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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15

16 IN RE MULLEN AUTOMOTIVE, INC.  
17 DERIVATIVE LITIGATION  
18

19 This Document Relates to:  
20  
21 ALL ACTIONS  
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Lead Case No. 2:22-cv-05336-DMG-  
(AGRx)

**DECLARATION OF ERICA L.  
STONE IN SUPPORT OF MOTION  
FOR FINAL APPROVAL OF  
SETTLEMENT AND FEE AND  
EXPENSE AMOUNT**

Date: January 24, 2025  
Time: 10:00 a.m.  
Courtroom: 8C, 8<sup>th</sup> Floor  
Judge: Honorable Dolly M. Gee

1 I, Erica L. Stone, declare as follows:

2 1. I am Counsel at The Rosen Law Firm, P.A. (“Rosen Law”), Co-Lead  
3 Counsel for Plaintiffs Jeff Witt, Joseph Birbigalia, and Hany Morsy (collectively,  
4 “Plaintiffs”)<sup>1</sup> in the above-captioned consolidated shareholder derivative action (the  
5 “Action”) brought on behalf of nominal defendant Mullen Automotive, Inc. (“Mullen”  
6 or the “Company”). I am admitted to practice before the courts in the State of New  
7 York and New Jersey and admitted *pro hac vice* in this Action.

8 2. I have overseen all material aspects of the litigation of this Action. In  
9 addition, I was involved in the negotiation of the terms of the Settlement. Accordingly,  
10 I have personal knowledge of the facts set forth herein and if called upon to testify, I  
11 could and would testify competently thereto.

12 3. I submit this declaration in support of Plaintiffs’ Motion for Final  
13 Approval of Settlement and Fee and Expense Amount (the “Motion”). The purpose of  
14 this Declaration is to set forth the background and procedural history of the Action, the  
15 negotiations that led to the Settlement, and the results achieved. This Declaration  
16 further demonstrates that: (i) the Settlement is fair, reasonable, and adequate, and in the  
17 best interest of Mullen and its shareholders; (ii) the agreed-upon amount of attorneys’  
18 fees and expenses to be paid to Plaintiffs’ Counsel (the “Fee and Expense Amount”) is  
19 fair and reasonable; and (iii) the Services Awards for Plaintiffs are fair and reasonable.

20 4. The Settlement, which is the culmination of arm’s-length negotiations by  
21 knowledgeable counsel on both sides under the supervision of Robert A. Meyer, Esq.  
22 of JAMS, an experienced mediator, fully and finally resolves all the claims asserted in  
23 this Action. *See* Exhibit A, Meyer Declaration (“Meyer Decl.”). It will also resolve the  
24 derivative claims brought in the action *Coleman v. Michery, et al.*, Case No. 2023-  
25 1228-KJSM (Del. Ch.). Stip., §I(D).

26  
27 <sup>1</sup> Unless otherwise noted, all capitalized terms herein shall have the same meaning as  
28 set forth in the Stipulation and Agreement of Settlement (“Stip.” or “Stipulation”) (ECF  
No. 31).

1           5.     The Settlement is the product of non-collusive, hard fought, arm's-length  
2 negotiations which is targeted to provide substantial and long-lasting benefits to Mullen  
3 and its shareholders through certain corporate governance reforms (the "Corporate  
4 Governance Enhancements") that address the wrongdoing as alleged in the Action.

5           6.     Prior to agreeing to the Settlement, Plaintiffs and Plaintiffs' Counsel were  
6 well-informed about the legal and factual issues of the litigation. Plaintiffs' and  
7 Plaintiffs' Counsel's efforts in the Action included: (i) reviewing and analyzing  
8 Mullen's public statements including U.S. Securities and Exchange Commission  
9 ("SEC") filings, press releases, transcripts of investor calls, and news articles; (ii)  
10 reviewing and analyzing the publicly available filings in the related Securities Class  
11 Action (defined below); (iii) researching, drafting, and filing the complaints in the *Witt*  
12 Action and *Morsy* Action (defined below); (iv) opposing specially appearing  
13 Defendant Oleg Firer's motion to dismiss; (v) reviewing internal, non-public  
14 documents Mullen produced to Plaintiffs in connection with the litigation; (vi)  
15 researching the applicable law with respect to the claims asserted, or that could be  
16 asserted, and the potential defenses thereto; (vii) researching corporate governance  
17 issues; (viii) preparing a settlement demand; (ix) participating in-person and virtual  
18 mediation sessions; (x) engaging in extensive post-mediation settlement discussions  
19 with Defense Counsel overseen by Mr. Meyer, including the exchange of corporate  
20 governance reform proposals and counteroffers; and (xi) negotiating and drafting the  
21 term sheet and subsequent settlement documentation for presentment to the Court.

22 **Factual Background**

23           7.     Mullen is automotive company that produces electric vehicles ("EVs")  
24 based in a Southern California. Mullen is the result of a merger between Mullen  
25 Technologies, Inc. and Net Element, Inc, an e-commerce technology company. On  
26 June 16, 2020, Mullen Technologies issued a press release announcing this merger.

1           8.       Plaintiffs assert that between June 15, 2020 and April 6, 2022, the Settling  
2 Defendants breached their fiduciary duties and violated the Securities Exchange Act of  
3 1934 (“Exchange Act”) causing Mullen to issue false and misleading statements  
4 including in press releases, interviews, and a proxy statement filed with the SEC.  
5 Specifically, the Action concerns the Settling Defendants’ purported issuance of a series  
6 of false and misleading statements concerning Mullen’s business prospects. In  
7 particular, Plaintiffs assert that the Settling Defendants allegedly misrepresented  
8 Mullen’s: (1) ability and timeline to produce and sell electric cars; (2) manufacturing  
9 facilities and capabilities; (3) battery technology development and capabilities; and (4)  
10 strategic partnerships and/or deals with third-parties and customer contracts.

11           9.       Plaintiffs allege that the truth emerged on April 6, 2022 when market  
12 analyst *Hindenburg Research* published a report detailing several issues with Mullen’s  
13 operations and prospects. *Hindenburg Research*’s report asserted, among other things,  
14 that: Mullen was unable to manufacture EVs in contrast to its previous representations;  
15 Mullen would not meet its stated technology goals including its battery technology;  
16 and customer agreements were no longer in effect. As a result of the Settling  
17 Defendants’ alleged wrongdoing, Plaintiffs allege that Mullen was damaged.

18           10.       Among other damages to Mullen, Plaintiffs allege that the Settling  
19 Defendants’ misconduct exposed Mullen to liability in the federal securities class  
20 action, captioned *In re Mullen Automotive, Inc. Securities Litigation*, Case No. 2:22-  
21 cv-03026-DMG-AGR (C.D. Cal.) (the “Securities Class Action”). The Securities Class  
22 Action settled for \$7,250,000 which was preliminarily approved. A final approval  
23 hearing in the Securities Class Action is scheduled for April 4, 2025.

24           11.       Defendants deny all of Plaintiffs’ allegations and any alleged wrongdoing.  
25 Stip., §III.

1 **Procedural Background**

2 12. On August 1, 2022, Plaintiffs Witt and Birbigalia filed a putative  
3 shareholder derivative action in this Court on behalf of Mullen captioned *Witt, et al. v.*  
4 *Michery et. al.*, Case No. 2:22-cv-05336-DMG-AGR (“*Witt Action*”), asserting claims  
5 against the Settling Defendants for breach of fiduciary duties, unjust enrichment, abuse  
6 of control, and waste of corporate assets, and asserting a claim against Defendant Firer  
7 for violations of Section 14 of the Exchange Act.

8 13. A second putative shareholder derivative action was filed in the Court on  
9 September 30, 2024, captioned *Morsy v. Michery et. al.*, Case No. 2:22-cv-07139 (the  
10 “*Morsy Action*”), asserting claims similar to those asserted in the *Witt Action* against  
11 the Settling Defendants.

12 14. Both the *Witt Action* and the *Morsy Action* allege that the Settling  
13 Defendants are liable to Mullen for purportedly permitting the issuance of a series of  
14 false and misleading statements, beginning on June 15, 2020, concerning Mullen’s  
15 business prospects.

16 15. On November 8, 2022, the Court consolidated the *Witt Action* with the  
17 *Morsy Action*, and appointed Gainey McKenna & Egleston (“GME”) and Rosen Law  
18 as Co-Lead Counsel for the Plaintiffs. ECF No. 11. Shortly thereafter, Plaintiffs and the  
19 Individual Mullen Settling Defendants filed a Joint Stipulation to Stay Derivative  
20 Litigation. ECF No. 13. The Court’s Order Staying Derivative Litigation was entered  
21 on November 30, 2022. ECF No. 15.

22 16. On October 24, 2023, specially appearing Defendant Firer filed a Motion  
23 to Dismiss for Improper Service (ECF No. 20). Plaintiffs responded to Firer’s motion  
24 to dismiss on November 1, 2023. (ECF No. 25). The motion to dismiss was fully  
25 briefed on November 22, 2023. (ECF No. 28). The Court took this motion under  
26 submission on December 7, 2023, prior to the entry of the Stipulation. Final approval  
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1 of the Settlement will moot this pending motion as Firer is a party to the Settlement.  
2 Stip., at 1, 27, §V.1.19.

3 Settlement Negotiations

4 17. Plaintiffs were invited to, and did, attend an in-person mediation session  
5 before Mr. Meyer on April 2, 2024 that was also held in connection with the Securities  
6 Class Action. Exhibit A, Meyer Decl., ¶9.

7 18. On March 13, 2024, prior to the mediation, Plaintiffs sent a written  
8 settlement demand to explore a potential resolution of the Action. Over the next several  
9 months, with Mr. Meyer's assistance, the Settling Parties engaged in extensive arm's-  
10 length negotiations. These included another virtual mediation session, additional  
11 videoconferences, and emails that included several exchanges of drafts of corporate  
12 governance reforms. *Id.*

13 19. On June 3, 2024, following lengthy, arm's-length negotiations, the  
14 Settling Parties reached an agreement-in-principle to settle the Action and executed a  
15 term sheet whereby Mullen agreed to adopt the Corporate Governance Enhancements,  
16 subject to execution of a formal, final stipulation and agreement of settlement and  
17 related papers, and Court approval.

18 20. Following this, the Settling Parties worked together to formalize the  
19 material terms of the settlement in the Stipulation, along with the exhibits thereto.

20 21. The Settling Parties began to negotiate attorneys' fees and expense only  
21 after the term sheet was executed that detailed the material, substantive terms of the  
22 Settlement and the Corporate Governance Enhancements. The Settling Parties  
23 continued to engage Mr. Meyer, who was knowledgeable about the complexity of the  
24 issues, risks, and challenges in the Action, to oversee these discussions. Over several  
25 weeks, the Settling Parties, through Mr. Meyer, participated in arm's-length  
26 negotiations regarding attorneys' fees and expenses. Eventually, Mr. Meyer proposed,  
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1 and the Settling Parties accepted, a mediator's proposal of \$500,000 for the Fee and  
2 Expense Amount. Meyer Decl., ¶11.

3 22. The Settlement negotiations were at all times conducted at arm's-length  
4 with knowledgeable counsel. Plaintiffs' Counsel has considerable experience  
5 prosecuting shareholder derivative actions and provided high-quality representation.  
6 They are nationally recognized firms that specialize in securities and shareholder  
7 derivative litigation. *See* Exhibits B and C, hereto. Mullen and the Mullen Individual  
8 Defendants are represented by King & Spalding LLP, who, like Plaintiffs' Counsel, are  
9 experienced shareholder derivative litigation practitioners who were also familiar with  
10 the strengths and weaknesses of the case. Mr. Firer is represented by Foley and Lardner  
11 LLP, also experienced shareholder derivative litigation practitioners. Both defense  
12 firms zealously advocated for their clients.

13 23. Mr. Meyer noted that counsel's knowledge and their adversarial  
14 participation in the settlement talks at all times. *See* Meyer Decl., ¶13 ("I can readily  
15 attest that the negotiations between counsel for the parties were conducted in good  
16 faith, at arm's length, and were not collusive. In addition, my review of the papers  
17 presented to me and discussions with counsel have led me to conclude that all counsel  
18 are skilled and experienced in this type of matter, and that all sides litigated the action  
19 in a vigorous, professional, and thorough manner. I am confident that counsel for the  
20 parties were sufficiently well informed to enter into the Settlement.").

21 24. Additionally, prior to finalizing the Settlement, Plaintiffs' Counsel  
22 reviewed internal, non-public Company documents that Mullen provided. Plaintiffs  
23 were in the process of preparing a consolidated amended complaint to incorporate these  
24 documents prior to agreeing to the Settlement. Thus, despite the Action being in the  
25 early procedural stages prior to formal discovery at the time of Settlement, Plaintiffs  
26 and their counsel had strong underlying facts and alleged misconduct to support their  
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1 opinion that the Settlement is fair, reasonable, and adequate through the informal  
2 discovery, pre-suit investigations, and settlement negotiations.

3 Preliminary Approval and Notice to Shareholders

4 25. On September 9, 2024, Plaintiffs moved for preliminary approval of the  
5 Settlement. (ECF Nos. 31-34). The Court held a hearing on October 11, 2024. (ECF  
6 No. 46). Also on October 11, 2024, the Court entered the Order Preliminarily  
7 Approving Settlement of Consolidated Derivative Action and Providing for Notice [32]  
8 (“Preliminary Approval Order”) (ECF No. 45).

9 26. Pursuant to the Preliminary Approval Order, Mullen was required to issue  
10 notice of the Settlement to its investors by November 1, 2024. *Id.*, ¶4. On October 21,  
11 2024, Mullen timely issued notice that comprised of: (1) posting a copy of the Long-  
12 Form Notice on the Investor Relations page of its website; (2) causing the Short-Form  
13 Notice to be pushed in *Investor’s Business Daily*; and (3) causing the Short-Form  
14 Notice to be published on *PRNewswire*. Additionally, Mullen will update its litigation  
15 disclosure in its next Form 10-Q filed with the SEC to state that the Long-Form Notice  
16 can be found on the Investor Relations page of Mullen’s website.

17 27. Additionally, Plaintiffs’ Counsel will post the documents filed in support  
18 of this Motion to their websites, [www.rosenlegal.com](http://www.rosenlegal.com) and [www.gme-law.com](http://www.gme-law.com), by  
19 December 9, 2024. *Id.*, ¶10.

20 28. Pursuant to the Preliminary Approval Order, the Notice directed that any  
21 objections to the Settlement be filed by January 3, 2025. *Id.*, ¶11. To date, the Parties  
22 have not received and are not aware of any objections to the Settlement.

23 **TERMS OF THE SETTLEMENT**

24 Corporate Governance Enhancements

25 29. The Settlement achieved here fully and finally resolves the claims asserted  
26 against Defendants in consideration for the Corporate Governance Enhancements  
27 which shall be maintained for at least four (4) years from the date that the Judgment in  
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1 this Action becomes Final. The Corporate Governance Enhancements also go to the  
2 heart of the alleged wrongdoing and thus are targeted to guarantee real benefits for the  
3 Company and its stockholders. As such, they greatly reduce the chance of Mullen  
4 suffering future legal exposure from misconduct similar to that alleged in the Action,  
5 enhance the value of the Company through improved compliance controls and better  
6 decision-making, and help foster investor confidence in the accuracy of the Company's  
7 public disclosures.

8 30. The Corporate Governance Enhancements, attached in full as Exhibit 1 to  
9 the Stipulation,<sup>2</sup> in summary include:

10 • The establishment of a new, Board-level Risk Committee to oversee  
11 the Company's risk management policies and framework. The Risk Committee  
12 shall consist of at least three (3) independent directors. Mullen's Board of  
13 Directors (the "Board") will adopt and implement a formal charter for the Risk  
14 Committee, a copy of which is attached to the Stipulation as Exhibit 2. Mullen  
15 will post the Risk Committee Charter on its website promptly after adoption.  
16 Stip. ¶V.3.2; Ex. 2.

17 • The creation of a Management-level Disclosure Committee that  
18 will establish effective procedures and protocols at the Company relating to  
19 financial disclosures, to ensure that all of Mullen's significant public statements  
20 are reviewed for, *inter alia*, accuracy, integrity, and completeness. The  
21 Disclosure Committee members shall consist of, at least, Mullen's Chief  
22 Executive Officer, Chief Financial Officer, legal counsel, and at least one other  
23 senior officer with day-to-day oversight of the key functional areas of the  
24 Company. Mullen will adopt and implement a formal Charter for the Disclosure  
25 Committee, a copy of which is attached as Exhibit 3 to the Stipulation. *Id.*,  
26 ¶V.3.3; Ex. 3.

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28 <sup>2</sup> Numbered exhibits refer to those attached to the Stipulation.

- 1           •       An assessment by the Audit Committee of the Company’s internal  
2 controls in consultation with Mullen’s outside auditors. *Id.*, ¶V.3.4.
- 3           •       Improvements to the Nominating and Corporate Governance  
4 Committee Charter, including requiring the committee to meet with each new  
5 prospective Board member prior to the individual’s nomination and determine  
6 whether to recommend the individual to the Board. Mullen will amend the  
7 Nominating and Corporate Governance Committee Charter as reflected in  
8 Exhibit 4 to the Stipulation. *Id.*, ¶V.3.5; Ex. 4.
- 9           •       Improvements to the Compensation Committee Charter, including  
10 assessing executive officer’s performance as it relates to annual compensation  
11 arrangements, and circumstances surrounding the departure of an executive  
12 officer as it relates to termination benefits and/or separation pay. Mullen will  
13 amend the Compensation Committee Charter as reflected in Exhibit 5 to the  
14 Stipulation. *Id.*, ¶V.3.6; Ex. 5.
- 15          •       Requiring either oral or written executive reports to the Board at all  
16 regularly scheduled quarterly Board meeting regarding each executive’s  
17 respective area of responsibility. *Id.*, ¶V.3.7.
- 18          •       Improved director education requiring that all existing outside  
19 directors, and all new outside directors, attend a National Associate of Corporate  
20 Directors certified training program, or similar program, within one year of (a)  
21 entry of Final Judgment in this Action, or (b) a new director joining the Board.  
22 *Id.*, ¶V.3.8.
- 23          •       Improved Board composition and practices including limiting the  
24 number of boards of public companies that Mullen directors can sit. Mullen will  
25 amend its Corporate Governance Guidelines as reflected in Exhibit 6 to the  
26 Stipulation. *Id.*, ¶V.3.9; Ex. 6.

- The formalization of a Whistleblower Policy, as reflected in Exhibit 7 to the Stipulation. *Id.*, ¶V.3.10; Ex. 7.

31. Plaintiffs and the Board agree that these Corporate Governance Enhancements are fair, reasonable, and in the best interest of Mullen and its current shareholders. Stip., ¶V.2.2. Likewise, Plaintiffs and Mullen agree that the Corporate Governance Enhancements confer substantial benefits upon Mullen and its current shareholders. *Id.*, ¶V.2.3.

Additional Settlement Terms

32. In addition to the above Corporate Governance Enhancements, the Settlement provides for mutual releases that discharge and relinquish any claims arising out of the Action, thus quieting any claims arising from the same or similar allegations.

**THE SETTLEMENT SHOULD BE FINALLY APPROVED**

33. Plaintiffs and Plaintiffs' Counsel believe that the Settlement confers substantial benefits to Mullen as the Corporate Governance Enhancements are a robust package of reforms designed to address, and prevent the future occurrence of, the wrongdoing alleged in the Action. The Corporate Governance Enhancements seek to strengthen Mullen's overall corporate governance and internal controls which will provide real, substantial, and long-lasting benefits for the Company and its shareholders, and is thus fair, adequate, and reasonable. Plaintiffs and Plaintiffs' Counsel are not alone in this belief as Mullen agrees that the Settlement "confer[s] substantial benefits on Mullen and its current shareholders." Stip., §IV; ¶V.2.3.

34. Importantly, Mullen's Board, in exercising its good faith business judgment, determined that "the Settlement and each of its terms are fair, reasonable, and in the best interest of Mullen and its current shareholders." *Id.*, ¶V.2.2. Moreover, Mullen recognizes that Plaintiffs' efforts of "the filing, pendency, and settlement of the Consolidated Derivative Action caused the adoption and implementation of the Corporate Governance Enhancements," (*id.*), and the Settling Defendants agree "that

1 it is desirable and beneficial that the Consolidated Derivative Action, and all of the  
2 Settling Parties' disputes related thereto, be fully and finally settled in the manner and  
3 upon the terms and conditions set forth in this Stipulation." *Id.*, §III.

4 35. Although, Plaintiffs and Plaintiffs' Counsel believe that the claims  
5 asserted in the Action were meritorious and that they may have prevailed had litigation  
6 continued, they recognize that shareholder derivative actions are notoriously difficult  
7 and continued litigation was not without significant risk. Indeed, Plaintiffs would have  
8 to withstand Fed. R. Civ. P. 23.1's heightened standards for pleading demand futility as  
9 well as prevail on a Fed. R. Civ. P. 12(b)(6) motion, extensive discovery, summary  
10 judgment, and trial. Even if Plaintiffs succeeded at trial, there was no guarantee that  
11 they would have withstood any appeals.

12 36. The Settlement eliminates these considerable risks, including the  
13 possibility of no recovery after potentially years of expensive and protracted litigation.  
14 Instead, the Settlement confers immediate and long-lasting improvements to Mullen  
15 through the Corporate Governance Enhancements.

16 **THE AGREED-UPON FEE AND EXPENSE AMOUNT SHOULD BE**  
17 **APPROVED**

18 37. Plaintiffs' Counsel undertook this litigation without any guarantee of any  
19 compensation. Commensurate with the value of the Settlement's benefits and the risks  
20 assumed by Plaintiffs' Counsel in pursuing the Action on a wholly contingent basis, the  
21 Settlement also provides for the agreed-upon Fee and Expense Award of \$500,000.

22 38. Once the term sheet was signed, encompassing the Corporate Governance  
23 Enhancements and other terms, the Parties began discussion attorneys' fees. They  
24 continued to engage Mr. Meyer to facilitate these negotiations. After discussions  
25 through Mr. Meyer over the course of a few weeks, Mr. Meyer issued his proposal of  
26 \$500,000. On July 31, 2024, he informed all counsel that the proposal was accepted.  
27 Meyer Decl., ¶11.  
28

39. Mr. Meyer recognizes that the Court will make the final determination on this request, however, based on his experience as a mediator and an attorney, he recommends the Fee and Expense Award. *Id.*, ¶15.

40. Plaintiffs' Counsel also submits that the Fee and Expense Amount is reasonable given the substantial benefits the Settlement achieved for Mullen and its shareholders.

41. As further detailed in the Declaration of Gregory M. Egleston on Behalf of Gainey McKenna & Egleston in Support of Final Approval of Settlement and Fee and Expense Amount and Declaration of Erica L. Stone on Behalf of The Rosen Law Firm, P.A. in Support of Final Approval of Settlement and Fee and Expense Amount, attached hereto as Exhibits B to C, respectively, Plaintiffs' Counsel have incurred the following fees and expenses in prosecuting the Action on a fully contingent basis:

<u>Firm</u>	<u>Hours</u>	<u>Lodestar</u>	<u>Expenses</u>
Gainey McKenna & Egleston	351.25	\$326,470.25	\$14,974.58
The Rosen Law Firm, P.A.	304.50	\$258,505.00	\$11,967.40
<b>Total:</b>	<b>655.75</b>	<b>\$584,975.25</b>	<b>\$26,941.98</b>

42. Plaintiffs' Counsel has worked diligently to achieve the Settlement, expending 655.75 hours in total for a combined lodestar value of \$584,975.25. Ex. B at ¶11; Ex. C at ¶6.

43. Additionally, Plaintiffs' Counsel also incurred \$26,941.98 in unreimbursed expenses in connection with the litigation of the Action. Ex. B at ¶15; Ex. C at ¶8.

