in internal controls over financial reporting).

- *In re Meade Instruments Corp. Derivative Litigation,* Case No. 06CC00205 (Cal. Super. Ct., Orange County) (corporate reforms included, enhanced timing, disclosures, and doc-umentation of company equity compensation awards of awards, the creation of a compliance officer and enhanced duties for compensation and audit committees).

- *In re Cheesecake Factory Incorporated Derivative Litigation,* Case No. CV-06-6234 (C.D. Cal.) (repayment to the company by certain directors and officers for mispriced exercised stock options; corporate reforms included, the addition of an independent director, maintenance of a lead independent director with specified duties, enhanced board of director duties and independence requirements, and revised compensation and stock option policies).

KIP B. SHUMAN kip@shumanlawfirm.com

Kip B. Shuman, founding member of the firm, has prosecuted class actions and derivative actions in Colorado and through-out the United States for more than twenty-five years. Mr. Shuman concentrates his practice on representing injured shareholders through securities class actions and derivative litigation.

Mr. Shuman graduated from U.C.L.A. in 1984 and the University of San Francisco School of Law in 1989.

OUR SECURITIES LITIGATION TEAM

Mr. Shuman has lectured in the area of class actions, teaching a continuing legal education course entitled, Litigating the Class Action Lawsuit in Colorado. He was also a panelist at the 35th Rocky Mountain Securities Conference and presented on the topic of Pleading Requirements in the Tenth Circuit after the Private Securities Litigation Reform Act of 1995.

Mr. Shuman is a member of both the Colorado and California State Bars, and is admitted to practice before the U.S. District Courts for the Northern and Central Districts of California, the U.S. District Court for Colorado, and the United States Ninth and Tenth Circuit Courts of Appeals.

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Rusty E. Glenn

rusty@shumanlawfirm.com

Rusty E. Glenn, a partner of the firm, concentrates his practice on representing injured shareholders through securities class actions and derivative litigation.

Mr. Glenn received his B.S., *summa cum laude*, from Baker University in 2004, an M.A. in Economics from the University of Kansas Graduate School of Economics in 2006 and his law degree from the University of Kansas School of Law in 2007. He also studied at Bahceshir University in Istanbul, Turkey under former U.S. Supreme Court Justice Antonin Scalia.

Mr. Glenn's professional experience includes two years as Constituent Director for Kansas Senate Democratic Leader Anthony Hensley. In addition, Mr. Glenn gained experience in the investigation and prosecution of financial crimes and corporate fraud while working for the Federal Bureau of Investigation in Washington, D.C. and Kansas City, Missouri. Upon graduation from law school, Mr. Glenn joined Shuman, Glenn & Stecker's predecessor firm and has prosecuted numerous class actions and derivative actions in the more than decade since.

Mr. Glenn is a member of the Colorado State Bar, and is admitted to practice before the United States District Court for the District of Colorado, and the United States Tenth Circuit Court of Appeals.

continued on next page

BRETT D. STECKER brett@shumanlawfirm.com

Brett D. Stecker, a partner of the firm, has concentrated his practice on representing injured shareholders through securities class actions and derivative litigation since 2006. Mr. Stecker joined Shuman, Glenn & Stecker as a partner in 2019 and previously was a member of a well-known Pennsylvania shareholder rights law firm for over 13 years. Mr. Stecker has served as lead or co-lead counsel in scores of shareholder class and derivative actions in state and federal courts across the U.S.

Prior to specializing in shareholder rights, Mr. Stecker was associated with two prominent Philadelphia law firms, where he represented Fortune 500 companies as well as large regional financial institutions in various complex commercial litigation matters.

Mr. Stecker graduated from Franklin & Marshall College in 1997 with a B.A. in government, and received his Juris Doctor from the Villanova University School of Law in 2000. While at Villanova University School of Law, Mr. Stecker served as an Executive Member of the Moot Court Board and competed in moot court competitions held at law schools across the U.S.

Mr. Stecker has been a member of both the Pennsylvania and New Jersey state bars since 2000. He is admitted to practice before the Pennsylvania Supreme Court, the United States District Court for the Eastern District of Pennsylvania, and the U.S. Court of Appeals for the Second and Ninth Circuits.

SHUMAN, GLENN & STECKER

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Ardmore, PA 19003

EXHIBIT 5

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN BUSHANSKY, derivatively on behalf of ATHIRA PHARMA, INC.,

Plaintiff,

vs.

LEEN KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, and MARK LITTON,

Defendants,

and

ATHIRA PHARMA, INC.,

Nominal Defendant.

Case No. 2:22-cv-497-TSZ

DECLARATION OF MILES A. YANICK IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS TO PLAINTIFFS

Yanick Law & Dispute Resolution PLLC
1325 Fourth Avenue, Suite 1130 Seattle, WA 98101
Telephone: (206) 455-5924

THOMAS HOULIHAN, derivatively on behalf of ATHIRA PHARMA, INC., Plaintiff, vs. LEEN H. KAWAS, KELLY A. ROMANO, JOSEPH EDELMAN, JOHN M. FLUKE, JR., JAMES A. JOHNSON, BARBARA KOSACZ, MARK LITTON, and KEVIN CHURCH, Defendants, and ATHIRA PHARMA, INC., Nominal Defendant.	Case No. 2:22-cv-620-TSZ

Yanick Law & Dispute Resolution PLLC
1325 Fourth Avenue, Suite 1130 Seattle, WA 98101
Telephone: (206) 455-5924

I, Miles A. Yanick, declare as follows:

1. I am the sole member of Yanick Law & Dispute Resolution PLLC, the local counsel for Plaintiffs Stephen Bushansky and Thomas Houlihan in the above consolidated captioned action brought derivatively on behalf of Athira Pharma, Inc. ("Athira" or the "Company").

2. This declaration is based on my own personal knowledge, information, and belief and if called upon I could and would competently testify thereto.

3. I submit this Declaration in support of Plaintiff's Motion for an Award of Attorneys' Fees and Expenses and Service Awards to Plaintiffs.

4. My firm acted as local counsel in this action, ensuring that Plaintiffs' co-lead counsel was aware of and complied with local customs and practices. As such, I reviewed Plaintiffs' filings with the Court prior to their filing and provided guidance thereon. I also consulted with Plaintiffs' co-lead counsel regarding procedural requirements, as well as case strategy. My background and experience are summarized in the resume attached hereto as Exhibit A.

5. Yanick Law & Dispute Resolution PLLC has prosecuted this litigation solely on a contingent fee basis and has been at risk that it would not receive any compensation or reimbursement of expenses for prosecuting claims on behalf of nominal defendant Athira. While Yanick Law & Dispute Resolution PLLC devoted its time and resources to this matter, it has foregone other legal work for which it would have been compensated.

6. The total number of hours spent on the prosecution and settlement of the case from its inception of the case through the present is 5.8 hours. The total lodestar amount for attorneys' time based on my firm's current rates is $2,465. I am the attorney who oversaw and/or conducted the day-to-day activities in the litigation and I reviewed these printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity

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for, and reasonableness of, the time and expenses committed to the litigation in the exercise of appropriate billing judgment. As a result of this review, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. The hourly rates shown below are the usual and customary rates charged for work of this nature. A breakdown of the lodestar is as follows:

NAME		**HOURS**	**RATE**	**LODESTAR**
Miles A. Yanick	Attorney	5.8	$425	$2,465
Totals		5.8	$425	$2,465

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 16th day of May 2024 at Seattle, Washington.

Miles A. Yanick

Yanick Law & Dispute Resolution PLLC
1325 Fourth Avenue, Suite 1130 Seattle, WA 98101
Telephone: (206) 455-5924

EXHIBIT A

Miles A. Yanick
Yanick Law & Dispute Resolution PLLC
1325 Fourth Avenue, Suite 1130
Seattle, Washington 98101

WORK EXPERIENCE

Yanick Law & Dispute Resolution PLLC, Seattle, Washington (September 2021-present)
Practice areas: business litigation, Collaborative Law, and mediation

Lowe Graham Jones, Seattle, Washington (September 2021-present)
Of counsel, intellectual-property litigation, including patent, trademark, trade-secrets

Savitt Bruce & Willey LLP, Seattle, Washington (January 2007-August 2021)
Partner in 12-attorney litigation boutique emphasizing business, real estate, trust/estate, shareholder, securities, employment, business-tort, and noncompete/trade-secret litigation, including class actions

Law Offices of Miles A. Yanick PC, Seattle, Washington (July 2005-Dec. 2006)
General civil-litigation practice

Davis Wright Tremaine LLP, Seattle, Washington (July 2001-June 2005)
Senior Associate in business-litigation practice group

McNaul Ebel Nawrot & Helgren, PLLC, Seattle, Washington (April 2000-July 2001)
Associate in general civil-litigation practice group

King County Prosecutor's Office, Civil Division (May 1999-April 2000)
Deputy Prosecuting Attorney, Contracts and County Services Sections

Riddell Williams P.S., Seattle, Washington (Nov. 1997-May 1999)
Associate in employment and business-litigation practice groups

Law Clerk to Judge Carolyn Dimmick, U.S. District Court, Western District of Washington (Aug. 1996-Aug. 1997)

EDUCATION

University of Michigan Law School, J.D. *magna cum laude* 1996

The Evergreen State College, Olympia, Washington, B.A. 1990

BAR COMMITTEES

Co-Chair, Local Rules Committee, Fed. Bar Ass'n, W. D. Wash. (Jan. 2010-Dec. 2015)
Co-Chair of committee charged with advocating for or assisting court with changes to local rules of procedure

KCBA Judicial Screening Committee (2006-2011)
Regular participant in meetings and reference checks to rate judicial candidates

KCBA Community Legal Services Committee (2000-2003)
Conceived and conducted survey of Seattle-area law firms to assess pro bono commitment; authored article for *Bar Bulletin* discussing results

VOLUNTEER LEGAL WORK

Mediator, King County Dispute Resolution Center (January 2009-2012)
Serve as mediator for cases pending in small claims court

Mediator, Snohomish County Dispute Resolution Center (February 2007-2010)
Serve as mediator for a variety of non-litigated disputes

Pro Bono Panel, U.S. District Court, Western District of Washington (2002-2003)
Represented plaintiff inmate at Washington State Special Corrections Center through trial in civil rights claim against State

KCBA Family Law Mentor Program (2001-2002)
Represented victim of domestic violence in dissolution proceeding through one-week trial

KCBA Housing Justice Project (1998-1999)
Defended tenants facing eviction at show-cause hearings

KCBA Lake City Neighborhood Legal Clinic (1997-2000)
Provide 30-minute consultation to clients on a wide range of matters

EXHIBIT 6

Neutral
As of: May 16, 2024 6:14 PM Z

In re Southern Co. S'holder Derivative Litig.

United States District Court for the Northern District of Georgia, Atlanta Division

June 9, 2022, Decided; June 9, 2022, Filed

CIVIL ACTION FILE NO. 1:17-CV-725-MHC

Reporter
2022 U.S. Dist. LEXIS 106456 *; 2022 WL 4545614

IN RE THE SOUTHERN COMPANY SHAREHOLDER DERIVATIVE LITIGATION

Prior History: *Monroe Cty. Emples. Ret. Sys. v. Southern Co., 2018 U.S. Dist. LEXIS 54008, 2018 WL 1558577 (N.D. Ga., Mar. 29, 2018)*

Core Terms

Settlement, derivative action, Plaintiffs', parties, Notice, negotiations, mediation, final approval, oversight, Reforms, awards, stockholders, Derivative, factors, courts, risks, attorney's fees, shareholder, discovery, collusion, benefits, weigh, substantial benefit, fee award, proceedings, compliance, contingent, milestones, approving, documents

Counsel: **[*1]** For Jean Vinyard, agent of | The Southern Company |, Plaintiff: Frank J. Johnson, LEAD ATTORNEY, PRO HAC VICE, Johnson & Weaver, LLP-CA, San Diego, CA USA; Michael Ira Fistel, Jr., William Woodhull Stone, LEAD ATTORNEYS, Adam Sunstrom, Johnson Fistel, LLP, Marietta, GA USA.

For Judy Mesirov, Derivatively | on behalf of | The Southern Company |, Plaintiff: Brian J. Robbins, LEAD ATTORNEY, Robbins Arroyo, LLP-SD CA, San Diego, CA USA; Craig W. Smith, LEAD ATTORNEY, PRO HAC VICE, Robbins LLP, San Diego, CA USA; Debra S. Goodman, LEAD ATTORNEY, Law Office of Debra S. Goodman P.C., Blue Bell, PA USA; Michael Ira Fistel, Jr., William Woodhull Stone, LEAD ATTORNEYS, Adam Sunstrom, Johnson Fistel, LLP, Marietta, GA USA; Shane P. Sanders, LEAD ATTORNEY, PRO HAC VICE, Robbins Arroyo, LLP-SD CA, San Diego, CA USA.

For Thomas A. Fanning, Arthur P. Beattie, Edward Day, VI, G. Edison Holland, Jr., Juanita Powell Baranco, Jon A. Boscia, Henry A. Clark, III, David J. Grain, Veronica M. Hagen, Warren A. Hood, Jr., Linda P. Hudson, Donald M. James, John D. Johns, DALE E. KLEIN, William G. Smith, Jr., Steven R. Specker, Lawrence D. Thompson, E. Jenner Wood, III, The Southern Company, a Delaware Corporation, **[*2]** NOMINAL DEFENDANT, Defendants: Ashley Heintz, Michael Joseph McConnell, Jones Day - Atlanta, Atlanta, GA USA; Robert Watts, Jones Day-Atlanta, Atlanta, GA USA.

For William Habermeyer, Jr., Defendant: Robert Watts, Jones Day-Atlanta, Atlanta, GA USA.

Judges: MARK H. COHEN, UNITED STATES DISTRICT JUDGE.

Opinion by: MARK H. COHEN

Opinion

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT, AND AWARDING ATTORNEYS' FEES, EXPENSES, AND DERIVATIVE PLAINTIFFS SERVICE AWARDS

This litigation arises out of a stockholder derivative action brought by Plaintiffs Jean Vinyard and Judy Mesirov on behalf of nominal defendant, the Southern Company ("Southern"), against current and former officers and directors of Southern for alleged breaches of fiduciary duties, unjust enrichment, and waste of corporate assets. Verified Shareholder Derivative Compl. [Doc. 1]; June 26, 2017, Order [Doc. 34] (consolidating the above-captioned action with Mesirov v. Fanning, No. 1:17-CV-1983-MHC (N.D. Ga. filed May 31, 2017)). In addition to the above-styled action (the "Federal Derivative Action"), there is a related derivative action pending in the Superior Court of Gwinnett

County. Helen E. Piper Survivor's Tr., derivatively on behalf of The Southern Co. **[*3]** v. Thomas A. Fanning et al., No. 17-A-04758-10 (Super. Ct. of Gwinnett Cnty. filed May 15, 2017) (the "State Derivative Action"). The claims in the Federal Derivative Action and the State Derivative Action (collectively, the "Derivative Actions") are based on Southern's attempted construction and subsequent decommissioning of a power plant in Kemper County, Mississippi, which resulted in financial losses.

On August 20, 2021, the Settling Parties[1] reached an agreement in principle on the material substantive terms of a global settlement of the Derivative Actions. Am. Stipulation and Agreement of Settlement ("Am. Stipulation") [Doc. 99-1]. On March 11, 2022, this Court issued the Preliminary Approval Order finding that "there is cause to believe that: (i) the Settlement is fair, reasonable, and adequate, and within the range of possible approval, as it provides a beneficial result for Southern and Current Southern Stockholders, (ii) the Settlement has been negotiated in good faith at arms-length between experienced attorneys for the Settling Parties familiar with the legal and factual issues of the Derivative Actions, and (iii) with respect to the forms of notice of the material terms **[*4]** of the Settlement to Current Southern Stockholders for their consideration and reaction, that notice is appropriate and warranted." Prelim. Approval Order [Doc. 100] at 3. This case is now before the Court on Plaintiffs' Motion for Final Approval of Derivative Settlement [Doc. 104]. After considering the entire record and the record of the Settlement Hearing held on June 1, 2022, the Court hereby issues this Order granting final approval of the Settlement and awarding attorneys' fees and expenses.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Factual Background

Southern is a gas and electric utility holding company based in Atlanta, Georgia. Decl. of Michael I. Fistel, Jr. in Supp. of Pls.' Mot. for Final Approval of Derivative Settlement ("Fistel Decl.") [Doc. 104-2] ¶ 13. The Company's subsidiaries include public utility companies throughout the southeastern United States, including Mississippi Power Company ("Mississippi Power"), Alabama Power Company, Georgia Power Company ("Georgia Power"), Gulf Power Company, and Southern Power Company. Id. Mississippi Power, a wholly owned subsidiary of the Company, operates as a utility company providing power to retail customers in the State **[*5]** of Mississippi and to wholesale customers in the Southeastern United States. Id.

The Derivative Actions arise out of Southern's construction and subsequent decommissioning of a commercial-scale integrated gasification combined cycle ("IGCC") lignite coal-fired power plant in Kemper County, Mississippi (the "Kemper Plant" or "Project"). Am. Stipulation at 3-4.[2]

Plaintiffs contend that the Individual Defendants, current and former directors and officers of Southern, breached fiduciary duties of loyalty and care owed to Southern and its stockholders by: (i) failing to exercise oversight over the design, planning and construction of the Project; (ii) failing to establish effective systems for monitoring and controlling Project design and construction, budget and schedule estimates, actual costs and schedules, and mitigation plans to address design and construction problems, cost overruns, and schedule delays; (iii) failing to ensure accurate and timely disclosure of material Project developments and changes in key Project assumptions, including material increases in actual and estimated costs and schedules, escalating risks to achievement of operational and financial objectives, qualification **[*6]** for government-funded incentives, and prospects for ratepayer recovery, and sustained declines in current and projected natural gas prices; and (iv) failing to prevent billions of dollars in foreseeable losses resulting from, *inter alia*, forfeited government incentives, rejected applications for ratepayer cost recovery, and excess construction and decommissioning costs. Id. at 4.[3] Plaintiffs further contend that these alleged breaches of duty exposed Southern to liability in the *Securities Act*ion, and to civil and/or criminal sanctions in a continuing investigation by the U.S. Department of Justice. Id. at 5.

[1] Unless otherwise noted, for the purposes of this Order, the Court adopts all defined terms as set out in the Amended Stipulation.

[2] Citations to the Amended Stipulation are to CM/ECF document number rather than the internal page number.

[3] As noted in the Amended Stipulation and at the Settlement Hearing, Defendants dispute and deny any and all such allegations and contentions. Am. Stipulation at 24-25.

B. Procedural History[4]

On February 27, 2017, Plaintiff Vinyard commenced the above-styled action. Verified Shareholder Derivative Compl. [Doc. 1]. Thereafter, upon agreement of the parties, the Court entered an order deferring the action pending a decision on the anticipated motion to dismiss in the *Securities Action* (Monroe Cnty Emps.' Retirement Sys. v. The Southern Co. et al., No. 1:17-CV-0241-WMR (N.D. Ga. filed Jan. 20, 2017)). Mar. 27, 2017, Order [Doc. 31]. Defendants also agreed, *inter alia*, to produce copies of documents and written discovery responses produced by Southern in the Securities Action and **[*7]** to engage in formal settlement discussions or mediation of the derivative claims in the event of similar discussions or mediation in the *Securities Action*. Am. Stipulation at 5-7.

On May 31, 2017, Plaintiff Mesirov filed the Mesirov action, alleging similar claims for breach of fiduciary duty and waste, and adding a claim under *§ 14(a)* of the *Securities Exchange Act of 1934*. Mesirov v. Fanning, No. 1:17-CV-1983-MHC (N.D. Ga. filed May 31, 2017). After the consolidation of Mesirov into the above-styled action, the Federal Parties negotiated the terms of a proposed order governing the production and exchange of confidential information, which the Court entered on February 28, 2018. See Stipulation and Order for the Production and Exchange of Certain Confidential Information [Doc. 40]. Southern subsequently produced a large volume of non-public corporate books and records, which Federal Derivative Action Plaintiffs' Counsel reviewed and evaluated. See Am. Stipulation at 87-88.

On March 29, 2018, the Court granted in part and denied in part a motion to dismiss the *Securities Action* [ECF 39]. See also Am. Stipulation at 8. The Federal Parties met and conferred and agreed that Southern's interests would be best served by continuing the litigation deferral **[*8]** and information exchange arrangement. Am. Stipulation at 8-9; see also Consent Order Continuing Deferral of Litigation [Doc. 43].

On October 30, 2018, counsel for the Federal Parties executed the undertaking appended to the confidentiality protective order entered in the *Securities Action*, following which Southern commenced a rolling production of documents, written discovery responses, discovery agreements, and deposition transcripts as they were generated in the *Securities Action*. Am. Stipulation at 9. Over the course of 24 months, Southern produced approximately 193,589 documents constituting more than four million pages documents, in addition to transcripts of depositions and other proceedings. Id. Federal Derivative Action Plaintiffs' Counsel used a search engine to identify over 81,000 highly relevant documents, and then organized these materials into smaller, topical datasets subject to further analysis. Id.

On February 20, 2020, the parties in the Derivative Actions attended an in-person mediation in New York supervised by the Mediator. Id. at 10. Before the mediation, Federal Derivative Action Plaintiffs' Counsel presented a detailed mediation statement informed by their evaluation of the discovery materials **[*9]** made available to date, and a proposed remedial framework. Id.

On August 17, 2020, the parties to the *Securities Action* notified the Court that they had reached an agreement in principle to settle. Id.; Joint Mot. to Stay Proceedings, Securities Action [ECF 215]. On September 25, 2020, Federal Plaintiffs filed a status report with the Court addressing the implications of the *Securities Action* settlement for the Federal Derivative Action and advised the Court that the Federal Parties' mediator-facilitated settlement discussions were continuing, and that another formal mediation session was scheduled for November 12, 2020. Pls.' Status Report [Doc. 65]. Over the next eleven (11) months, the Court granted additional deferrals to facilitate the Federal Parties' ongoing mediator-facilitated settlement negotiations. [Docs. 67-88].

On August 23, 2021, the Federal Plaintiffs notified the Court that they had reached an agreement in principle to settle the Federal Derivative Action, subject to Board approval. See Aug. 23, 2021, Order [Doc. 90]. The Court entered an order continuing the deferral of the Federal Derivative Action pending the filing of a stipulation of settlement by the parties. Id.

On January 20, 2022, the parties **[*10]** executed the Stipulation and Agreement of Settlement, and Plaintiffs moved this Court to preliminarily approve the Settlement on January 21, 2022. Pls.' Unopposed Mot. for Prelim. Approval of Settlement [Doc. 97]. On March 10, 2022, the Federal Parties filed the Amended Stipulation with the Court. Am. Stipulation.

[4] The parties to the State Derivative Action also are signatories to the Amended Stipulation and the Settlement also resolves that action. Per the Amended Stipulation, the State Fee and Expense Amount and State Plaintiff service award shall be approved by the State Court. Am. Stipulation at 39.

C. Preliminary Approval and Notice

On March 11, 2022, this Court preliminarily approved the Settlement, authorized issuance of the Notice and the Summary Notice to shareholders, and set June 1, 2022, as the hearing date for final approval of the Settlement and payment of attorneys' fees. Prelim. Approval Order [Doc. 100]. Southern disseminated the Notice in accordance with the process presented to and approved by the Court. Notice of Filing of Decl. Regarding Proof of Publication of the Notice and Summ. Notice [Doc. 103].

II. TERMS OF THE SETTLEMENT

The Settlement commits Southern, through its Board and/or committees of the Board or duly authorized officers of Southern, to adopt and/or maintain for a minimum period of five (5) years a comprehensive package of oversight and internal controls reforms designed to address the alleged lapses in Board- and management-level supervision **[*11]** of Large Capital Projects ("LCPs") that Plaintiffs contend contributed to the Project's failure and caused Southern's losses. Am. Stipulation at 34, 57-68.

Specifically, the Settlement includes, *inter alia*, the following categories of reforms:

- **Cost Tracking for Large Capital Projects**: The Reforms require Southern to implement comprehensive, standardized, and audited cost tracking systems and procedures to govern all LCPs.

- **Southern Disclosure Committee**: The Settlement requires Southern to improve the operation of the Southern Disclosure Committee by requiring consistency in membership, across relevant corporate functions, expanding its duties and responsibilities, and enhancing meeting and reporting requirements designed to involve the Audit Committee directly in disclosure oversight and decision-making.

- **Chief Audit Executive**: The Reforms formalize the Chief Audit Executive's duties, responsibilities, authority, and reporting requirements to strengthen the rigor of Southern's executive- and Board-level oversight of internal controls over accounting, financial reporting, compliance, and operational risk management.

- **Internal Audit**: The Reforms further strengthen the Board's supervision **[*12]** of Southern's internal controls, compliance, and risk management through enhancements to the Company's Internal Audit process.

- **Management Oversight and Communication with the Board**: During the Commitment Period, executive management from both Southern and its operating subsidiaries responsible for building and operating LCPs will meet periodically to focus on material enterprise risks. Southern and its subsidiaries' executives will both engage in regular oversight of LCPs and communicate regularly with the Board and relevant Board committees, including through reports presented at Board and/or committee meetings.

- **Operations, Environmental and Safety Committee Oversight**: Oversight of policies and operating issues related to construction and licensing of new facilities or infrastructure, including the review of cost and schedule estimates, risks, and associated risk management activities, will be coordinated through the Board's Operations, Environmental and Safety Committee.

- **Board and Committee Authority**: The Reforms provide the Board and each Board committee with express authority to engage the services of advisors as it deems appropriate.

- **Alignment of Executive Compensation with [*13] LCP Milestones**: Performance pay decisions will incorporate objective measures, including: (i) deadline milestones; (ii) budget milestones; (iii) operational milestones; (iv) regulatory milestones; and (v) safety milestones. In the event an LCP materially exceeds budget or schedule targets, the Compensation and Management Succession Committee must review the impact such event has on the Company's or subsidiary's financial performance and, where warranted, reduce the performance-based compensation payouts or recover previous payouts pursuant to Southern's enhanced Compensation Clawback Policy.

- **Compensation Clawback Policy**: The Clawback Policy now extends to annual Performance Pay Program awards and long-term incentive program awards to current and former executive officers and other senior management.

• **Director Education**: Within one year after a director's initial election to the Board, and at least once every three years thereafter, Southern will fund a director's continuing education program of their own choosing concerning, among other things, compliance with law and regulation, disclosures to shareholders, and fiduciary duties.

• **Compliance Education/Training**: Southern will fund **[*14]** enhanced training provided by the Office of the Chief Compliance Officer regarding the whistleblower provisions of the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Southern's non-retaliation policy, and the Company's Concerns Program for receiving, investigating, and responding to employee complaints.

Id. at 57-68.

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.

The Court's evaluation of the Settlement is guided by the "strong judicial policy favoring settlement[,] as well as by the realization that compromise is the essence of settlement." *Bennett v. Behring Corp., 737 F.2d 982, 986 (11th Cir. 1984)*: *In re Motorsports Merch. Antitrust Litig., 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000)* (same). "Settlements of shareholder derivative actions are particularly favored because such litigation is 'notoriously difficult and unpredictable[,]'" *Maher v. Zapata Corp., 714 F.2d 436, 455 (5th Cir. 1983)*, and because they permit "management [to] return its attention and energy from the courtroom to the corporation itself." *Zimmerman v. Bell, 800 F.2d 386, 392 (4th Cir. 1986)*.

The question on final approval is "whether [the Settlement] is 'fair, adequate, reasonable, and not the product of collusion.'" *George v. Acad. Mortg. Corp. (UT), 369 F. Supp. 3d 1356, 1369 (N.D. Ga. 2019)* (quoting *Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812, 105 S. Ct. 2965, 86 L. Ed. 2d 628 (1985)*); see also *Leverso v. SouthTrust Bank, 18 F.3d 1527, 1530 (11th Cir. 1994)*; *Bennett, 737 F.2d at 986*; *Cotton v. Hinton, 559 F.2d 1326, 1330 (5th Cir. 1977)*[5]). Relevant factors include:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement **[*15]** is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Bennett, 737 F.2d at 986. Here, each of these factors are met.

A. The Settlement Merits a Strong Presumption that It Is Fair, Reasonable, and Adequate.

"Determining the fairness of the settlement is left to the sound discretion of the trial court. ..." Id. In exercising this discretion, courts need not "reach[] ultimate conclusions on the issues underlying the dispute or substituting its business judgment for that of the parties." *In re Chicken Antitrust Litig., 560 F. Supp. 957, 960 (N.D. Ga. 1980)*. A proposed settlement "enjoys a strong presumption that it is fair, reasonable, and adequate" where it "is the product of extensive, arm's-length negotiations conducted by capable counsel who are well-experienced in class and derivative actions." Hugo ex rel. Bank Atlantic Bancorp. v. Levan, No. 08-61018-CIV, 2011 WL 13173025, at *5 (S.D. Fla. July 12, 2011).

The presumption is strengthened where plaintiffs' counsel are "nationally recognized members of the securities litigation bar[.]" *In re NeuStar, Inc. Sec. Litig., No. 1:14cv885 (JCC/TRJ), 2015 U.S. Dist. LEXIS 165320, 2015 WL 8484438, at *4 (E.D. Va. Dec. 8, 2015)* (punctuation and citation omitted); see also *Lake v. First Nationwide Bank, 900 F. Supp. 726, 732 (E.D. Pa. 1995)* ("Significant weight should be attributed 'to the belief of experienced counsel that settlement is in the best interest of the class.'"). "The **[*16]** trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'" *In re Domestic Air Transp. Antitrust Litis., 148 F.R.D. 297, 312-13 (N.D. Ga. 1993)* (quoting *Cotton, 559 F.2d at 1330*) (alterations accepted); see also *In re Smith, 926 F.2d 1027, 1028 (11th Cir. 1991)* ("trial judge ought not try the case during a settlement hearing and should be hesitant to substitute his or her own judgment for that of counsel").

Here, the Court finds that the Settlement is the product

[5] Under *Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981)* (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

of hard-fought, arm's-length negotiations by prepared, skilled, and experienced counsel conducted over the course of months through in-person, telephonic and written exchanges, and that there is no evidence of collusion. Federal Derivative Action Plaintiffs' Counsel include nationally recognized leaders in shareholder litigation, and as detailed further herein, their recommendation and the Federal Plaintiff's decision to settle on the terms set forth in the Stipulation was well-informed. See Am. Stipulation at 13-19. Further, the Mediator's integral role in guiding the Federal Parties' negotiations strengthens the presumption of fairness. See *D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001)* (noting that a "mediator's involvement. . . helps to ensure that the proceedings were free of collusion"); *George, 369 F. Supp. 3d at 1370* ("mediation with an experienced mediator . . . further confirms that **[*17]** the process was procedurally sound and not collusive").

Further, during the course of the negotiations, which continued for more than a year, the Settling Parties exchanged substantial confidential information regarding the merits, damages, insurance, and the Company's corporate governance and internal controls, in addition to numerous drafts of the Term Sheet and settlement-related documents detailing the key settlement terms. Fistel Decl. ¶ 89. The Federal Parties' respective views regarding the strengths and weaknesses of the claims and defenses; the probable costs, risks, and duration of continued litigation; and the alleged governance and oversight weaknesses Federal Plaintiffs contend led to Southern's alleged losses were thoroughly rehearsed and tested in extensive written and verbal exchanges. See Am. Stipulation at 13-20.

Moreover, Southern's Board, including by unanimous vote of its non-defendant members, approved a resolution reflecting its informed and good faith determination that: (i) the Reforms adopted, implemented, and/or maintained pursuant to the Settlement confer substantial corporate benefits on the Company and its stockholders; (ii) Plaintiffs' litigation and settlement **[*18]** efforts caused the adoption, implementation, and/or maintenance of the Reforms for the Commitment Period; and (iii) the Settlement is fair, reasonable, and adequate, and serves the best interests of the Company and its stockholders. Id. at 25. The directors' exercise of business judgment with respect to the Settlement warrants substantial judicial deference. See *Lunsford v. Woodforest Nat'l Bank, No. 1:12-cv-103-CAP, 2014 U.S. Dist. LEXIS 200716, 2014 WL 12740375, at *4 (N.D. Ga. May 19, 2014)* (quoting *Rankin v. Rots, No. 02-CV-71045, 2006 U.S. Dist. LEXIS 45706, 2006 WL 1876538, at *3 (E.D. Mich. June 27, 2006)*) (Regarding settlement, "the Court 'will not substitute its business judgment for that of the parties[.]'"); *Unitrin, Inc. v. Am. Gen. Corp., 651 A.2d 1361, 1386 (Del. 1995)* (citation omitted) ("[C]ourts will not substitute their business judgment for that of the directors, but will determine if the directors' decision was, on balance, within a range of reasonableness[.]"); *Brooks v. Am, Exp. Indus., Inc., 1977 U.S. Dist. LEXIS 17313, at *10 (S.D.N.Y. Feb. 17, 1977)* (board's approval of settlement "is a business judgement with presumptive validity").

Accordingly, the Court finds that the Settlement is presumptively fair, adequate, and reasonable.

B. Plaintiffs' Counsel's Settlement Recommendation Is Well-informed.

The sixth *Bennett* factor regarding the "stage of proceedings" focuses on whether "[c]ounsel had sufficient information to adequately evaluate the merits of the case and weigh the benefits against further litigation," not whether there has been formal discovery. *Francisco v. Numismatic Guar. Corp., No. 06-61677-CIV, 2008 U.S. Dist. LEXIS 125370, 2008 WL 649124, at *11 (S.D. Fla. Jan. 31, 2008)* (citing **[*19]** *Cotton, 559 F.2d at 1332*)). Where information has been gathered through other means "formal discovery [is not] a necessary ticket to the bargaining table." *In re Corrugated Container Antitrust Litig., 643 F.2d 195, 211 (5th Cir. 1981)*; see also *In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000)* (same); *Cotton, 559 F.2d at 1332* (finding that "very little formal discovery was conducted and there [was] no voluminous record in this case" but that "the lack of such does not compel the conclusion that insufficient discovery was conducted," as plaintiffs "achieved the desired quantum of information necessary to achieve a settlement" through investigation and informal discovery).

Here, Federal Derivative Action Plaintiffs' Counsel's decision to settle was exceedingly well-informed, see Fistel Decl. ¶¶ 9, 73, 82; and the Court finds that Federal Derivative Action Plaintiffs' Counsel had a strong understanding of the potential risks and rewards of pursuing further litigation, how Southern's and its stockholders' interests would be impacted across the broad range of possible litigation scenarios and outcomes, and the remedial measures that would be necessary to ensure the Company would not suffer the alleged consequences of similar alleged wrongdoing in the future.

This Court also finds that the Federal Derivative Action Plaintiffs' Counsel's determination that the substantial **[*20]** benefits guaranteed by the Settlement far outweigh the value of any probable risk-adjusted monetary recovery that might be secured through further litigation is thoroughly informed by their comprehensive review of the facts, circumstances, and law, as well as their decades of experience litigating and settling dozens of derivative actions of similar magnitude and complexity. Id. ¶¶ 82, 90. The evaluations of the Reforms by Professor Hamermesh and Mr. Jetley confirm Plaintiffs' Counsel's determination. Decl. of Lawrence A. Hamermesh ("Hamermesh Decl.") [Doc. 104-3] ¶ 16-22; Decl. of Guarav Jetley ("Jetley Decl") [Doc. 104-4] ¶ 19-43.

Accordingly, the Court finds this factor strongly supports final approval of the Settlement.

C. Weighed Against the Possible Range of Recovery, the Substantial Benefits of the Settlement Merit Final Approval.

"The second and third factors in the Eleventh Circuit's *Bennett* analysis call for the Court to determine the 'possible range of recovery' and then ascertain where within that range 'fair, adequate, and reasonable settlements lie.'" *Deas v. Russell Stover Candies, Inc., No. CV-04-C-0491-S, 2005 U.S. Dist. LEXIS 60152, 2005 WL 8158201, at *11 (N.D. Ala. Dec. 22, 2005)* (citation omitted).

The Settlement provides Southern and its stockholders the benefits of a comprehensive package of oversight and **[*21]** internal controls reforms designed to address the alleged lapses in Board- and management-level supervision of LCPs and that will reduce the likelihood that the Company will suffer from similar such lapses in the future. Fistel Decl. ¶ 91; Hamermesh Decl. ¶¶ 14, 22; Jetley Decl. ¶ 18.