1 44. After subtracting these expenses from the requested Fee and Expense  
2 Amount, the result represents a fractional lodestar multiplier of 0.81.<sup>3</sup>

3 45. Plaintiffs' Counsel worked diligently to investigate the claims, commence  
4 litigation, and reached this amicable resolution. The time spent and expenses incurred  
5 by Plaintiffs' Counsel is reasonable under the circumstances of this Action and was  
6 spent on tasks that led directly to the recovery, including: (i) reviewing and analyzing  
7 Mullen's public statements including SEC filings, press releases, transcripts of investor  
8 calls, and news articles; (ii) reviewing and analyzing the publicly available filings in  
9 the related Securities Class Action; (iii) researching, drafting, and filing the complaints  
10 in the *Witt* Action and *Morsy* Action; (iv) opposing specially appearing Defendant Oleg  
11 Firer's motion to dismiss; (v) reviewing internal, non-public documents Mullen  
12 produced to Plaintiffs in connection with the litigation; (vi) researching the applicable  
13 law with respect to the claims asserted, or that could be asserted, and the potential  
14 defenses thereto; (vii) researching corporate governance issues; (viii) preparing a  
15 settlement demand; (ix) participating in-person and virtual mediation sessions; (x)  
16 engaging in extensive post-mediation settlement discussions with Defense Counsel  
17 overseen by the Mediator, including the exchange of corporate governance reform  
18 proposals and counteroffers; (xi) negotiating and drafting the term sheet and  
19 subsequent settlement documentation for presentment to the Court; and (xii) and  
20 moving for preliminary approval and participating in the hearing.

21 **THE SERVICE AWARDS FOR PLAINTIFFS ARE REASONABLE**

22 46. In recognition of their participation in the Action and for creating the  
23 substantial benefit to Mullen, Plaintiffs also seek Service Awards of \$2,000 each, or  
24 \$6,000 in total. If granted, the Service Awards will be funded from the Fee and Expense  
25 Award. Accordingly, Mullen and its insurers will not be responsible for any additional  
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27 <sup>3</sup> \$500,000 requested Fee and Expense Award - \$26,941.98 in litigation expenses = a  
28 net fee of \$473,058.02. The lodestar multiplier is \$473,058.02/\$584,975.25 = 0.81.

1 payment since the Service Awards will come from any attorneys' fees and expense  
2 award to Plaintiffs' Counsel.

3 47. Indeed, as a matter of policy, engaged, concerned, shareholders such as  
4 Plaintiffs should be encouraged to step forward to prosecute viable shareholder  
5 derivative claims in order to provide a check to the conduct of corporate boards.  
6 Approval of the Service Awards would serve this valuable purpose.

7 48. The requested Service Awards are well within the range approved by  
8 courts as fair and reasonable and should be approved. The modest service awards are  
9 reasonable in light of Plaintiffs' role in securing substantial benefits on Mullen, and,  
10 because they are drawn from the Fee and Expense Amount, they would not reduce the  
11 benefit enjoyed by the Company and its shareholders.

12 **Exhibits**

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

14 Exhibit A Declaration of Robert A. Meyer

15 Exhibit B Declaration of Gregory M. Egleston on Behalf of Gainey McKenna &  
16 Egleston in Support of Final Approval of Settlement and Fee and Expense  
17 Amount

18 Exhibit C Declaration of Erica L. Stone on Behalf of The Rosen Law Firm, P.A. in  
19 Support of Final Approval of Settlement and Fee and Expense Amount

20 Exhibit D Final Order and Judgment in *In re Zuora, Inc. Derivative Litig.*, Case No.  
21 3:19-cv-05701-SI (N.D. Cal. Sept. 18, 2023)

22 Exhibit E Excerpts from the Stipulation and Agreement of Settlement filed in *In re*  
23 *Zuora, Inc. Derivative Litig.*, Case No. 3:19-cv-05701-SI (N.D. Cal.)

24 Exhibit F Final Judgment and Order of Dismissal in *In re Cell Therapeutics, Inc.*  
25 *Derivative Litig.*, Case No. 2:10-cv-00564-MJP (W.D. Wash. May 31,  
26 2013)  
27  
28

1 Exhibit G Excerpts from the Stipulation of Settlement filed in *In re Cell*  
2 *Therapeutics, Inc. Derivative Litig.*, Case No. 2:10-cv-00564-MJP (W.D.  
3 Wash.)

4 Exhibit H Order and Final Judgment, attaching Stipulation of Settlement, in *In re*  
5 *RH S'holder Derivative Litig.*, Case No. 4:18-cv-02452-YGR (N.D. Cal.  
6 Dec. 18, 2020)

7 Exhibit I Final Order and Judgment in *Nanduri v. Small, et al.*, 1:18-cv-06524 (N.D.  
8 Ill. April 11, 2023)

9 Exhibit J Excerpts from the Stipulation and Agreement of Settlement in *Nanduri v.*  
10 *Small, et al.*, 1:18-cv-06524 (N.D. Ill.)

11 Exhibit K Ruling and Order Approving Shareholder Derivative Settlement *In re*  
12 *Synchrony Fin. Derivative Litig.*, Case No. 3:19-cv-00130-VAB (D.  
13 Conn. Apr. 5, 2024)

14 Exhibit L Excerpts from the Stipulation and Agreement of Settlement in *In re*  
15 *Synchrony Fin. Derivative Litig.*, Case No. 3:19-cv-00130-VAB (D.  
16 Conn.)

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

19 Executed this 6th day of December 2024.

20 /s/ Erica L. Stone  
21 Erica L. Stone  
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# EXHIBIT A

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

IN RE MULLEN AUTOMOTIVE, INC.  
DERIVATIVE LITIGATION

Lead Case No. 2:22-cv-05336-DMG-  
(AGRx)

**DECLARATION OF  
ROBERT A. MEYER**

This Document Relates to:

ALL ACTIONS

Date: January 24, 2025

Time: 10:00 a.m.

Courtroom: 8C, 8<sup>th</sup> Floor

Judge: Honorable Dolly M. Gee

1 I, Robert A. Meyer, hereby declare as follows:

2 1. I submit this declaration in my capacity as the mediator of the proposed  
3 settlement of the above-captioned shareholder derivative action (the "Settlement"). I  
4 make this declaration based on personal knowledge and if called and sworn as a witness  
5 could and would testify competently thereto.

6 2. I have been asked to provide this declaration to give my views on the  
7 mediation process that culminated in the Settlement that will be presented to the Court  
8 for final approval in this matter.

9 3. All of the parties, entities, and individuals who were represented at the  
10 mediation session executed a confidentiality agreement stating that the mediation was  
11 considered settlement negotiations for the purpose of all rules protecting mediation  
12 disclosures from later discovery and/or use in evidence. The parties further agreed that  
13 the confidentiality agreement extends to all present and future civil, judicial, quasi-  
14 judicial, arbitral, administrative, or other proceedings. Nothing in my declaration  
15 divulges any privileged information, and the filing of this declaration does not  
16 constitute a waiver of any such confidentiality.

17 4. I have been a mediator for more than 15 years. I am a panelist at JAMS in  
18 Los Angeles, California, and have over 40 years of experience as a litigation attorney.  
19 Since serving as a neutral, I have extensive experience mediating the settlement of  
20 many different types of complex class actions, including securities and derivative cases  
21 pending through the United States.

22 5. I am a Fellow of the American College of Trial Lawyers and have  
23 represented both plaintiffs and defendants in securities litigation, class actions and  
24 derivative suits, intellectual property litigation (including copyright, trademark, and  
25 right of publicity lawsuits), attorneys' and accountants' professional liability lawsuits,  
26 and claims involving breach of contract and commercial fraud. As a mediator for more  
27 than 15 years, I endeavor to apply my experience as a mediator and trial lawyer to each  
28 matter. I am ranked on the exclusive "National Mediators" List (Band 1), Chambers

1 USA.

2 6. Many cases in which I have served as a neutral have included numerous  
3 plaintiffs and plaintiffs' counsel, as well as many defendants, defense counsel, and  
4 insurers.

5 7. I provide my professional background as context for the statements in my  
6 declaration and to establish that my perspective on the Settlement of this action is  
7 grounded in my significant experience in resolving complex litigation.

8 8. While the Court will make its own determination as to the Settlement's  
9 fairness under applicable legal standards, from my viewpoint as mediator, I recommend  
10 the Settlement as reasonably reflective of the risks and potential rewards of the claims  
11 being settled. As described below, the current matter presented complex and substantial  
12 legal, factual, and practical issues. The parties were represented during the mediation  
13 process by well-prepared and competent counsel, who negotiated zealously and at  
14 arm's length for their clients. Thus, I believe that the Settlement of this case represents  
15 a fair, reasonable, and adequate resolution of this action.<sup>1</sup>

16 9. I conducted in-person mediation in this case on April 2, 2024. Prior to the  
17 in-person April 2, 2024 mediation session, plaintiffs provided the defendants a  
18 settlement demand that included corporate governance reforms. Also, before the in-  
19 person mediation session, I caucused with both sides about the mediation process. After  
20 the in-person mediation session, I oversaw extensive discussions with the parties  
21 including a virtual mediation session where the parties discussed defendants'  
22 counterproposal and plaintiffs' response thereto. Additionally, I engaged in *ex parte*  
23 communications with both sides via email and telephone. I found the demand and  
24 counteroffers to be valuable in helping me to understand the relative merits of each  
25 party's position, and to identify the issues that were likely to serve as the primary  
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27 <sup>1</sup> I was particularly knowledgeable about the underlying allegations as I also  
28 mediated the related securities class action, *In re Mullen Automotive, Inc. Securities*  
*Litigation*, Case No. 2:22-cv-03026-DMG-AGR (C.D. Cal.).

1 drivers and obstacles to achieving settlement. With regard to the parties' exchanged  
2 positions on proposed corporate governance measures, I found them to be well thought-  
3 out, the product of extensive research, and helpful in framing the issues.

4 10. Over the course of the mediation process, I engaged in extensive  
5 discussions with counsel for the parties in an effort to find common ground among their  
6 respective positions. I developed an understanding of the full range of complex and  
7 adversarial disputes, the respective positions of the various participants, and the relative  
8 strengths and weaknesses of those positions, as well as the risks, rewards, and analysis  
9 of the terms that might support a fair and reasonable settlement that would serve Mullen  
10 Automotive Inc. ("Mullen") and its stockholders, given the risks of continued  
11 derivative litigation. Both sides possessed strong, non-frivolous arguments supporting  
12 their positions. During these discussions, I challenged each side separately to address  
13 potential weaknesses in their positions and arguments. Eventually, the parties agreed  
14 on corporate governance reforms and executed a term sheet on June 3, 2024.

15 11. After the term sheet was executed, I facilitated negotiations between  
16 counsel regarding attorneys' fees and expense commensurate with the value of the  
17 Settlement's benefits and the contribution of plaintiffs' counsel to the Settlement.  
18 Following a number of exchanges through me, I issued a double-blind mediator's  
19 proposal for a fee and expense amount of \$500,000 (the "Fee and Expense Amount").  
20 On July 31, 2024, I informed plaintiffs' counsel and defendants' counsel that my  
21 proposal was accepted by both sides.

22 12. I am informed that, on August 21, 2024 the parties executed the  
23 Stipulation and Agreement of Settlement, which was preliminarily approved by the  
24 Court on October 11, 2024.

25 13. While I cannot delve into the specifics regarding each party's positions  
26 and thinking because these discussions occurred during confidential mediation  
27 communications, I can say that there were many complex issues that required  
28 significant negotiation and practical solutions. I can readily attest that the negotiations

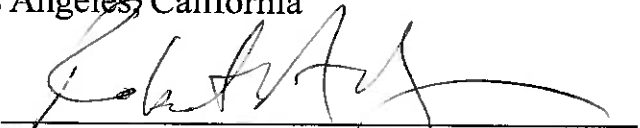
1 between counsel for the parties were conducted in good faith, at arm's length, and were  
2 not collusive. In addition, my review of the papers presented to me and discussions  
3 with counsel have led me to conclude that all counsel are skilled and experienced in  
4 this type of matter, and that all sides litigated the action in a vigorous, professional, and  
5 thorough manner. I am confident that counsel for the parties were sufficiently well  
6 informed to enter into the Settlement.

7 14. I am aware, and was aware at all relevant times, of other derivative actions  
8 pending on behalf of Mullen, *Coleman v. Michery, et al.*, C.A. No. 2023-1228-KSJM,  
9 filed in Delaware Chancery Court (the *Coleman* Action), and *Martis v. Michery, et al.*,  
10 Case No. 2:24-cv-02908-BRM-AME, filed in the U.S. District Court for the District of  
11 New Jersey (the "*Martis* Action"). I am aware that the Settlement will resolve the  
12 *Coleman* Action, and that the *Martis* Action was previously voluntarily dismissed.

13 15. I believe that the Settlement represents a well-reasoned and sound  
14 resolution of highly uncertain litigation. Based on my experience as a mediator and an  
15 attorney, I therefore recommend the Settlement and Fee and Expense Award as  
16 reflective of the risks and potential rewards of the claims asserted. In my opinion, the  
17 Settlement will confer substantial benefits on Mullen and its current shareholders,  
18 while also avoiding the time, expense, and risk entailed in further litigation. I also  
19 believe the Settlement flows from the parties' assessment of the litigation risks. I  
20 respectfully recommend that the Settlement be approved.

21 I declare under penalty of perjury that the foregoing is true and correct.  
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24 Executed on November 8, 2024 at Los Angeles, California

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26 \_\_\_\_\_  
27 Robert A. Meyer  
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# EXHIBIT B

1 Laurence M. Rosen (SBN 219683)  
2 **THE ROSEN LAW FIRM, P.A.**  
3 355 South Grand Avenue, Suite 2450  
4 Los Angeles, CA 90071  
5 Telephone: (213) 785-2610  
6 Facsimile: (213) 226-4684  
7 Email: lrosen@rosenlegal.com

8  
9 *Co-Lead Counsel for Plaintiffs*  
10

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12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
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16 IN RE MULLEN AUTOMOTIVE, INC.  
17 DERIVATIVE LITIGATION  
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19 This Document Relates to:  
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21 ALL ACTIONS  
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Lead Case No. 2:22-cv-05336-DMG-  
(AGRx)

**DECLARATION OF GREGORY M.  
EGLESTON ON BEHALF OF  
GAINEY McKENNA & EGLESTON  
IN SUPPORT OF MOTION FOR  
FINAL APPROVAL OF  
SETTLEMENT AND FEE AND  
EXPENSE AMOUNT**

Date: January 24, 2025  
Time: 10:00 a.m.  
Courtroom: 8C, 8<sup>th</sup> Floor  
Judge: Honorable Dolly M. Gee

1 I, Gregory M. Egleston, declare as follows:

2 1. I am a Member at Gainey McKenna & Egleston (“GM&E”), counsel for  
3 Plaintiffs Jeff Witt and Joseph Birbigalia (“Plaintiffs”) in the above-captioned  
4 Consolidated Derivative Action.<sup>1</sup> I have personal knowledge of the facts set forth  
5 herein and if called upon to testify, I could and would testify competently thereto.

6 2. I submit this declaration in support of Plaintiffs’ Motion for Final  
7 Approval of Settlement and Fee and Expense Amount (the “Motion”), that seeks entry  
8 of an order determining: (i) the terms and conditions of the Settlement are fair,  
9 reasonable and adequate to Mullen Automotive, Inc. (“Mullen”) and its shareholders;  
10 (ii) whether the [Proposed] Order Approving Final Settlement of Consolidated  
11 Derivative Action and the [Proposed] Final Judgment should be entered; (iii) to award  
12 the Fee and Expense Award and the Service Awards; and (iv) for such other and  
13 further relief as the Court deems appropriate.

14 3. I am relying on the facts of the action and the procedural history  
15 referenced in the accompanying Declaration Of Erica Stone In Support Of Motion For  
16 Final Approval Of Settlement And Fee And Expense Amount filed simultaneously  
17 herewith.

18 4. The statements herein are true to the best of my personal knowledge,  
19 information and belief based on GM&E’s books and records and information received  
20 from its attorneys and staff. I have personal knowledge of the following facts and if  
21 called upon to testify, I could testify competently thereto.

22 5. I am the partner who oversaw my firm’s involvement in the Action.  
23 GM&E’s compensation for services rendered in connection with this matter was  
24 undertaken on a wholly contingent basis. The fees and unreimbursed expenses  
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26  
27 <sup>1</sup> Unless otherwise defined herein, all defined terms shall have the meanings as set forth  
28 in the Stipulation and Agreement of Settlement (the “Stipulation”) (ECF No. 31).

1 described herein have not been paid from any source and have not been subject to any  
2 prior request, or prior award, in any litigation or other proceeding.

3 6. During this litigation, and as detailed herein, once the Rosen firm joined  
4 the Action, GM&E coordinated with Rosen to divide work amongst the firms in an  
5 efficient and effective manner. GM&E's time and expense records (including, where  
6 necessary, backup documentation) have been reviewed to confirm both the accuracy  
7 of the entries as well as the necessity for and reasonableness of the time and expenses  
8 expended in this litigation.

9 7. The services undertaken by my firm in connection with the litigation  
10 can be summarized as, among other things: (i) reviewing and analyzing Mullen's  
11 press releases, public statements, and filings with the U.S. Securities and Exchange  
12 Commission; (ii) reviewing and analyzing securities analysts' reports and advisories  
13 and media reports about the Company; (iii) researching the applicable law with  
14 respect to the claims alleged and the potential defenses thereto; (iv) researching and  
15 evaluating factual and legal issues relevant to the claims; (v) preparing and filing the  
16 original complaint on behalf of Plaintiffs; (vi) opposing Defendant Oleg Firer's  
17 Motion to Dismiss; (vii) reviewing internal, non-public documents Mullen produced  
18 to Plaintiffs in connection with the litigation; (viii) communications and updates to  
19 Plaintiffs throughout the prosecution of the Derivative Actions; (ix) reviewing and  
20 analyzing pleadings from the related securities action captioned *In Re Mullen*  
21 *Automotive Inc Securities Litigation*, 2:22-cv-3026 (C.D. Cal.), and the various other  
22 Derivative Actions; (x) preparing and assisting in the preparation of various  
23 comprehensive settlement demands upon the Individual Defendants; (xi) assisting in  
24 the preparation of detailed mediation briefs setting forth the Plaintiffs' legal and  
25 factual positions for the mediation; (xii) negotiating this Settlement with Defendants,  
26 including researching and drafting corporate governance reforms proposals,  
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1 participating in the mediation and conducting numerous teleconferences and e-mail  
2 exchanges with Defendants and Plaintiffs' Counsel thereafter; and (xiii) participating  
3 in the preparation of the stipulation of settlement and the motion papers in support of  
4 the proposed Settlement; and (xiv) participating in the drafting of the motion papers  
5 in support of preliminary and final approval of the Settlement.

6 8. GM&E attorneys dedicated 351.25 hours to the prosecution of the  
7 Action.

8 9. The lodestar amount for the attorney time based on my firm's current  
9 rates is \$326,470.25.

10 10. The hourly rates shown below are my firm's current usual and  
11 customary rates and are reasonable in light of GM&E's highly specialized skill and  
12 many years of experience litigating stockholder derivative actions.

13 11. The information in this declaration regarding time is based on time  
14 recorded contemporaneously and then compiled electronically. A breakdown of the  
15 lodestar is as follows:  
16

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NAME		Total Hours	Hourly Rate	Cumulative Lodestar
Thomas J. McKenna	P	125.60	\$995	\$124,972.00
Gregory Egleston	P	195.00	\$975	\$190,125.00
Christopher M. Brain	SA	11.40	\$595	\$ 6,270.00
Noemi Rivera	SPL	12.10	\$295	\$ 3,569.50
Michael Frieri	PAR	4.15	\$225	\$ 933.75
Christopher Gutierrez	PAR	3.00	\$200	\$ 600.00
<b>TOTAL:</b>		<b>351.25</b>		<b>\$326,470.25</b>

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24 (P) Partner, (SA) Senior Associate, (SPL) Senior Paralegal, (PAR) Paralegal

25 12. I supervised and worked directly with the attorneys and other  
26 professional staff who billed time to this matter. I can aver that the hours reported and  
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1 the work they reflect were reasonably necessary to the successful commencement,  
2 prosecution, and settlement of the derivative claims.

3 13. The hourly billing rates at my firm are customary and in line with those  
4 utilized by attorneys in the non-contingent market of similar skill and expertise, which  
5 I have become familiar with through, *inter alia*, litigating fee applications across the  
6 country, discussing fees with attorneys, reviewing attorneys' fees applications and  
7 awards in other cases, and by reviewing surveys and articles regarding customary  
8 billing rates. Indeed, the hourly billing rates utilized at my firm have been approved  
9 as reasonable by various courts in similar litigation and are further supported by  
10 several surveys of legal rates.

11 14. The firm's lodestar figures do not include charges for expense items.  
12 Expense items are billed separately, and such charges are not duplicated in the firm's  
13 current billing rates. Further, expense items do not contain any general overhead costs  
14 and do not contain a surcharge over the amount paid to the corresponding vendor(s).

15 15. Based on records maintained by my firm in the ordinary course of  
16 business, the total unreimbursed expenses incurred by GM&E with respect to the  
17 Action from inception to date are. The expenses, broken down by category are as  
18 follows:  
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DISBURSEMENTS	TOTAL
Photocopying	\$ 201.60
Telephone Conference calls and Facsimile	\$ 55.81
Computer Research/Services	\$ 285.85
Postage/Messenger/Federal Express	\$ 12.45
Court Filing Fees/Service Costs Serve	\$ 402.00
Press Release	\$ 190.00
Mediation Fee	\$ 600.00

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<i>Pro Hac Vice</i> Fee	\$ 500.00
Travel/Parking/Meals/Miscellaneous	\$12,726.87
<b>Total</b>	<b>\$14,974.58</b>

16. These expenses are reflected in records maintained by my firm in the ordinary course of business. These records are prepared from expense vouchers, invoices, and other records submitted contemporaneously as they are incurred. I have reviewed the expense records in detail and can aver that they were reasonably necessary for the effective and efficient prosecution and resolution of the derivative claims brought on behalf of Mullen, and they are customary and reasonable in amount.

17. As set forth in GME's firm résumé, a true and correct copy of which is attached hereto as Exhibit 1, the attorneys primarily responsible for participating in the prosecution of the above captioned actions are experienced and skilled advocates.

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

Executed this 6<sup>th</sup> day of December 2024, at New York, New York.

/s/ Gregory M. Egleston  
Gregory M. Egleston

# EXHIBIT 1

## *Gainey McKenna & Egleston*

*Attorneys at Law*

[www.gme-law.com](http://www.gme-law.com)

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### *FIRM RÉSUMÉ*

#### **I. Introduction**

Gainey McKenna & Egleston (the “Firm”) is based in New York and New Jersey and litigates throughout the country in both state and federal court. Members of the Firm have been engaged in the practice of law for over thirty years. The Firm concentrates its practice on civil litigation of all types and especially in class action litigation on behalf of investors, consumers and small businesses.

The Firm has broad experience in the following areas: breach of fiduciary duty claims under the Employee Retirement Income Security Act of 1974 (“ERISA”), securities, shareholder derivative, consumer fraud and other types of complex commercial and tort litigation. The Firm also has experience in federal and state minimum wage laws, overtime laws or other employment laws regulating the payment of wages and benefits to employees.

Many of the Firm’s cases involve multi-district litigation. The Firm is experienced in, and thoroughly familiar with, all aspects of complex litigation, including the underlying substantive law, the procedures recommended in the Manual for Complex Litigation and the substance and procedure of class certification.

The Firm’s approach to each case is the same. It presents an aggressive position for its clients and uses all available resources necessary to achieve the best possible outcome for its clients. In short, the Firm works hard to produce victories for its clients and takes pride in providing a high level of legal service. It also develops a strong working relationship with its clients and will do whatever it takes within the bounds of the law to get results.

The Firm was formed with the goal of combining the experience gained through practicing law at large firms with the closeness, flexibility and attention to detail that characterize many smaller firms. In essence, the Firm has designed itself to be able to handle both large and small matters, offering what we believe our clients want most: quality legal work with an emphasis on communication.

We also represent plaintiffs and defendants in a variety of complex civil and commercial litigations, including real estate and business disputes, breach of contract and commercial disputes, employment cases (discrimination, harassment, wrongful termination), insurance coverage disputes, professional malpractice (accounting, legal and medical), products liability, and personal injury lawsuits.

The Firm recently made law in the field of ERISA with its successful prosecution of an appeal to the United States Supreme Court wherein the Court struck down a “presumption of prudence” that lower courts had been using to protect the actions of fiduciaries of employer retirement plans who imprudently invested in company stock for the retirement plan. In the case, *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), the Firm argued with co-counsel that the presumption was illegitimate and had no place in the ERISA statutory framework. The Supreme Court agreed.

We have also been retained strictly as trial counsel in many matters. Members of the Firm are admitted to practice in all the courts of the State of New York, New Jersey, Pennsylvania, and Connecticut as well as in the United States Supreme Court, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, the United States District Court of New Jersey, United States District Court for the Eastern District of Pennsylvania, the United States District Court of Connecticut, the United States Court of Appeals for the Second Circuit, Fifth Circuit, Sixth Circuit, Eighth Circuit, Ninth Circuit and Eleventh Circuit. Members of the firm have also been admitted *pro hac* vice in a number of other state and federal jurisdictions.

## **II. Notable Achievements**

Below are just some of the cases the attorneys at the Firm have successfully prosecuted by producing a recovery for their clients:

- *In re Columbia University Tuition Refund Action*, Civil Action No.: 1:20-cv-03208 (S.D.N.Y.) (Co-Lead Counsel in Consumer Class Action)(Recovery of \$12.5 million for class of Columbia University students regarding denial of services during Covid-19 college campus closure);
- *Dudenhoeffer, et al. v. Fifth Third Bancorp., et al.*, Civil Action No.: 08-cv-538 (S.D. Ohio) (Co-Lead Counsel in ERISA Class Action) (Recovery of \$6,000,000 in cash and structural relief to the 401(k) Plan);
- *Borboa, et al. v. Theodore L. Chandler, et al.*, Case No.: 3:13-cv-844-JAG (E.D. Va.) (counsel in ERISA Class Action) (Recovery of \$5 million for the employees’ 401(k) plan);

- *Klein v. Gordon et al.*, Civil Action No.: 8:17-cv-00123-AB (C.D. Cal.) (Court Appointed Interim Lead Counsel in Derivative Action) (settlement achieved on behalf of Opus Bank consisting of corporate governance reforms);
- *In re CytRx Corporation Stockholder Derivative Litigation II*, Civil Action No.: C.A. No. 11800-VCMR (Chancery Delaware) (*de facto* Co-Lead Counsel in Derivative Action) (settlement achieved on behalf of CytRx Corp. consisting of corporate governance reforms);
- *Floridia et al v. Dolan, et al.*, Civil Action No.: 14-cv-03011 (D. Minn.) (Lead Counsel in securities fraud Class Action) (settled for \$2.1 million for benefit of class);
- *In re Wilmington Trust Corp. ERISA Litig.*, Civil Action No.: 10-cv-001114-SLR (D. Del.) (Co-Lead Counsel in ERISA Class Action) (Recovery of \$3 million for the employees' 401(k) plan);
- *In re Schering-Plough Corp. Enhance ERISA Litig.*, Civil Action No.: 08-cv-1432 (D.N.J.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$12.25 million for the employees' 401(k) plan);
- *In re Popular Inc. ERISA Litig.*, Master File No.: 09-cv-01552-ADC (D. P.R.) (Co-Lead Counsel in ERISA Class Action) (recovery \$8.2 million for the employees' 401(k) plan);
- *Salvato v. Zale Corp., et al.*, Civil Action No.: 06-cv-1124 (N.D. Tex.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$7 million for the employees' 401(k) plan);
- *In re General Growth Properties, Inc. ERISA Litig.*, Master File No.: 08-cv-6680 (N.D. Ill.) (Co-Class Counsel for the Settlement Class in ERISA class action) (recovery of \$5.75 million for the employees' 401(k) plan);
- *Morrison v. MoneyGram Int'l, Inc., et al.*, Civil Action No.: 08-cv-1121 (D. Minn.) (Lead Counsel in ERISA Class Action) (recovery of \$4.5 million for the employees' 401(k) plan);
- *Jennifer Taylor v. Monster Worldwide, Inc.*, Civil Action No.: 06-cv-8322 (AKH) (S.D.N.Y.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$4.25 million for the employees' 401(k) plan);
- *Boyd, et al. v. Coventry Health, et al.*, Civil Action No.: 09-cv-2661 (D. Md.) (Co-Lead Counsel in ERISA class action) (recovery \$3.6 million for the employees 401(k) plan);

- *Singh v. Tri-Tech Holdings, Inc.*, Civil Action No.: 13-cv-09031 (Co-Lead Counsel in securities fraud Class Action) (settled for \$975,000 for benefit of class);
- *Shane v. Kenneth E. Edge, et al.*, Civil Action No.: 10-cv-50089 (N.D. Ill.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$3.35 million for the employees' 401(k) plan);
- *Thurman v. HCA, Inc., et al.*, Civil Action No.: 05-cv-01001 (M.D. Tenn.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$3 million for the employees' 401(k) plan);
- *Bagley, et al., v. KB Home, et al.*, Civil Action No.: 07-cv-1754 (C.D. Cal.) (Co-Lead Counsel in ERISA Class Action) (recovery \$3 million for the employees' 401(k) plan);
- *Maxwell v. Radioshack Corp., et al.*, Civil Action No.: 06-cv-499 (N.D. Tex.) (Co-Lead Counsel in ERISA class action) (recovery of \$2.4 million for the employees' 401(k) plan);
- *In re MBNA Corp. ERISA Litig.*, Master Docket No.: 05-cv-429 (D. Del.) (Class Counsel in ERISA Class Action) (recovery of \$4.5 million for the employees' 401(k) plan);
- *In re Guidant Corp. ERIS Litig.*, Civil Action No.: 05-cv-1009 (S.D. Ind.) (recovery of \$7 million for the employees' 401(k) plan);
- *In re ING Groep, N.V. ERISA Litig.*, Master File No.: 09-cv-00400 (N.D. Ga.) (Co-Counsel in ERISA Class Action) (recovery of \$3.5 million for the employees' 401(k) plan);
- *In re Netsol Technologies, Inc.*, Civil Action No.: 14-cv-05787 (C.D. Cal.) (Lead Counsel in securities fraud Class Action) (settled for \$850,000 for benefit of class).

### **III. The Firm Serving As “Lead,” “Co-Lead” or “Counsel”**

The Firm has significant experience in prosecuting complex cases, including class actions under ERISA involving breach of fiduciary duty, consumer class actions, securities fraud class actions, derivative cases and transactional matters. By way of example, the following are some of the other cases the Firm has been involved in serving as “Lead or “Co-Lead” Counsel:

#### **Derivative Actions**

- *Recupero v. Friedli, et al.*, Civil Action No.: 1:17-cv-00381-JKB (D. Md.) (Court Appointed Interim Lead Counsel in Derivative Action) (settlement achieved on behalf of Osiris Therapeutics, Inc. consisting of corporate governance reforms);

- *In re Fifth Street Finance Corp., Stockholder Litig.*, C.A. No.: 12157-VCG (Del. Chancery) (Court Appointed Co-Lead Counsel in Derivative Action) (settlement achieved in cooperation with other derivative actions venued elsewhere for monetary and non-monetary corporate benefits conferred on corporation);
- *Hamdan v. Munro, et al.*, Civil Action No.: 3:16-cv-03706-PGS (D. N.J.) (Lead Counsel in Derivative Action) (settlement achieved on behalf of Intercloud Systems, Inc. consisting of corporate reforms);
- *In Re Capstone Turbine Corp. Stockholder Derivative Litigation*, Civil Action No.: CV16-01569-DMG (C.D. Cal) (Court Appointed Co-Lead Counsel in Derivative Action);
- *Nahar, et al., v. Bianco, et al.*, Civil Action No.: 2:16-cv-00756-RSL (W.D. Wash.) (Court Appointed Co-Lead Counsel in Derivative Action) (settlement achieved on behalf of CTI Biopharma Corp. in cooperation with other derivative actions venued elsewhere consisting of corporate reforms);
- *In re Provectus Biopharmaceuticals Inc. Derivative Litig.*, Civil Action No.: 3:14-cv-00372-PLR-HBG (E.D. Tenn.) (Co-Lead Counsel in Derivative Action) (settlement consisting of corporate governance reforms achieved on behalf of Company);
- *Loyd v. Giles, et al.*, Case No.: 2015CV33429 (Colo., Denver County) (settlement consisting of corporate governance reforms achieved on behalf of Ampio Pharmaceuticals, Inc.);
- *Vacek v. Awad, et al.*, Civil Action No.: 2:17-cv-02820 (E.D. Pa.) (settlement achieved on behalf of Walter Investment Management Corp. consisting of corporate reforms);
- *Giesbrecht v. Lee, et al.*, Civil Action No.: 3:13-cv-0697 (D. Nev.) (settlement achieved in cooperation with other derivative actions venued elsewhere for corporate benefits conferred on L&L Energy, Inc.);
- *Hapka v. Dennis Crowley, et al.*, 50-2005 CA (15th Judicial Circuit in and for Palm Beach County, Florida) (*de facto* Lead Counsel in Derivative Action) (settlement achieved on behalf of Spear & Jackson, Inc. for monetary benefits conferred on corporation);
- *Nieman v. Ira B. Lampert, et al.*, Civil Action No.: 05-cv-60574 (S.D. Fl.) (*de facto* Co-Lead Counsel in Derivative Action) (settlement consisting of corporate governance reforms achieved on behalf of Concord Camera Corp.);

- *Riley v. Jorge Mas, et al.*, Case No.: 04-cv-27000 (11th Judicial Circuit in and for Dade County, Florida) (Lead Counsel in Derivative Action) (settlement consisting of corporate governance reforms achieved on behalf of Mastec, Inc.);
- *Ramseur v. Callidus Software, Inc., et al.*, Civil Action No.: 04-cv-4419 (N.D. Cal.) (Co-Counsel in Derivative Action) (settlement achieved on behalf of Callidus Software, Inc. consisting of corporate reforms);
- *Emond v. Murphy, et al.*, Civil Action No.: 2:18-cv-09040 (C.D. Cal.) (settlement achieved in cooperation with other derivative action venued elsewhere for corporate benefits conferred on Izea Worldwide, Inc. consisting of corporate reforms);
- *In re India Globalization Capital, Inc. Derivative Litigation*, Civil Action No.: 1:18-cv-3698 (D. Md.) (Court Appointed Co-Lead Counsel) (settlement in principle reached in cooperation with other derivative action);
- *In re Revolution Lighting Technologies, Inc. Derivative Action*, Civil Action No.: 1:19-cv-03913 (S.D.N.Y.) (Court Appointed Co-Lead Counsel) (settlement in principle reached in cooperation with other derivative action venued elsewhere);
- *Kelly Nicole Desmond-Newman v. Saagar Govil, et al.*, Civil Action No.: 18-cv-03992 (E.D. NY) (Court Appointed Interim Lead Counsel in Derivative Action) (settlement achieved on behalf of Cemtrex, Inc. consisting of corporate reforms in cooperation with other derivative action venued elsewhere);
- *Savage, Spencer, et al., v. Kay, Robert B., et al.*, Index No.: 162407/2015 (*de facto* lead counsel in Derivative Action) (settlement achieved on behalf of iBIO, Inc. consisting of corporate reforms);
- *Labare v. Dunleavy, et al.*, Civil Action No.: 3:15-cv-01980 (D. N.J.) (co-counsel) (settlement achieved on behalf of Ocean Power Technologies, Inc. consisting of corporate reforms);
- *In re Marriott International Customer Security Data Breach Litigation – Derivative Track*, Civil Action No.: 8:19-md-02879 (D. Md.) (Court Appointed Co-Lead Counsel);
- *In re Mullen Automotive, Inc. Derivative Litigation*, Civil Action No.: 22-5336-DMG (AGRx) (C.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In re iRobot Corporation Derivative Litigation*; Civil Action No.: 1:20-cv-10034 (D. Mass.) (Court Appointed Co-Lead Counsel);

- *In re CBL & Associates Properties, Inc. Stockholder Derivative Litigation*; Consolidated Case No.: 2020-0011-JTL (Chancery Delaware) (Court Appointed Co-Lead Counsel);
- *In re Ormat Technologies, Inc. Derivative Litigation*, Civil Action No.: 3:18-cv-00439 (D. Nev.) (Court Appointed Co-Lead Counsel);
- *In re 22<sup>nd</sup> Century Group, Inc. Derivative Litigation*, Civil Action No.: 1:19-cv-00479 (W.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *Thiese v. Giles. et al.*, Civil Action No.: 18-cv-02558-RBJ (D. Co.) (Court Appointed Co-Lead Counsel in Derivative Action);
- *In re Rev Group, Inc. Derivative Litigation*, Civil Action No.: 1:19-cv-0009 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re LendingClub Corporation Stockholder Derivative Litigation*, Civil Action No.: 3:18-cv-04391(N.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In Re Zillow Group, Inc. Shareholder Derivative Litigation*, Civil Action No.: 17-cv-1568 (W.D. Wash) (Court Appointed Co-Lead Counsel; motion to dismiss denied);
- *Bonessi v. Bank of the Ozarks, Inc. (Nominal Defendant)*, Civil Action No.: 4:19-cv-00567-DPM (E.D. Ark.) (*de facto* lead counsel in Derivative Action; motion to dismiss fully briefed);
- *Kates v. Metlife, Inc. (Nominal Defendant)*, Civil Action No.: 1:19-cv-01266-LPS-JLH (D. Del.) (co-counsel in Derivative Action; motion to dismiss fully briefed);
- *Behrman, et al. v. Dentsply Sirona, Inc. (Nominal Defendant)*, Civil Action No.: 1:19-CV-00772-RGA (D. Del.) (*de facto* lead counsel in Derivative Action; motion to dismiss fully briefed);
- *Wajda v. Lipocine, Inc. (Nominal Defendant)*, C.A. No.: 2019-0122-JTL (Del. Chancery) (*de facto* lead counsel in Derivative Action; motion to dismiss fully briefed);
- *In Re stamps.com Derivative Litigation*, Civil Action No.: 2:19-cv-04272 (C.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In re Taronis technologies, Inc. Shareholder Derivative Litigation*, Civil Action No.: 2:19-cv-04547 (D. Ariz.) (Court Appointed Co-Lead Counsel);

- *In Re Cloudera, Inc. Stockholder Derivative Litigation*, Civil Action No.: 1:19-cv-01422 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re CVS Health Corporation Derivative Litigation*, Civil Action No.: 17-378 (D. RI) (Court Appointed Co-Lead Counsel);
- *In re Colony Capital Stockholder-Derivative Litigation*, Civil Action No.: 1:18-cv-03176 (Court Appointed Co-Lead Counsel);
- *Klein v. Arora, et al.*, Civil Action No.: 19-cv-03148 (N.D. Il.) (Court Appointed Co-Lead Counsel in Derivative Action);
- *Mina Pastagia, et al., v. Charles J. Philippin, et al.*, Case No.: 2018-CH-07432 (Chancery Illinois, Cook County) (Interim Lead Counsel in Derivative Action involving Ulta Beauty, Inc.);
- *Ruth v. CannaVest Corp. (Nominal Defendant)*, Civil Action No.: 2:15-cv-00481 (D. Nev.) (*de facto* lead counsel in Derivative Action);
- *In re Johnson & Johnson Talc Stockholder Derivative Litigation*, Lead Case No.: 3:19-cv-18874-FLW-LHG (Court Appointed Executive Committee in the Derivative Action);
- *In re Beyond Meat, Inc. Derivative Litigation*, Civil Action No.: 20-2524 (C.D. Cal.) (Court Appointed Co-Lead Counsel);
- *Lee v. TrueCar, Inc. (Nominal Defendant)*, Case No 2019-0988 (Chancery Delaware) (Court Appointed Interim Lead Counsel);
- *In re Crown Castle International Corp. Derivative Litigation*, Civil Action No.: 20-cv-00606 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Acer Therapeutics, Inc. Derivative Litigation*, Civil Action No. 19-cv-01505 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Curo Group Holdings, Corp., Derivative Litigation*, Civil Action No.: 20-cv-00851 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Zoom Video Communications Shareholder Derivative Litigation*, Civil Action No.: 1:20-cv-00797-LPS (D. Del.) (Court Appointed Co-Lead Counsel);
- *In Re Inovio Pharmaceuticals, Inc. Derivative Litigation*, Civil Action No. 2:20-cv-01962 (E.D. Pa.) (Court Appointed Co-Lead Counsel);

- *In re Exela Technologies, Inc. Shareholder Derivative Litigation*, Civil Action No.: 3:20-CV-1800 (N.D. Tex) (Court Appointed Co-Lead Counsel);
- *In re Blink Charging Company Stockholder Derivative Litigation*, Civil Action No. 2020-019815-CA-01 (11th Judicial Circuit in and for Dade County, Florida) (Co-Lead Counsel in Derivative Action);
- *In re Tyson Foods Inc. Derivative Litigation*, Civil Action No.: 21-00730 (E.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *In re Quantumscape Corporation Derivative Litigation*, Civil Action No: 21-00989 (N.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In re Velodyne Lidar, Inc. Derivative Litigation*, Civil Action No.: 21-cv-00369 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Peabody Energy Corp. Derivative Litigation*, Civil Action No.: 20-cv-01747 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Plug Power Inc. Derivative Litigation*, Civil Action No.: 1:21-cv-02753 (S.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *In re Co-Diagnostics, Inc. Derivative Litigation*, Civil Action No.: 20-cv-00654 (D. UT) (Court Appointed Co-Lead Counsel);
- *In re Stride Inc. Derivative Litigation*, Civil Action No.: 20-cv-01731 (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Tricida Stockholder Derivative Litigation*, Civil Action No.: 1:21-cv-00205 (D. Del.) (Court Appointed Lead Counsel);
- *In re Cytodyn Stockholder Derivative Litigation*, Civil Action No.: 3:21-cv-05422 MLP (W.D. Wash.) (Court Appointed Co-Lead Counsel);
- *In Re AcelRx Pharmaceuticals, Inc. Derivative Litigation*, Civil Action No.: 3:21-cv-05197 (N.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In re Appharvest Inc. Shareholder Derivative Litigation*, Civil Action No.: 1:22-cv-02037 (S.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *In re View Derivative Litigation*, Civil Action No.: 21-1719 (D. Del.) (Court Appointed Co-Lead Counsel);

- *In re Opendoor Technologies, Inc. Stockholder Derivative Litigation*, Civil Action No.: 2023-0642 (Del. Chancery) (Court Appointed Co-Lead Counsel);
- *In Re Cormedix Inc. Derivative Litigation*, Civil Action No: 2:21-Cv-18493 (D.N.J.) (Court Appointed Co-Lead Counsel);
- *In re SesenBio, Inc., Derivative Litigation*, Civil Action No.: 1:21-cv-11538 (D. Mass) (Court Appointed Co-Lead Counsel);
- *In re Beyond Meat, Inc. Stockholder Derivative Litigation*, Civil Action No.: 23-5954-MWF (C.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In re Veru, Inc. Stockholder Derivative Litigation*, Civil Action No.: 2:23-cv-01164-SCD (E.D. WI) (Court Appointed Co-Lead Counsel);
- *In re Novavax, Inc. Shareholder Derivative Litigation*, Case No. C-15-CV-21-000618 (Cir. Ct. Mont. Cty) (Court Appointed Co-Lead Counsel);
- *In Re RTX Corporation (F/K/A Raytheon Technologies Corporation) Derivative Litigation*, Civil Action No.: C.A. No. 20-cv-1614-MN (D. Del). (Court Appointed Co-Lead Counsel);
- *In Re C3.AI, Inc. Derivative Litigation*, Civil Action No. 4:22-cv-03031-HSG (N.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In re Kenvue, Inc. Derivative Litigation*, Civil Action No.: 3:24-cv-00307-MAS (D. N.J.) (Court Appointed Co-Lead Counsel);
- *In Re Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc. Derivative Litigation.*, Civil Action No. 3:23-cv-06627-JSC (N.D. Cal.) (Court Appointed Co-Lead Counsel);
- *In Re Unity Software, Inc. Stockholder Derivative Litigation*, Case No. 2023-0499-PAF (Del. Chancery) (Court Appointed Co-Lead Counsel);
- *In Re The Beauty Health Company Consolidated Stockholder Derivative Litigation*, Civil Action No.: C.A. No. 2024-0114-LWW (Del. Chancery) (Court Appointed Co-Lead Counsel);
- *In Re Snowflake, Inc. Derivative Litigation*, Case No. 24-cv-426-CFC (D. Del.) (Court Appointed Co-Lead Counsel);

- *In Re Bluebird Bio, Inc. Stockholder Derivative Litigation*, Case No.: 1:24-cv-11674-PBS, (D. Mass.) (Court Appointed Co-Lead Counsel);
- *Spiteri v. Branson et al.*, Case No.: 1:22cv933, (E.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *In Re Prudential Financial, Inc. Derivative Litigation*, Case No.: ESX-L-6550-20 (Sup. Ct. NJ, Essex Cty.) (Court Appointed Co-Lead Counsel);
- *In Re Faraday Future Intelligent Electric Inc. Delaware Derivative Litigation*, Civil Action No.: 1:22-cv-00467-VAC (D. Del.) (Court Appointed Co-Lead Counsel);
- *In re Chargepoint Holdings, Inc. Derivative Litigation*, Case No.: 5:24-cv-00149-EKL (N.D. Cal) (Court Appointed Co-Lead Counsel);
- *In re CVS Health Corporation Stockholder Derivative Litigation*, Case No.: 1:24-cv-00393 (D. RI) (Court Appointed Lead Counsel); and
- *In Re Crowdstrike Holdings, Inc. Derivative Litigation*, Case No.:24-cv-01031-RP (W.D. Tx) (Court Appointed Co-Lead Counsel).

#### **Securities Class Actions**

- *In re Kiromic Biopharma, Inc. Securities Litigation*, Civil Action: No.: 22-cv-6690 (S.D.N.Y) (Court Appointed Lead Counsel in securities fraud Class action);
- *In re VimpelCom Ltd. Securities Litig.*, Civil Action: No.: 1:15-cv-08672 (ALC) (S.D.N.Y.) (Lead Counsel in securities fraud Class action);
- *Fogel v. Vega, et al.*, Civil Action No.: 1:13-cv-02282-KPF (S.D.N.Y.) (Lead Counsel in securities fraud Class Action against Wal-Mart de Mexico SAB de CV, Ernesto Vega, Scot Rank, and Wal-Mart Stores, Inc.);
- *Floridia et al v. Dolan, et al.*, Civil Action No.: 14-cv-03011 (D. Minn.) (Lead Counsel in securities fraud Class Action);
- *In re Netsol Technologies, Inc.*, Civil Action No.: 14-cv-05787 (C.D. Cal.) (Lead Counsel in securities fraud Class Action);
- *Singh v. Tri-Tech Holdings, Inc.*, Civil Action No.: 13-cv-09031 (Co-Lead Counsel in securities fraud Class Action);

- *Jason v. Junfeng Chen, et al.*, Civil Action No.: 12-cv-1041 (S.D.N.Y) (Lead Counsel in securities fraud Class action);
- *Anderson v. Peregrine Pharmaceuticals, Inc., et al.*, Civil Action No.: 12-cv-01647 PSG (FMOx) (C.D. Cal.) (Lead Counsel in securities fraud Class Action);
- *Araj v. JML Portfolio Mgmt. Ltd., et al.*, Civil Action No.: 09-cv-00903 (M.D. Fla.) (Co-Lead Counsel in securities fraud Class Action);
- *Hanson et al, v. Frazer, LLP., et al.*, Civil Action No.: 12-cv-3166 (S.D.N.Y.) (Lead Counsel in securities fraud Class Action);
- *Labit v. Glenn Zagoren, et al.*, Civil Action No.: 03-cv-2298; (S.D.N.Y.) (Co-Lead Counsel in securities fraud Class Action);
- *Karp v. SI Financial Group, Inc., et al.*, Civil Action No: 19-cv-199 (D. Conn.) (Lead Counsel in securities fraud Class Action); and
- *Evans v. Mohawk Industries, Inc. et al.*, Civil Action No.: N20C-01-259 (Sup. Ct. Del.) (Class Counsel in a securities Class Action)

#### **Consumer Actions**

- *Rand v. The Travelers Indemnity Company*, Civil Action No.: 7:21-cv-10744 (S.D.N.Y.) (Counsel for the Proposed Class);
- *In re USAA Data Security Litigation*, Civil Action No.: 7:21-cv-05813 (S.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *In re Columbia University Tuition Refund Action*, Civil Action No.: 1:20-cv-03208 (S.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *In re Columbia College Rankings Action*; Civil Action No.: 1:22-cv-05945-PGG (S.D.N.Y.) (Court Appointed Co-Lead Counsel);
- *Placko v. Michigan State University*, Court of Claims No. 20-000120-MK (Mi. State Court of Claims) (Court Appointed Co- Lead Counsel);
- *Kincheloe v. University of Chicago et al*, Civil Action No.: 1:20-cv-03015 (N.D. Ill.) (Court Appointed Co-Lead Counsel);
- *Jairo Jara, et al., v. DeVry Education Group, Inc., et al.*, Civil Action No.: 1:16-cv-10168 (N.D. Ill.);

- *Dumont v. Litton Loan Servicing, LP*, Civil Action No.: 1:12-cv-2677-ER-LMS (S.D.N.Y.) (Gainey McKenna & Egleston and Robbins Geller Rudman & Dowd LLP were plaintiffs' co-lead counsel in a putative class action lawsuit filed in the United States District Court for the Southern District of New York on behalf of thousands of homeowners in New York, New Jersey and Pennsylvania. The lawsuit alleged, among other things, that Litton Loan Servicing ("Litton") and Ocwen Loan Servicing ("Ocwen") engaged in a deceptive scheme to delay or deny permanent mortgage loan modifications through the federal Home Affordable Modification Program ("HAMP") to desperate homeowners, systematically breaching their contractual obligations to homeowners, committing deceptive trade practices, and causing significant financial harm);
- *Schroeder, et al. v. Countrywide Home Loans, Inc. Bank of America, et al.*, Civil Action No.: 07-cv-1363 (PGS) (D.N.J.) (Class Counsel in nationwide class action on behalf of United States Military Service members overcharged on their mortgages in violation of the Service members' Civil Relief Act; recovery of \$5.962 million for more than 17,000 service members); and
- *Stamm v. My Pillow, Inc. a Minnesota Corporation, a/k/a My Pillow Direct, LLC*, Index No.: 651472/2017 (N.Y. Sup. Ct.).