Courts widely recognize that "a corporation may receive a 'substantial benefit' from a derivative suit. . . regardless of whether the benefit is pecuniary in nature." *Mills v. Elec. Auto-Lite Co., 396 U.S. 375, 395, 90 S. Ct. 616, 24 L. Ed. 2d 593 (1970)*; see *In re AOL Time Warner S'holder Derivative Life, No. 02 Civ. 6302(SWK), 2006 U.S. Dist. LEXIS 63260, 2006 WL 2572114, at *4 (S.D.N.Y. Sept. 6, 2006)* (non-monetary benefits can be "substantial enough to merit [settlement] approval"); *Lewis v. Anderson, 692 F.2d 1267, 1271 (9th Cir. 1982)* (same). "Strong corporate governance is fundamental to the economic well-being and success of a corporation[,]" and governance reforms designed to prevent recurrence of alleged wrongdoing "provide valuable benefits to public companies." *In re NVIDIA Corp. Derivative Litis., 2009 U.S. Dist. LEXIS 24973, at * 11-*12 (N.D. Cal. Mar. 18, 2009)*. Further, settlements supported by reforms "specifically designed to minimize the probability of violations of fiduciary duties and federal securities laws" are generally approved because they make it "far less likely [that the corporation will] become subject to long and costly securities litigation [or to] . . . prosecution or investigation by regulators and prosecutors." *Cohn v. Nelson, 375 F. Supp. 2d 844, 853-55 (E.D. Mo. 2005)*; see also *In re Pfizer Inc. S'holder Derivative Litig., 780 F. Supp. 2d 336, 342 (S.D.N.Y. 2011)* (approving derivative settlement **[*22]** predicated on "a significantly improved institutional structure for detecting and rectifying the types of wrongdoing that have, in recent years, caused extensive harm to the company"); *Unite Nat'l Ret. Fund v. Watts, No. 04CV3603DMC, 2005 U.S. Dist. LEXIS 26246, 2005 WL 2877899, at *2 (D.N.J. Oct. 28, 2005)* (corporate governance benefits designed "to prevent future harm" support settlement); *In re Infinity Broad. Corp. S'holder Litig., 802 A.2d 285, 289-90 (Del. 2002)* (settlement's future impact properly considered in evaluating fairness and adequacy).

Considering the substantial benefits guaranteed by the Settlement weighed against the possible range of recovery, the Court finds the second and third factors in the Eleventh Circuit's *Bennett* analysis factors are satisfied and support settlement approval.

D. The Substantial Costs, Delays, and Risks of Further Litigation Support Settlement Approval.

The first and fourth *Bennett* factors concerning the expected complexity, expense, and duration of further litigation and the likelihood of success at trial weigh heavily in favor of final approval. Shareholder derivative litigation is "notoriously difficult and unpredictable." *Maher, 714 F.2d at 455* (punctuation and citation omitted). Moreover, the breach of the duty of oversight claim at the heart of the Derivative Actions is "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a **[*23]** judgment." *In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959, 967 (Del. Ch. 1996)*; see *In re The Home Depot. Inc.*

S'holder Derivative Life, 223 F. Supp. 3d 1317, 1325 (N.D. Ga. 2016). In these circumstances, "it is prudent to eliminate the risks of litigation to achieve specific certainty though admittedly it might be considerably less (or more) than were the case fought to the bitter end." Fla. Trailer & Equip. Co. v. Deal 284 F.2d 567, 573 (5th Cir. 1960); see also Maher, 714 F.2d at 458, 461 (affirming district court's approval of a settlement where prospects for superior recovery were "problematical" and "did not outweigh the costs, both legal and otherwise"); Lunsford, 2014 U.S. Dist. LEXIS 200716, 2014 WL 12740375, at *8 ("'[T]he class faced a multitude of potentially serious, substantive defenses, any one of which could have precluded or drastically reduced the prospects of recovery.... Given the innumerable risks ... as well as the certainty of substantial delay and expense from ongoing litigation, the [s]ettlement cannot be seen as anything except a fair compromise.").

Federal Plaintiffs' decision to lock in the Settlement's guarantee that the Reforms will be implemented and maintained for at least half of a decade, rather than to sacrifice that benefit in order to pursue the remote possibility of a monetary recovery exceeding the Reforms' value, is eminently reasonable. As such, the first and fourth Bennett factors concerning the expected complexity, expense, and duration of further litigation and **[*24]** the likelihood of success at trial weigh heavily in favor of final approval.

E. The Reaction of Current Southern Stockholders Supports Approval.

The Court also considers the "substance and amount of opposition to the [S]ettlement[,]" which includes the reaction of Current Southern Stockholders to the Settlement. Bennett, 737 F.2d at 986. Here, Southern disseminated the Summary Notice and Long-Form Notice of the Settlement in accordance with the process approved by the Court and as consistent with the requirements of Rule 23.1 and due process. See Prelim. Approval Order; Notice of Filing of Decl. Regarding Proof of Publication of the Notice and Summ. Notice. The Notices informed investors of their rights under the Settlement, including by specifying procedures for raising any objections to the Settlement. See Notice of Proposed Settlement [Doc. 103-4]. The deadline for submitting objections was May 18, 2022. See Prelim. Approval Order at 8. There were no objections to the Settlement. See Pls.' Reply in Supp. of Pls.' Mot. for Final Approval [Doc. 105]. The Court finds that the absence of a single objection to the Settlement demonstrates the fairness of the Settlement and weighs in favor of approval.

Based on the foregoing, **[*25]** the Court hereby finally **APPROVES** in all respects the Settlement, and finds that the Settlement is fair, reasonable, and adequate.

IV. THE FEDERAL FEE AND EXPENSE AMOUNT IS FAIR AND **REASONABLE**.

Federal Derivative Action Plaintiffs' Counsel seek approval of an agreed-to fee and expenses amount of $3.5 million. Am. Stipulation at 96-97; Mem. of Law in Supp. of Pls.' Mot. for Final Approval [Doc. 104-1] at 4. For the reasons detailed below, the Federal Fee and Expense Amount is APPROVED as fair and reasonable.

A. The Federal Parties' Agreement Merits Substantial Deference.

The Supreme Court of the United States has endorsed the consensual resolution of the amount of attorneys' fees to be paid to plaintiffs' counsel in representative litigation. Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S. Ct. 1933, 76 L. Ed. 2d 40 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally . . . litigants will settle the amount of a fee."). "[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that **[*26]** the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." Officers for Justice v. Civil Ser. Comm'n of City and Cnty. of S.F., 688 F.2d 615, 625 (9th Cir. 1982). Where there is no evidence of collusion, courts accord substantial deference to fee and expense amounts determined by the parties. See Ingram v. The Coca-Cola Co., 200 F.R.D. 685, 695 (N.D. Ga. 2001) (affording "substantial weight to a negotiated fee amount"); Cohn, 375 F. Supp. 2d at 861 ("where ... the parties have agreed on the amount of attorneys' fees and expenses, courts give the parties' agreement substantial deference").

The Federal Parties' negotiations were based on an informed analysis of the appropriate fee range in light of the Settlement benefits' value, contingency risk, and fees approved by courts in comparable cases, and the negotiations were facilitated and supervised by the Mediator, who was familiar with the complexity of the issues, the risks and challenges confronted by Federal Plaintiffs, as well as the magnitude and quality of Federal Derivative Action Plaintiffs' Counsel's efforts in securing the Settlement benefit. Fistel Decl. ¶¶ 114-15; Decl. of David M. Murphy, Esq. ("Murphy Decl.") [Doc. 104-5] ¶¶ 15-16. Following a number of exchanges through the Mediator, the Federal Parties accepted his double-blind proposal, agreeing on the Federal Fee and Expense Amount **[*27]** of $3.5 million, to be funded by Southern's insurers, as consideration for the substantial benefits conferred upon Southern and its stockholders by Federal Derivative Action Plaintiffs' Counsel through the Settlement, subject to the Court's approval. Murphy Decl. ¶¶ 15-16. The Mediator's role in the negotiations provides further assurances that the process was fair and the amount reasonable. See *In re AOL Time Warner Scolder Derivative Litig., No. 02 Civ. 6302(CM), 2009 U.S. Dist. LEXIS 124372, 2010 WL 363113, at *24 (S.D.N.Y. Feb. 1, 2010)* (punctuation and citation omitted) ("[M]ediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").

The Court finds that the result of the Federal Parties' informed negotiations, which was arrived at following the Mediator's proposal, is entitled to great weight in evaluating Federal Derivative Action Plaintiffs' Counsel's request for approval of the agreed-to Federal Fee and Expense Amount. *Johnson v. Ga. Highway Express, Inc., 488 F.2d 714, 720 (5th Cir. 1974)* ("*Johnson*") (encouraging counsel to "arrive at a settlement as to attorney's fees.").

B. The Johnson Factors Support the Fee Agreement.

In the Eleventh Circuit, courts evaluate proposed fee awards guided by the factors articulated in *Johnson*, including: (1) the results obtained and fees in similar cases; (2) the novelty and difficulty of the **[*28]** questions involved; (3) the preclusion of other employment due to the acceptance of the case; (4) whether the fee is fixed or contingent; (5) the experience, reputation, and ability of the attorneys; and (6) the time and labor required. *488 F.2d at 717-19*. "[N]ot every [*Johnson*] factor need be necessarily considered." *In re Catfish Antitrust Litig., 939 F. Supp. 493, 502 (N.D. Miss. 1996)*. "'[T]he most critical factor' in determining the reasonableness of a fee award 'is the degree of success obtained.'" *Klein v. City of Laguna Beach, 810 F.3d 693, 698-99 (9th Cir. 2016)* (quoting *Farrar v. Hobby, 506 U.S. 103, 114, 113 S. Ct. 566, 121 L. Ed. 2d 494 (1992)*). As discussed below, the application of the relevant *Johnson* factors confirms the fairness and reasonableness of the agreed-to Federal Fee and Expense Amount.

1. The Results Obtained and Fee Awards in Comparable Cases

While the Settlement benefit is non-pecuniary, it does confer real and substantial corporate benefits to Southern. See Hamermesh Decl. ¶ 2. Courts have long recognized that a "corporation may receive a 'substantial benefit' from a derivative suit, justifying an award of counsel fees, regardless of whether the benefit is pecuniary in nature[,]" *Mills, 396 U.S. at 395-96*, and that the value of effective corporate therapeutics may well exceed the value of any probable monetary judgment. *Maher, 714 F.2d at 461* ("the effects of the suit on the functioning of the corporation may have a substantially greater economic **[*29]** impact on it, both long- and short-term, than the dollar amount of any likely judgment in its favor").

Further, the Federal Fee and Expense Amount also appears reasonable when measured against attorneys' fees approved in comparable derivative settlements. See *In re Schering-Plough Corp. S'holders Derivative Litig., No. 01-1412, 2008 U.S. Dist. LEXIS 2569, 2008 WL 185809, at *1, *5 (D.N.J. Jan. 14, 2008)* (approving $9.5 million fee and noting "[t]he adoption of the corporate governance and compliance mechanisms required by the settlement can prevent breakdowns in oversight that would otherwise subject the company to the risk of regulatory action, or uncover and remedy a problem at the early stages before it becomes the subject of a government investigation. Effective corporate governance can also affect stock price by bolstering investor confidence and improving consumer perceptions.").[6]

[6] See also, City of Pontiac Gen. Emps.' Ret. Sys. v. Langone, No. 2006-cv-122302, slip op. (Ga. Super. Ct. of Fulton Cnty. June 10, 2008) ($14.5 million fee in governance-based settlement) [Doc. 104-12]; In re Motorola, Inc., Derivative Litig., No. 07CH23297, slip op. (Ill. Cir. Ct. of Cook Cnty. Nov. 29, 2012) ($9.5 million fee in governance-based settlement) [Doc. 104-13]; Warner v. Lesar, No. 2011-09567, slip op. (Tex. Dist. Ct. of Harris Cnty. Oct. 1, 2012) ($7.75 million fee in governance-based settlement) [Doc. 104-14]; In re Lifelock, Inc. Derivative Litig., No. CV2015-054087, slip op. (Ariz.

The Court finds that the results obtained through the Settlement, as well as fee awards in comparable derivative cases, support approval of the agreed-to $3.5 million Federal Fee and Expense Amount.

2. The Novelty and Difficulty of the Questions Involved

As noted herein, shareholder derivative actions **[*30]** are "notoriously difficult and unpredictable[.]" *Maher, 714 F.2d at 455*. This action is no different; it involved a sprawling and highly technical fact pattern involving cutting-edge coal gasification and carbon sequestration technologies, complex economic and financial projections, and related design, engineering, and construction planning, scheduling, and budget issues. Dozens of witnesses were involved, and the documentary record was extensive. See Am. Stipulation at 13-19; Fistel Decl. ¶ 121. Adding to the novelty and difficulty in this case is the fact that Plaintiffs' claims centered on breach of the duty of oversight, widely recognized as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *In re Caremark Int'l Inc. Derivative Litig., 698 A.2d at 967*; see also Fistel Decl. ¶ 122; *In re The Home Depot, Inc. S'holder Derivative Litig., 223 F. Supp. 3d at 1325* ("where the [p]laintiffs allege a failure of oversight on the part of the [b]oard, the [p]laintiffs must show that the [d]irectors either *knew* they were not discharging their fiduciary obligations or that the directors demonstrated a *conscious* disregard for their responsibilities such as by failing to act in the face of a known duty to act.") (emphasis in original) (punctuation and citation omitted).

Accordingly, the Court finds **[*31]** that the novelty and difficulty of the legal and factual issues faced by the Federal Derivative Plaintiffs' Counsel supports a finding that the Federal Fee and Expense Amount is reasonable.

3. The Skill, Experience, and Reputation of Counsel

Federal Derivative Action Plaintiffs' Counsel have strong reputations and long track records of exemplary results in shareholder litigation. Fistel Decl. ¶ 124; Johnson Fistel, LLP Firm Resume [Doc. 104-8]; Decl. of Craig W. Smith in Supp. of Pls.' Mot. for Final Approval ("Smith Decl.") [Doc. 104-9] ¶¶ 1-4. Their successful navigation of the complex issues and significant challenges posed by this matter speaks to their skill as practitioners and their value as counsel. Further, Defendants were represented by Jones Day, a leading corporate defense firm, whose lawyers zealously and effectively represented their interests. See *In re Sunbeam Sec. Litig., 176 F. Supp. 2d 1323, 1334 (S.D. Fla. 2001)* (quality of opposing counsel substantiates quality of plaintiffs' counsel's work).

Accordingly, the Court finds the experience, reputation, and ability of Federal Derivative Action Plaintiffs' Counsel supports approval of the Federal Fee and Expense Amount.

4. The Contingent Nature of the Fee

Courts have consistently recognized **[*32]** that another important factor in evaluating an application for fees is the contingent nature of the fee. *Johnson, 488 F. 2d at 718-19*: see also *Behrens v. Wometco Enters., Inc., 118 F.R.D. 534, 548 (S.D. Fla. 1988)* ("A contingency fee arrangement often justifies an increase in the award of attorneys' fees.... If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risk of recovering nothing."), aff'd, *899 F.2d 21 (11th Cir. 1990)*; *Milstein v. Werner, 58 F.R.D. 544, 549 (S.D.N.Y. 1973)* (derivative suit fee "should be viewed as an incentive, as much as a just reward for services performed"). Here, Federal Derivative Action Plaintiffs' Counsel devoted significant time and effort to this matter on a wholly contingent basis. Fistel Decl. ¶ 125.

Thus, the Court finds that this factor, too, supports the fairness and reasonableness of the Federal Fee and Expense Amount.

5. The Preclusion of Other Employment Due to the Acceptance of the Case

The Federal Derivative Action was filed in 2017. Since then, Federal Derivative Action Plaintiffs' Counsel spent substantial time and resources prosecuting the Federal Derivative Action. Fistel Decl. ¶¶ 126-29. Thus, Federal

Super. Ct. of Maricopa Cnty. Sept. 8, 2016) ($6 million fee for governance, compliance and internal controls reforms) [Doc. 104-15]; In re F5 Networks, Inc. Derivative Litig., No. C06-794 RSL, slip op. (W.D. Wash. Jan. 6, 2011) ($5 million fee in governance-based settlement) [Doc. 104-17]; In re MiMedx Group, Inc. S'holder Derivative Litig., No. 1:18-cv-04486-WMR (N.D.Ga. Dec. 21, 2020), Final Order and Judgment, ¶ 11 ($3.5 million fee in governance-based settlement) [Doc. 104-20].

Derivative Actions Plaintiffs' Counsel's prosecution of the Federal **[*33]** Derivative Action necessarily precluded them from devoting resources to other litigation and the prosecution of additional cases. See id. Accordingly, the Court finds that this factor supports a finding that the Federal Fee and Expense Amount is reasonable.

6. The Time and Labor Required to Secure the Result

Federal Derivative Action Plaintiffs' Counsel incurred $200,288.30 in out-of-pocket expenses,[7] and expended 8,371.2 hours in the investigation, commencement, prosecution, and settlement of the Federal Derivative Action, amounting to lodestar of $4,158,081.00 using counsel's ordinary hourly rates.[8] Fistel Decl. ¶¶ 138-43. This time was spent on over five years of tasks and led to the recovery. See id. ¶¶ 126-37.

Finally, although a lodestar "cross-check" is not required, see *Camden I Condominium Association, Inc. v. Dunkle, 946 F.2d 768, 773-75 (11th Cir. 1991)* (criticizing inefficiencies and incentives of lodestar approach), if one is conducted here, the Federal Fee and Expense Amount actually represents a negative lodestar multiplier of .84. Fistel Decl. ¶ 144. Indeed, courts in the Eleventh Circuit routinely approve fee awards amounting to positive multipliers on counsel's time to compensate them for the **[*34]** risky nature of representative litigation.[9] Given the foregoing, the Federal Fee and Expense Amount is reasonable.

7. Lack of Objections to the Federal Fee and Expense Amount

No Current Southern Stockholder objected to the Federal Fee and Expense Amount. See *In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 305 (3d Cir. 2005)* (fact that only two class members objected to proposed fee award supports approval); *In re The Mills Corp. Sec. Litis., 265 F.R.D. 246, 261-62 (E.D. Va. 2009)* (fact that only two of 128,000 class members objected to fee and expense application "[f]urther indicat[es] the [c]lass' approval of the result realized by this [s]ettlement"). Accordingly, his factor also weighs in favor of approving the Federal Fee and Expense Amount.