#### **ERISA Class Actions**

- *In re Comcast Corp. ERISA Litig.*, Master File No.: 08-cv-00773-HB (E.D. Pa.) (recovery of \$5 million for the employees' 401(k) plan);
- *Simeon v. Affiliated Computer Services, Inc. et al.*, Civil Action No.: 06-cv-1592 (N.D. Tex.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$1.5 million for the employees' 401(k) plan);
- *Herrera v. Wyeth, et al.*, Civil Action No.: 08-cv-04688 (RJS) (S.D.N.Y.) (recovery of \$2 million for the employees' 401(k) plan);
- *Douglas J. Coppess v. Healthways, Inc.*, Civil Action No.: 10-cv-00109 (M.D. Tenn.) (Lead Counsel in ERISA Class Action) (recovery of \$1.25 million for the employees' 401(k) plan);
- *In re Int'l Game Tech. ERISA Litig.*, Civil Action No.: 09-cv-00584 (D. Nev.) (Co-Lead Counsel in ERISA class action) (recovery of \$500,000 for the employees' 401(k) plan);
- *Jennifer Jones v. NovaStar Fin., Inc.*, Civil Action No.: 08-cv-490 (NKL) (W.D. Mo.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$925,000 for the employees' 401(k) plan);

- *Page v. Impac Mortgage Holdings, Inc., et al.*, Civil Action No.: 07-cv-1447 (C.D. Cal.) (Co-Lead Counsel in ERISA Class Action) (recovery of \$300,000 for the employees' 401(k) plan);
- *Fulmer v. Scott Klein, et al.*, Civil Action No.: 09-cv-2354-N (N.D. Tex.) (Lead Counsel in ERISA Class Action);
- *In re Pilgrims Pride Stock Investment Plan ERISA Litig.*, Civil Action No.: 08-cv-000472-TJW-CE (E.D. Tex.) (Co-Lead Counsel in ERISA Class Action);
- *In re UBS ERISA Litig.*, Civil Action No.: 08-cv-6696 (S.D.N.Y.) (Co-Lead Counsel in ERISA Class Action);
- *Rinehart v. Lehman Brothers Holdings Inc., et al.*, Civil Action No.: 08-cv-5598 (S.D.N.Y.) (Co-Lead Counsel in ERISA Class Action);
- *Usenko v. Sunedison Semiconductor, LLC., et al.*, Civil Action No.: 17-cv-2227 (E.D. Mo.) (*de facto* Co-Lead Counsel in ERISA Class Action);
- *Harris and Ramos v. Amgen, Inc., et al.*, Civil Action No.: 07-cv-5442 (C.D. Cal.) (Co-Lead Counsel in ERISA Class Action);
- *Russell v. Harman Int'l Industries Inc., et al.*, Civil Action No.: 07-cv-02212 (D. of Columbia) (*de facto* Lead Counsel in ERISA Class Action);
- *Mellot v. Choicepoint, Inc., et al.*, Civil Action No.: 05-cv-1340 (N.D. Ga.) (Co-Lead Counsel in ERISA Class Action);
- *In re Eastman Kodak ERISA Litig.*, MASTER FILE NO. 6:12-CV-06051-DGL (W.D.N.Y.) (Co-Counsel in ERISA Class Action); and
- *Sheedy v. Adventist Health System Sunbelt Healthcare Corporation., et al.*, Civil Action No.: 6:16-cv-01893-GAP (M.D. Fl.) (Interim Lead Counsel in ERISA Action).

#### **Anti-Trust Class Actions**

- *In re: Package Seafood Products Antitrust Litig.*, Civil Action No.: 15-MD-2670 (JLS) (MDD) (S.D. Cal.) (co-counsel in on-going anti-trust action);
- *In re Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328 (Member of the committee in anti-trust action) (settlement obtained from several defendants); and

- *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation*, MDL No. 2542 (co-counsel in on-going anti-trust action).

#### **FLSA Actions**

- *Affen v. The TJX Companies, Inc., et al.*, Civil Action No.: 14-cv-03820-CCC-JBC (D. N.J.);
- *Roberts v. The TJX Companies, Inc.*, Civil Action No.: 14-cv-00746-BJD-MCR (M.D. Fla.);
- *Sifferman v. Sterling Financial Corp.*, Civil Action No.: 13-cv-00183 (W.D. Wash.); and
- *Winfield, et al., v. Citibank, N.A.*, Case No.: 10-cv-7304 (S.D.N.Y).

#### **IV. Attorneys**

**Barry J. Gainey** received his bachelor's degree in 1981 from Boston University and received his J.D. in 1984 from Washington and Lee University School of Law where he was a Law Review Notes and Comments Editor and authored two published articles. Mr. Gainey was a partner at Wilson, Elser, Moskowitz, Edelman & Dicker in New York City, and the founding partner of Renzulli, Gainey & Rutherford (which later became Gainey & McKenna and now Gainey McKenna & Egleston), with offices in New York City and New Jersey. Mr. Gainey has worked on many high profile actions such as:

- *Schroeder, et al. v. Countrywide Home Loans, Inc., Bank of America, et al.*, Civil Action No.: 07-cv-1363 (D.N.J.) (Appointed Class Counsel in nationwide class action on behalf of United States Military Service members with Countrywide mortgages);
- *Klyachman v. Vitamin Shoppe, et al.*, Civil Action No.: 07-cv-1528 (D.N.J.) (Appointed Class Counsel in nationwide consumer fraud case);
- *Kleck v. Bluegreen Corp.*, Civil Action No.: 09-cv-81047 (S.D. Fl.) (Appointed Class Counsel with Florida firm in nationwide class action);
- *Resnik v. Lucent Technologies, Inc. et al.*, Case No.: L-1230-06 (N.J.) (Appointed Co-Class Counsel in class action);
- *Alamo v. Bluegreen Corp. et al.*, Case No.: L-6716-05 (N.J.) (Appointed Class Counsel in consumer fraud case); and
- *Blumer, et al. v. Acu-Gen Biolabs, Inc., et al.*, Civil Action No.: 06-cv-10359 (D. Mass) (Appointed Class Counsel in consumer fraud case).

Mr. Gainey is admitted to practice in the Federal and State Courts of New York and New Jersey. He is also a past or current member of the American Association for Justice, New Jersey Association for Justice, New York State Bar Association, American Bar Association, New York State Trial Lawyers Association, New Jersey State Bar Association, and Bergen County Bar Association.

**Thomas J. McKenna** received his bachelor's degree in 1981 from Boston College (*magna cum laude*) and received his J.D. in 1984 from Syracuse University College of Law (*cum laude*) where he was a Law Review Editor and a Member of the Justinian Honorary Law Society. Following law school, Mr. McKenna clerked in the United States District Court for the Eastern District of Louisiana for the Honorable Veronica D. Wicker from 1984 through 1986.

Before starting his own law practice, Mr. McKenna was associated with Cahill, Gordon & Reindel ("Cahill") in New York City, practicing class actions and securities law, insurance coverage litigation and general commercial litigation. After his association with Cahill, he was an attorney at Grutman Greene & Humphrey in New York City where he concentrated on class actions and trial practice in complex commercial and tort litigation. In 1996, Mr. McKenna started his own law firm and then formed Gainey & McKenna in 1998 where he focused his practice on trials, class actions and commercial disputes. Mr. McKenna has worked on many important actions such as:

- *Allapattah Services, Inc., et al., v. Exxon Corp.*, Civil Action No.: 91-cv-0983 (S.D. Fla.) (Nationwide class action for class of Exxon service station operators against Exxon for allegedly overcharging them for gasoline, eventually settled for over \$1 billion);
- *In re Popular Inc. ERISA Litig.*, Master File No.: 09-cv-01552-ADC (D. P.R.) (Co-Lead Counsel) (breach of fiduciary duty case under ERISA);
- *In re Schering-Plough Corp. Enhance ERISA Litig.*, Civil Action No.: 08-cv-1432 (D.N.J.) (Co-Lead Counsel) (claim on behalf of employees and ex-employees against 401(k) fiduciaries for breaches of duty in connection with Vytarin);
- *In re General Growth Properties, Inc. ERISA Litig.*, Master File No.: 08-cv-6680 (N.D. Ill.) (Class Counsel) (breach of fiduciary duty case involving harm to retirement plan in connection with alleged risky real estate investments); and
- *Morrison v. MoneyGram Int'l, Inc., et al.*, Civil Action No.: 08-cv-1121 (D. Minn.) (Lead Counsel) (breach of fiduciary duty claims involving alleged improper investment practices).

Mr. McKenna is a member of the Bar of the State of New York and admitted to practice before the United States Supreme Court and United States District Courts for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second, Fifth, Sixth, Ninth and Eleventh Circuits. He has also been admitted *pro hac vice* in numerous other courts. Mr.

McKenna is also a member of the Association of the Bar of the City of New York, the New York State Trial Lawyers Association, and the American Association for Justice (formerly the American Trial Lawyers Association) and past member of the New York County Lawyers Association.

**Gregory M. Egleston** received his bachelor's degree in 1992 from Fordham University (*magna cum laude*), his master's degree in 1994 from Columbia University, and received his J.D. in 1997 from New York Law School. Before joining the Firm, Mr. Egleston had his own law firm and prior to that, Mr. Egleston was an attorney specializing in securities class action litigation, shareholder derivative actions, and consumer fraud litigation at a prominent Manhattan plaintiffs' class action firm. Mr. Egleston has worked on many high-profile class actions such as:

- *Shane v. Kenneth E. Edge, et al.*, Civil Action No.: 10-cv-50089 (N.D. Ill.) (recovery of \$3.35 million for the company's 401(k) plan);
- *Mayer v. Administrative Committee of Smurfit-Stone Container Corp. Retirement Plans*, Civil Action No.: 09-cv-02984 (N.D. Ill.) (recovery of \$7.75 million for the company's 401(k) plan);
- *In re YRC Worldwide Inc. ERISA Litig.*, Civil Action No.: 09-cv-02593 JWL/JPO (D. Kan.) (recovery of \$6.5 million for the company's 401(k) plan);
- *In re Beazer Homes U.S.A., Inc. Sec. Litig.*, Civil Action No.: 07-cv-725-CC (N.D. Ga.) (\$30.5 million settlement in a Securities Class Action);
- *In re Willbros Group, Inc. Sec. Litig.*, Civil Action No.: 06-cv-1778 (S.D. Tex.) (\$10.5 million settlement in a Securities Class Action);
- *In re Royal Dutch/Shell Transport Sec. Litig.*, Civil Action No.: 04-cv-374 (JAP) (D.N.J.) (U.S. settlement with a minimum cash value of \$138.3 million with a potential value of more than \$180 million, in addition to a related European settlement of \$350 million);
- *In re Marsh & McLennan Companies, Inc. Sec. Litig.*, Civil Action No.: 04-cv-8144 (CM) (S.D.N.Y.) (\$400 Million settlement in a Securities Class Action); and
- *In re Lumenis Sec. Litig.*, Civil Action No.: 02-cv-1989 (S.D.N.Y.) (\$20.1 million settlement in a Securities Class Action).

Mr. Egleston was also involved in a high-profile landlord/tenant action entitled *Roberts v. Tishman Speyer, L.P., et al.*, N.Y. Sup. Ct., Index No. 07600475. The core legal issue was whether landlords could permissibly deregulate and charge market rents for certain so-called "luxury" apartment units in these complexes in years in which the landlords were simultaneously receiving tax abatements from New York City known as "J-51" benefits. The Court of Appeals ruled that the New York statutory scheme prevents landlords of rent stabilized buildings from charging market rents while receiving J-51 benefits for as long as they continue to receive those tax benefits. The action recently settled for \$68.8 million.

Mr. Egleston is admitted to the Bars of the States of New York and Connecticut. He is also admitted to practice before the Bars of the federal district courts for the Southern and Eastern Districts of New York and the District of Connecticut.

**Robert J. Schupler** received his bachelor's degree in 1979 from Drexel University (Philadelphia, PA), and received his J.D. in 1982 from Southwestern University School of Law (Los Angeles, CA).

Mr. Schupler began his legal career at a boutique law firm in Los Angeles where he focused on civil litigation and transactional matters. He returned "home" to the Philadelphia area in the 90's and shortly thereafter began focusing on class action litigation and complex tort and commercial disputes, assisting in litigation matters which included *Sunbeam* and *WorldCom*.

Mr. Schupler has the unique experience of working for both plaintiff and defense litigation firms. While working at an internationally recognized defense law firm, Mr. Schupler concentrated on healthcare related products liability litigation matters. In one of these matters, Mr. Schupler was responsible for the administration of a multi-billion dollar settlement involving tens of thousands of plaintiff claimants.

In 2015, Mr. Schupler began working with Gainey McKenna & Egleston. He has assisted GME in prosecuting numerous class action and shareholder derivative actions, including:

- *In Re: Packaged Seafood Products Antitrust Litigation*, Civil Action No.: 15-MD-2670 JLS (MDD) (S. D. Cal.);
- *George Dumont, et al. vs. Litton Loan Servicing LP, et al.*, Civil Action No.: 7:12-cv-02677-ER-LMS (S.D.N.Y.);
- *Gordon Niedermayer, et al. v. Steven A. Kriegsman, et al.*, Civil Action No.: 11800-VCMR (Chancery Delaware);
- *Arthur P. Cardi, et al. v. FXCM Inc., et al.*, Civil Action No.: 1:17-cv-4699-PAC-HBP (S. D.N.Y.);
- *In Re Rocket Fuel, Inc. Derivative Litigation*, Civil Action No.: 4:15-cv-04625-PJH (N.D. Cal.);
- *Douglas Labare v. Charles Dunleavy, et al.*, Civil Action No.: 3:15-cv-01980-FLW-LHG (D. N.J.);
- *Waseem Hamdan vs. Mark Munro, et al.*, Civil Action No.: 2:16-cv-03706 (D. N.J.);
- *In Re VimpelCom, Ltd. Securities Litigation*, Civil Action No.: 1:15-cv-08672-ALC (S.D.N.Y.); and

- *Shuli Chiu, et al., v. Michelle Dipp, et al.*, Civil Action No.: 1:17-cv-11382 (D. Mass.).

Mr. Schupler is a member of the Bar of the State of Pennsylvania and is also admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

**David A. Silva** received his bachelor's degree in 1982 from New York University and received his J.D. in 1985 from Brooklyn Law School where he was a member of the Moot Court National Team. Between the years of 1985 and 1988, Mr. Silva worked as an Assistant Corporation Counsel in the Law Department of the City of New York. While at the Law Department, Mr. Silva represented various city agencies in Article 78 proceedings as well as defended the constitutionality of various aspects of the New York City Public Health Law, as well as the Building Code and Zoning Resolution. In addition, he was lead counsel on Federal civil rights actions defending the City and its employees.

In 1988, Mr. Silva left the City and joined Mound Cotton Wollan & Greengrass as an associate and worked there for 25 years becoming a partner in 1995 and a senior partner in 2002.

Mr. Silva has served as counsel to both insurers and reinsurers in dozens of reinsurance arbitrations and court proceedings across the United States. He has also acted as lead counsel in arbitrations in both Bermuda and England, involving some of the highest profile issues in the industry. Mr. Silva regularly advises clients on a wide range of issues including workers' compensation carve out and spiral business; life, personal accident and medical reinsurance issues; long term care reinsurance; actuarial disputes; coverage of declaratory judgment expenses; rescission claims; claims for pre-answer security; letter of credit disputes; commutation valuations; allocation of losses; contract drafting; records inspection rights, and audits. He also has substantial experience in other reinsurance-related matters, including issues involving domestic and off-shore captive reinsurers, surplus relief treaties, and many matters relating to life, accident, health, and long-term care insurance. He also has substantial involvement in all aspects of property and casualty insurance litigation including first- and third-party coverage and claims defense, business interruption, products liability defense, and disputes between primary and excess carriers.

Mr. Silva has been recognized in the Chambers USA Directory, Best Lawyers in America, and Super Lawyers as a leading individual in the field of insurance and reinsurance. Mr. Silva has also served as a lecturer and panelist for various reinsurance programs, including the Reinsurance Association of America, ARIAS U.S., as well as Harris Martin and HB Litigation Conferences.

Mr. Silva is admitted to practice in the federal and state courts of New York and is a past member of the New York State Bar Association as well as the New York County Lawyers Association.

**Christopher M. Brain** was called as a barrister in England and Wales by the Honourable Society of Gray's Inn in 2021; having received his bachelor's degree in law ("LLB") from Swansea University in 2019, his master's degree in law ("LLM") from BPP University in 2020, and a further LLM from Cornell Law School in 2021. Mr. Brain was admitted to the New York State Bar on January 19<sup>th</sup>, 2023 and is a member in good standing.

While in the United Kingdom, Mr. Brain received specialized training in litigation and gained experience assisting counsel and observing proceedings in the English courts in an array of criminal, civil, and family law matters. Mr. Brain also spent some time shadowing District Judge Jones on the South-Eastern Circuit.

Prior to joining the Firm, Mr. Brain worked as a complex civil litigation and class actions attorney with a boutique litigation United States law firm. During this, Mr. Brain worked on various securities, data privacy, and toxic tort class actions. Notably, Mr. Brain assisted with:

- *Town of Fairfield, et al. v. Allianz Global Investors U.S. LLC*, No. 20-cv-05817 (S.D.N.Y.) (settled ERISA class action on behalf of institutional investors)
- *Jackson v. Allianz Global Investors U.S. LLC*, Index No. 651233/2021 (N.Y.S.–N.Y. Cnty.) (\$145 million settlement in securities class action on behalf of public investors)
- *Zaluda v. Apple, Inc.*, Case No. 2019 CH 11771 (Ill. Cir. Ct.–Cook Cnty.) (data privacy class action involving alleged violations of the Illinois BIPA legislation)
- *Ryan, et al. v. Greif Inc., et al.*, Case No. 4:22-cv-40089 (D. Mass.) (class action on behalf of over 200 residents whose water supply and topsoil had allegedly been contaminated with PFAS6)

Since joining the Firm, Mr. Brain has worked on a number of class actions and shareholder derivative actions, including:

- *In re Facebook, Inc. Derivative Litigation*, C.A. No. 2018-0307 (Del. Chan.) (ongoing shareholder derivative action)
- *In re Zoom Video Communications, Inc. Derivative Litigation*, Case No. 1:20-cv-00797 (D. Del.) (ongoing shareholder derivative action)
- *Rand v. The Travelers Indemnity Company*, Case No. 7:21-cv-10744-VB (S.D.N.Y.) (ongoing data privacy class action)
- *In re USAA Data Security Litigation*, Case No. 7:21-cv-05813-VB (S.D.N.Y.) (ongoing data privacy class action)
- *Kincheloe v. University of Chicago, et al.*, Case No. 1:20-cv-03015 (E.D. Ill.) (COVID-19 college closure class action, recently received preliminary approval of settlement)

Before his admission to the New York State Bar, Mr. Brain worked with vulnerable clients through the Swansea Law Clinic, dealing with sensitive family and housing law matters on a pro bono basis. Mr. Brain also carried out detailed research and drafted confidential memoranda on international law and policy for members of Congress and the public while working as a Global Legal Research Intern with the Law Library of Congress.

Besides being a member of the Bars of New York State and England and Wales, Mr. Brain also received an accreditation as a civil and commercial mediator by ADR-ODR International in 2020.

# EXHIBIT C

1 Laurence M. Rosen (SBN 219683)  
2 **THE ROSEN LAW FIRM, P.A.**  
3 355 South Grand Avenue, Suite 2450  
4 Los Angeles, CA 90071  
5 Telephone: (213) 785-2610  
6 Facsimile: (213) 226-4684  
7 Email: lrosen@rosenlegal.com

8  
9 *Co-Lead Counsel for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12  
13 IN RE MULLEN AUTOMOTIVE, INC.  
14 DERIVATIVE LITIGATION

15  
16 This Document Relates to:  
17  
18 ALL ACTIONS

Lead Case No. 2:22-cv-05336-DMG-  
(AGRx)

19 **DECLARATION OF ERICA L.**  
20 **STONE ON BEHALF OF THE**  
21 **ROSEN LAW FIRM, P.A. IN**  
22 **SUPPORT OF MOTION FOR**  
23 **FINAL APPROVAL OF**  
24 **SETTLEMENT AND FEE AND**  
25 **EXPENSE AMOUNT**

26 Date: January 24, 2025  
27 Time: 10:00 a.m.  
28 Courtroom: 8C, 8<sup>th</sup> Floor  
Judge: Honorable Dolly M. Gee

1 I, Erica L. Stone, declare as follows:

2 1. I am Counsel at The Rosen Law Firm, P.A. (“Rosen Law”), counsel for  
3 Plaintiff Hany Morsy (“Morsy”) in the above-captioned Consolidated Derivative  
4 Action.<sup>1</sup> I have personal knowledge of the facts set forth herein and if called upon to  
5 testify, I could and would testify competently thereto.

6 2. I submit this declaration in support of Plaintiffs’ Motion for Final  
7 Approval of Settlement and Fee and Expense Amount (the “Motion”), that seeks  
8 entry of an order determining: (i) the terms and conditions of the Settlement are fair,  
9 reasonable and adequate to Mullen Automotive, Inc. (“Mullen”) and its  
10 shareholders; (ii) whether the [Proposed] Order Approving Final Settlement of  
11 Consolidated Derivative Action and the [Proposed] Final Judgment should be  
12 entered; (iii) to award the Fee and Expense Award and the Service Awards; and (iv)  
13 for such other and further relief as the Court deems appropriate.

14 3. My firm seeks attorneys’ fees and reimbursement of expenses for the  
15 work performed as counsel for Plaintiff Morsy in this Action. My firm undertook  
16 this representation on a wholly contingent basis, with the understanding that we  
17 would receive no compensation, and our expenses would not be reimbursed, unless  
18 our efforts resulted in the recovery of a substantial benefit for Mullen. None of the  
19 attorneys’ fees and expenses submitted to this Court has been paid from any source  
20 or has been the subject of any prior request or prior award in any litigation or other  
21 proceeding.

22 4. My firm actively engaged in the prosecution of this Action, including,  
23 *inter alia*: (i) reviewing and analyzing Mullen press releases, public statements,  
24

25  
26 <sup>1</sup> Unless otherwise defined herein, all defined terms shall have the meanings as set  
27 forth in the Stipulation and Agreement of Settlement (the “Stipulation”) (ECF No.  
28 31).