V. FEDERAL PLAINTIFFS' REQUESTED SERVICE AWARDS

The Amended Stipulation provides that "[t]he Settling Parties agree that Federal Plaintiffs and State Plaintiff may seek service awards, not to exceed $3,000 per Plaintiff, to be paid out of their counsel's respective fee and expense amounts, subject to approval by the Court or State Court, respectively." Am. Stipulation at 43.

Prior to September 17, 2020, courts in this circuit routinely approved incentive awards to compensate class representatives for the services they provide and **[*35]** the risks they incur on behalf of the Class. See, e.g., *Ingram, 200 F.R.D. at 695-96*. On that date, the United States Court of Appeals for the Eleventh

[7] Federal Derivative Action Plaintiffs' Counsel advised the Court that since the filing of the Motion on May 4, 2022, Federal Derivative Action Plaintiffs' Counsel received a check in the amount of $13,597.76 from State Derivative Action Plaintiffs' Counsel towards expert fees, reducing Federal Derivative Action Plaintiffs' Counsel's total unreimbursed expenses from $213,886.06 to $200,288.30. Pls.' Reply in Supp. of Mot. for Final Approval.

[8] Federal Derivative Action Plaintiffs' Counsel's hourly rates are consistent with the rates submitted by other plaintiff's-side shareholder law firms. For example, hourly rates charged by partners of Federal Derivative Action Plaintiffs' Counsel in the Federal Derivative Action range from $875.00 to $1,100.00, associate, staff attorney, and of counsel rates range from $311.15 to $675.00, and professional staff rates range from $193.00 to $385.00. Fistel Decl. ¶¶ 138-39. Federal and state courts across the nation (including the Northern District of Georgia) have approved similar rates for lawyers of comparable skill and experience. See, e.g., *In re Equifax Inc. Customer Data Security Breach Litig., No. 1:17-md-2800-TWT, 2020 U.S. Dist. LEXIS 118209, 2020 WL 256132, at *39 (N.D. Ga. Mar. 17, 2020)* (finding hourly rates of more than $1,000 for counsel reasonable and noting that prevailing rates for complex litigation in Atlanta and around the country are commensurate with or even in excess of those hourly rates); In re MiMedx Group, Inc. S'holder Derivative Litig., No. 1:18-cv-04486-WMR (N.D. Ga.) (approving similar hourly rates).

[9] See *Pinto v. Princess Cruise Lines, Ltd., 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007)* (citation omitted) (noting that lodestar multipliers "'in large and complicated class actions' range from 2.26 to 4.5, while 'three appears to be the average.'"); *Ingram, 200 F.R.D. at 694-96* (finding a multiplier between 2.5 and 4 to be reasonable); *Mashburn v. Nat'l Healthcare, Inc., 684 F. Supp. 679, 702 (M.D. Ala. 1988)* (a multiplier of 3.1 is "not unusual or unreasonable"); In re MiMedx Group, Inc. S'holder Derivative Litig., No. 1:18-cv-04486-WMR (N.D. Ga.) (approving fee and expense amount with 1.57 multiplier).

Circuit decided *Johnson v. NPAS Sols., 975 F.3d 1244 (11th Cir. 2020)*,[10] in which the court held that "[a] plaintiff suing on behalf of a class . . . cannot be paid a salary or be reimbursed for his personal expenses." *Id. at 1257*. In *Johnson*, the Eleventh Circuit was presented with a class action settlement arising out of alleged violations of the Telephone Consumer Protection Act, *47 U.S.C. § 227*, that included an incentive payment to the class representative. After reviewing the Nineteenth Century precedents of *Trustees v. Greenough, 105 U.S. 527, 26 L. Ed. 1157 (1882)*, and *Cent. R.R. & Banking Co. v. Pettus, 113 U.S. 116, 5 S. Ct. 387, 28 L. Ed. 915 (1885)*, the court found that these two cases "prohibit the type of incentive award that the district court approved here—one that compensates a class representative for his time and rewards him for bringing a lawsuit." *NPAS Sols., 975 F.3d at 1260*.

Considering the Plaintiffs' requested service awards in light of the precedent of NPAS Solutions, the Court will deny the service awards without prejudice and retain jurisdiction for the limited purpose of revisiting this issue if NPAS Solutions is reversed. See *In re Equifax Inc. Customer Data Sec. Breach Litig., 999 F.3d 1247, 1281-82 (11th Cir. 2021)* (vacating incentive awards made by the district court prior to the opinion in NPAS Solutions). The Court finds this appropriate, given that **[*36]** the mandate in NPAS Solutions has been withheld and there still is a pending petition for en banc review. See *Sabal Trail Transmission, LLC v. Lasseter, 823 F. App'x 914, 918 (11th Cir. 2020)* (quoting *Flagship Marine Svcs., Inc. v. Belcher Towing Co., 23 F.3d 341, 342 (11th Cir. 1994)* ("Until a mandate issues, an appellate judgment is not final; the decision reached in the opinion may be revised by the panel, or reconsidered by the *en banc* court, or certiorari may be granted by the Supreme Court."); see also *Fruitstone v. Spartan Race, Inc., No. 20-cv-20836-BLOOM/Louis, 2021 U.S. Dist. LEXIS 95860, 2021 WL 2012362, at *13 (S.D. Fla. May 20, 2021)* (disapproving service award but reserving jurisdiction to allow Class Counsel to renew the request should NPAS Solutions be reversed).

VI. CONCLUSION

For the reasons set forth above, it is hereby **ORDERED** that:

(1)Plaintiffs' Motion for Final Approval of Derivative Settlement [Doc. 104] is **GRANTED**.

(2)The Federal Fee and Expense Amount of $3,500,000 is **APPROVED**.

(3)Federal Plaintiffs' requested service awards in the amount of $3,000 each, to be paid out of the Federal Fee and Expense Amount, are **DENIED WITHOUT PREJUDICE**.

(4)The Court will concurrently herewith enter the Order and Final Judgment submitted by the Federal Parties.

IT IS SO ORDERED this 9th day of June, 2022.

/s/ Mark H. Cohen

MARK H. COHEN

UNITED STATES DISTRICT JUDGE

End of Document

[10] A petition for en banc review is pending in NPAS Solutions, and a judge of the Eleventh Circuit has withheld issuance of the mandate. Order, Johnson v. NPAS Sols., No. 18-12344 (entered for the court Nov. 9, 2020) (withholding issuance of the mandate in the appeal); Pet. for Reh'g or for Reh'g En Banc, Johnson v. NPAS Sols., No. 18-12344 (filed Oct. 22, 2020).

EXHIBIT 7

Nixon-Crenshaw v. Coley

United States District Court for the Southern District of Florida

April 21, 2021, Decided; April 21, 2021, Entered on Docket

CASE NO. 18-25289-CIV-SINGHAL/GOODMAN; CASE NO. 20-21952-CIV-SINGHAL/TORRES

Reporter

2021 U.S. Dist. LEXIS 76897 *

SHARON NIXON-CRENSHAW, derivatively on behalf of Dycom Industries, Inc., Plaintiff, v. STEPHEN C. COLEY, DWIGHT B. DUKE, EITAN GERTEL, ANDERS GUSTAFSSON, PATRICIA L. HIGGINS, STEVEN E. NIELSON, PETER T. PRUITT, JR., RICHARD K. SYKES, LAURIE J. THOMSEN, and CHARLES B. COE, Defendants, and DYCOM INDUSTRIES, INC., Nominal Defendant.TERRY WHITE and CHRIS PERKINS, derivatively on behalf of Dycom Industries, Inc., Plaintiffs, v. STEVEN E. NIELSEN, H. ANDREW DEFERRARI, DWIGHT B. DUKE, EITAN GERTEL, ANDERS GUSTAFSSON, PATRICIA L. HIGGINS, RICHARD K. SYKES, LAURIE J. THOMSEN, CHARLES B. COE, and STEPHEN C. COLEY, Defendants, and DYCOM INDUSTRIES, INC., Nominal Defendant.

Core Terms

settlement, parties, above-captioned

Counsel: **[*1]** For Sharon Nixon-Crenshaw, Derivatively on Behalf of Dycom Industries, Inc., Plaintiff (1:18-cv-25289-AHS): Thomas J. McKenna, LEAD ATTORNEY, Gainey & McKenna, New York, NY; Gregory M. Egleston, PRO HAC VICE, Gainey McKenna & Egleston, New York, NY; Scott Daniel Egleston, Law Office of Scott Egleston, P.A., Miami, FL.

For Terry White, Derivatively on Behalf of Nominal Defendant Dycom Industries, Inc., Chris Perkins, Derivatively on Behalf of Nominal Defendant Dycom Industries, Inc., Consol Plaintiffs (1:18-cv-25289-AHS): Scott Daniel Egleston, LEAD ATTORNEY, Law Office of Scott Egleston, P.A., Miami, FL.

For Stephen C. Coley, Dwight B. Duke, Eitan Gertel, Anders Gustafsson, Patricia L. Higgins, Steven E. Nielsen, Charles B. Coe, Defendants (1:18-cv-25289-AHS): Scott Gardner Hawkins, LEAD ATTORNEY, Joanne M. O'Connor, Jones Foster Johnston & Stubbs, West Palm Beach, FL; Alan S. Goudiss, PRO HAC VICE, Shearman & Sterling, New York, NY.

For Peter T. Pruitt, Jr., Defendant (1:18-cv-25289-AHS): Joanne M. O'Connor, LEAD ATTORNEY, Jones Foster Johnston & Stubbs, West Palm Beach, FL; Alan S. Goudiss, PRO HAC VICE, Shearman & Sterling, New York, NY.

For Richard K. Sykes, Laurie J. Thomsen, Defendants **[*2]** (1:18-cv-25289-AHS): Joanne M. O'Connor, Scott Gardner Hawkins, LEAD ATTORNEYS, Jones Foster Johnston & Stubbs, West Palm Beach, FL; Alan S. Goudiss, PRO HAC VICE, Shearman & Sterling, New York, NY.

For Dycom Industries, Inc., Defendant (1:18-cv-25289-AHS): Scott Gardner Hawkins, LEAD ATTORNEY, Jones Foster Johnston & Stubbs, West Palm Beach, FL; Alan S. Goudiss, PRO HAC VICE, Shearman & Sterling, New York, NY; Joanne M. O'Connor, Joanne M. O'Connor, Jones Foster Johnston & Stubbs, West Palm Beach, FL; Consol Defendant, H. Andrew Deferrari; Scott Gardner Hawkins, LEAD ATTORNEY, Jones Foster Johnston & Stubbs, West Palm Beach, FL.

For Terry White, Derivatively on Behalf of Nominal Defendant Dycom Industries, Inc., Chris Perkins, Derivatively on Behalf of Nominal Defendant Dycom Industries, Inc., Plaintiffs (1:20-cv-21952-AHS): Scott Daniel Egleston, Law Office of Scott Egleston, P.A., Miami, FL.

For Steven E Nielsen, H. Andrew Deferrari, Dwight B. Duke, Eitan Gertel, Anders Gustafsson, Patricia L. Higgins, Richard K. Sykes, Laurie J. Thomsen, Charles B. Coe, Stephen C. Coley, Dycom Industries, Inc., Nominal Defendant, Defendants (1:20-cv-21952-AHS): Joanne M. O'Connor, Scott Gardner Hawkins, **[*3]** LEAD ATTORNEYS, Jones Foster Johnston & Stubbs, West Palm Beach, FL.

Judges: RAAG SINGHAL, UNITED STATES DISTRICT JUDGE.

Opinion by: RAAG SINGHAL

Opinion

ORDER ADMINISTRATIVELY CLOSING CASE

THIS CAUSE is before the Court on the parties' Joint Notice of Settlement (DE [40]) filed in 18-25289-CIV-SINGHAL/GOODMAN. The parties report that they have all agreed to settle the two above-captioned actions, conditioned on the Court's approval of the settlement under *Federal Rule of Civil Procedure 23(e)*. The Court having carefully reviewed the file, and being otherwise fully advised, it is hereby

ORDERED AND ADJUDGED that the two above-captioned actions are administratively **CLOSED** without prejudice for the parties to file a stipulation of settlement within **30 days** of the date of this Order. If the parties fail to complete the expected settlement, any party may request the Court to reopen the case. Furthermore, the Court retains jurisdiction over the case until the settlement is consummated. The Clerk of Court shall **CLOSE** the above-styled actions for administrative purposes only. Any pending motions are **DENIED AS MOOT**. The Clerk is also directed to docket a copy of this Order in both cases.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 21st day of **[*4]** April 2021.

/s/ Raag Singhal

RAAG SINGHAL

UNITED STATES DISTRICT JUDGE

End of Document

EXHIBIT 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE MIMEDX GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION	Lead Case No. 1:18-cv-04486-WMR (Consolidated with Case No. 1:18-cv-04514-WMR and Case No. 1:18-cv-04864-WMR)
This Document Relates To: ALL ACTIONS.	

<u>FINAL ORDER AND JUDGMENT</u>

This matter came before the Court for hearing pursuant to the Order Preliminarily Approving Settlement ("Preliminary Approval Order") of this Court, dated October 8, 2020, on the application of Plaintiffs for approval of the settlement of this Georgia Federal Action as set forth in the Stipulation and Agreement of Settlement dated as of September 4, 2020, including all exhibits thereto (the "Stipulation"). Due and adequate notice having been given by MiMedx Group, Inc. ("MiMedx" or the "Company") to Current MiMedx Shareholders as required in the Court's Preliminary Approval Order, and the Court having considered all papers filed and proceedings held herein, and otherwise being fully informed, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Final Order and Judgment ("Judgment") incorporates herein the Stipulation, including the exhibits thereto. Unless otherwise defined herein, all

capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction to enter this Judgment. This Court has jurisdiction over the subject matter of the Georgia Federal Action, including all matters necessary to effectuate the Settlement, and over all Settling Parties.

3. The record shows that Notice has been given to all Current MiMedx Shareholders in the manner approved by the Court in the Preliminary Approval Order. The Court finds that such Notice: (i) constitutes notice that was reasonably calculated, under the circumstances, to apprise all Current MiMedx Shareholders of the pendency of the Georgia Federal Action, the terms of the Settlement, and Current MiMedx Shareholders' right to object to and to appear at the Settlement Hearing held on December 21, 2020; (ii) constitutes due, adequate, and sufficient notice to all Persons or entities entitled to receive notice in accordance with Rule 23.1(c) of the Federal Rules of Civil Procedure; and (iii) meets the requirements of due process, Fla. Sta. § 607.0745 and all other applicable law.

4. In light of the substantial benefits to the Company, the complexity, expense, possible duration of further litigation against the Individual Defendants, and the uncertainty inherent in the continued prosecution of the claims in the Georgia Federal Action through trial and any subsequent appeal(s), the Court hereby fully and finally approves the Settlement, pursuant to Rule 23.1(c), as set forth in the Stipulation in all respects, and finds that the Settlement is, in all respects, fair,

reasonable, and adequate, and in the best interests of MiMedx and its shareholders. This Court further finds the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of MiMedx, MiMedx's shareholders, and the Individual Defendants.

5. The Settling Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Stipulation.

6. The Georgia Federal Action and all claims contained therein, as well as all of the Released Claims, are dismissed on the merits and with prejudice. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation and in this Judgment.

7. 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, and particularly with Rule 11(b) of the Federal Rules of Civil Procedure.

8. Upon the Effective Date, except as expressly provided in paragraphs 2.3 and 5.4 of the Stipulation, each of the Released Plaintiffs' Persons and anyone claiming through or on behalf of any of them, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, unconditionally and forever released, relinquished, and discharged and dismissed with prejudice the Released Plaintiffs' Claims (including Unknown Claims) against the Individual Defendants and each and all of the other Released Defendants' Persons. Nothing herein shall in

any way impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation. Upon the Effective Date, except as expressly provided in paragraphs 2.3 and 5.4 of the Stipulation, the Released Plaintiffs' Persons will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Plaintiffs' Claims (including Unknown Claims) against any of the Released Defendants' Persons.

9. Upon the Effective Date, except as expressly provided in paragraphs 2.3 and 5.4 of the Stipulation, the Released Defendants' Persons, and anyone claiming through or on behalf of any of them, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, unconditionally, and forever released, relinquished, and discharged the Released Defendants' Claims (including Unknown Claims) against one another and against each and all of Plaintiffs, Plaintiffs' Counsel, MiMedx, Current MiMedx Shareholders (solely in their capacity as MiMedx Shareholders), and each of the Released Plaintiffs' Persons. Upon the Effective Date, except as expressly provided in paragraphs 2.3 and 5.4 of the Stipulation, the Released Defendants' Persons will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Defendants' Claims (including Unknown Claims) against any of the Released Plaintiffs' Persons.

10. Neither the Settlement, this Stipulation (including any exhibits attached hereto), nor any act performed or document executed pursuant to, or in furtherance of, the Stipulation or the Settlement: (a) is, may be deemed to be, or may be offered, attempted to be offered, or used in any way as a concession, admission, or evidence of the validity of any Released Plaintiffs' Claims, or of any fault, wrongdoing, or liability of the Released Defendants' Persons or MiMedx; (b) is, may be deemed to be, or may be used as a presumption, admission, or evidence of, any liability, fault, or omission of any of the Released Defendants' Persons in any civil, criminal, administrative, or other proceeding in any court, administrative agency, tribunal, or other forum; or (c) is, may be deemed to be, or may be offered, attempted to be offered, or used in any way as a concession, admission, or evidence against Plaintiffs that any of their claims lack merit, or that any defenses asserted by the Individual Defendants lack merit. Nothing in this Section, however, shall prevent the Released Persons from filing this Stipulation and/or the 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, full faith and credit, release, standing, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, and any of the Parties may file this Stipulation and documents executed pursuant and in furtherance thereto in any action to enforce the Settlement.

11. The Court hereby approves the Fee and Expense Amount in accordance with the Stipulation.

12. Payment of the Fee and Expense Amount made, as specified in paragraphs 4.1-4.3 of the Stipulation, shall be immediately releasable upon the entry of this Judgment, notwithstanding the existence of any collateral attacks on the Settlement and/or the Fee and Expense Amount, including, without limitation, any objections or appeals, in accordance with the terms and conditions set forth in the Stipulation.[1]

13. Without affecting the finality of this Judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Stipulation, the Settlement, and of this Judgment, to protect and effectuate this Judgment, and for any other necessary purpose. Plaintiffs, Defendants, and each MiMedx shareholder are hereby deemed to have irrevocably submitted to the exclusive jurisdiction of this Court, for the purpose of any suit, action, proceeding, or dispute arising out of, or relating to, the Settlement or the Stipulation, including the exhibits thereto, and only for such purposes. Without limiting the generality of the foregoing, and without affecting the finality of this Judgment, the Court retains exclusive jurisdiction over any such suit, action, or proceeding.