1 filings with the U.S. Securities and Exchange Commission, media and analyst  
2 reports about Mullen, and the pleadings in the securities class action, *In re Mullen*  
3 *Automotive, Inc. Securities Litigation*, Case No. 2:22-cv-03026-DMG-AGR (C.D.  
4 Cal.); (ii) researching the applicable law with respect to the claims alleged and the  
5 potential defenses thereto; (iii) filing a complaint; (iv) conducting damages analyses  
6 and research into the Company's corporate governance structure in connection with  
7 settlement efforts; (v) opposing Defendant Oleg Firer's Motion to Dismiss; (vi)  
8 reviewing internal, non-public documents Mullen produced to Plaintiffs in  
9 connection with the litigation; (vii) preparing a comprehensive written settlement  
10 demand and modified demands over the course of the Parties' settlement  
11 negotiations; (viii) participating in the in-person mediation session, an additional  
12 mediation session via videoconference, and follow-on settlement negotiations with  
13 Defendants' Counsel and the mediator; (ix) negotiating the material terms of the  
14 settlement, including the Term Sheet and, later, the Stipulation and exhibits thereto;  
15 and (x) drafting the motions to approve the Settlement, both preliminarily and  
16 finally.  
17

18 5. From the inception of the Action through the present, Rosen Law  
19 devoted 304.5 hours to the litigation, representing total lodestar of \$258,505.  
20 Rosen Law's lodestar was prepared from contemporaneous, daily time records  
21 prepared and maintained by the firm. Rosen Law's hourly rates, as reflected in the  
22 chart in paragraph six below, are Rosen Law's usual and customary rates. These  
23 rates are set based on market rates for attorneys of comparable skill and experience,  
24 and they have been approved by federal and state courts throughout the nation.

25 6. The chart below summarizes the hours, hourly rates, and lodestar of  
26 each Rosen Law professional who worked on this matter:  
27  
28

<b>Name and Position*</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Total Lodestar</b>
Laurence Rosen (P)	\$1,250	4.2	\$5,250.00
Phillip Kim (P)	\$1,150	41.6	\$47,840.00
Erica L. Stone (C)	\$850	211.5	\$179,775.00
Ryan Hedrick (A)	\$600	20.4	\$12,240.00
Luke Foley (A)	\$500	26.8	\$13,400.00
<b>Total:</b>		<b>304.5</b>	<b>\$258,505.00</b>

\*(P) – Partner; (C) – Counsel; (A) – Associate

7. I supervised or worked directly with the attorneys who spent time on this matter. I can aver that the hours reported and the work they reflect were reasonably necessary for the successful commencement, prosecution, and settlement of the derivative claims.

8. Rosen Law incurred a total of \$11,967.40 in unreimbursed expenses in connection with the prosecution of the Action, as summarized in the chart below:

<b>Category</b>	<b>Amount</b>
Online Legal Research and Document Retrieval	\$673.75
Court Filing Fees	\$402.00
<i>Pro Hac Vice</i> and Certificate of Good Standing Fees	\$521.30
Mediation Fees	\$600.00
Service of Process Fees	\$269.55
Notice to Investor Fees	\$337.50
Travel, Transportation, Hotels, and Meals Fees**	\$9,144.14
Printing, Photocopying, and Scanning	\$19.16
<b>TOTAL EXPENSES</b>	<b>\$11,967.40</b>

\*\*Includes estimated expenses for traveling to and from the Settlement Hearing

9. These expenses are reflected in records maintained by my firm in the ordinary course of business. These records are prepared from expense vouchers, invoices, and other records submitted contemporaneously as they are incurred. I have reviewed the expense records in detail and can aver that they were reasonably necessary for the effective and efficient prosecution and resolution of the derivative

1 claims brought on behalf of Mullen, and they are reasonable in amount.

2 10. As set forth in Rosen Law's firm résumé, a true and correct copy of  
3 which is attached hereto as Exhibit 1, the attorneys primarily responsible for  
4 participating in the prosecution of the above captioned actions are experienced and  
5 skilled advocates.

6  
7 I declare under penalty of perjury under the laws of the United States of  
8 America that the foregoing is true and correct.

9 Executed this 6th day of December, 2024, at New York, New York.

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12 /s/ Erica L. Stone  
13 Erica L. Stone  
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# EXHIBIT 1

**THE ROSEN LAW FIRM P.A.  
BIOGRAPHY**

**I. ATTORNEYS**

**LAURENCE ROSEN – MANAGING PARTNER**

Laurence Rosen is a 1988 graduate of New York University School of Law. He earned an M.B.A. in finance and accounting at the University of Chicago Graduate School of Business and a B.A. in Economics from Emory University. Mr. Rosen served as a law clerk to the Honorable Stanley S. Brotman, Senior United States District Judge for the District of New Jersey. Mr. Rosen entered private practice as an associate at the law firm of Skadden Arps Slate Meagher & Flom in New York City where he participated in a number of complex securities class action and derivative litigation matters. He later served as an associate at McCarter & English in Newark, New Jersey where he specialized in securities and business litigation.

After practicing general securities and commercial litigation in New York City with Solton Rosen & Balakhovsky LLP, Mr. Rosen founded The Rosen Law Firm to represent investors exclusively in securities class actions and derivative litigation. Mr. Rosen is admitted to practice law in New York, California, Florida, New Jersey and the District of Columbia. Mr. Rosen is also admitted to practice before numerous United States District Courts throughout the country and the United States Court of Appeals for the Second, Fourth, and Sixth Circuits.

In 2019-2024 Lawdragon named Mr. Rosen as one of the 500 Leading Plaintiff Financial Lawyers. Mr. Rosen was also named by law360 as Titan of Plaintiffs' Bar for 2020. Mr. Rosen was selected to *Super Lawyers* in 2017-2024.

**PHILLIP KIM – PARTNER**

Mr. Kim graduated from Villanova University School of Law in 2002. He received a B.A. in Economics from The Johns Hopkins University in Baltimore, Maryland in 1999. Prior to joining

The Rosen Law Firm, Mr. Kim served as Assistant Corporation Counsel for the City of New York in the Special Federal Litigation Division. In that position, Mr. Kim defended a number of class action lawsuits, litigated numerous individual actions, and participated in more than seven trials. Mr. Kim focuses his practice on securities class actions and shareholder derivative litigation. Mr. Kim is admitted to the bar of the State of New York and admitted to practice in the Southern, Eastern, Northern and Western Districts of New York, the District of Colorado, the Eastern District of Wisconsin, the Eastern District of Michigan, and United States Court of Appeals for the Second, Sixth and Ninth Circuits.

In 2019-2024 Lawdragon named Mr. Kim as one of the 500 Leading Plaintiff Financial Lawyers. In 2023-2024 Mr. Kim was selected to *Super Lawyers*. Mr. Kim was recognized by Best Lawyers in The Best Lawyers of America 2024-2025.

**JACOB A. GOLDBERG – PARTNER**

Mr. Goldberg is a 1988 graduate of Columbia University. Mr. Goldberg received his J.D., *cum laude*, from the Temple University School of Law in 1992. For over 23 years, Mr. Goldberg has litigated complex cases at the highest levels, championing the rights of investors, employees and consumers. Mr. Goldberg has recovered over \$200 million for investors in securities class actions. In addition to serving in leadership roles in securities class actions, Mr. Goldberg has litigated many cases under state corporations laws, against faithless boards of directors both on behalf of shareholders, in the mergers and acquisitions context, and, derivatively, on behalf of corporations, to remedy harm to the corporation itself. Mr. Goldberg is admitted to practice law in the Commonwealth of Pennsylvania, New York, the United States Supreme Court, the United

States Court of Appeals for the Second, Third, Fourth and Sixth Circuits, and various United States District Courts across the country.

In 2019-2024 Lawdragon named Mr. Goldberg as one of the 500 Leading Plaintiff Financial Lawyers.

**JONATHAN A. SAIDEL – PARTNER**

Mr. Saidel has had a long and distinguished career in Pennsylvania politics, as well as in the roles of attorney, accountant and author. He served as Philadelphia city controller for four consecutive terms, each time earning reelection by a wide margin, and enacting financial reforms that have saved taxpayers upwards of \$500 million. Later, in 2010 he went on to campaign for lieutenant governor of Pennsylvania, where he was runner-up to Scott Conklin by only a few thousand votes out of almost 1 million cast. A Lifelong resident of Northeast Philadelphia, Mr. Saidel's tireless dedication to fiscal discipline reduced the city's tax burden and spurred economic development. Mr. Saidel also pushed for important business tax incentives and expanded minority and small business lending, all of which have revitalized the city, helping it prosper and come back from the brink of bankruptcy in the early 1990's to become one of the most vibrant cities on the East Coast.

Mr. Saidel's book, "Philadelphia: A New Urban Direction", is widely considered an essential guide for effective government and corporate governance and is required reading at many colleges and universities.

Mr. Saidel received his JD from the Widener University of Law and is a graduate of Temple University. He is also an adjunct lecturer at the University of Pennsylvania Fels Institute of Government, and Drexel University's MBA Program. In addition to being a Certified Public Account, Jonathan is a recipient of the National Association of Local Government Auditor's Knighton Award, the President's Council on Integrity and Efficiency Award for Excellence,

multiple special project awards from the National Association of Local Government Auditors, and the "Controller of the Year" award, a peer recognition presented by the Pennsylvania City Controllers Association.

**SARA FUKS – PARTNER**

Ms. Fuks graduated from Fordham University School of Law, *cum laude*, in February 2005, where she was a member of Fordham Law Review. She received her B.A. in Political Science, *magna cum laude*, from New York University in 2001. Ms. Fuks began her practice at Dewey Ballantine, LLP where she focused on general commercial litigation and then went on to prosecute numerous ERISA and securities class actions as an associate at Milberg LLP. Ms. Fuks is admitted to the bar of the State of New York and admitted to practice in the United States District Courts for the Southern District and Eastern District of New York, and the Eastern District of Michigan. Ms. Fuks was selected to *SuperLawyers* in 2021-2024 and *SuperLawyers* Rising Stars in 2017-2019.

**JONATHAN HORNE – PARTNER**

Mr. Horne is a 2009 graduate of New York University School of Law, where he received the Lederman/Milbank Law, Economics, and Business fellowship, and holds a B.A. in Economics & Philosophy from the University of Toronto. Mr. Horne began his practice at Kaye Scholer LLP. Mr. Horne specializes in securities litigation. He is admitted to practice in New York and the United States District Courts for the District of Colorado and the Southern and Eastern Districts of New York. Mr. Horne was named a Super Lawyer – Rising Star for the New York Metro Area every year since 2015.

**YU SHI – PARTNER**

Mr. Shi received his J.D. from Columbia Law School in 2011 and his B.A., *cum laude*, from Columbia University in 2008. In 2024, Lawdragon recognized Mr. Shi as one of the 500

Leading Plaintiffs Financial Lawyers. In 2022, Law360 named Mr. Shi as one of the nation's top securities attorneys under the age of 40. He has been selected to *Super Lawyers* each year since 2018. Mr. Shi began his career as a Special Assistant Corporation Counsel in the New York City Law Department's Economic Development Division. Mr. Shi joined The Rosen Law Firm in 2012 and focuses his practice on securities litigation. He is admitted to practice in the State of New York, the United States District Courts for the Eastern District of New York, Southern Districts of New York, and the District of Colorado, and the United States Court of Appeals for the Second Circuit.

**JONATHAN STERN – PARTNER**

Mr. Stern graduated from New York University School of Law in May of 2008, where he was a Development Editor of the Annual Survey of American Law. He received his B.A. in Philosophy with Honors from McGill University. Mr. Stern began his practice in the litigation department of Simpson Thacher & Bartlett LLP, and then went on to practice at the litigation boutique of Simon & Partners LLP, where he participated in a Federal trial. Mr. Stern is admitted to the bar of the State of New York and admitted to practice in the United States Southern and Eastern District Courts of New York and the United States Court of Appeals for the Second Circuit. for the First, Sixth, Seventh, Eighth and Ninth Circuits, and the United States Supreme Court.

**JING CHEN – PARTNER**

Ms. Chen received a Juris Doctor degree from Pace University School of Law in 2011, Juris Master degree from China University of Political Science and Law in Beijing, China and B.A. in English Literature and Linguistics from Shandong University in Jinan, China. She is admitted to practice in New York, New Jersey and China. Prior to joining The Rosen Law Firm, Ms. Chen practiced corporate law, commercial transactions and arbitration for over two years.

**BRIAN ALEXANDER – PARTNER**

Mr. Alexander graduated from Harvard Law School, *cum laude*, in 2008. He received a B.A. from Cornell University, *magna cum laude*, in 2003. Prior to joining the Rosen Law Firm, Mr. Alexander practiced complex commercial litigation at Boies Schiller Flexner LLP and other prominent law firms in New York. He also served as a law clerk to the Honorable Raymond J. Dearie of the United States District Court for the Eastern District of New York. He is admitted to practice in New York and in the United States District Courts for the Eastern and Southern Districts of New York. Mr. Alexander was recognized by Best Lawyers as Best Lawyers: Ones to Watch 2025.

**ROBIN BRONZAFI HOWALD – COUNSEL**

Ms. Howald is a graduate of Stanford Law School where she was a member of the Stanford Law Review. Ms. Howald earned her BA from Barnard College, *magna cum laude*. Ms. Howald joined the firm in 2021 and focuses her practice on securities litigation. For the last 15 years, Ms. Howald has prosecuted major securities litigations. She was one of the lead attorneys in cases that achieved settlements of \$250 million for injured investors, including *Schleicher v. Wendt*, 618 F.3d 679 (7<sup>th</sup> Cir. 2010) (\$41.5 million), *In re Mannkind Corp. Securities Litigation* (C.D. California) (\$23 million); *In re ECI Telecom Ltd. Securities Litigation* (Eastern District of Virginia) (\$21.75 million), *In re Gilat Satellite Networks, Ltd. Securities Litigation* (E.D.N.Y.) (\$20 million), *In re Musicmaker.com Securities Litigation*, 2001 WL 34062431 (C.D. Cal. 2001) (\$13.75 million), *In re Puda Coal Inc. Securities Litigation* (S.D.N.Y.) (\$8.6 million following reconsideration of grant of summary judgment), *Jenson v. Fiserv Trust Co.*, 256 F. App'x. 924 (9<sup>th</sup> Cir. 2007) (\$8.5 million recovered for victims of a Ponzi scheme). Ms. Howald is admitted to the bars of California, New York, the United States District Courts for the Eastern and Southern Districts of New York, the

Central, Eastern, and Northern Districts of California, the Eastern District of Michigan, and the United States Court of Appeals.

**GONEN HAKLAY – COUNSEL**

Mr. Haklay graduated from Stanford University School of Law in 1995. He received a B.A. in Political Science from The University of Massachusetts at Amherst in 1992. After several years as an associate at a large Philadelphia law firm, Mr. Haklay joined the Philadelphia District Attorney's office. As a prosecutor, he tried over 100 criminal jury cases and handled both capital and non-capital homicide cases. After 12 years as prosecutor, Mr. Haklay joined a prominent plaintiffs' firm where he tried over ten asbestos cases, recovering millions of dollars for his clients. As a young man, Mr. Haklay served as an infantryman in the Israel Defense Forces. Mr. Haklay is admitted to the bars of the Commonwealth of Pennsylvania, the State of New Jersey, the United States District Court for the Eastern District of Pennsylvania, and the United States Third Circuit Court of Appeals. Mr. Haklay was recognized by Best Lawyers as Best Lawyers: Ones to Watch 2025.

**DANIEL TYRE-KARP – COUNSEL**

Prior to joining The Rosen Law Firm in May 2018, Mr. Tyre-Karp was a senior associate in the securities litigation and corporate governance group at Weil, Gotshal & Manges, where he advised corporate and individual clients on a variety of high-stakes regulatory and litigation matters in state and federal courts. Mr. Tyre-Karp's extensive experience includes working on several of the largest recent shareholder class action litigations (*In re American International Group, Inc. 2008 Securities Litigation*, Docket No. 08-CV-4772 (S.D.N.Y.) and related opt-out actions; *In re El Paso Corporation Shareholder Litigation*, Docket No. 6949 (Del. Ch.)), participating in complex business and bankruptcy litigations (*In re Lehman Brothers Holdings, Inc., et al*, Docket No. 1:08-bk-13555 (Bankr. S.D.N.Y.)), and advising numerous clients facing

FINRA and SEC investigations. Mr. Tyre-Karp graduated with honors from Wesleyan University in 2003 and received his J.D. from New York University School of Law in 2009, where he served as Senior Notes Editor of the Journal of Legislation and Public Policy. He is admitted to practice in New York and the United States District Courts for the Southern and Eastern Districts of New York. Mr. Tyre-Karp was recognized by Best Lawyers as Best Lawyers: Ones to Watch 2025.

**ERICA STONE – COUNSEL**

Ms. Stone graduated from the Benjamin N. Cardozo School of Law in 2013. She received her B.A. in Political Science and Communications, *cum laude*, from the University of Pennsylvania in 2009. She is admitted to practice in New York, New Jersey, and the United States District Courts for the Southern District and Eastern District of New York, the District of New Jersey, the Eastern District of Wisconsin, and the Eastern District of Michigan. In 2024, Ms. Stone was selected to *Super Lawyers*. Ms. Stone was recognized by Best Lawyers as Best Lawyers: Ones to Watch 2025.

**JOSHUA BAKER – COUNSEL**

Mr. Baker graduated from the New York University School of Law in 2013. He received a B.A. from the University of Maryland in 2009. Prior to joining the Rosen Law Firm, Mr. Baker practiced complex commercial litigation for a New York firm. He is admitted to practice in New York, Massachusetts, and United States District Courts for the Eastern and Southern Districts of New York and the District of Massachusetts. Mr. Baker was recognized by Best Lawyers as Best Lawyers: Ones to Watch 2025.

**BRENT LAPOINTE – COUNSEL**

Mr. LaPointe received his J.D., *cum laude*, from the University of Michigan Law School in 2010, where he served as an Articles Editor on both the Michigan Journal of Law Reform and the Michigan Journal of Gender & Law. Mr. LaPointe received a B.B.A. in Accounting &

Information Systems and Political Science, *cum laude*, from the University of Massachusetts-Amherst in 2006. Mr. LaPointe focuses his practice on securities litigation. Mr. LaPointe is admitted to the bars of New York and Missouri and the United States District Courts for the Southern District and Eastern District of New York, Western District of Missouri, Eastern District of Michigan, District of Kansas, and the United States Court of Appeals for the Second Circuit and Eighth Circuit. Mr. LaPointe was recognized by Best Lawyers as Best Lawyers: Ones to Watch 2025.

**HENRY BLOXENHEIM – ATTORNEY**

Mr. Bloxenheim graduated from Columbia Law School in 2023. Mr. Bloxenheim received his B.A. in Political Science, *summa cum laude*, from Brooklyn College. Mr. Bloxenheim is admitted to practice in New York and in the United States District Courts for the Southern District and Eastern District of New York.

**CHRISTIE BUZZETTI – ATTORNEY**

Ms. Buzzetti graduated from Brooklyn Law School in 2022. She received her B.A. in Political Science from the University of California, Los Angeles in 2016. Ms. Buzzetti is admitted to practice in New York.

**MICHAEL COHEN – ATTORNEY**

Mr. Cohen focuses his practice on securities and shareholder derivative litigation. Prior to joining The Rosen Law Firm in 2021, Mr. Cohen was an associate in the litigation practice of Kramer Levin Naftalis & Frankel LLP, where he advised corporate and individual clients on a wide variety of litigation and regulatory matters in federal and state courts. He has also served as a law clerk to the Honorable Corinne Beckwith of the District of Columbia Court of Appeals. Mr. Cohen is admitted to practice in New York and the United States District Courts for the Eastern

and Southern Districts of New York. Mr. Cohen was recognized by Best Lawyers as Best Lawyers: Ones to Watch 2023-2025.

**YITZCHOK (IZZY) FISHBACH – ATTORNEY**

Mr. Fishbach received his J.D. from Vanderbilt University Law School in 2022, where he served as the Articles Editor of the Environmental Law and Policy Annual Review. He received his B.A. in Political Science from Binghamton University in 2019. Mr. Fishbach is admitted to practice in New York, Tennessee, and the United States District Courts for the Eastern and Southern Districts of New York.

**LUKE FOLEY – ATTORNEY**

Mr. Foley received his J.D. from the William and Mary Law School in 2022. He received his B.A. in History and Citizenship & Civic Engagement from Syracuse University in 2016. Prior to joining the Rosen Law Firm in September 2023, Mr. Foley was the Law Clerk to the Hon. Barbara Buono Stanton of the New Jersey Superior Court, Passaic County. Mr. Foley is admitted to practice in Maryland.

**RYAN HEDRICK – ATTORNEY**

Mr. Hedrick received his J.D. from the University of Chicago in 2019. He received his B.A. in Linguistics and Political Science, *summa cum laude*, from The Ohio State University in 2015. Mr. Hedrick joined the Rosen Law Firm in August 2019. Mr. Hedrick is admitted to practice in New York, New Jersey, the United States District Courts for the Eastern and Southern Districts of New York, the United States District Court for the District of New Jersey, and the United States District Court for the District of Colorado.

**HA SUNG (SCOTT) KIM – ATTORNEY**

Mr. Kim received his J.D. from the Columbia Law School in 2017. He received his B.A., *magna cum laude*, from Wheaton College in 2013. Mr. Kim joined the Rosen Law Firm in January 2020. Mr. Kim is admitted to practice in New York.

**LEAH HEIFETZ-LI – ATTORNEY**

Ms. Heifetz-Li is a 2009 graduate of Columbia Law School, and received a B.A. from the University of Pennsylvania. Ms. Heifetz-Li served as a Law Clerk to the Honorable Cynthia S. Kern, New York State Supreme Court, New York County. She has extensive experience in class action litigation, having previously practiced at a large class action firm representing shareholders in merger and acquisition litigation as well as shareholder derivative actions. Ms. Heifetz-Li has worked on case teams that secured significant financial recoveries for stockholders as well as corporate governance reforms in the Delaware Court of Chancery and other courts throughout the country.

**IAN McDOWELL – ATTORNEY**

Mr. McDowell graduated *cum laude* from the University of Richmond School of Law in 2022. He received his B.A. from James Madison University in 2016. Mr. McDowell is admitted to practice in Pennsylvania and Maryland as well as the United States District Court for the Eastern District of Pennsylvania.

**OLIVIA SIMKINS – ATTORNEY**

Ms. Simkins is a 2024 graduate of Tulane University School of Law. She earned her B.A. in Linguistics and English *cum laude* from Tulane University in 2017. Ms. Simkins is admitted to practice in Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

## **ERIC JUN BI – LAW CLERK**

Mr. Bi is a 2024 graduate of Cornell Law School. He earned his Bachelor of Laws from Yanching Institute of Technology in 2020. Mr. Bi is fluent in Mandarin.

## **II. RECENT ACCOMPLISHMENTS OF THE ROSEN LAW FIRM, P.A.**

- **Alibaba Group Holding Ltd.**, (S.D.N.Y.). Rosen Lead Counsel. **\$250 million.**
- **Fiat Chrysler Automobiles**, (S.D.N.Y.). Rosen Co-Lead Counsel. **\$110 million.**
- **Infinity Q Diversified Alpha Fund**, (N.Y. Supreme). Rosen Co-Lead Counsel. **\$48 million.**
- **Silver Wheaton Corp.**, (C.D. Cal.). Rosen Lead Counsel. **\$41.5 million.**
- **Vanguard Chester Funds** (E.D. Pa.). Rosen Lead Counsel. **\$40 million**, pending Court approval.
- **Omega Healthcare Investors, Inc.**, (S.D.N.Y.). Rosen Lead Counsel. **\$30.75 million.**
- **Magnachip Semiconductor Corp.**, (N.D. Cal.). Rosen Co-Lead Counsel. **\$29.7 million.**
- **Och-Ziff Capital Management Group LLC**, (S.D.N.Y.). Rosen Co-Lead Counsel. **\$28.75 million.**
- **Walter Investment Management**, (S.D. Fla.). Rosen Co-Lead Counsel. **\$24 million.**
- **Galena Biopharma, Inc.**, (D. Or.). Rosen Co-Lead Counsel. **\$20.165 million.**
- **El Pollo Loco Holdings, Inc.**, (C.D. Cal.). Rosen Co-Lead Counsel. **\$20 million.**
- **Tibet Pharmaceuticals, Inc.**, (D.N.J.). Rosen Lead Counsel. **\$14 million bankruptcy settlement. \$2.075 million** with auditor.
- **USA Technologies, Inc.**, (E.D. Pa.). Rosen Lead Counsel. **\$15.3 million.**
- **Zillow Group, Inc. Sec. Litig.**, (W.D. Wash.). Rosen Lead Counsel. **\$15 million.**
- **Silvercorp Metals, Inc.**, (S.D.N.Y.). Rosen Plaintiffs' Counsel. **\$14 million.**

- **Sandridge Energy, Inc.,** (W.D. Okla.). Rosen Co-Lead Counsel. **\$13.945 million.**
- **Astec Industries, Inc.,** (E.D. Tenn.). Rosen Lead Counsel. **\$13.7 million.**
- **Blue Apron Holdings, Inc.,** (E.D.N.Y.). Rosen Co-Lead Counsel. **\$13.25 million.**
- **Canopy Growth Corporation,** (D.N.J.). Rosen Co-Lead Counsel. **\$13 million.**
- **SeaWorld Entertainment Inc. (Shareholder Derivative)** (Del. Ch.). Rosen Co-Lead Counsel. **\$12.5 million.**
- **The RealReal, Inc.,** (N.D. Cal.). Rosen Lead Counsel. **\$11 million.**
- **Full Truck Alliance Co.** (E.D.N.Y.) and (NY. Sup.). Rosen Federal Lead Counsel. **\$10.25 million.**
- **Quest Energy Partners LP,** (W.D. Okla.). Rosen Lead Counsel. **\$10.1 million** all classes.
- **Prosper Marketplace, Inc.,** (Cal. Superior). Rosen Class Counsel. **\$10 million.**
- **PG&E Corp.,** (N.D. Cal.). Rosen Co-Lead Counsel. **\$10 million.**
- **Textainer Financial Servs. Corp.,** (Cal. Superior). Rosen Co-Lead Counsel. **\$10 million.**
- **comScore, Inc. (Shareholder Derivative),** Rosen Co-Lead Counsel. **\$10 million.**
- **Santander Consumer USA Holdings Inc.,** (N.D. Tex.). Rosen Co-Lead Counsel. **\$9.5 million.**
- **Uxin Limited,** (E.D.N.Y.). Rosen Lead Counsel. **\$9.5 million.**
- **Concordia International Corp.,** (S.D.N.Y.). Rosen Lead Counsel. **\$9.25 million.**
- **PPDAI Group Inc.,** (E.D.N.Y.). Rosen Lead Counsel. **\$9 million.**
- **Puda Coal,** (S.D.N.Y.). Rosen Co-Lead Counsel. **\$8.7 million.**
- **RINO International Corporation,** (C.D. Cal.). Rosen Lead Counsel. **\$8,685,000.**
- **Acer Therapeutics, Inc.,** (S.D.N.Y.). Rosen Lead Counsel. **\$8.35 million.**
- **Montage Technology Group Limited,** (N.D. Cal.). Rosen Lead Counsel. **\$7.25 million.**

- **AgFeed Industries**, (M.D. Tenn.). Rosen Lead Counsel. **\$7 million.**
- **Sundial Growers, Inc.**, (S.D.N.Y.). Rosen Co-Lead Counsel. **\$7 million.**
- **Akazoo S.A.**, (E.D.N.Y.). Rosen Co-Lead Counsel. **\$6.51 million.**
- **Global Brokerage, Inc. f/k/a FXCM, Inc. Sec. Litig.**, (S.D.N.Y.). Rosen Lead Counsel. **\$6.5 million.**
- **Aeterna Zentaris, Inc.**, (D. N.J.). Rosen Class Counsel. **\$6.5 million.**
- **Sunlands Technology Group**, (E.D.N.Y.). Rosen Lead Counsel. **\$6.2 million.**
- **Covia Holdings Corp.**, (N.D. Ohio). Rosen Lead Counsel. **\$6 million.**
- **FalconStor Software, Inc.**, (E.D.N.Y.). Rosen Lead Counsel. **\$5 million.**
- **Jumia Technologies AG**, (S.D.N.Y.). Rosen Lead Counsel. **\$5 million.**
- **Momo, Inc.**, (S.D.N.Y.). Rosen Lead Counsel. **\$5 million.**
- **SOS Limited**, (D.N.J.). Rosen Co-Lead Counsel. **\$5 million.**
- **Missfresh Limited**, (S.D.N.Y.). Rosen Co-Lead Counsel. **\$4.9039 million.**
- **State Street**, (D. Mass.). Rosen Lead Counsel. **\$4.9 million.**
- **Dada Nexus Limited**, (C.D. Cal.). Rosen Lead Counsel. **\$4.8 million**, pending Court approval.
- **Altice USA Inc.**, (E.D.N.Y.). Rosen Lead Counsel. **\$4.75 million.**
- **KIOR, Inc.**, (S.D. Tex.). Rosen Co-Lead Counsel. **\$4.5 million.**
- **Entropin, Inc.**, (C.D. Cal.). Rosen Lead Counsel. **\$4.5 million.**
- **Sonus Networks, Inc.**, (D. Mass). Rosen Co-Lead Counsel. **\$4.5 million.**
- **Uni-Pixel, Inc.**, (S.D. Tex.). Rosen Co-Lead Counsel. **\$4.5 million.**
- **China Expert Technology, Inc.**, (S.D.N.Y.). Rosen Lead Counsel. **\$4.2 million.**
- **IDreamSky Technology Limited**, (S.D.N.Y.). Rosen Co-Lead Counsel. **\$4.15 million.**

- **Universal Travel Group, Inc., (D.N.J.).** Rosen Lead Counsel. **\$4.075 million.**
- **Allegiant Travel Co., (D. Nev.).** Rosen Lead Counsel. **\$4 million.**
- **Zynerba Pharms., Inc., (E.D. Pa.).** Rosen Co-Lead Counsel. **\$4 million.**
- **Dapper Labs, Inc., (S.D.N.Y.).** Rosen Lead Counsel, **\$4 million.**
- **Liberty Oilfield Services, Inc., (D. Colo.).** Rosen Lead Counsel. **\$3.9 million.**
- **Caribou Biosciences, Inc., (N.D. Cal.).** Rosen Co-Lead Counsel. **\$3.9 million,** pending Court approval.
- **China Electric Motor, Inc., (C.D. Cal.).** Rosen Lead Counsel. **\$3,778,333.33.**
- **IsoRay, Inc., (E.D. Wash.).** Rosen Co-Lead Counsel. **\$3,537,500.**
- **Deer Consumer Products, Inc., (C.D. Cal.).** Rosen Lead Counsel. **\$3.55 million.**
- **SAExploration Holdings, Inc., (S.D. Tex.).** **\$3.55 million.**
- **L&L Energy, Inc., (S.D.N.Y.).** Rosen Lead Counsel. **\$3.5 million.**
- **Tarena International, Inc., N (E.D.N.Y.).** Rosen Lead Counsel. **\$3.5 million.**
- **Catalyst Pharmaceutical Partners, Inc., (S.D. Fla.).** Rosen Lead Counsel. **\$3.5 million.**
- **Sunlight Financial Holdings, Inc., (S.D.N.Y.).** Rosen Lead Counsel. **\$3.5 million,** pending Court approval.
- **Keyuan Petrochemicals, Inc. and Auditor, (S.D.N.Y.) & (D.N.J.).** Rosen Lead Counsel. **\$3.5 million.**
- **StockerYale, Inc., (D.N.H.).** Rosen Lead Counsel. **\$3.4 million.**
- **Industrial Enterprises of America, Inc., (S.D.N.Y.).** Rosen Co-Lead Counsel. **\$3.4 million.**
- **Ampio Pharmaceuticals, Inc., (C.D. Cal.).** Rosen Lead Counsel. **\$3.4 million.**
- **Textura Corporation, (N.D Ill.).** Rosen Lead Counsel. **\$3.3 million.**

- **Roka Bioscience, Inc.,** (D.N.J.). Rosen Lead Counsel. **\$3.275 million.**
- **Intrusion, Inc.,** No. 21-cv-307-SDJ (E.D. Tex.). Rosen Lead Counsel. **\$3.25 million.**
- **Wedbush Morgan Securities, Inc.,** (Cal. Superior). Co-Lead Counsel. **\$3.2 million.**
- **New Oriental Education & Technology Group Inc.,** (D.N.J.). Rosen Co-Lead Counsel. **\$3.15 million.**
- **TierOne Corporation,** (D. Neb.). Rosen Lead Counsel. **\$3.1 million.**
- **GDS Holdings Limited,** (C.D. Cal.). Rosen Lead Counsel. **\$3 million,** pending Court approval.
- **Hanmi Financial Corporation,** (C.D. Cal.). Rosen Lead Counsel. **\$3 million.**
- **Cadiz, Inc.,** (C.D. Cal.). Rosen Co-Lead Counsel. **\$3 million.**
- **Fat Brands, Inc.,** (C.D. Cal.). Rosen Lead Counsel. **\$3 million.**
- **China Finance Online Co. Limited,** (S.D.N.Y.). Rosen Lead Counsel. **\$3 million.**
- **Skilled Healthcare Group, Inc.,** (C.D. Cal.). Rosen Co-Lead Counsel. **\$3 million.**
- **Spectrum Pharms. Inc.,** (D. Nev.). Rosen Lead Counsel. **\$2.995 million.**
- **MiMedx Group, Inc.,** (N.D. Ga.). Rosen Lead Counsel. **\$2.979 million.**
- **Pegasus Communications Corp,** (E.D. Pa.). Rosen Lead Counsel. **\$2.95 million.**
- **Albany Molecular Research,** (E.D.N.Y.). Rosen Lead Counsel. **\$2.868 million.**
- **Lihua International, Inc.,** (S.D.N.Y.). Rosen Lead Counsel. **\$2.865 million.**
- **TVIA, Inc.,** (N.D. Cal.). Rosen Lead Counsel. **\$2.85 million.**
- **New Source Energy Partners LP,** (S.D.N.Y.). Rosen Lead Counsel. **\$2.85 million.**
- **Innocoll Holdings Public Ltd.,** (E.D. Pa.). Rosen Lead Counsel. **\$2.755 million.**
- **Natural Health Trends Corp., et al.,** (N.D. Tex.). Rosen Lead Counsel. **\$2.75 million.**
- **Sequans Communications,** (E.D.N.Y.). Rosen Co-Lead Counsel. **\$2.75 million.**

- **Akari Therapeutics PLC**, (S.D.N.Y.). Rosen Lead Counsel. **\$2.7 million.**
- **Electric Last Mile Solutions**, (D.N.J.). Rosen Lead Counsel. **\$2.7 million.**
- **Growlife, Inc.**, (C.D. Cal.). Rosen Lead Counsel. **\$2.7 million (cash and stock).**
- **Tangoe, Inc.**, (D. Conn.). Rosen Co-Lead Counsel. **\$2.55 million.**
- **Twitter, Inc.**, (Cal. Superior). Rosen Co-Lead Counsel. **\$2.5 million.**
- **Radiant Pharmaceuticals Corporation**, (C.D. Cal.). Rosen Lead Counsel. **\$2.5 million.**
- **Robert T. Harvey Securities Litigation**, (C.D. Cal.). Rosen Co-Lead Counsel. **\$2.485 million.**
- **China Education Alliance, Inc.**, (C.D. Cal.). Rosen Lead Counsel. **\$2.425 million.**
- **Oasmia Pharmaceuticals AB.**, (E.D.N.Y.). Rosen Co-Lead Counsel. **\$2.35 million.**
- **BioAmber, Inc.**, (E.D.N.Y.). Rosen Co-Lead Counsel. **\$2.25 million.**
- **DouYu International Holdings Ltd.**, (D.N.J.). Rosen Co-Lead Counsel. **\$2.25 million**, pending Court approval.
- **NetApp, Inc.**, (N.D. Cal.). Rosen Lead Counsel. **\$2.25 million.**
- **Akers Biosciences, Inc.**, (D.N.J.). Rosen Lead Counsel. **\$2.25 million.**
- **Kanzhun Limited**, (D.N.J.). Rosen Lead Counsel. **\$2.25 million.**
- **SkyPeople Fruit Juice**, (S.D.N.Y.). Rosen Lead Counsel. **\$2.2 million.**
- **Caesarstone Sdot-Yam Ltd.**, (S.D.N.Y.). Rosen Co-Lead Counsel. **\$2.2 million.**
- **RCI Hospitality Holdings Inc.**, (S.D. Tex.). Rosen Co-Lead Counsel. **\$2.2 million.**
- **Fuwei Films**, (S.D.N.Y.). Rosen Lead Counsel. **\$2.15 million.**
- **Gulf Resources, Inc.**, (C.D. Cal.). Rosen Lead Counsel. **\$2.125 million.**
- **PTC Inc.**, (D. Mass.). Rosen Lead Counsel. **\$2.1 million.**
- **DS Healthcare Group, Inc.**, (S.D. Fla.). Rosen Lead Counsel. **\$2.1 million.**

- **Indivior PLC**, (D.N.J.). Rosen Lead Counsel. **\$2 million.**
- **Orient Paper, Inc.**, (C.D. Cal.). Rosen Lead Counsel. **\$2 million.**
- **Mesoblast Limited**, (S.D.N.Y.). Rosen Lead Counsel. **\$2 million.**
- **GTT Communications, Inc.**, No. 21-CV-270-DOC-AS (C.D. Cal.). **\$2 million.**
- **iBio, Inc.**, (D. Del.). Rosen Lead Counsel. **\$1.875 million.**
- **CD Projekt SA**, No. CV-20-11627 (FMO)(RAOx) (C.D. Cal.). **\$1.85 million.**
- **Ignite Restaurant Group, Inc.**, (S.D. Tex.). Rosen Lead Counsel. **\$1.8 million.**
- **Electronic Game Card, Inc.**, (C.D. Cal.). Rosen Lead Counsel. **\$1.755 million.**
- **BMW AG**, (D.N.J.). Rosen Lead Counsel. **\$1.75 million.**
- **Natural Health Trends Corp.**, (C.D. Cal.). Rosen Co-Lead Counsel. **\$1.75 million.**
- **Corrrevio Pharma Corp.**, (S.D.N.Y.). Rosen Co-Lead Counsel. **\$1.75 million.**
- **Delstaff LLC (Merger Litigation)**, (Cal. Superior). **\$1.6425 million.**
- **Worldwide Energy & Manufacturing USA, Inc.**, (Cal. Superior). Rosen Lead Counsel. **\$1.615 million.**
- **Alliance MMA, Inc.**, (D.N.J.). Rosen Lead Counsel. **\$1.55 million.**
- **Lightinthebox Holding Co., Ltd.**, (S.D.N.Y.). Rosen Lead Counsel. **\$1.55 million.**
- **Nutracea, Inc.**, (D. Ariz.). Rosen Lead Counsel. **\$1.5 million.**
- **Kraton Corporation**, (S.D. Tex.). Rosen Lead Counsel. **\$1.5 million.**
- **RMG Networks Holding Corporation (Merger Litigation)**, (Del. Ch.). **\$1.5 million.**
- **BlueNRGY Group Ltd, f/k/a CBD Energy Ltd.**, (S.D. Tex.). Rosen Lead Counsel. **\$1.5 million.**
- **Ambow Education Holding Ltd.**, (C.D. Cal.). Rosen Lead Counsel. **\$1.5 million.**
- **Active Power, Inc.**, (W.D. Tex.). Rosen Lead Counsel. **\$1.5 million.**

- **Northfield Laboratories, Inc.,** (N.D. Ill.). Rosen Lead Counsel. **\$1.5 million.**
- **PartsBase.com, Inc.,** (S.D. Fla.). Rosen Lead Counsel. **\$1.5 million.**
- **China Natural Gas, Inc.,** (D. Del.). Rosen Lead Counsel. **\$1.5 million.**
- **FAB Universal Corp.,** (S.D.N.Y.). Rosen Co-Lead Counsel. **\$1.5 million.**
- **Sogou, Inc.,** (S.D.N.Y.). Rosen Co-Lead Counsel. **\$1.45 million.**
- **Code Rebel Corp.,** (S.D.N.Y.). Rosen Co-Lead Counsel. **\$1.415 million.**
- **Empyrean Bioscience,** (N.D. Ga.). Rosen Lead Counsel. **\$1.4 million.**
- **Shattuck Labs, Inc.,** (E.D.N.Y.). Rosen Lead Counsel. **\$1.4 million.**
- **Longeveron, Inc.,** (S.D. Fla.). Rosen Lead Counsel. **\$1.395 million.**
- **Agria, Inc.,** (D.N.J.). Rosen Lead Counsel. **\$1.3 million.**
- **Ateerian, Inc.,** (S.D.N.Y.). Rosen Lead Counsel. **\$1.3 million.**
- **CoCrystal Pharma, Inc.,** (D.N.J.). Rosen Lead Counsel. **\$1.265 million.**
- **Wins Financial Holdings, Inc.,** (C.D. Cal.). Rosen Lead Counsel. **\$1.26 million,** pending Court approval.
- **ERBA Diagnostics, Inc.,** (S.D. Fla.). Rosen Lead Counsel. **\$1.215 million.**
- **Yingli Green Energy Holding Co. Ltd.,** (C.D. Cal.). Rosen Lead Counsel. **\$1.2 million.**
- **Himax Technologies, Inc.,** (C.D. Cal.). Rosen Co-Lead Counsel. **\$1.2 million.**
- **Flight Safety Technologies, Inc.,** (D. Conn.). Rosen Lead Counsel. **\$1.2 million.**
- **M.H. Meyerson & Co.,** (D.N.J.). Rosen Lead Counsel. **\$1.2 million.**
- **Izea, Inc.,** (C.D. Cal.). Rosen Co-Lead Counsel. **\$1.2 million.**
- **India Globalization Capital, Inc.,** (D. Md.). Rosen Co-Lead Counsel. **\$1 million.**
- **National Lampoon, Inc.,** (C.D. Cal.). Rosen Lead Counsel. **\$1 million.**
- **Lentuo International, Inc.,** (C.D. Cal.). Rosen Lead Counsel. **\$1 million.**

- **Katanga Mining Limited**, (D.N.J.). Rosen Lead Counsel. **\$1 million.**
- **Busybox.com, Inc.**, (Cal. Superior). Rosen Co-Lead Counsel. **\$1 million.**

### **III. SECURITIES CLASS ACTIONS IN WHICH THE ROSEN LAW FIRM, P.A. IS CURRENTLY LEAD COUNSEL**

In re Maiden Holdings, Ltd. Securities Litigation, No. 19-CV-5296-RMB-JS (D.N.J.)

Rosen Co-Lead Counsel.

In re ChinaCast Education Corporation Sec. Litig., No. CV 12-4621- JFW (PLAx) (C.D.

Cal.). Rosen Co-Lead Counsel.

Kasillingam v. Tilray, Inc., No. 20-CV-3459 (PAC) (S.D.N.Y.). Rosen Lead Counsel.

In re NIO, Inc. Securities Litigation, No. 19-CV-1424 (NGG) (JRC) (E.D.N.Y.). Rosen Class Counsel.

Lavin v. Virgin Galactic Holdings Inc., No. 21-CV-3070 (ARR)(TAM) (E.D.N.Y.). Rosen Lead Counsel.

Handal v. Tenet Fintech Group, Inc., No. 21-cv-6461 (PKC)(RLM) (E.D.N.Y.). Rosen Lead Counsel.

Atery v. Astra Space, Inc., No. 22-cv-737 (NM)(MMH) (E.D.N.Y.). Rosen Co-Lead Counsel.

Hoang v. ContextLogic, Inc., No. 21-cv-3930-BLF (N.D. Cal.). Rosen Co-Lead Counsel.

Mallozzi v. Innovative Industrial Properties, Inc., No. 22-cv-2359-EP-JRA (D.N.J.). Rosen Lead Counsel.

Gru v. Axsome Therapeutics, Inc., No. 22-cv-3925 (AGS) (S.D.N.Y.). Rosen Co-Lead Counsel.

Farhar v. Ontrak, Inc., No. 21-CV-1987-FLA-A (C.D. Cal.). Rosen Lead Counsel.

In re Walmart Secs. Litig., No. 21-cv-55-CFC (D. Del.). Rosen Lead Counsel.

Sanchez v. Arrival SA, No. 220cv0172 (DG)(RLM) (E.D.N.Y.). Rosen Lead Counsel.

Winter v. Stronghold Digital Mining, Inc., No. 22-CV-3088 (RA). Rosen Lead Counsel.

In re VEON Ltd. Sec. Litig., No. 15-cv-8672 (ALC)(OTW) (S.D.N.Y.). Rosen Lead Counsel.

In re Volkswagen AG Sec. Litig., No. 22-cv-45-RDA-TCB (E.D. Va.). Rosen Lead Counsel.

In re DiDi Global Inc. Sec. Litig., No. 21-CV-5807 (LAK) (S.D.N.Y.). Rosen Lead Counsel.

Patterson v. TerraForm Labs Pte Ltd., No. 22-cv-3600-TLT (N.D. Cal.). Rosen Lead Counsel.

Diaz v. The Gap, Inc., No. 22-cv-7371 (DG)(RER) (E.D.N.Y.). Rosen Lead Counsel.

Armbruster v. Gaia, Inc., No. 22-CV-3267 (D. Colo.). Rosen Lead Counsel.

Pang v. Levitt (Core Scientific, Inc.), No. 22-CV-1191-LY (W.D. Tex.). Rosen Lead Counsel.

Goodman v. Wheels Up Experience, Inc., No. 23-cv-2900 (OEM)(VMS) (E.D.N.Y.). Rosen Lead Counsel.

Brennan v. Latch, Inc., No. 22-CV-7473 (JGK) (S.D.N.Y.). Rosen Lead Counsel.

In re Enovix Corp. Sec. Litig., No. 23-cv-71-SI (N.D. Cal.). Rosen Co-Lead Counsel.

Gambrill v. CS Disco, Inc., No. 23-cv-8270 (LAK)(SN) (S.D.N.Y.). Rosen Lead Counsel.

Lewandowski v. Tal Education Group, No. 23-cv-1769 (MEF) (JRA) (D.N.J.). Rosen Lead Counsel.

HRSA-ILA Funds v. adidas AG, No. 23-CV-629-IM (D. Or.). Rosen Lead Counsel.

Tan v. PacWest Bancorp., No. CV-23-1685 (JWH)(ADSx) (C.D. Cal.). Rosen Co-Lead Counsel.

Maschhoff v. Polished.com, No. 22-cv-6605 (NGG)(VMS) (E.D.N.Y.). Rosen Lead Counsel.

Donley v. Live Nation Entertainment, Inc., No. CV-23-6343 (KK)(ASx) (C.D. Cal.). Rosen Co-Lead Counsel.

Pelham v. VBIT Tech. Corp., No. 23-CV-162-CFC-SRF (D. Del.). Rosen Lead Counsel.

Sporn v. Brainstorm Cell Therapeutics, Inc., No. 23-cv-9630 (DEH) (S.D.N.Y.) Rosen Lead Counsel.

In re GigaCloud Tech. Sec. Litig., No. 23-cv-10645 (JMF) (S.D.N.Y.). Rosen Co-Lead Counsel.

Glantz v. James River Group Holdings Ltd., No. 23-cv-10000 (LJL). Rosen Lead Counsel.

Schelling v. Microvast Holdings, Inc., No. 23-cv-4565 (S.D. Tex.). Rosen Co-Lead Counsel.

Sigman v. Nuscale Power Corp., No. 23-cv-1689-IM (D. Or.). Rosen Lead Counsel.

Spitzer v. Flexon, No. 23-cv-8659-HDV (C.D. Cal.). Rosen Co-Lead Counsel.

Bender v. Vertex Energy, Inc., No. 23-cv-2145 (S.D. Tex.). Rosen Lead Counsel.

Hunter v. Blue Ridge Bankshares, Inc., No. 23-cv-8944 (DG)(JAM) (E.D.N.Y.). Rosen Lead Counsel.

Jaar v. Northern Genesis Acquisition Corp., No. 24-cv-2155 (JLR) (S.D.N.Y.). Rosen Lead Counsel.

Taylor v. The Chemours Company, No. 24-cv-361-RGA (D. Del.). Rosen Lead Counsel.

Nowakowski v. AXT, Inc., No. 24-cv-2778-MMC (N.D. Cal.). Rosen Lead Counsel.

Dorin v. Exscientia PLC, No. 24-cv-5692-RMD-AMD (D.N.J.). Rosen Lead Counsel.