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[1] The Court does not approve of the Service Awards. The Plaintiffs can renew their motion for the Service Awards by filing a new motion and brief addressing to what extent, if any, the ruling of the 11th Circuit in *Johnson v. NPAS Solutions, LLC* (Case No. 18-12344, decided September 17, 2020) has on such potential Service Awards.

14. In the event that the Settlement is terminated as provided in the Stipulation or the Effective Date does not occur, this Judgment shall be vacated, and all orders entered, and releases delivered, in connection with the Stipulation and this Judgment shall be null and void, except as otherwise provided for in the Stipulation, and the Settling Parties shall be returned to their respective positions immediately prior to the execution of the Stipulation.

15. This Judgment is a final, appealable judgment and should be entered forthwith by the Clerk in accordance with Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

William M. Ray II

WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE

EXHIBIT 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE HD SUPPLY HOLDINGS, INC. DERIVATIVE LITIGATION	Lead Case No.: 1:17-cv-02977-MLB (Derivative Action)

ORDER AND FINAL JUDGMENT

This matter came before the Court for hearing pursuant to the Order of this Court, dated March 23, 2021 ("Amended Preliminary Approval Order"), on the application of the Settling Parties for approval of the Settlement set forth in the Stipulation and Agreement of Settlement dated December 4, 2020 (the "Stipulation").[1] Due and adequate notice having been given to present and former HD Supply Holdings, Inc. ("HD Supply" or the "Company") stockholders as required in said Amended Preliminary Approval Order, and the Court having considered all papers filed and proceedings 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 herein the Stipulation, including all

[1] Throughout this order, the term "Settlement" refers to the Settlement set forth in the Stipulation.

exhibits thereto. Unless otherwise defined herein, 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 above-captioned Federal Derivative Action, including all matters necessary to effectuate the Settlement, and the Settling Parties have consented to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

3. The Court finds that the Long-Form Notice and the Summary Notice attached as Exhibits A and B, respectively, to the Amended Preliminary Approval Order and the notice program which included (i) written notice of the Settlement and copies of the Stipulation (along with any exhibits thereto) and Long-Form Notice, substantially in the form of Exhibit A to the Amended Preliminary Approval Order, to HD Supply's current sole shareholder, The Home Depot, Inc. ("Home Depot"); (ii) publication of the Summary Notice, substantially in the form of Exhibit B to the Amended Preliminary Approval Order (a) via a press release and (b) for one day in Investor's Business Daily; and (iii) the posting a link to the Stipulation (along with any exhibits thereto) and Long-Form Notice on HD Supply's website such that visitors to the website will readily find a hyperlink to the Long-Form Notice and Stipulation (along with any exhibits thereto), which shall be maintained as an active

link until such time as the Court grants final approval of the Settlement constituted appropriate and adequate notice under the circumstances and fully satisfied the requirements of Federal Rule of Civil Procedure 23.1 and the requirements of due process.

4. Among other materials, the Court reviewed Plaintiffs' Memorandum of Law in Support of Plaintiff's Unopposed Motion for Final Approval of Derivative Settlement and attachments thereto ("Plaintiff's Memorandum"). (Dkts. 43-1–43-17.) The Court agrees with Plaintiff's assessment of the fairness, adequacy, and reasonableness of the Settlement for the reasons discussed therein. The Court thus finds that the Settlement as set forth in the Stipulation is fair, reasonable, adequate, and in the best interests of HD Supply and its sole current stockholder. The Court hereby finally approves the Settlement in all respects and orders the Settling Parties to perform its terms to the extent the Settling Parties have not already done so.

5. The above-captioned Federal Derivative Action and all claims contained therein, as well as all of the Released Claims (including Unknown Claims), are dismissed on the merits and with prejudice. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

6. Upon the Effective Date, all Plaintiffs' Released Claims (including Unknown Claims) shall be deemed to have been fully, finally, and forever released, relinquished, and discharged as against the Released Persons.

7. Upon the Effective Date, HD Supply and the Individual Defendants shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Derivative Matters or the Released Claims.

8. Nothing in this Judgment constitutes or reflects a waiver or release of any rights or claims of Defendants against their insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives, including, but not limited to, any rights or claims of Defendants under any directors' and officers' liability insurance or other applicable insurance coverage maintained by the Company. Nothing in this Judgment constitutes or reflects a waiver or release of any rights or claims of the Individual Defendants relating in any way to indemnification or advancement of attorneys' fees relating to the Derivative Actions or the Released Claims, whether under any written indemnification or advancement agreement, or under the Company's charter, by-laws, or under applicable law.

9. During the course of the Derivative Matters, all parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11, and all other similar rules, laws, or statutes.

10. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be offered, attempted to be offered, or used in any way by the Settling Parties or any other Person as a presumption, a concession, or an admission of, or evidence of, any fault, wrongdoing, or liability of the Settling Parties or Released Persons, or of the validity of any Released Claims; or (ii) may be offered or received as evidence or used by any other person in any other actions or proceedings, whether civil, criminal, or administrative, other than to enforce the terms therein.

11. The Released Persons 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, full faith and credit, release, standing, 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 also file the Stipulation and documents

executed pursuant and in furtherance thereto in any action to enforce the Settlement and/or this Judgment.

12. Plaintiffs and/or any present or former HD Supply stockholders derivatively on behalf of HD Supply are permanently barred and enjoined from commencing, prosecuting, instituting, or in any way participating in the commencement or prosecution of any action asserting any Released Claims against any of the Released Persons.

13. Because HD Supply is no longer an SEC registrant following the Company's acquisition by Home Depot on December 24, 2020, in the event that HD Supply's Board may determine to alter or discontinue any of the Corporate Governance Reforms prior to the end of the Minimum Term, HD Supply shall have no obligation to report such determination or alteration or discontinuation of any Corporate Governance Reform via an SEC filing or otherwise.

14. In the event the Effective Date does not occur, or if the Stipulation is in any way canceled, terminated, or fails to become Final in accordance with its terms, and if counsel for the Settling Parties do not otherwise mutually agree in writing to proceed with the Stipulation: (i) all Settling Parties and Released Persons shall be restored to their respective positions prior to execution of this Stipulation; (ii) all releases delivered in connection with the Stipulation shall be null and void, except

Case 2:12-cv-02497-TSZ Document 250 Filed 05/17/24 Page 7 of 8

as otherwise provided for in the Stipulation; (iii) the Fee and Expense Amount paid to Plaintiffs' Counsel shall be refunded and returned to the insurers that made such payment within ten (10) business days of notice that the Settlement failed to become effective; and (iv) all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission by a Settling Party of any act, matter, or proposition, and shall not be used in any manner for any purpose in any subsequent proceeding in the Derivative Matters or in any other action or proceeding. In such event, the terms and provisions of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall not be used in the Derivative Matters or in any other proceeding for any purpose.

15. For the reasons set forth in Plaintiff's Memorandum, the Court also hereby approves the sum of $1,900,000 for the payment of fees and expenses to Plaintiffs' Counsel (the "Fee and Expense Amount") and finds that the Fee and Expense Amount is fair and reasonable. No other fees, costs, or expenses may be awarded to Plaintiffs' Counsel in connection with the Settlement. The Fee and Expense Amount shall be distributed in accordance with the terms of the Stipulation.

16. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction with respect to implementation and

enforcement of the terms of the Stipulation.

17. This Judgment is a final, appealable judgment and should be entered forthwith by the Clerk.

SO ORDERED this 1st day of July, 2021.

MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE

EXHIBIT 10

In re RTI Surgical Derivative Litig.

United States District Court for the Northern District of Illinois, Eastern Division

September 30, 2021, Decided; September 30, 2021, Filed

Master File No.: 1:20-CV-3347 (MFK)

Reporter
2021 U.S. Dist. LEXIS 257581 *; 2021 WL 8314461

In re ***RTI*** ***Surgical*** Derivative Litigation

Subsequent History: Settled by, Dismissed by, Motion granted by, Judgment entered by *Rti Surgical Derivative Litig., 2022 U.S. Dist. LEXIS 96385 (N.D. Ill., Jan. 24, 2022)*

Core Terms

Settlement, Surgalign, stockholders, Derivative, Notice, Matters, Settling, Parties, books and records, attorney's fees, corporate governance, negotiated, terms, proposed settlement, telephonically, disclosure, expenses, annexed, Awards, Documents, annually, platform, Compliance, approve, written objection, consolidated, Nominating, mediation, Investor, shareholder derivative action

Counsel: **[*1]** For Brian K. Hutchison, Defendant: James K. Goldfarb, Murphy & McGonigle PC, New York, NY; Stephen J Crimmins, Murphy & McGonigle PC, Washington, DC; Alan M Wolper, Ulmer & Berne LLP, Chicago, IL.

For Curtis M. Selquist, Camille I. Farhat, Christopher R. Sweeney, Mark D. Stolper, Paul G. Thomas, Peter F. Gearen, Nicholas J. Valeriani, Thomas A. McEachin, Shirley A. Weis, Defendants: Martin G. Durkin, LEAD ATTORNEY, Holland & Knight LLC, Chicago, IL; Allison Kernisky, PRO HAC VICE, Stephen P Warren, Holland & Knight LLP, Miami, FL; Louise McAlpin, Coral Gables, FL.

For Dominick DeFilippis, Plaintiff: Matthew M Houston, Benjamin Isaac Sachs-Michaels, PRO HAC VICE, Glancy Prongay & Murray LLP, New York, NY; Andrew Szot, Marvin Alan Miller, Miller Law LLC, Chicago, IL; Melinda Ann Nicholson, Kahn Swick & Foti Llc, New Orleans, LA.

For David Summers, Plaintiff: Melinda Ann Nicholson, Kahn Swick & Foti Llc, New Orleans, LA; Phillip C Kim, PRO HAC VICE, Carl V. Malmstrom, LEAD ATTORNEY, Wolf Haldenstein Adler Freeman & Herz LLC, Chicago, IL; Erica Lauren Stone, PRO HAC VICE, The Rosen Law Firm P.A., New York, NY.

For Johannes W. Louw, Defendant: Adam Louis Schwartz, Russell Koonin Esq., PRO HAC **[*2]** VICE, Homer Bonner Jacobs Ortiz P.A., Miami, FL; Elizabeth Ann Austermuehle, Vivek Jayaram, LEAD ATTORNEY, Jayaram Law Group Ltd., Chicago, IL; Palak Vinod Patel, Jayaram Law Inc., Chicago, IL.

For Robert P. Jordheim, Defendant: Keara M. Gordon, PRO HAC VICE, DLA Piper LLP (US), New York, NY; Yan Grinblat, DLA Piper LLP (US), Chicago, IL; Deborah Meshulam, PRO HAC VICE, DLA Piper LLP (US), Washington, DC.

For RTI Surgical Holdings Inc., Defendant: Martin G. Durkin, LEAD ATTORNEY, Holland & Knight LLC, Chicago, IL; James Wallace Ducayet, LEAD ATTORNEY, Sidley Austin LLP (Chicago), Chicago, IL.

For Niall Campbell, Niall Campell, Plaintiffs: Melinda Ann Nicholson, Kahn Swick & Foti Llc, New Orleans, LA.

For Jonathon M. Singer, Defendant: Martin G. Durkin, LEAD ATTORNEY, Holland & Knight LLC, Chicago, IL.

Judges: HONORABLE MATTHEW F. KENNELLY, UNITED STATES DISTRICT JUDGE.

Opinion by: MATTHEW F. KENNELLY

Opinion

ORDER FOR PRELIMINARY APPROVAL

WHEREAS, a consolidated derivative action is pending in this Court entitled *In re RTI Surgical Derivative Litigation*, Master File No. 1: 20-cv-03347 (N.D. Ill.) (the "Action");

WHEREAS, Co-Lead Plaintiffs have moved, pursuant to *Federal Rule of Civil Procedure 23.1* for an order: (i) preliminarily approving the settlement **[*3]** of the Derivative Matters, in accordance with a Stipulation of Settlement, dated September 10, 2021 (the "Stipulation" or "Settlement"), which, together with the Exhibits annexed thereto, set forth the terms and conditions for a proposed Settlement and dismissal of the Actions with prejudice; and (ii) approving the dissemination of the Notice of Proposed Derivative Settlement and Summary Notice of Proposed Derivative Settlement;

WHEREAS, all capitalized terms contained herein shall have the meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein); and

WHEREAS, this Court, having considered the Stipulation and the Exhibits annexed thereto and having heard the arguments of the Settling Parties at the preliminary approval hearing; In re RTI Surgical Derivative Litigation

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Court does hereby preliminarily approve, subject to further consideration at the Settlement Hearing described below, the Stipulation and the Settlement set forth therein, including the terms and conditions for settlement and dismissal with prejudice of the Actions.

2. A hearing (the "Settlement Hearing") shall be held telephonically before **[*4]** this Court on January 24, 2022, at 8:45 a.m. to determine whether the Settlement of the Derivative Matters on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to Surgalign Holdings, Inc. ("Surgalign" or the "Company") and its stockholders and should be approved by the Court; whether the District Court Approval Order and a Judgment as provided in ¶ 1.8 and ¶ 1.11 of the Stipulation should be entered herein; whether to award attorneys' fees and expenses to Plaintiffs' Counsel and Service Awards to each of the Stockholders; and to consider any other matters that may properly be brought before the Court in connection with the Settlement.

3. The Court approves, as to form and content, the Notice of Proposed Derivative Settlement annexed as Exhibit A-1 hereto (the "Long-Form Notice") and the Summary Notice of Proposed Derivative Settlement annexed as Exhibit A-2 hereto (the "Summary Notice"), and finds that the publication of the Long-Form Notice, Summary Notice and Stipulation, substantially in the manner and form set forth in this Order, meeting the requirements of *Federal Rule of Civil Procedure 23.1* and due process, is the best notice practicable under the circumstances, and shall **[*5]** constitute due and sufficient notice to all Persons entitled thereto.

4. Not later than ten (10) business days following entry of this Order, Surgalign shall: (a) cause a copy of the Long-Form Notice, substantially in the form annexed as Exhibit A-1 hereto, and the Stipulation together with the Exhibits annexed thereto to be filed with the U.S. Securities and Exchange Commission ("SEC") along with an SEC Form 8-K or other appropriate filing; (b) create a link to the SEC filing on the Company's "Investor Relations" page of http://ir.surgalign.com, the address of which shall be contained in the Long-Form Notice and Summary Notice, and which link shall be maintained through the date of the Settlement Hearing; and (c) cause a copy of the Summary Notice, substantially in the form annexed as Exhibit A-2 hereto, to be published once in *Investor's Business Daily*.

5. All costs incurred in the filing, publishing, and posting of the Long-Form Notice and the Summary Notice shall be paid by Surgalign or its insurers, and Surgalign shall undertake all administrative responsibility for such filing, publication, and posting.

6. Not later than thirty-five (35) days before the Settlement Hearing, Surgalign's **[*6]** Counsel shall serve on Co-Lead Plaintiffs' Counsel and file with the Court proof, by affidavit or declaration, that it has complied with ¶ 4 above.

7. All Surgalign stockholders of record as of the Approval Date shall be bound by all orders, determinations, and judgments of the Court in the Actions concerning the Settlement, whether favorable or unfavorable to Surgalign stockholders.

8. Pending final determination by the Court of whether the Settlement should be approved, this Court preliminarily bars and enjoins Co-Lead Plaintiffs, all other stockholders, and the Company, on behalf of themselves, from commencing, instituting, filing, intervening in, participating in (as a nominal defendant or otherwise), receiving any benefit from, or prosecuting any of the Released Claims against any of the Released Persons. All proceedings and discovery in the Actions

shall be stayed except as otherwise provided for in the Stipulation, and no party to the Actions or any Surgalign stockholder shall file or prosecute any action or proceeding in any court or tribunal relating to the Settlement or asserting any of the Released Claims against the Released Persons.

9. All papers in support of the Settlement **[*7]** and any separately negotiated attorneys' fees and expenses and Service Awards shall be filed with the Court and served at least twentyeight (28) calendar days before the Settlement Hearing and any reply briefs shall be filed with the Court at least seven (7) calendar days before the Settlement Hearing.

10. Any current Surgalign stockholder may appear and show cause, if he, she, or it has any reason why the terms of the Settlement of the Derivative Matters, including any negotiated amount of attorneys' fees and expenses and Service Awards, should not be approved as fair, reasonable and adequate, or why the District Court Approval Order and Judgment should not be entered thereon, provided, however, that, unless otherwise ordered by the Court, no current Surgalign stockholder shall be heard or entitled to contest the approval of all or any of the terms and conditions of the Settlement, or, if approved, the District Court Approval Order and the Judgment to be entered thereon approving the same, unless that Person has, at least twenty-one (21) calendar days before the Settlement Hearing, filed with the Clerk of the Court appropriate proof of Surgalign stock ownership, along with written **[*8]** objections, including the basis therefore, and copies of any papers and brief in support thereof. All written objections and supporting papers must be submitted to the Court either by mailing them to:

Clerk of the Court
United States District Court
Northern District Of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, IL 60604

Or by filing them in person at any location of the United States District Court for the Northern District of Illinois to the extent the Court is open for in-person filings.

All written objections must also be mailed to:

Co-Lead Counsel for Plaintiffs:
Matthew M. Houston
Benjamin I. Sachs-Michaels

Glancy Prongay & Murray LLP
712 Fifth Avenue, 31 Floor
New York, NY 10019
(212) 935-7400
Or
Timothy Brown

The Brown Law Firm, P.C.
767 Third Avenue, Suite 2501
New York, NY 10017
(516) 922-5427
And

Counsel for Stockholder John Schweigert:
Melinda A. Nicholson

Kahn Swick & Foti, LLC
1100 Poydras Street, Suite 3200
New Orleans, LA 70163
(504) 455-1400
And

Surgalign's Counsel:
James W. Ducayet

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7621
Or

Counsel for Defendants Camille I. Farhat, Jonathon Singer, Peter F. Gearen, Thomas A. McEachin, **[*9]** Curtis M. Selquist, Mark D. Stolper, Christopher R. Sweeney, Paul G. Thomas, Nicholas J. Valeriani, and Shirley A. Weis:
Martin G. Durkin

Holland & Knight LLP
150 N. Riverside Plaza
Suite 2700
Chicago, IL 60606
(312) 853-7000
Louise McAlpin
Stephen P. Warren
Allison Kernisky

Holland & Knight LLP
701 Brickell Avenue
Suite 3300
Miami, FL 33131
(305) 374-8500

Any current Surgalign stockholder who does not make an objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the Stipulation and to the award of attorneys' fees and expenses to Stockholders' Counsel and the Service Awards, unless otherwise ordered by the Court, but shall otherwise be bound by the District Court Approval Order and the Judgment to be entered and the releases to be given.