Pujo v. EHang Holdings Limited, No. 23-CV-10165-FLA (C.D. Cal.). Rosen Lead Counsel.

In re Intel Corp. Sec. Litig., No. 24-cv-2683-TLT (N.D. Cal.). Rosen Co-Lead Counsel.

In re Altimune, Inc. Sec. Litig., No. 24-cv-1315-ABA (D. Md.). Rosen Co-Lead  
Counsel.

Yarborough v. Ardelyx, Inc., No. 24-cv-12119-LTS (D. Mass.). Rosen Lead Counsel.

# EXHIBIT D

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

IN RE ZUORA, INC. DERIVATIVE  
LITIGATION

This Document Relates To:

ALL ACTIONS.

Lead Case No. 3:19-cv-05701-SI  
(Consolidated with Case No. 3:19-cv-05702-SI)

FINAL ORDER AND JUDGMENT

1 This matter came before the Court for hearing pursuant to the Preliminary Approval Order  
2 of this Court, dated July 14, 2023 (“Order”), on the motion of the parties for approval of the  
3 proposed settlement (“Settlement”) set forth in the Stipulation and Agreement of Settlement dated  
4 May 9, 2023 (“Stipulation”).

5 The Court has reviewed and considered all documents, evidence, objections (if any), and  
6 arguments presented in support of or against the Settlement. Being fully advised of the premises  
7 and finding that good cause exists, the Court enters this Judgment.

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

9  
10 1. This Order and Final Judgment incorporates by reference the definitions in the  
11 Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation,  
12 unless otherwise set forth herein.

13  
14 2. This Court has jurisdiction over the subject matter of this case, including all matters  
15 necessary to effectuate the Settlement, and over all Settling Parties.

16 3. Based on evidence submitted, the Court finds that notice of the Settlement was  
17 published and disseminated in accordance with this Court’s Preliminary Approval Order. This  
18 Court further finds that the forms and contents of the Notice and Summary Notice, as previously  
19 preliminary approved by the Court, complied with the requirements of Federal Rule of Civil  
20 Procedure 23.1, satisfied the requirements of due process of the United States Constitution, and  
21 constituted due and sufficient notice of the matters set forth therein.

22  
23 4. The Court finds that the terms of the Stipulation and Settlement are fair, reasonable,  
24 and adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and  
25 Settlement in all respects and orders the Settling Parties to perform its terms to the extent the Settling  
26 Parties have not already done so.

1           5. Pursuant to entry of this Judgment, this California Consolidated Action and all claims  
2 contained therein against Defendants, as well as all of the Released Claims against each of the  
3 Defendants and their Related Persons, are hereby dismissed with prejudice. As among the Plaintiffs  
4 and Defendants, the parties are to bear their own costs, except as otherwise provided in the  
5 Stipulation.  
6

7           6. Upon the Effective Date, Zuora, Inc. (“Zuora”), Plaintiffs (on behalf of themselves  
8 and derivatively on behalf of Zuora), and all other Releasing Persons (derivatively on behalf of  
9 Zuora) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and  
10 forever released, relinquished, and discharged the Released Persons from the Released Claims. The  
11 Releasing Persons shall be deemed to have, and by operation of this Judgment shall have,  
12 covenanted not to sue any Released Person with respect to any Released Claims, and shall be  
13 permanently barred and enjoined from initiating, instituting, commencing, maintaining, or  
14 prosecuting any of the Released Claims against any of the Released Persons. Upon the Effective  
15 Date, the Releasing Persons shall be deemed to have waived and relinquished, to the fullest extent  
16 permitted by law, the provisions, rights, and benefits of any state, federal, or foreign law, or principle  
17 of common law, which may have the effect of limiting the foregoing release. The foregoing release  
18 shall include a release of Unknown Claims. Nothing herein shall in any way impair or restrict the  
19 rights of any Settling Parties to enforce the terms of the Stipulation or the Judgment.  
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22           7. Upon the Effective Date, the Released Persons shall be deemed to have, and by  
23 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and  
24 discharged the Releasing Persons from all claims, sanctions, actions, liabilities, or damages arising  
25 out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or  
26 resolution of the Released Claims. The foregoing release shall include a release of Unknown  
27  
28

1 Claims. Nothing herein shall in any way impair or restrict the rights of any Settling Parties to  
2 enforce the terms of the Stipulation or the Judgment.

3 8. Nothing in the Stipulation constitutes or reflects a waiver or release of any rights or  
4 claims of Defendants and/or Zuora against their insurers, or their insurers' subsidiaries,  
5 predecessors, successors, assigns, affiliates, or representatives, including, but not limited to, any  
6 rights or claims by the Defendants under any directors' and officers' liability insurance or other  
7 applicable insurance coverage maintained by the Company. Nothing in the Stipulation constitutes  
8 or reflects a waiver or release of any rights or claims of the Defendants relating in any way to  
9 indemnification or advancement of attorneys' fees relating to the Action or the Released Claims,  
10 whether under any written indemnification or advancement agreement, or under the Company's  
11 charter, by-laws or operating agreement, or under applicable law.  
12

13 9. During the course of the Litigation, all parties and their respective counsel at all times  
14 complied with the requirements of Federal Rule of Civil Procedure 11, and all other similar rules,  
15 laws, or statutes.  
16

17 10. The Court hereby approves the Fee and Expense Amount and Service Awards and  
18 finds that such awards are fair and reasonable, as follows: \$2,000,000 in attorneys' fees and  
19 expenses and Service Awards of \$2,000 to each of eight plaintiffs, totaling \$16,000, to be paid from  
20 the Fee and Expense Amount.  
21

22 11. Neither the Stipulation (including any Exhibits attached thereto) nor the Settlement,  
23 nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the  
24 Settlement: (a) is or may be deemed to be, or may be offered, attempted to be offered or used in any  
25 way by the Settling Parties as a presumption, a concession or an admission of, or evidence of, any  
26 fault, wrongdoing or liability of the Settling Parties or of the validity of any Released Claims; or (b)  
27 is intended by the Settling Parties to be offered or received as evidence or used by any other person  
28


1 in any other actions or proceedings, whether civil, criminal or administrative. The Released Persons  
2 may file the Stipulation and/or the Judgment in any action that may be brought against them in order  
3 to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full  
4 faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other  
5 theory of claim preclusion or issue preclusion or similar defense or counterclaim, and any of the  
6 Settling Parties may file the Stipulation and documents executed pursuant and in furtherance thereto  
7 in any action to enforce the Settlement.  
8

9 12. Without affecting the finality of this Judgment in any way, this Court hereby retains  
10 continuing jurisdiction with respect to implementation and enforcement of the terms of the  
11 Stipulation, except as otherwise provided in the Stipulation.  
12

13 13. This Final Order and Judgment is a final, appealable judgment and should be entered  
14 forthwith by the Clerk in accordance with Federal Rule of Civil Procedure 58 and all other similar  
15 laws.  
16

17 IT IS SO ORDERED.

18 DATED: September 18, 2023

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HONORABLE SUSAN ILLSTON

# EXHIBIT E

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

IN RE ZUORA, INC. DERIVATIVE  
LITIGATION

Lead Case No. 3:19-cv-05701-SI  
(Consolidated with Case No. 3:19-cv-05702-SI)

This Document Relates To:

ALL ACTIONS.

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement, dated May 9, 2023 (the “Stipulation”), is made and entered into by and among the following Settling Parties (as defined herein), each by and through their respective counsel: (1) Andrew Lichter (“Lichter”) and Keith Beaven (“Beaven”), plaintiffs in the above-captioned consolidated shareholder derivative action captioned *In re Zuora, Inc. Derivative Litigation*, Case No.: 3:19-cv-05701-SI (N.D. Cal.) (the “California Consolidated Action”); (2) Theresa DeRycke Sbarra (“Sbarra”),<sup>1</sup> plaintiff in the shareholder derivative action captioned *DeRycke v. Tzuo, et al.*, Docket No. 3:22-cv-2775-SI (N.D. Cal.) (the “Demand Made Action”); (3) Ahtesham Ahmed (“Ahmed”) and Kenneth Schuster (“Schuster”), plaintiffs in the consolidated shareholder derivative action pending in the United States District Court for the District of Delaware (the “Delaware Federal Court”), captioned *In re Zuora, Inc. Derivative Litigation*, Case No. 20-cv-00714-CFC (D. Del.) (the “Federal Delaware Action”); (4) Aleta Thompson (“Thompson”) and Matthew Harney (“Harney”), plaintiffs in the consolidated shareholder derivative action pending in the Delaware Court of Chancery (the “Chancery Court”) captioned *In re Zuora, Inc. Stockholder Derivative Litigation*, Case No. 2021-0147-SG (Del. Ch.) (the “State Delaware Action”, and together with the California Consolidated Action, the Demand Made Action, and the Federal Delaware Action, the “Litigation”); (5) Janet Kernan (“Kernan”), a Zuora, Inc. (“Zuora” or the “Company”) stockholder who issued an inspection demand to Zuora pursuant to 8 *Del. C.* § 220 (“Section 220”); (6) Individual Defendants Marc Diouane (“Diouane”), Peter Fenton, Kenneth A. Goldman, Timothy Haley, Jason Pressman, Tyler Sloat, Tien Tzuo (“Tzuo”), Michelangelo Volpi, Magdalena Yesil, Omar Abbosh, and Sarah Bond; and (7) nominal defendant Zuora, (together with the Individual Defendants and Plaintiffs,<sup>2</sup> the “Settling Parties”).

This Stipulation, subject to the approval of the U.S. District Court for the Northern District of California (the “Northern District of California” or the “Court”), before which both the California

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<sup>1</sup> In January of 2023, Plaintiff Theresa DeRycke changed her name to Theresa Sbarra.

<sup>2</sup> “Plaintiffs” collectively refers to Lichter, Beaven, Sbarra, Ahmed, Schuster, Thompson, Harney, and Kernan.

1 out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or  
2 resolution of the Released Claims. The foregoing release shall include a release of Unknown  
3 Claims.

4 4.3 Notwithstanding § V, ¶¶ 4.1 through 4.2 above, nothing in the Stipulation or the  
5 Judgment shall provide a release of any claims to enforce this Stipulation, the Settlement, or the  
6 Judgment or bar any action by any Settling Party to enforce the terms of the Stipulation, the  
7 Settlement, or the Judgment. In addition, nothing in § V, ¶¶ 4.1 through 4.2 above is intended to  
8 release any rights to indemnification, insurance coverage, or advancement of expenses that any  
9 Released Person has or may have under any insurance policy, contract, bylaw, or charter provision,  
10 or under Delaware law, including, but not limited to, any rights any Released Person has or may  
11 have related to any pending or threatened civil or government proceedings.

12 **5. Separately Negotiated Fee and Expense Amount and Service Awards**

13 5.1 After reaching agreement in principle on the substantive consideration for the  
14 Settlement, the Parties commenced good faith, arm's-length negotiations concerning a fair and  
15 reasonable amount of attorneys' fees and expenses to be paid to Plaintiffs' Counsel, overseen and  
16 assisted by the Mediator. Pursuant to a formal mediator's proposal issued by the Mediator and  
17 accepted by all parties, and in recognition of the substantial benefits provided to Zuora and Current  
18 Zuora Shareholders as a result of the Settlement, Defendants' D&O insurers have agreed to pay to  
19 Plaintiffs' Counsel an award of attorneys' fees and expenses in the total amount of two million  
20 dollars (\$2,000,000.00) (the "Fee and Expense Amount"), subject to approval by the Court. The  
21 Settling Parties mutually agree that the Fee and Expense Amount is fair and reasonable in light of  
22 the substantial benefits conferred upon Zuora and Current Zuora Shareholders by the Settlement.

23 5.2 The Fee and Expense Amount shall be transferred to a trust account (the "Trust  
24 Account") held by The Brown Law Firm, P.C. ("Brown Law"), as receiving agent for Plaintiffs'  
25 Counsel within the later of thirty (30) calendar days after (a) entry of the Preliminary Approval  
26 Order by the Court or (b) receipt by Defendants' Counsel of the appropriate payment instructions  
27 and a Form W-9. Defendants and Defendants' Counsel shall have no responsibility for, nor bear  
28 any risk or liability with respect to, the Trust Account, its operation, and any taxes or expenses

1 incurred in connection with the Trust Account. Brown Law shall be solely responsible for any  
2 administrative costs associated with the Trust Account as well as the filing of all informational and  
3 other tax returns with the Internal Revenue Service, or any other state or local taxing authority, as  
4 may be necessary or appropriate.

5       5.3 The Fee and Expense Amount shall remain in the Trust Account until the entry of the  
6 Judgment by the Court finally approving the Settlement, at which time the Fee and Expense Amount  
7 shall be immediately releasable to Plaintiffs' Counsel. Should the Court order the payment of  
8 attorneys' fees and expenses in an amount less than the agreed Fee and Expense Amount, then only  
9 the Court-approved amount, plus interest earned thereon, shall be released to Plaintiffs' Counsel  
10 from the Trust Account, and all remaining amounts shall be returned to Zuora within fifteen (15)  
11 calendar days of the entry of the Judgment.

12       5.4 Payment of the Fee and Expense Amount shall constitute final and complete payment  
13 for all of Plaintiffs' Counsel's attorneys' fees and expenses in connection with the Litigation.  
14 Plaintiffs' Counsel shall allocate the Fee and Expense Amount among themselves. Plaintiffs'  
15 Counsel agree that any disputes regarding the allocation of the Fee and Expense Amount among  
16 them shall be presented to and be mediated by the Mediator, and if mediation is unsuccessful,  
17 decided on a final, binding, non-appealable basis by the Mediator, on the terms and subject to the  
18 processes and procedures set forth by the Mediator in his sole discretion. The Mediator's fees and  
19 costs for any such mediation and/or arbitration shall be borne solely by Plaintiffs' Counsel and split  
20 evenly among Plaintiffs' Counsel. Defendants and Defendants' Counsel shall have no responsibility  
21 for the allocation or distribution of the Fee and Expense Amount amongst Plaintiffs' Counsel.  
22 Defendants shall have no obligation to make any payment to Plaintiffs' Counsel other than the  
23 payment to the Trust Account by Zuora's insurers as provided in § V, ¶¶ 5.1-5.2 herein.

24       5.5 If for any reason, any condition in § V, ¶ 6.1 is not met, if the Stipulation does not  
25 become effective or is in any way canceled or terminated, or if the Judgment does not become Final  
26 (individually or collectively, a "Triggering Event"), each of Plaintiffs' Counsel (and each of their  
27 successors) shall be obligated to repay to Zuora, within fifteen (15) calendar days of the Triggering  
28 Event, the amount of the Fee and Expense Amount, or part thereof, that they received respectively.

1 To the extent all or any remaining portion of the Fee and Expense Amount remains in the Trust  
2 Account at the time of a Triggering Event, then Brown Law will return all (or any remaining portion)  
3 of the Fee and Expense Amount to Zuora (with the interest accrued thereon) within fifteen (15)  
4 calendar days of the Triggering Event.

5 5.6 The Trust Account, Brown Law (as receiving agent), and each of Plaintiffs' Counsel  
6 who receives any portion of the Fee and Expense Amount shall be subject to the Court's jurisdiction  
7 for the purposes of enforcing Section V, paragraph 5.5 herein or any other of the provisions herein  
8 related to the Fee and Expense Amount (except as otherwise provided above).

9 5.7 Except as otherwise provided herein, each of the Settling Parties shall bear his, her,  
10 or its own costs and attorneys' fees.

11 5.8 In light of the benefits they have helped to create for all Current Zuora Shareholders,  
12 each of the Plaintiffs may apply for Court-approved service awards in the amount of as much as two  
13 thousand dollars (\$2,000.00) each (the "Service Awards"). The Service Awards shall be funded  
14 exclusively from the Fee and Expense Amount. Defendants shall take no position on whether the  
15 Court should approve the Service Awards, and Defendants shall have no obligation to pay any such  
16 Service Award.

17 **6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

18 6.1 The Effective Date of the Stipulation shall be conditioned upon the occurrence of all  
19 of the following events:

20 (i) Court approval of the Settlement and approval of the content and method of  
21 providing notice of the proposed Settlement to Current Zuora Shareholders, and the subsequent  
22 dissemination of the Notice to Current Zuora Shareholders;

23 (ii) Court entry of the Judgment, in all material respects in the form set forth as  
24 Exhibit E annexed hereto, approving the Settlement and dismissing the California Consolidated  
25 Action with prejudice, without awarding costs to any party, except as provided herein;

26 (iii) the payment of the Fee and Expense Amount in accordance with  
27 § V, ¶¶ 5.1-5.2 hereof;

28 (iv) the passing of the date upon which the Judgment becomes Final; and

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Stipulation to be  
executed, by their duly authorized attorneys, dated as of May 9, 2023.

**WILMER CUTLER PICKERING HALE AND DORR LLP**

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*Counsel for Stockholder Janet Kernan  
(\$220 Document Demand)*

# EXHIBIT A

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

IN RE ZUORA, INC. DERIVATIVE  
LITIGATION

This Document Relates To:

ALL ACTIONS.

Lead Case No. 3:19-cv-05701-SI  
(Consolidated with Case No. 3:19-cv-05702-SI)

**EXHIBIT A – CORPORATE GOVERNANCE  
MEASURES**

- 1 • **Chief Compliance Officer:** Zuora shall formally designate a Chief Compliance Officer  
2 (“CCO”) with responsibility for overseeing compliance at Zuora, including, but not limited  
3 to the oversight and administration of the Company’s compliance framework and corporate  
4 governance policies. The CCO role may be held either by an existing Zuora employee or a  
5 newly appointed officer.
  - 6 ○ The CCO, or his or her designee, will provide a formal report to the Audit Committee  
7 at least once annually and will report promptly to that Committee any significant  
8 compliance and ethics issues or concerns, including but not limited to any significant  
9 allegations of financial fraud or disclosure and/or reporting violations.
  - 10 ○ The CCO, or his or her designee, shall attend Disclosure Committee meetings.  
11 Moreover, the CCO shall work with the full Board, and the other Board committees,  
12 as necessary to facilitate the Board’s oversight responsibilities regarding Zuora’s  
13 compliance program.
  - 14 ○ The CCO, or his or her designee, shall manage and oversee Zuora’s ethics and  
15 compliance program and help implement procedures for monitoring and evaluating  
16 the program’s performance.
  - 17 ○ The CCO, or his or her designee, shall review Zuora’s draft quarterly and annual  
18 reports to be filed with the SEC on Forms 10-Q and 10-K and drafts of earnings press  
19 releases or other earnings materials, and if requested, confer with the Audit  
20 Committee or management regarding the contents of such disclosures.
  - 21 ○ The CCO, or his or her designee, shall oversee employee training in risk assessment  
22 and compliance.
  - 23 ○ The CCO shall be responsible for monitoring compliance with Zuora’s Global Code  
24 of Business Conduct and Ethics (the “Code of Conduct”). In the event that a violation  
25 of the Code of Conduct is sufficiently material to trigger a disclosure obligation, the  
26 CCO will report the violation to the Audit Committee.
- 27 • **Disclosure Committee:** Zuora will agree to amend its Disclosure Committee Charter to  
28 reflect the following:
  - A member of the Disclosure Committee will report to the Audit Committee at least  
four (4) times per year regarding the Company’s risk factors, including, as warranted,  
risk factors concerning privacy, technology, and cybersecurity.
  - Such meetings will be held in connection with the preparation and filing of the  
Company’s quarterly and annual reports to be filed with the SEC on Forms 10-Q and  
10-K.
  - The “risk factors concerning privacy, technology, and cybersecurity” shall include, as  
warranted, major information systems, key technological initiatives and the design,  
development, implementation, and maintenance of Zuora’s fundamental products,  
including the Company’s primary software-as-a-service (“SaaS”) offerings.

- 1 • The Disclosure Committee shall review earnings call transcripts in advance of the Company's  
2 Form 10-Q or 10-K filings, and report to the Audit Committee the need for any potential  
3 public disclosures and/or remedial actions as warranted.
- 4 • **Meetings of the Independent Directors:** The Independent Directors of the Zuora Board will  
5 have no less than three (3) meetings each year, either in a separate meeting or in an executive  
6 session of a regularly scheduled Board meeting, outside the presence of any Company  
7 employee(s). During such meetings, the Independent Directors shall review and discuss  
8 issues of immediate concern to the Company or the Board as well as topics such as  
9 management development, business plans and prospects, and other issues deemed relevant  
10 by the Independent Directors.
- 11 • **Board Attendance at Shareholder Meetings:** Absent extraordinary circumstances, Zuora  
12 will agree that the Chairman of the Board or the Lead Independent Director, or a designee of  
13 the Chairman or the Lead Independent Director if neither the Chairman or the Lead  
14 Independent Director are available, will attend shareholder meetings, and if such meetings  
15 are held in person, shall attend in person.
- 16 • **Size of the Board:** Zuora has enlarged its Board to include two (2) new, independent directors  
17 (Laura Clayton McDonnell and Amy Guggenheim Shenkan) since and in response to the  
18 Derivative Matters. Zuora acknowledges and agrees that the Derivative Matters were a  
19 precipitating, material, and substantial cause underlying any subsequent modifications made  
20 to its Board composition and structure in the period between (1) the commencement of any  
21 of the Derivative Matters and (2) an agreement to resolve the Derivative Matters.
- 22 • **Minimum Percentage of Independent Board Members:** Zuora will agree that its Board  
23 will continuously be composed of at least 66% Board members that meet the independence  
24 standards of the NASDAQ and/or NYSE, absent extraordinary circumstances.
- 25 • **Director Education:** Zuora will agree to encourage its directors to annually participate in  
26 continuing education programs focused on the Company's business and industry, committee  
27 roles and responsibilities, and legal and ethical responsibilities of directors, including, but not  
28 limited to, rules and regulations regarding public disclosures, Generally Accepted Accounting  
Principles ("GAAP"), the Sarbanes-Oxley Act of 2002, standards governing internal controls  
over financial reporting, and reporting requirements for public-traded corporations; such  
educational opportunities shall include, but not be limited to, offering training courses from  
the National Association of Corporate Directors. All new Board members will be encouraged  
to attend a similar program(s) within six (6) months of their election or appointment to the  
Board.
- **Establishment of Anonymous Reporting Hotline:** Zuora will continue to maintain a  
confidential Reporting Hotline, which will be available 24/7 to allow individuals to report  
situations of suspected wrongdoing by the Company, its employees, or directors that may  
require investigation. The Reporting Hotline shall be maintained by an independent third-  
party, which will relay the report to the appropriate individuals and/or departments at the  
Company.

- 1 • **Chief Technology Officer:** Zuora shall create the new executive-level position of Chief  
2 Technology Officer (“CTO”). The CTO role may be held either by an existing Zuora  
3 employee or a newly appointed officer. The CTO shall, *inter alia*:
  - 4 ○ Monitor Zuora’s technology infrastructure generally;
  - 5 ○ Remain informed and aware of new and existing technologies;
  - 6 ○ Monitor the Company’s short- and long-term technology projects;
  - 7 ○ Assist management and the Board in evaluating technology-related capital investment  
8 decisions; and
  - 9 ○ Zuora’s CTO, or his or her designee, will report annually to the Board on Zuora’s  
10 technology infrastructure and related technology issues or developments. Risks  
11 related to such matters will be considered, as warranted, for disclosure in Zuora’s  
12 Form 10-Q or 10-K filings.
- 13 • **Audit Committee:**
  - 14 ○ The Audit Committee shall, in carrying out its duties, confer at least five (5) times  
15 annually with the Company’s management, including a member of the Disclosure  
16 Committee, CCO, the internal auditor, and the independent auditor.
  - 17 ○ A member of the Audit Committee shall confer with external auditors at least four (4)  
18 times annually, including before the filing of the Company’s annual and quarterly  
19 reports with the SEC.
  - 20 ○ The Audit Committee, along with the CCO, shall be responsible for reviewing the  
21 Company’s Form 10-K for the purpose of ensuring proper disclosure of risks and risk  
22 factors. In the event that such review reveals a potential false statement or omission  
23 of material fact in the periodic public report, the Audit Committee will report the  
24 suspected deficiency to management (and, as warranted, to the Board) to enable  
25 proper disclosure in the periodic report.
- 26 • **Strategic Update:** On no less than an annual basis, management shall report to the Board, as  
27 warranted, on:
  - 28 ○ The status of any material acquisition, sale, spin-off, or investment.
  - The status of the implementation of the Company’s strategic plan(s) and related  
initiatives.
  - Corporate development opportunities, including as they relate to new software, other  
products, and/or business opportunities.
  - Potential strategic investments.
  - Critical strategic issues facing the Company.