11. Any attorney hired by a stockholder for the purpose of objecting to the Settlement must file a notice of appearance with the Clerk of the Court no later than twenty-one (21) calendar days before the Settlement Hearing.

12. Co-Lead Plaintiffs' Counsel and Defendants' Counsel are directed to promptly **[*10]** furnish each other with copies of any and all objections that are served upon them or otherwise come into their possession.

13. Neither the Stipulation nor the Settlement, including the Exhibits attached thereto, nor any act performed or documented executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be offered, attempted to be offered or used in any way as a concession, admission, or evidence of the validity of any Released Claims or any fault, wrongdoing, or liability of the Released Persons or Surgalign; or (b) is or may be deemed to be or may be used as a presumption, admission, or evidence of any liability, fault or omission of any of the Released Persons or Surgalign in any civil, criminal, or administrative or other proceeding in any court, administrative agency, tribunal or other forum. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Released Persons may file or use the Stipulation, the District **[*11]** Court Approval Order and/or the 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, full faith and credit, release, standing, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. The Court reserves the right to change the date or time of, or platform used for (*i.e.*, in person, telephonically, or via video), the Settlement Hearing or to modify any other dates set forth herein without further notice to Surgalign stockholders, and retains exclusive jurisdiction to consider all further applications arising out of or connected with the 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 Surgalign stockholders. Any Surgalign stockholder (or his, her or its counsel) who wishes to appear at the Settlement Hearing should consult the Court's calendar and/or the Surgalign's "Investor Relations" page at http://ir.surgalign.com for any change in date or time of, or platform used for, the Settlement Hearing.

IT **[*12]** IS SO ORDERED.

DATED: 9/30/2021

/s/ MATTHEW F. KENNELLY

HONORABLE MATTHEW F. KENNELLY

UNITED STATES DISTRICT JUDGE

EXHIBIT A-1

EX. A-1 - NOTICE OF PROPOSED DERIVATIVE SETTLEMENT

TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF THE COMMON STOCK OF SURGALIGN HOLDINGS, INC. ("SURGALIGN" OR THE "COMPANY")[1] AS OF SEPTEMBER 10, 2021 (THE "RECORD DATE")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT AND DISMISSAL OF THE ABOVE-CAPTIONED CONSOLIDATED DERIVATIVE ACTION (THE "ACTION") AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. YOUR RIGHTS MAY BE AFFECTED BY THESE LEGAL PROCEEDINGS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND FROM PURSUING THE RELEASED CLAIMS.

IF YOU HOLD SURGALIGN COMMON STOCK FOR

[1] Surgalign was previously known as RTI Surgical Holdings, Inc.

THE BENEFIT OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS DOCUMENT TO SUCH BENEFICIAL OWNER.

Notice is hereby provided to you of the proposed settlement (the "Settlement") of this stockholder derivative litigation. This Notice is provided by Order of the United States District Court for the Northern District of Illinois (the "Court"). It is not an expression of any opinion **[*13]** by the Court with respect to the truth of the allegations in the litigation or merits of the claims or defenses asserted by or against any party. It is solely to notify you of the terms of the proposed Settlement, and your rights related thereto. The terms of the proposed Settlement are set forth in a written Stipulation of Settlement dated September 10, 2021 ("Stipulation").[2] A link to the Form 8-K filed with the U.S. Securities and Exchange Commission ("SEC") containing the text of the Stipulation together with the Exhibits annexed thereto may be found on Surgalign's website at the Investor Relations page at http://ir.surgalign.com.

I. WHY THE COMPANY HAS ISSUED THIS NOTICE

Your rights may be affected by the settlement of the action styled *In re RTI Surgical Derivative Litigation*, Master File No: 1:20-CV-3347 (MFK) (the "Action" or "Derivative Action") and a related demand to inspect the Company's books and records pursuant to *8 Del. C. §220* (the "Books and Records Demand," and, together with the Action, the "Derivative Matters"). Co-Lead Plaintiffs Niall Campbell and Dominick De Filippis ("Co-Lead Plaintiffs") (on behalf of themselves and derivatively on behalf of Surgalign); David Summers, the **[*14]** plaintiff who filed the initial shareholder derivative complaint on behalf of the Company in this Court; and John Schweigert, a purported stockholder who made the Books and Records Demand; (Campbell, De Filippis, Summers, and Schweigert are collectively referred to as the "Stockholders"); individual defendants Camille I. Farhat, Brian K. Hutchison, Jonathon M. Singer, Robert P. Jordheim, Johannes W. Louw, Peter F. Gearen, Thomas A. McEachin, Curtis M. Selquist, Mark D. Stolper, Christopher R. Sweeney, Paul G. Thomas, Nicholas J. Valeriani, and Shirley A. Weiss (the "Settling Defendants"); and Nominal Party Surgalign (Stockholders, Settling Defendants, and Surgalign, are collectively, the "Settling Parties") have agreed upon terms to settle the above-referenced litigation and have signed the Stipulation setting forth those settlement terms.

On January 24, 2022, at 8:45 a.m., the Court will hold a hearing (the "Settlement Hearing") in the Action. The purpose of the Settlement Hearing is to determine: (i) whether the Settlement is fair, reasonable, and adequate and should be finally approved; (ii) whether any negotiated attorneys' fees and expense award to Stockholders' Counsel is fair, **[*15]** reasonable and adequate or, if the Settling Parties have not agreed to any such award, the appropriate amount for an attorneys' fees and expense award to Stockholders' Counsel; (iii) whether service awards to each of the Stockholders to be paid out of any attorneys' fees and expense award should be approved; (iv) whether a final judgment should be entered and the Actions dismissed with prejudice pursuant to the Stipulation; and (v) such other matters as may be necessary and proper under the circumstances.

II. SURGALIGN DERIVATIVE LITIGATION

A. Derivative Action

On June 5, 2020, Plaintiff Summers filed a verified shareholder derivative complaint on behalf of the Company against the Settling Defendants in the Court, asserting claims for breach of fiduciary duties, unjust enrichment, waste of corporate assets, and violations of Sections 14(a), 10(b), and 20(a) of the *Securities Exchange Act of 1934 (the "Exchange Act") (the "Summers Action")*.

On June 12, 2020, Plaintiff Niall Campbell filed a verified shareholder derivative action on behalf of the Company against the Settling Defendants in the Court, asserting claims for breach of fiduciary duties, unjust enrichment, waste of corporate assets, and violations of Sections 14(a), 10(b), and 20(a) of the Exchange Act (the "*Campbell* Action").

On June 24, 2020, the **[*16]** parties to the *Summers* Action and *Campbell* Action filed a Joint Motion to Consolidate, to Excuse Response to Initial Complaint and to Appoint a Leadership Structure for Plaintiffs' Counsel.

On July 7, 2020, Plaintiff De Filippis filed a verified shareholder derivative action on behalf of the Company against the Settling Defendants in the Court, asserting claims for breach of fiduciary duties, unjust enrichment,

[2] Capitalized terms not otherwise defined shall have the same meanings as set forth in the Stipulation.

waste of corporate assets, insider trading, and violations of Sections 14(a) and 10(b) of the Exchange Act (the "*De Filippis* Action").

On July 10, 2020, the Court held a telephonic status hearing in the *Summers* Action and ordered the consolidation of the *Summers, Campbell*, and *De Filippis* Actions and directed the parties to file a joint status report in the consolidated Action regarding next steps.

On July 31, 2020, the parties to the Action filed a joint status report regarding a schedule for filing a consolidated complaint and/or a temporary stay of the Action pending a decision on an anticipated motion to dismiss to be filed in the related securities class action lawsuit, *Lowry v. RTI Surgical Holdings, Inc., et al.*, Case No. 1:20-cv-01939 (N.D. Ill.) (the "Securities Class Action"). The same **[*17]** day, Plaintiff De Filippis filed a motion to appoint Co-Lead Plaintiffs and Co-Lead Counsel in opposition to Plaintiff Summers' and Campbell's earlier motion.

After meeting and conferring, Plaintiffs agreed to the appointment of Campbell and De Filippis as Co-Lead Plaintiffs, The Brown Law Firm, P.C. and Glancy Prongay & Murray LLP as Co-Lead Counsel, and Wolf Haldenstein Adler Freeman & Herz LLC and Miller Law LLC as Co-Liaison Counsel for Plaintiffs in the Action. On August 25, 2020, the Court entered an Agreed Order Granting Motion to Appoint Lead Counsel.

On September 2, 2020, the parties to the Action filed a joint status report, requesting the Court to stay the *Campbell* and *De Filippis* Actions pending the final resolution of the Action. The same day, the parties to the Action filed an unopposed motion to stay the Action pending resolution of the motions to dismiss in the Securities Class Action, which the Court so-ordered on September 6, 2020 (the "Stay Order"). The Stay Order also provided that, if the Company produced documents in response to a books and records demand from another stockholder making similar allegations, the Company would produce the same documents to Co-Lead **[*18]** Plaintiffs within ten days of such production.

On April 1, 2021, the Court denied the motions to dismiss the amended complaint in the Securities Class Action.

On April 30, 2021, the parties to the Action submitted a joint status report informing the Court of their agreement to engage in a mediation and to stay the Action pending the mediation.

On June 1, 2021, Co-Lead Plaintiffs filed an Amended Consolidated Complaint, which, among other things, made new allegations based on allegations in the Consolidated Amended Class Action complaint filed on August 31, 2020 in the Securities Class Action, the April 1, 2021 order denying the motions to dismiss in the Securities Class Action, and the *Section 220* Documents (defined below).

B. Books And Records Demand

On May 7, 2021, Stockholder Schweigert sent the Books and Records Demand to the Company. Following negotiations, on May 26, 2021, the Company made an initial compromise production in response to the Books and Records Demand (the "Section 220 Documents"). Stockholder Schweigert agreed to provisionally forgo seeking the remainder of the documents sought in the Books and Records Demand pending a review of the *Section 220* Documents and the upcoming mediation. Pursuant **[*19]** to the Stay Order, the *Section 220* Documents were also provided to Co-Lead Plaintiffs and Plaintiff Summers. The *Section 220* Documents comprised nearly 1,000 pages, and consisted of non-privileged Board and Audit Committee meeting minutes and materials from January 1, 2017 through July 20, 2020 relating to the allegations in the Securities Class Action complaint, the internal audit committee investigation, the SEC investigation, any other governmental investigations, the restatement, and/or any customer or whistleblower complaints concerning accelerated deliveries of the Company's products.

C. Settlement Negotiations

On June 7, 2021, the Stockholders sent the Company and the Settling Defendants a joint written settlement demand to resolve the Derivative Matters. On June 30, 2021, the Settling Parties participated in a full-day mediation conference with mediator Michelle Yoshida (the "Mediator"). Although a settlement was not reached on that day, the Settling Parties and the Mediator continued negotiations thereafter, including exchanging various drafts of proposed corporate governance reforms, until they reached an agreement-in-principle to settle the Derivative Matters, at which time they signed a binding **[*20]** term sheet. The settlement terms involve the Company agreeing to adopt certain Corporate Governance Reforms, subject to Court approval.

III. TERMS OF THE PROPOSED DERIVATIVE SETTLEMENT

The principal terms, conditions, and other matters that are part of the Settlement, which is subject to approval by the Court, are summarized below. This summary should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Stipulation, which, together with the Exhibits annexed thereto, has been filed with the Court and is available at a link on Surgalign's website at the Investor Relations page at http://ir.surgalign.com.

In connection with the Settlement of the Derivative Matters, Surgalign's Board of Directors shall adopt and maintain the corporate governance measures described below within thirty (30) days after the Court's final approval of the proposed Settlement. The Corporate Governance Reforms shall remain in effect for not fewer than five (5) years from that date and shall not be altered without a Court order. In the event any Corporate Governance Reform listed below conflicts with any law, rule, or regulation (including, but not limited to, regulations **[*21]** of any stock exchange on which the Company's securities are listed), the Company shall not be required to implement or maintain such modification. If any of the modifications or practices requires stockholder approval, then the implementation of such modifications or practices will remain subject to receipt of such approval.

Surgalign acknowledges and agrees that the corporate governance policies set forth below, confer substantial benefit upon Surgalign and its stockholders. Surgalign also acknowledges that the commencement, prosecution, and settlement of the Derivative Matters were material and substantial factors for the Board's decision to adopt, implement, and maintain the corporate governance policies set forth below.

IV. CORPORATE GOVERNANCE POLICIES

a) Composition of the Board of Directors. The Company's Corporate Governance Guidelines shall be amended to specifically provide that no director may sit on the boards of more than four (4) other publicly-traded corporations.

b) Board Evaluation of Independence of Officers and Directors. The Company shall require its officers and directors to annually complete and sign questionnaires. The Company's management shall review the questionnaires, **[*22]** and the Board shall determine the independence of each director in conjunction with the Nominating and Governance Committee, which is responsible to assist management in preparing the annual Proxy disclosures on director independence.

c) Lead Independent Director. The Company shall amend its Corporate Governance Guidelines to enact a formal policy providing for the appointment of a Lead Independent Director if the Chairperson of the Board is also a member of the management of the Company or the Chairperson is not otherwise considered independent under NASDAQ rules. The following duties shall be assigned to the Lead Independent Director, including but not limited to:

Working directly with the Board Chairman to ensure the preparation of meeting agendas, materials and schedules, and seeking input from the directors, as deemed appropriate, as to the preparation of the agendas for Board and committee meetings;

Assessing and advising the Board as to the quality, quantity, and timeliness of the information provided to the Board by Company management to assist the Board in performing its oversight duties. This may be done in connection with periodic Board evaluations;

Developing the agenda for, **[*23]** and moderating executive sessions of, the Board, and acting as principal liaison between the Board and management on critical issues where the Chairman would otherwise be conflicted;

Making recommendations to the Chairperson of the Board as needed concerning the retention and supervision of outside consultants retained by the full Board;

Acting as liaison between the independent directors and the Chairperson of the Board and management, and regularly consulting with the chairpersons of the Audit Committee, Nominating and Governance Committee and the Compensation Committee; and

Conducting board evaluations with the Chairman and the Chairs of the Compensation and Governance Committees.

d) Board Diversity. Surgalign shall add the following language to the Corporate Governance Guidelines:

The Company when electing new (non-incumbent) directors shall consider underrepresented populations when seeking candidates for nomination to the Board, including consideration of at least one (1) member of an underrepresented group, in each pool of new candidates considered for nomination to the Board, thereby ensuring that members of underrepresented populations are considered for nomination to the Board **[*24]** with appropriate consistency.

The Company shall adopt the definition of "underrepresented group" in proposed NASDAQ Rule 5605.

Surgalign shall annually provide a graphic representation in the Company's proxy statement of current Board-level diversity and, to the extent unachieved, Board-level diversity goals.

e) Meetings in Executive Sessions. The Company's Corporate Governance Guidelines shall be revised to state that the Chairman or the Independent Directors shall have the power to call for reporting from any business unit at the executive sessions of Board meetings, including, without limitation, from audit and compliance segments.

f) Director Continuing Education. The Company shall revise its Corporate Governance Guidelines to include annual director education on topics selected by the Board and an orientation for all new directors, for which the Company would pay all related costs.

The director education program can be overseen by the Nominating and Governance Committee in conjunction with, or performed by, the General Counsel, the Board, and/or the Compliance Operations Attorney.

g) Establishment of a Disclosure Committee. The Company shall formally adopt a charter for a management-level **[*25]** Disclosure Committee as set forth in Exhibit 1 attached hereto providing, among other things, that:

Purpose

The purpose of the Disclosure Committee (the "Committee") is to assist Surgalign Holdings, Inc. (the "Company") and the Company's chief executive officer (the "CEO") and chief financial officer (the "CFO") in establishing, maintaining, reviewing and evaluating controls and other procedures designed to ensure that information required to be disclosed by the Company in its publicly-filed reports (including, without limitation, reports required to be filed pursuant to the *Securities Exchange Act of 1934*, as amended (the "Exchange Act")) is recorded, processed, summarized and reported within the time period(s) specified in applicable rules and forms, and that the Company's public disclosures are materially accurate and complete and otherwise comply with or exceed applicable disclosure requirements in all material respects.

Committee Membership

The members of the Committee shall be designated by the CEO from time to time, but at no time shall the Committee have fewer than three members. Initially, the members of the Committee shall include, if applicable, the Company's CEO, CFO, Chief Accounting Officer, General Counsel, **[*26]** and such other officers or employees of the Company as the CEO deems appropriate, taking into account, among other things, such person's expertise and responsibility for, and involvement in, the business operations of the Company and the collection, processing and disclosure of information in the Company's publicly-filed reports. The members of the Committee shall serve on the Committee until such time as the CEO shall determine.

Meeting Requirements

The Committee shall meet at least four times annually, prior to the preparation and filing of the Company's annual and quarterly financial statements, and additional meetings shall be scheduled as appropriate to allow the Committee to fulfill its duties and responsibilities, taking into account the Company's current and periodic reporting obligations. In addition, the Committee shall convene meetings at the request of either the CEO or CFO. The CEO shall appoint a chair who shall be responsible for scheduling meetings and setting the agenda for such meetings.

Committee Authority, Responsibilities and Duties

The Committee shall have, without limitation, the following duties and responsibilities:

To help ensure that information that is or potentially **[*27]** could be material (taking into account applicable standards of materiality) or that otherwise is or potentially could be required to be

disclosed by the Company is promptly communicated to the Committee for its review;
To gather and review information communicated to the Committee and to determine, in its good faith business judgment, whether such information is material or is otherwise required to be disclosed by the Company;
To help determine, in its good faith business judgment, the nature and timing of any disclosure requirements the Company may have with respect to such information and, if disclosure is required, to assist in its preparation, review and timely filing or release;
To oversee the preparation of the Company's periodic reports, including the preparation of a schedule for each periodic report;
To review and approve the Company's Forms 10-K, Forms 10-Q, registration statements, and proxy statements in advance of Board approval;
To review and approve, as deemed necessary by the CFO or GC Forms 8-K, quarterly earnings press releases, correspondence to shareholders, and presentations to analysts and investors, and other information material to the Company's shareholders;

To provide **[*28]** advice and counsel to the CEO and CFO on disclosure matters; and
To perform such other duties, tasks and responsibilities relevant to the purpose of the Committee as may from time to time be requested by the CEO or the CFO or as may be required or advisable in light of applicable laws, regulations or listing requirements.

Reports and Records
The Committee shall have such access to the Company's books, records, facilities and personnel as are necessary or appropriate in order to perform its duties.
The Committee shall report to the CEO and CFO, and to such other members of senior management of the Company as the CEO or CFO may, from time to time, designate.
A designee of the Disclosure Committee shall report periodically, but at least quarterly to the Company's Audit Committee and at least annually to the Company's full Board of Directors.
The Committee shall maintain such records of its proceedings as are appropriate in light of applicable laws, rules and regulations.

h) <u>Revisions to Audit Committee Charter</u>. The Audit Committee Charter shall be revised and amended as shown in Exhibit 2 attached hereto.

i) <u>Adoption of Corporate Compliance and Ethics Guidelines</u>. The Company shall adopt the Corporate **[*29]** Compliance And Ethics Guidelines as shown in Exhibit 3 attached hereto.

j) <u>Compliance with COSO Guidelines</u>. As a result of the Derivative Matters, the Company has retained an outside consultant to assist in the process of bringing the Company into compliance with the 2013 COSO framework, including risk management.

k) <u>Employee Compliance Training</u>. The Company shall supplement the Code of Conduct to formalize the Company's compliance training policies as follows:

All Company employees have to sign the Company's Code of Conduct annually;
All Senior Financial Professionals have to sign a Code of Conduct annually;
Training will be annually administered by the compliance operations attorneys or other third-party consultants; and
Training shall be tailored to individual roles and functions and may include reserves policy; SOX for internal controls owners; ethics for Executive and Finance teams; anonymous reporting; maintenance of sufficient capture; and the use and storage of information used to evaluate financial reporting controls.

The General Counsel shall maintain records of the completion of such training.

l) <u>Insider Trading Policy</u>. The Company shall amend its Insider Trading Policy as shown **[*30]** in Exhibit 4 attached hereto.

m) <u>Recoupment Policy</u>. The Company shall adopt a separate "Recoupment Policy" as shown in Exhibit 5 attached hereto.

n) <u>Whistleblower Policy</u>. The Company shall formally adopt the Whistleblower Policy as shown in Exhibit 6 attached hereto.

V. RELEASES

The Stipulation provides that the following releases and bar are triggered on the Effective Date (as defined therein):

a) the Stockholders (acting on their own behalf and derivatively on behalf of Surgalign and its stockholders), all other stockholders of Surgalign, and Surgalign, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged and dismissed with prejudice each and every one of the Released Claims against the Released Persons;

b) the Stockholders (acting on their own behalf and derivatively on behalf of Surgalign and its stockholders), all other stockholders of Surgalign, and Surgalign, shall be forever barred and enjoined from commencing, instituting or prosecuting any of the Released Claims against any of the Released Persons; and

c) each of the Released Persons shall be deemed **[*31]** to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and all of the Stockholders and Stockholders' Counsel and all current Surgalign stockholders (solely in their capacity as Surgalign stockholders) from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Derivative Matters or the Released Claims.

VI. STOCKHOLDERS' COUNSEL'S SEPARATELY NEGOTIATED ATTORNEYS' FEES AND EXPENSES AND STOCKHOLDERS' SERVICE AWARDS

After negotiating the principal terms of the Settlement, Stockholders' Counsel and Surgalign, acting by and through Surgalign's Counsel, with the assistance of the Mediator have begun separate negotiations regarding the attorneys' fees and expenses to be paid by Surgalign's insurers to Stockholders' Counsel (the "Fee and Expense Amount"). If the negotiations do not result in an agreed upon amount, Stockholders' Counsel intend to seek a Fee and Expense Amount up to One Million Five Hundred Thousand ($1,500,000) Dollars and the issue shall be submitted **[*32]** to the Court for its determination. To date, Stockholders' Counsel have not received any payments for their efforts on behalf of Surgalign stockholders. The Fee and Expense Amount will compensate Stockholders' Counsel for the results achieved in the litigation. Stockholder's Counsel also intend to apply to the Court for Service Awards for each of the Stockholders to be paid solely from (and out of) any Fee and Expenses Amount, which Surgalign and the Settling Defendants have agreed not to oppose.

VII. REASONS FOR THE SETTLEMENT

The Settling Parties have determined that it is desirable and beneficial that the Derivative Matters, and all of their disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation, and Stockholders' Counsel believe that the Settlement is in the best interests of the Settling Parties, Surgalign, and its stockholders.

A. Why Did the Settling Defendants Agree to Settle?

The Settling Defendants have denied and continue to deny each of the claims and contentions alleged by the Stockholders in the Derivative Matters. The Settling Defendants expressly have denied and continue to deny all allegations **[*33]** of wrongdoing by or liability against them or any of them arising out of, based upon, or related to, any of the conduct, statements, acts or omissions alleged, or that could have been alleged in the Derivative Matters. Without limiting the foregoing, the Settling Defendants have denied and continue to deny, among other things, that they breached their fiduciary duties or any other duty owed to Surgalign or its stockholders, or that the Stockholders, Surgalign, or its stockholders suffered any damage or were harmed as a result of any conduct alleged in the Derivative Matters or otherwise. The Settling Defendants have further asserted and continue to assert that at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of Surgalign and its stockholders.

Nonetheless, the Settling Defendants also have taken into account the expense, uncertainty, and risks inherent in any litigation, especially in complex cases like the Action, other shareholder derivative action(s), or other actions based on the Books and Records Demand, and that the proposed Settlement would, among other things: (a) bring to an end the expenses, burdens, and uncertainties **[*34]** associated with the continued litigation of the claims asserted in the Derivative Matters; (b) put to rest those claims and the underlying Derivative Matters; and (c) confer benefits upon them, including further avoidance of disruption of their duties due to the pendency and defense of the Derivative Matters. Therefore, the Settling Defendants have determined that it is desirable and beneficial that the Derivative Matters, and all of the Settling Parties' disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Pursuant to the terms of the Settlement, the Stipulation (including all of the Exhibits hereto) shall in no event be construed as or deemed to be evidence of an admission or concession by the Settling Defendants with respect to any claim of fault, liability, wrongdoing, or damage whatsoever.

B. Why Did Stockholders Agree to Settle?

The Stockholders and Stockholders' Counsel believe that the claims asserted in the Derivative Matters have merit. However, Stockholders and Stockholders' Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Derivative **[*35]** Matters, including the Actions, other shareholder derivative action(s), or other actions based on the Books and Records Demand, against the Settling Defendants through trial(s) and potential appeal(s). Stockholders and Stockholders' Counsel also have considered the uncertain outcome and the risk of any litigation, especially in complex actions such as the Action, other shareholder derivative action(s), or other actions based on the Books and Records Demand, as well as the difficulties and delays inherent in such litigation. Stockholders and Stockholders' Counsel also are mindful of the inherent problems of proof of, and possible defenses to, the claims asserted in the Action, that could be asserted in any shareholder derivative action(s) or other actions based on the Books and Records Demand. Based on their evaluation, Stockholders and Stockholders' Counsel have determined that the Settlement set forth in this Stipulation is in the best interests of Surgalign and its stockholders.

VIII. SETTLEMENT HEARING

On January 24, 2022, at 8:45 a.m., the Court will hold the Settlement Hearing telephonically. At the Settlement Hearing, the Court will consider whether: (1) the terms of the proposed **[*36]** Settlement should be approved as fair, reasonable, and adequate; (2) any negotiated attorneys' fees and expense award to Stockholders' Counsel is fair, reasonable and adequate or, if the Settling Parties have not agreed to any such award, the appropriate amount for an attorneys' fees and expense award to Stockholders' Counsel; (3) Service Awards for each of the Stockholders to be paid out of any fee and expense award should be approved; and (4) the Action should be dismissed on the merits and with prejudice on the terms set forth in the Stipulation.

Pending the Effective Date, none of the Settling Parties shall: (i) prosecute or pursue the Action or the Books and Records Demand, or (ii) file, prosecute, or pursue any other actions, proceedings, or demands relating to the Action, the Books and Records Demand, or the Settlement (aside from an action to enforce the Settlement).

IX. RIGHT TO ATTEND SETTLEMENT HEARING

Any current Surgalign stockholder may, but is not required to, appear in person (or telephonically or via any video platform as may be designated by the Court) at the Settlement Hearing. If you want to be heard at the Settlement Hearing, then you must first comply with the procedures **[*37]** for objecting, which are set forth below. The Court has the right to change the hearing date, time, or platform (in person or via video) without further notice. Thus, if you are planning to participate in the Settlement Hearing, you should confirm the date, time and platform (in person, via video, or telephonically) before going to the Court, and you may consult the Court's calendar and/or Surgalign's website at the Investor Relations page at http://ir.surgalign.com for any change in date or time of, or platform used for, the Settlement Hearing.

Current Surgalign stockholders who have no objection to the Settlement do not need to appear at the Settlement Hearing or take any other action.

X. RIGHT TO OBJECT TO THE PROPOSED DERIVATIVE SETTLEMENT AND PROCEDURES FOR DOING SO

Any current Surgalign stockholder may appear and show cause, if he, she, or it has any reason why the Settlement of the Derivative Matters should not be approved as fair, reasonable, and adequate, or why a judgment should not be entered thereon, or why the separately negotiated attorneys' fees and expenses or Service Awards should not be approved. You must object in writing, and you may request to be heard at the Settlement **[*38]** Hearing. If you choose to object, then you must follow these procedures.

A. You Must Make Detailed Objections in Writing

Any objections must be presented in writing and must contain the following information:

1. Your name, legal address, and telephone number;

2. The case name and number (*In re RTI Surgical Derivative Litigation*, Master File No.: 1:20-CV-3347 (MFK).

3. Proof of being a Surgalign stockholder as of the Record Date, September 10, 2021.

4. The date(s) you acquired your Surgalign shares;

5. A statement of each objection being made;

6. Notice of whether you intend to appear at the Settlement Hearing. You are not required to appear; and

7. Copies of any papers you intend to submit, along with the names of any witness(es) you intend to call to testify at the Settlement Hearing and the subject(s) of their testimony.

The Court may not consider any objection that does not substantially comply with these requirements.

B. You Must Timely Deliver Written Objections to the Court

All written objections and supporting papers must be submitted to the Court either by mailing them to:

Clerk of the Court
United States District Court
Northern District Of Illinois

Everett McKinley Dirksen United States Courthouse **[*39]**
219 South Dearborn Street
Chicago, IL 60604

Or, if feasible, by filing them in person at any location of the United States District Court for the Northern District of Illinois to the extent the Court is open for in-person filings.

YOUR WRITTEN OBJECTIONS MUST BE POSTMARKED OR ON FILE WITH THE CLERK FOR THE COURT NO LATER THAN JANUARY 3, 2022.

Unless the Court orders otherwise, your objection will not be considered unless it is timely filed with the Court.

Your written objection must also be mailed to:

Co-Lead Counsel for Plaintiffs:

Matthew M. Houston
Benjamin I. Sachs-Michaels

Glancy Prongay & Murray LLP
712 Fifth Avenue, 31 Floor
New York, NY 10019
(212) 935-7400
Or
Timothy Brown

The Brown Law Firm, P.C.
767 Third Avenue, Suite 2501
New York, NY 10017
(516) 922-5427
And

Counsel for Stockholder John Schweigert:
Melinda A. Nicholson

Kahn Swick & Foti, LLC
1100 Poydras Street, Suite 3200
New Orleans, LA 70163
(504) 455-1400
And

Surgalign's Counsel:
James W. Ducayet

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7621
Or

Counsel for Defendants Camille I. Farhat, Jonathon Singer, Peter F. Gearen, Thomas A. McEachin, Curtis M. Selquist, Mark D. Stolper, Christopher R. Sweeney, Paul G. Thomas, Nicholas **[*40]** J. Valeriani, and Shirley A. Weis:
Martin G. Durkin

Holland & Knight LLP
150 N. Riverside Plaza
Suite 2700
Chicago, IL 60606
(312) 853-7000
Louise McAlpin
Stephen P. Warren
Allison Kernisky

Holland & Knight LLP
701 Brickell Avenue
Suite 3300
Miami, FL 33131
(305) 374-8500

Any Person or entity who fails to object or otherwise request to be heard in the manner prescribed above will be deemed to have waived the right to object to any aspect of the Settlement as incorporated in the Stipulation or otherwise request to be heard (including the right to appeal) and will be forever barred from raising such objection or request to be heard in this or any other action or proceeding, and, unless otherwise ordered by the Court, shall be bound by the Judgment to be entered and the releases to be given.

XI. HOW TO OBTAIN ADDITIONAL INFORMATION

This Notice summarizes the Stipulation. It is not a complete statement of the events of the Actions or the Settlement contained in the Stipulation.

You may inspect the Stipulation together with the Exhibits annexed thereto and other papers in the Action at the United States District Court Clerk's office at any time it is open to the general public. The Clerk's office is located **[*41]** at the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen U.S. Courthouse, 219 South Dearborn Street, Chicago, IL 60604. However, you must appear in person to inspect these documents. The Clerk's office will not mail copies to you. You may also view and download the Stipulation together with the Exhibits annexed thereto at http://ir.surgalign.com.

If you have any questions about matters in this Notice, you may contact:

Co-Lead Counsel for Plaintiffs:

Matthew M. Houston

Benjamin I. Sachs-Michaels

Glancy Prongay & Murray LLP

712 Fifth Avenue, 31 Floor

New York, NY 10019

(212) 935-7400

Or

Timothy Brown

The Brown Law Firm, P.C.

767 Third Avenue

Suite 2501

New York, NY 10017

(516) 922-5427

Or

Counsel for Stockholder John Schweigert:

Melinda A. Nicholson

Kahn Swick & Foti, LLC

1100 Poydras Street, Suite 3200

New Orleans, LA 70163

(504) 455-1400

PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT QUESTIONS TO EITHER THE COURT OR THE CLERK'S OFFICE.

DATED: __, 2021

BY ORDER OF THE COURT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EXHIBIT A-2

EX. A-2 - SUMMARY NOTICE OF PROPOSED DERIVATIVE SETTLEMENT

TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF THE COMMON STOCK OF **[*42]** SURGALIGN HOLDINGS, INC. ("SURGALIGN" OR THE "COMPANY") AS OF SEPTEMBER 10, 2021 (THE "RECORD DATE")

PLEASE TAKE NOTICE that the above-captioned shareholder derivative action (the "Action") and a related demand to inspect the Company's books and records pursuant to *8 Del. C. §220* (the "Books and Records Demand," and, together with the Action, the "Actions") are being settled on the terms set forth in a Stipulation of Settlement, dated September 10, 2021 (the "Stipulation" or "Settlement").[3] Under the terms of

[3] This notice should be read in conjunction with, and is qualified in its entirety by reference to, the text of the

the Stipulation, as part of the proposed Settlement, Surgalign will adopt certain corporate governance reforms. These reforms are intended to address the claims asserted in the Actions.

Surgalign's Board of Directors reviewed the derivative settlement parameters, and exercising its business judgment and mindful of its duties to stockholders, approved the Settlement. Surgalign agrees and acknowledges that the corporate governance reforms confer substantial benefit upon Surgalign and its stockholders.

In light of the substantial benefits conferred upon Surgalign by Stockholders' Counsel's efforts, the Company and Stockholders' Counsel have participated in negotiations regarding the attorneys' fee **[*43]** and expenses to be paid by Surgalign's insurers to Stockholders' Counsel. If the negotiations do not result in an agreed upon amount, Stockholders' Counsel intend to seek a Fee and Expense Amount up to One Million Five Hundred Thousand ($1,500,000) Dollars and the issue shall be submitted to the Court for its determination.

IF YOU WERE A RECORD OR BENEFICIAL OWNER OF SURGALIGN COMMON STOCK AS OF SEPTEMBER 10, 2021, PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY AS YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THE ABOVE-REFERENCED LITIGATION.

On January 24, 2022, at 8:45 a.m., a hearing (the "Settlement Hearing") will be held telephonically to determine whether: (1) the terms of the proposed Settlement should be approved as fair, reasonable, and adequate; (2) any negotiated attorneys' fees and expense award to Stockholders' Counsel is fair, reasonable and adequate or, if the Settling Parties have not agreed to any such award, the appropriate amount for an attorneys' fees and expense award to Stockholders' Counsel; (3) Service Awards to each of the Stockholders to be paid out of any attorneys' fees and expense award should be approved; (4) a final judgment should be entered and **[*44]** the Actions should be dismissed with prejudice on the terms set forth in the Stipulation; and (5) such other matters as may be necessary and proper under the circumstances.

The Court has the right to change the hearing date, time, or platform (in person or via video) without further notice. Thus, if you are planning to participate in the Settlement Hearing, you should confirm the date, time and platform (in person, via video, or telephonically) before going to the Court, and you may consult the Court's calendar and/or Surgalign's website at the Investor Relations page at http://ir.surgalign.com for any change in date or time of, or platform used for, the Settlement Hearing.

Any Surgalign stockholder that objects to the Settlement shall have a right to appear in person (or telephonically or via any video platform as may be designated by the Court) and to be heard at the Settlement Hearing, provided that he, she, or it was a stockholder of record or beneficial owner as of September 10, 2021. Any Surgalign stockholder who satisfies this requirement may enter an appearance through counsel of such stockholder's own choosing and at such stockholder's own expense, or may appear on their own. **[*45]** However, no stockholder of Surgalign shall be heard at the Settlement Hearing unless, no later than January 3, 2022, such stockholder has filed with the Court and counsel for parties, a written notice of objection containing the following information:

1. Your name, legal address, and telephone number;

2. The case name and number (*In re RTI Surgical Derivative Litigation*, Master File No.: 1:20-CV-3347 (MFK).

3. Proof of being a Surgalign stockholder as of the Record Date, September 10, 2021.

4. The date(s) you acquired your Surgalign shares;

5. A statement of each objection being made;

6. Notice of whether you intend to appear at the Settlement Hearing. You are not required to appear; and

7. Copies of any papers you intend to submit, along with the names of any witness(es) you intend to call to testify at the Settlement Hearing and the subject(s) of their testimony.

Only stockholders who have filed and delivered valid and timely written notices of objection will be entitled to be heard at the Settlement Hearing unless the Court

Stipulation, which has been filed with the United States District Court for the Northern District of Illinois. A link to the Form 8-K filed with the U.S. Securities and Exchange Commission ("SEC") containing the text of the Stipulation together with the Exhibits annexed thereto may be found on the Company's website at the Investor Relations page at http://ir.surgalign.com. All capitalized terms herein have the same meanings as set forth in the Stipulation.

orders otherwise.

If you wish to object to the proposed Settlement, you must file the written objection described above with the Court and counsel for the parties on **[*46]** or before January 3, 2022.

Any Surgalign stockholder as of September 10, 2021, who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as incorporated in the Stipulation and/or to any award of attorneys' fees and expenses to Stockholders' Counsel or Service Awards, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

If you have any questions about matters in this Notice, you may contact:

Co-Lead Counsel for Plaintiffs:
Matthew M. Houston
Benjamin I. Sachs-Michaels

Glancy Prongay & Murray LLP
712 Fifth Avenue, 31 Floor
New York, NY 10019
(212) 935-7400
Or
Timothy Brown

The Brown Law Firm, P.C.
767 Third Avenue, Suite 2501
New York, NY 10017
(516) 922-5427
And

Counsel for Stockholder John Schweigert:
Melinda A. Nicholson

Kahn Swick & Foti, LLC
1100 Poydras Street, Suite 3200
New Orleans, LA 70163
(504) 455-1400
And

Surgalign's Counsel:
James W. Ducayet

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
(312) 853-7621
Or

Counsel for Defendants Camille **[*47]** I. Farhat, Jonathon Singer, Peter F. Gearen, Thomas A. McEachin, Curtis M. Selquist, Mark D. Stolper, Christopher R. Sweeney, Paul G. Thomas, Nicholas J. Valeriani, and Shirley A. Weis:
Martin G. Durkin

Holland & Knight LLP
150 N. Riverside Plaza
Suite 2700
Chicago, IL 60606
(312) 853-7000
Louise McAlpin
Stephen P. Warren
Allison Kernisky

Holland & Knight LLP
701 Brickell Avenue
Suite 3300
Miami, FL 33131
(305) 374-8500

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

DATED: __, 2021

BY ORDER OF THE COURT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

End of Document

EXHIBIT 11

The Honorable John C. Coughenour
Noting Date: August 29, 2023 @ 9:00 a.m.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE ZILLOW GROUP, INC. SHAREHOLDER DERIVATIVE LITIGATION	Master File No.: 17-cv-01568-JCC
THIS DOCUMENT RELATES TO: ALL ACTIONS	**[~~PROPOSED~~] FINAL ORDER AND JUDGMENT**

BADGLEY MULLINS TURNER PLLC
19929 BALLINGER WAY NE, SUITE 200
SEATTLE, WA 98155
TEL: (206) 621-6566

This matter came before the Court for hearing pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice, dated April 25, 2023 (the "Preliminary Approval Order"), on the application of the Parties for final approval of the settlement of the Actions set forth in the Stipulation and Agreement of Settlement dated April 20, 2023 (the "Stipulation"). Due and adequate notice having been given to Current Zillow Shareholders as required in said 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 Order and Judgment incorporates by reference the definitions in the Stipulation, and unless otherwise defined herein, all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Final Order and Judgment. The Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, and the Parties to the Stipulation have consented to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

3. The Court finds that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and in the best interests of Zillow and Current Zillow Shareholders, and pursuant to Fed. R. Civ. P. 23.1, the Court hereby finally approves the Settlement in all respects, finds that the Settlement set forth in the Stipulation provides material benefits to Zillow and Current Zillow Shareholders, and orders the Parties to perform its terms to the extent the Parties have not already done so.

4. The Action and all claims asserted therein are hereby ordered as compromised, settled, released, discharged and dismissed with prejudice by virtue of the proceedings herein and this Final Order and Judgment, and as set forth in the Stipulation. As among Plaintiffs, Zillow, and the Individual Defendants, the Parties are to bear their own costs, except as

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SEATTLE, WA 98155
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otherwise provided in the Stipulation, the Preliminary Approval Order, and this Final Order and Judgment.

5. Upon the Effective Date of the Settlement, (i) Plaintiffs and all other Current Zillow Shareholders shall be deemed to have, and by operation of the law and of the Judgment shall have, fully, finally and forever released, relinquished and discharged their right to assert derivatively on behalf of the Company any and all of the Plaintiffs' Released Claims (including Unknown Claims) against the Defendants' Released Persons, and shall forever be barred and enjoined from instituting, commencing, or prosecuting derivatively on behalf of the Company any and all of the Plaintiffs' Released Claims against the Defendants' Released Persons; and (ii) Zillow shall be deemed to have, and by operation of the law and of the Judgment shall have, fully, finally, and forever released, relinquished and discharged its right to assert directly any and all of the Plaintiffs' Released Claims against the Defendants' Released Persons, and shall forever be barred and enjoined from instituting, commencing, or prosecuting directly any and all of the Plaintiffs' Released Claims against the Defendants' Released Persons.

6. Upon the Effective Date of the Settlement, Defendants shall be deemed to have, and by operation of the law and of the Judgment shall have, fully, finally and forever released, relinquished and discharged any and all of the Defendants' Released Claims against the Plaintiffs' Released Persons, and shall forever be barred and enjoined from instituting, commencing, or prosecuting any and all of the Defendants' Released Claims against the Plaintiffs' Released Persons.

7. Notwithstanding paragraphs 5 and 6 above, nothing in this Final Order and Judgment shall in any way impair or restrict the rights of any Party to enforce the terms of the Stipulation or this Final Order and Judgment.

8. The Court finds that the notice to Current Zillow Shareholders (a) was provided pursuant to and in the form and manner directed by the Preliminary Approval Order; (b) meets the requirements of Fed. R. Civ. P. 23.1 and due process; and (c) constitutes due and sufficient notice of all matters relating to the Settlement to all Persons entitled to such notice.

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19929 BALLINGER WAY NE, SUITE 200
SEATTLE, WA 98155
TEL: (206) 621-6566

9. Pursuant to and in compliance with Fed. R. Civ. P. 23.1 and due process, the Court hereby finds that the notice provided advised Persons in interest of the terms of the Settlement and the Fee and Expense Award and of their right to object thereto, and a full and fair opportunity was accorded to all Persons entitled to be heard with respect to the foregoing matters.

10. This Court finds that the Action has been properly maintained as a derivative action according to the provisions of Fed. R. Civ. P. 23.1 and any corollary state rule, and the Court finds that throughout the course of the Action, the Parties and their counsel at all times complied with the requirements of Fed. R. Civ. P. 11 and any corollary state rule.

11. The Court hereby approves the Fee and Expense Award, which sum the Court finds to be fair and reasonable. The Court also hereby approves payment of the Service Awards, which shall be funded from the Fee and Expense Award. The Fee and Expense Award shall be paid in accordance with the terms of the Stipulation.

12. No proceedings or court order with respect to the Fee and Expense Award or Service Awards shall in any way disturb or affect this Order and Final Judgment (including precluding this Order and Final Judgment from being Final or otherwise being entitled to preclusive effect), and any such proceedings or court order shall be considered separate from this Order and Final Judgment.

13. Neither the Stipulation (whether or not consummated), including the exhibits thereto, the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith): (i) shall be offered against any of the Defendants' Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Released Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of

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TEL: (206) 621-6566

any kind of any of the Defendants' Released Persons or in any way referred to for any other reason as against any of the Defendants' Released Persons, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the Settlement; or (ii) shall be offered against any of the Plaintiffs' Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiffs' Released Persons that any of Plaintiffs' claims are without merit, that any of the Defendants had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement consideration or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Released Persons, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the Settlement; provided, however, that the Parties, the Released Persons, and their respective counsel may file the Stipulation and/or this Final Order and 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.

14. Without affecting the finality of this Final Order and Judgment in any way, the Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement; (b) the Parties for the purpose of construing, enforcing, and administering the Stipulation and this Final Order and Judgment; and (c) any other matters related to the foregoing.

15. Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation to effectuate the Settlement that: (a) are not materially inconsistent with this Final Order Judgment; and (b) do not materially limit the rights of Current Zillow Shareholders in connection with the Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement.

BADGLEY MULLINS TURNER PLLC
19929 BALLINGER WAY NE, SUITE 200
SEATTLE, WA 98155
TEL: (206) 621-6566

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16. This Final Order and Judgment is a final, appealable judgment and should be entered by the Clerk of the Court forthwith in accordance with Fed. R. Civ. P. 58.

IT IS SO ORDERED.

DATED: August 29, 2023

Honorable John C. Coughenour

Presented By:

BADGLEY MULLINS TURNER PLLC
s/ Duncan C. Turner
DUNCAN C. TURNER, WSBA No. 20597
19929 Ballinger Way NE, Suite 200
Seattle, WA 98155
Telephone: (206) 621-6566
Email: dturner@badgleymullins.com

Liaison Counsel for Plaintiffs

THE WEISER LAW FIRM, P.C.
JAMES M. FICARO (admitted *Pro Hac Vice*)
200 Barr Harbor Dr., Suite 400
West Conshohocken, PA 19428
Telephone: (610) 225-2677
Email: jmf@weiserlawfirm.com

GAINEY McKENNA & EGLESTON
THOMAS J. MCKENNA (admitted *Pro Hac Vice*)
GREGORY M. EGLESTON (admitted *Pro Hac Vice*)
501 Fifth Avenue, 19^{th} Fl.
NY, NY 10017
Telephone: (212) 983-1300
Email: tjmckemma@gmail.com
Email: gegleston@gme-law.com

Co-Lead Counsel for Plaintiffs

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LORI RAVENSCROFT GEARE and ROBERT J. CASEY, II, Derivatively for the Benefit of HOSPIRA, INC., Plaintiffs, v. CHRISTOPHER B. BEGLEY, F. MICHAEL BALL, THOMAS E. WERNER, IRVING W. BAILEY, II, JACQUE J. SOKOLOV, BARBARA L. BOWLES, ROGER W. HALE, JOHN C. STALEY, CONNIE R. CURRAN, HEINO VON PRONDZYNSKI, MARK F. WHEELER, TERRENCE C. KEARNEY, RONALD A. MATRICARIA, and BRIAN J. SMITH, Defendants, –and– HOSPIRA, INC., a Delaware corporation, Nominal Defendant.	Case No. 11-cv-09074 (JJT)

FINAL ORDER AND JUDGMENT

WHEREAS, this Court having considered the Stipulation of Settlement dated November 3, 2014, and its exhibits (the "Stipulation") between: (a) Lori Ravenscroft Geare and Robert J. Casey, II ("Illinois Plaintiffs") and the International Union of Operating Engineers Pension Plan of Eastern Pennsylvania and Delaware ("Delaware Plaintiff") (collectively, "Plaintiffs"); (b) nominal defendant Hospira, Inc. ("Hospira" or the "Company"); and (c) Christopher B. Begley, F. Michael Ball, Thomas E. Werner, Irving W. Bailey, II, Jacque J. Sokolov, Barbara L. Bowles, Roger W. Hale, John C. Staley, Connie R. Curran, Heino von Prondzynski, Mark F. Wheeler, Terrence C. Kearney, Ronald A. Matricaria, and Brian J. Smith (collectively, the "Individual Defendants," and collectively with Hospira, the "Defendants"), and having held a hearing on January 23, 2015 (the "Settlement Hearing"), and having considered all papers filed and proceedings herein, and otherwise being fully informed, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Court finds that Hospira and Plaintiffs' Counsel caused notice to be made in the manner required by the Preliminary Approval Order. The form and manner of the notice given is hereby determined to have been reasonably calculated, under the circumstances, to provide adequate notice to Hospira Shareholders of the terms of the Settlement, and their right to object to the Stipulation and to appear at the Settlement Hearing, in compliance with Federal Rule of Civil Procedure 23.1(c).

2. The Court finds, in accordance with Federal Rule of Civil Procedure 23.1(c), that the Stipulation provides a fair, reasonable, and adequate resolution of the Action, and is in the best interests of Hospira. Further, no objections to the Stipulation have been raised.

Accordingly, the Court hereby approves the settlement of the Action as set forth in the Stipulation and directs the implementation thereof.

3. In connection with the settlement of the Action, the Court approves (i) the agreed-to fee and expense amount of $2.3 million for Illinois Plaintiffs' Counsel and $330,000 for Delaware Plaintiff's Counsel; and (ii) the agreed-to incentive award amount of $3,000 per Plaintiff for Plaintiffs' efforts in the Actions, which amount shall be paid by each Plaintiff's Counsel out of the fee and expense amount approved herein.

4. This Action is hereby dismissed with prejudice, with each side to bear its own costs and expenses, except as set forth in paragraph 3. Any pending motions are denied as moot.

5. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed with prejudice the Released Claims against the Released Parties; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

6. Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever settled, released, discharged, extinguished, and dismissed, with prejudice, all claims (including Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Actions or the Released Claims against Plaintiffs and Plaintiffs' Counsel; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

7. Neither the Stipulation, nor any of its terms or provisions, nor any document referred to therein, nor the exhibits thereto, nor this Judgment, nor the fact of the Settlement, nor

any action taken to carry out the Stipulation or the Settlement, is, may be construed as, or may be used as, evidence of the validity of any claim or as an admission by or against any of the Released Parties of any fault, wrongdoing, or concession of liability whatsoever. The Settlement and the Stipulation, and any and all negotiations, documents, and discussions associated therewith, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of equity or of any liability or wrongdoing by the Released Parties whatsoever, or of the truth of any of the claims or allegations made against any of Defendants in the Actions.

8. As used in this Judgment, the following terms have the meanings specified below:

A. "Action" means the consolidated derivative action captioned, *Casey v. Begley*, Case No. 11-cv-09074 (JJT), pending in the U.S. District Court for the Northern District of Illinois. "Actions" means the Action together with the verified shareholder derivative action captioned, *International Union of Operating Engineers Pension Plan of Eastern Pennsylvania and Delaware v. Begley*, C.A. No. 9926-VCP, pending in the Court of Chancery of the State of Delaware.

B. "Effective Date" means the first date by which all of the following events and conditions have been met and have occurred:

(a) Court approval of the Settlement;

(b) entry of this Judgment in this Action;

(c) payment to Plaintiffs' Counsel of the Fee and Expense Amount approved by the Court;

(d) this Judgment becoming Final; and

(e) dismissal of the Delaware Action with prejudice.

C. "Final" means when the last of the following shall occur: (i) the time to file a motion to alter or amend this Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of the time in which to appeal this Judgment has passed without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, the determination of that motion or appeal in such a manner as to permit this Judgment to remain in force unaltered. For purposes of this paragraph, an "appeal" shall include any petition for a writ of certiorari or other writ that may be filed in connection with this Judgment, but shall not include any appeal that concerns only the issue of attorneys' fees and expenses or Incentive Award.

D. "Hospira Shareholder" means, for purposes of the Stipulation, any Person who owned Hospira common stock as of November 3, 2014, the execution Date of the Stipulation and who continues to hold Hospira common stock as of the date of this Judgment, excluding the Individual Defendants, members of their immediate families, and their legal representatives, heirs, successors, or assigns, and any entity in which Individual Defendants have or had a controlling interest.

E. "Person" means an individual, business, or legal entity, including any corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and their spouses, heirs, predecessors, successors, representatives, or assignees.

F. "Plaintiffs' Counsel" means (a) Robbins Arroyo LLP and the Paskowitz Law Firm, P.C., as Co-Lead Counsel for the Illinois Action, (b) the firms of Lasky & Rifkind, Ltd. and the Law Offices of Edward T. Joyce & Associates, P.C., as Co-Liaison Counsel for the

Illinois Action; the Grant Law Firm, PLLC, Roy Jacobs & Associates, and the Law Office of Alfred G. Yates, Jr., P.C., as additional counsel in the Illinois Action; and (c) the firms of Schubert, Jonckheer & Kolbe LLP, Shepherd Finkleman Miller & Shah LLP, and Rosenthal, Monhait & Goddess, P.A., as counsel for the Delaware Action.

G. "Released Claims" means any and all claims, demands, rights, remedies or causes of action, whether based on federal, state, local, statutory, common, or foreign law or any other law, rule, regulation, or principle of equity, whether known or unknown, including without limitation Unknown Claims, whether suspected or unsuspected, whether contingent or non-contingent, whether accrued or unaccrued, whether or not concealed or hidden, whether factual or legal, and for any remedy whether at equity or law, that were, could have been, or might have been asserted from the beginning of time through the date of entry of the Final Order and Judgment, by Hospira or any Hospira Shareholder in the Action, any shareholder demand, or in any other forum derivatively on behalf of Hospira, against the Released Parties or any other individual named or unnamed, in connection with, arising out of, related to, based upon, in whole or in part, directly or indirectly, any action or omission or failure to act relating to any of the matters, facts, or events set forth, referenced, or alleged in any pleading or other document filed in the Action; provided however that nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of the Stipulation.

H. "Released Parties" means the Defendants, including each and all individuals named or who could have been named in the Action, and each and all members of their families, parent entities, affiliates, and subsidiaries and each and all of their respective past or present officers, directors, employees, agents, attorneys, accountants, auditors, insurers, heirs, executors, estates, administrators, predecessors, successors, assigns, and representatives, as well as any entity in which they have a controlling interest or any trust of which they are the settlor or which is for the benefit of them and/or member(s) of their family.

I. "Releasing Parties" means the Plaintiffs (individually, and derivatively on behalf of Hospira), Hospira, and every Hospira Shareholder and each and all members of their families, heirs, administrators, predecessors, successors, parent entities, subsidiaries, affiliates, custodians, agents, representatives, executors, assigns, estates, trusts, trustees, trust beneficiaries, and all Persons acting in concert with any of the aforementioned Persons.

J. "Unknown Claims" means any Released Claims that any Plaintiff (individually, and derivatively on behalf of Hospira), Hospira, or any Hospira Shareholder does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties that, if known by him, her, or it might have affected his, her, or its settlement with, and release of, the Released Parties, or might have affected his, her, or its decision not to object to this Settlement, including claims based on the discovery of facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the Released Claims. The Released Claims constitute an express waiver by the Parties of all rights and protections afforded by California Civil Code section 1542 and all similar federal, state, or foreign laws, rights, rules, or legal principles. Section 1542 states:

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

IT IS SO ORDERED.

DATED: Jan 23, 2015

John J. Tharp, Jr.
United States District Judge