- The Board shall evaluate and determine, as warranted, whether and what action, if any, is necessary to address risks or issues raised in the annual reports received from management, and any remedial actions recommended and/or taken. The Board's consideration of such matters shall be documented in the Board's minutes.

# EXHIBIT F

The Honorable Marsha J. Pechman



10-CV-00564-REQ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re CELL THERAPEUTICS, INC.,  
DERIVATIVE LITIGATION

Master Docket No. C 10-564 MJP

This Document Relates To:

ALL ACTIONS

**[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL**

[PROPOSED] FINAL JUDGMENT AND ORDER  
OF DISMISSAL  
Master Docket No. C 10-564 MJP

**ROBBINS UMEDA LLP**  
600 B Street, Suite 1900  
San Diego, CA 92101  
Tel: (619) 525-3990 • Fax: (619) 525-3991

1 This matter came before the Court for hearing pursuant to the Order Preliminarily  
2 Approving Settlement and Providing for Notice of this Court, dated December 26, 2012  
3 ("Preliminary Approval Order"), on the application of the Settling Parties for approval of the  
4 Settlement set forth in the Stipulation of Settlement dated November 6, 2012 (the "Stipulation").  
5 Due and adequate notice having been provided to Current CTI Shareholders as required in the  
6 Preliminary Approval Order, and the Court having considered all papers filed and proceedings  
7 had herein and otherwise being fully informed in the premises and good cause appearing  
8 therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

9 1. This Judgment incorporates by reference the definitions in the Stipulation, and all  
10 capitalized terms used herein shall have the same meanings as set forth in the Stipulation.

11 2. This Court has jurisdiction over the subject matter of the Action, including all  
12 matters necessary to effectuate the Settlement.

13 3. The Court finds that the Settlement provides substantial benefits to CTI and is  
14 fair, reasonable, and adequate as to each of the Settling Parties, and hereby finally approves the  
15 Settlement in all respects. The Court orders the Settling Parties to perform the Settlement's terms  
16 to the extent the Settling Parties have not already done so.

17 4. The Action and all claims contained therein, as well as all of the Released Claims,  
18 are dismissed with prejudice against each and all Released Persons. As between Plaintiffs, CTI,  
19 and the Individual Defendants, the Settling Parties are to bear their own costs, except as  
20 otherwise provided in the Stipulation and this Judgment.

21 5. Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on  
22 behalf of CTI); CTI, its predecessors, successors, subsidiaries, affiliates, divisions, and assigns;  
23 and each of CTI's shareholders (solely in their capacity as CTI shareholders) shall be deemed to  
24 have, and by operation of the Judgment shall have, fully, finally, and forever released,  
25 relinquished, and discharged the Released Claims against the Released Persons and any and all  
26 claims (including Unknown Claims) arising out of, relating to, or in connection with the defense,

1 settlement, or resolution of the Action against the Released Persons, provided that nothing herein  
2 shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the  
3 Stipulation or the Judgment.

4 6. Upon the Effective Date, each of the Released Persons shall be deemed to have,  
5 and by operation of the Judgment shall have, fully, finally, and forever released, relinquished,  
6 and discharged each and all of the Plaintiffs, Plaintiffs' Counsel, CTI, the Related Persons, and  
7 all CTI shareholders (solely in their capacity as CTI shareholders) from all claims (including  
8 Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution,  
9 assertion, settlement, or resolution of the Action or the Released Claims. Nothing herein shall in  
10 any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation  
11 or Judgment.

12 7. The Court finds that the Summary Notice of Pendency and Proposed Settlement  
13 of Action published in *Investor's Business Daily*, and the Notice of Pendency and Proposed  
14 Settlement of Action posted on the website of CTI and filed with the U.S. Securities and  
15 Exchange Commission by CTI in a Form 8-K, provided the best notice practicable under the  
16 circumstances of these proceedings and of the matters set forth therein, including the Settlement  
17 set forth in the Stipulation, to all Persons entitled to such notice, and said notices fully satisfied  
18 the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and the requirements of  
19 due process.

20 8. The Court finds that during the course of the Action, the Settling Parties and their  
21 counsel at all times complied with Rule 11 of the Federal Rules of Civil Procedure and all other  
22 similar rules and law.

23 9. The Court has considered the Fee and Expense Application and finds that Co-  
24 Lead Counsel for Plaintiffs are entitled to \$ 1.3 million in attorneys' fees and  
25 \$ 58,195.07 in reimbursement of expenses.

1           10. The Court hereby approves the Incentive Award of \$1,500 for plaintiff Joseph  
2 Shackleton, to be paid from the amount awarded in the Fee and Expense Application, in  
3 recognition of his participation and effort in the prosecution of the Action.

4           11. Neither the Stipulation (including any exhibits attached thereto) nor the  
5 Settlement, nor any act performed or document executed pursuant to or in furtherance of the  
6 Stipulation or the Settlement: (a) is or may be deemed to be, or may be offered, attempted to be  
7 offered, or used in any way by the Settling Parties as a presumption, a concession, or an  
8 admission of, or evidence of, any fault, wrongdoing, or liability of the Settling Parties or of the  
9 validity of any Released Claims; or (b) is intended by the Settling Parties to be offered or  
10 received as evidence or used by any other person in any other actions or proceedings, whether  
11 civil, criminal, or administrative. The Released Persons may file the Stipulation and/or the  
12 Judgment in any action that may be brought against them in order to support a defense or  
13 counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release,  
14 standing, good faith settlement, judgment bar or reduction, or any other theory of claim  
15 preclusion or issue preclusion or similar defense or counterclaim, and any of the Settling Parties  
16 may file the Stipulation and documents executed pursuant and in furtherance thereto in any  
17 action to enforce the Settlement.

18           12. Without affecting the finality of this Judgment in any way, this Court hereby  
19 retains continuing jurisdiction over: (i) implementation of the Settlement; and (ii) the Settling  
20 Parties for the purpose of construing, enforcing, and administering the Stipulation and the  
21 Settlement, including, if necessary, setting aside and vacating this Judgment, on motion of a  
22 party, to the extent consistent with and in accordance with the Stipulation if the Effective Date  
23 fails to occur in accordance with the Stipulation.

24           13. No action in regard to Plaintiffs' Fee and Expense Application—including any  
25 order of this Court or any potential appellate review of such order—shall affect the finality of  
26 any other portion of this Judgment or delay the Effective Date of the Stipulation. The Fee and

1 Expense Application shall be considered separate for the purposes of appellate review of this  
2 Judgment.

3 14. Without further order of the Court, the Settling Parties may agree to reasonable  
4 extensions of time to carry out any of the provisions of the Stipulation.

5 15. This Judgment is a final, appealable judgment and should be entered forthwith by  
6 the Clerk in accordance with Rule 58 of the Federal Rules of Civil Procedure.

7 IT IS SO ORDERED.

8  
9 DATED: May 31<sup>st</sup> 2013

  
HONORABLE MARSHA J. PECHMAN  
UNITED STATES DISTRICT JUDGE

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[PROPOSED] FINAL JUDGMENT AND ORDER  
OF DISMISSAL  
Master Docket No. C 10-564 MJP

- 4 -

**ROBBINS UMEDA LLP**  
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# EXHIBIT G

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re CELL THERAPEUTICS, INC.,  
DERIVATIVE LITIGATION

Master Docket No. C 10-564 MJP

**STIPULATION OF SETTLEMENT**

This Document Relates To:  
  
ALL ACTIONS

1 This Stipulation of Settlement, dated November 6, 2012 (the “Stipulation”), is made and  
2 entered into by and among the following Settling Parties,<sup>1</sup> each by and through their respective  
3 counsel: (i) plaintiffs Joseph Shackleton, Terry Marbury, Paul Cyrek, Brandon Bohland, and  
4 Lawrence J. Alexander (collectively, “Plaintiffs”), on behalf of themselves and derivatively on  
5 behalf of Cell Therapeutics, Inc. (“CTI” or the “Company”);<sup>2</sup> (ii) defendants John H. Bauer,  
6 James A. Bianco, Vartan Gregorian, Richard L. Love, Mary O’Neil Munding, Phillip M.  
7 Nudelman, Jack W. Singer, and Frederick W. Telling (the “Individual Defendants”) and nominal  
8 defendant CTI (collectively, “Defendants”). The Stipulation is intended by the Settling Parties to  
9 fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to  
10 the terms and conditions hereof (the “Settlement”).

11 **I. INTRODUCTION AND PROCEDURAL OVERVIEW**

12 **A. The Derivative Action**

13 On April 1, 2010, plaintiff Joseph Shackleton filed a complaint against the Individual  
14 Defendants and nominal defendant CTI in the U.S. District Court for the Western District of  
15 Washington, captioned *Shackleton v. Bauer*, Case No. C 2:10-cv-00564-MJP (the “Shackleton  
16 Complaint”). The Shackleton Complaint asserted claims on behalf of CTI, alleging that the CTI  
17 Board of Directors (“Board”), among other things, failed to adequately supervise or exercise  
18 oversight as to the Company’s disclosures related to pixantrone, a treatment for non-Hodgkin’s  
19 lymphoma, and the Company’s disclosures related to communications with the U.S. Food and  
20 Drug Administration (“FDA”) about the FDA approval process for pixantrone. Specifically, the  
21 Shackleton Complaint alleged that the Company failed to disclose that: (i) a Special Protocol  
22

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23 <sup>1</sup> All capitalized terms are defined in Section IV.1 below, unless otherwise noted.

24 <sup>2</sup> Plaintiffs Joseph Shackleton and Paul Cyrek continue to hold their shares of CTI stock.  
25 Plaintiffs Terry Marbury, Brandon Bohland, and Lawrence J. Alexander no longer own CTI  
26 stock.

hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date, each Plaintiff, Released Person, and CTI shall expressly settle and release, and each CTI shareholder shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the CTI shareholders shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement of which this release is a part.

## **2. Corporate Governance Measures**

2.1 In connection with the prosecution and settlement of the Action, CTI has agreed to implement the Corporate Governance Measures set forth below. The Corporate Governance Measures shall be adopted by the Board within ninety days after the Effective Date of the Settlement and maintained for a minimum of four years from the Effective Date, subject to revisions that may be required by changes in applicable laws and/or regulations, except that this obligation will terminate if and when there is a change of control of the Company. Defendants acknowledge that the filing, prosecution, and settlement of this Action was a material and substantial contributing factor in bringing about the following changes to the Company's corporate governance structure that were made after the filing of this Action.

### **BOARD SEATS**

2.2 On September 20, 2011, CTI appointed Dr. Reed V. Tuckson to the Board, increasing the size of the Board to nine directors. Dr. Tuckson is the Executive Vice President

1 and Chief of Medical Affairs at UnitedHealth Group and oversees the clinically-related programs  
2 of that company's six operating businesses. He has extensive experience and expertise in  
3 overseeing clinical programs, as well as in other aspects of the Company's operations, such as  
4 the development and commercialization of drug products.

5       2.3 The Board has fixed the number of directors at twelve, and the Board's  
6 Nominating and Governance Committee ("Governance Committee") will continue to evaluate  
7 potential candidates to find directors with the necessary experience and expertise to fill  
8 remaining vacancies on the Board.

#### 9                   **SCIENTIFIC REVIEW AND OVERSIGHT COMMITTEE**

10       2.4 The Board will adopt a resolution stating that if the Company becomes engaged in  
11 significant research and development activities related to potential drug products involving more  
12 than 35% of the Company's prior year's total operating expenses based on audited financial  
13 statements, the Board shall consider the formation of a Scientific Review and Oversight  
14 Committee to oversee these activities. The Board will form such a committee if, in the Board's  
15 judgment, it would be an efficient, effective, and appropriate addition to the Company's controls  
16 and procedures. If the Board decides to form such a committee, it will have discretion as to the  
17 nature of its composition, authority, and responsibilities.

#### 18                   **DISCLOSURE COMMITTEE**

19       2.5 As part of this Settlement, the Board will adopt the charter for the Disclosure  
20 Committee attached hereto as Exhibit A, and CTI will make changes to the composition,  
21 authority, and responsibilities of the Disclosure Committee in accordance with the terms of that  
22 charter.

#### 23                   **MANAGEMENT ASSESSMENT OF DISCLOSURE CONTROLS**

24       2.6 The Chief Executive Officer ("CEO"), the Chief Financial Officer ("CFO"), and  
25 the President (collectively, the "Senior Officers") will assess the adequacy of the Company's  
26 disclosure controls annually, and at any other such time as the Senior Officers deem appropriate.

1 Should the Senior Officers identify any material weaknesses with regard to these controls, they  
2 shall take corrective action, or as they deem appropriate, recommend that the Board take  
3 corrective action. This assessment shall include evaluation of the process of reviewing  
4 disclosures and examination of the effectiveness of internal communications regarding the status  
5 of the Company's products and the Company's interactions with the FDA.

#### 6 **CHIEF COMPLIANCE AND GOVERNANCE OFFICERS**

7 2.7 CTI has a Chief Compliance Officer for the purpose of overseeing its Corporate  
8 Integrity Agreement, and will maintain this position. The Board will adopt a resolution stating  
9 that the Chief Compliance Officer will monitor the Code of Business Conduct and Ethics, and  
10 work with the head of CTI's regulatory department to maintain compliance with applicable  
11 regulations promulgated by the FDA. The Chief Compliance Officer will also work to ensure  
12 that all material communications with the FDA regarding compliance are appropriately  
13 communicated to senior management, the Disclosure Committee, and the Board. The Chief  
14 Compliance Officer will provide written, quarterly reports to the Board that include updates on  
15 significant developments related to the Company's clinical programs.

16 2.8 In addition, as part of this Settlement, the Board will adopt a resolution  
17 establishing the position of Chief Governance Officer, who will be a member of the Disclosure  
18 Committee and will report to the Board's Governance Committee. The Governance Committee  
19 will continue to consist of a minimum of three directors of the Board who are "independent"  
20 according to the definition in Section 4200(a)(15) of the rules for the NASDAQ stock exchange  
21 (and/or any other exchange on which CTI securities is actively traded).

22 2.9 The Chief Governance Officer will monitor the Corporate Governance Guidelines  
23 and the Code of Ethics for Senior Officers. The Chief Governance Officer will maintain and  
24 monitor the system for reporting and investigating compliance and ethics concerns and will  
25 promote awareness of, and provide for training regarding, issues related to compliance and  
26 ethics, as he or she determines is necessary and appropriate.

1           2.10 The Chief Governance Officer will provide a written report to the Governance  
2 Committee at least once a year, and will immediately report in writing to the Governance  
3 Committee any allegations of compliance or ethics violations. The Chief Governance Officer  
4 will recommend to the Governance Committee any proposed changes to the Company's system  
5 for reporting and investigating compliance and ethics concerns, and the Governance Committee  
6 will then consider these recommendations and submit any changes that it recommends to the  
7 Board for approval.

### 8                                   **CROSS-FUNCTIONAL TRAINING OF THE BOARD**

9           2.11 The Chief Compliance Officer will provide for training to be given to the Board at  
10 least once a year that is focused on the Company's interactions with the FDA, and which may  
11 include an update on relevant FDA practices, policies, and regulations; information regarding  
12 appropriate interactions with the FDA; and guidance related to the disclosure of communications  
13 with the FDA. The Chief Compliance Officer will provide an annual written report to the Board  
14 on this training.

### 15                                   **INSIDER TRADING POLICY**

16           2.12 The Board has appointed the Company's CFO to serve as the Company's Trading  
17 Compliance Officer, and a senior CTI officer will continue to serve in this position. The Trading  
18 Compliance Officer will evaluate CTI's current Insider Trading Policy and make any  
19 recommendations for improvement to the Board within six months of the Effective Date of the  
20 Settlement. As part of this evaluation, the Trading Compliance Officer will develop potential  
21 amendments to that policy as appropriate to ensure compliance with insider trading regulations  
22 and present any such proposed amendments to the Board for approval. The Trading Compliance  
23 Officer will ensure that the Insider Trading Program includes a process to review and approve all  
24 stock sales by Section 16 officers and directors before those trades are made, unless the trades  
25 are made pursuant to a trading plan established under SEC Rule 10b5-1.



Company in a prominent position on its public website, so as to be available not only to employees, but to customers, vendors, and other third parties. The hotline(s) shall provide a communication channel through which employees and other stakeholders may report, anonymously if they choose, concerns regarding the integrity of CTI's internal financial controls, the accuracy or completeness of CTI's financial statements and other public disclosures, and other concerns about ethics, compliance, and/or the professional conduct of CTI's officers. The Corporate Governance Officer shall ensure that any complaints made through the hotline(s) shall be provided to the chair of the Audit Committee within three business days, and the Board shall ensure that all whistleblower complaints are promptly and thoroughly investigated by an appropriate entity, in consultation with the independent members of the Board.

### **DIRECTOR COMPENSATION**

2.19 The Board shall adopt a resolution stating that if the Board renews eligibility for the equity-based incentive awards for Board directors that are triggered by the regulatory approval of pixantrone, it shall not extend the deadline for the achievement of this goal past December 31, 2017.

2.20 The Board shall adopt a resolution stating that a "Say on Pay" shareholder vote, conducted pursuant to section 14A(a)(1) of the Securities and Exchange Act, shall be held annually, rather than every three years, and the Senior Officers shall abstain from such vote.

### **3. Procedure for Implementing the Settlement**

3.1 Promptly after execution of this Stipulation, Plaintiffs shall submit the Stipulation and its exhibits to the Court and shall apply for an order substantially in the form of Exhibit B hereto, requesting the preliminary approval of the Settlement set forth in this Stipulation (the "Preliminary Approval Order"), and approval for the publication of a notice of settlement ("Notice of Settlement") substantially in the form of Exhibit C hereto, which shall include the terms of the Settlement set forth in this Stipulation, any fees and expenses requested by Plaintiffs' Counsel, any incentive fee awards requested by Plaintiffs, and the date of the

1 Settlement or resolution of the action, provided, that nothing herein shall in any way impair or  
2 restrict the rights of any Settling Party to enforce the terms of the Stipulation or Judgment.

3 4.3 Upon the Effective Date, each of the Released Persons shall be deemed to have,  
4 and by operation of the Judgment shall have, fully, finally, and forever released, relinquished,  
5 and discharged each and all of the Plaintiffs, Plaintiffs' Counsel, CTI, the Related Persons, and  
6 all CTI shareholders (solely in their capacity as CTI shareholders) from all claims (including  
7 Unknown Claims), arising out of, relating to, or in connection with the institution, prosecution,  
8 assertion, settlement, or resolution of the Action or the Released Claims. Nothing herein shall in  
9 any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation  
10 or Judgment.

11 **5. Attorneys' Fees and Expenses**

12 5.1 Plaintiffs and Co-Lead Counsel intend to petition the Court for an award of fees  
13 and expenses in connection with the Action (the "Fee and Expense Application"). The Settling  
14 Parties agree that Plaintiffs are entitled to an award of reasonable attorneys' fees reflecting,  
15 among other factors, the substantial benefits conferred by the Settlement and the risks undertaken  
16 in pursuing the Action, as well as compensation for reasonable expenses incurred in prosecuting  
17 the Action. The Settling Parties do not agree on the amount of attorneys' fees and expenses that  
18 should be awarded in the Action, however, and have agreed to present this matter to the Court  
19 for resolution.

20 5.2 The Fee and Expense Application shall be Plaintiffs' and/or Co-Lead Counsel's  
21 sole application for an award of fees or expenses in connection with this Action. Final resolution  
22 by the Court of the Fee and Expense Application shall not be a precondition to the dismissal of  
23 the Action in accordance with this Stipulation, and the Settling Parties agree that the Fee and  
24 Expense Application may be considered separately from the proposed Settlement.

25 5.3 Co-Lead Counsel intend to seek Court approval for an award in the amount of  
26 \$1,500.00 for Plaintiff Shackleton (the "Incentive Award"). The Individual Defendants and CTI

1 agree not to object to a request for Court approval of the Incentive Award. The Incentive Award  
2 will be funded by any fee amount awarded in the Fee and Expense Application.

3 5.4 Any fee amount shall be allocated among Plaintiffs' Counsel by Co-Lead Counsel  
4 in the manner Co-Lead Counsel believe reflects each of Plaintiffs' Counsel's relative  
5 contributions to the initiation, prosecution, and successful resolution of the Action. CTI and the  
6 Individual Defendants shall have no liability whatsoever with respect to the allocation of the fee  
7 amount among Plaintiffs' Counsel.

8 5.5 The Settling Parties acknowledge and agree that the Individual Defendants and/or  
9 CTI (or its insurer(s)) shall pay, or cause to be paid on behalf of the Individual Defendants and  
10 CTI, any fees and expenses awarded by the Court to Federman & Sherwood, as receiving agent  
11 for Plaintiffs' Counsel, within twenty business days of the date on which an order awarding such  
12 fees and expenses becomes Final.

13 **6. Conditions of Settlement, Effect of Disapproval, Cancellation, or**  
14 **Termination**

15 6.1 The Effective Date is conditioned on the occurrence of all of the following events  
16 and is the first date by which all of the following events and conditions have been met and have  
17 occurred:

18 (a) approval of the Settlement by the Board, including the Corporate  
19 Governance Measures;

20 (b) entry by the Court of the Judgment dismissing the Action with prejudice,  
21 and an order approving the Settlement; and

22 (c) the Judgment has become Final.

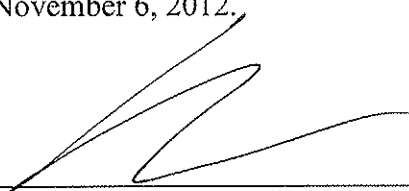
23 6.2 If the Effective Date does not occur because any of the conditions specified in  
24 paragraph 6.1 have not been met, and it appears that they will not be met, then the Stipulation  
25 shall be canceled and terminated subject to paragraph 6.3, unless the Settling Parties agree in  
26 writing to proceed with the Stipulation.

1        7.14 The Settling Parties hereby represent and warrant that they have not assigned any  
2 rights, claims, or causes of action that were asserted or could have been asserted in connection  
3 with, under, or arising out of the Released Claims.

4        7.15 Without further order of the Court, the Settling Parties may agree to reasonable  
5 extensions of time to carry out any of the provisions of this Stipulation.

6        IN WITNESS WHEREOF, the Settling Parties have caused the Stipulation to be  
7 executed by their duly authorized attorneys and dated November 6, 2012.

8 DATED: November 6, 2012

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*Attorneys for Individual Defendants and  
Nominal Defendant Cell Therapeutics, Inc.*

22 DATED: November 6, 2012

24  
25  
26  
\_\_\_\_\_  
Brian J. Robbins  
Craig W. Smith (*pro hac vice*)  
Shane P. Sanders (*pro hac vice*)  
**ROBBINS UMEDA LLP**  
600 B Street, Suite 1900

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2 rights, claims, or causes of action that were asserted or could have been asserted in connection  
3 with, under, or arising out of the Released Claims.

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8 DATED: November 6, 2012

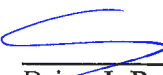
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11        Barry M. Kaplan, WSBA #8661  
12        Claire Loeb Davis, WSBA #39812  
13        **WILSON SONSINI GOODRICH & ROSATI**  
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29        *Attorneys for Individual Defendants and*  
30        *Nominal Defendant Cell Therapeutics, Inc.*

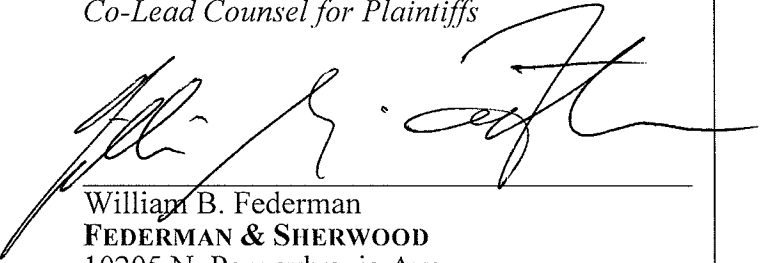
31 DATED: November 6, 2012

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33          
34        Brian J. Robbins  
35        Craig W. Smith (*pro hac vice*)  
36        Shane P. Sanders (*pro hac vice*)  
37        **ROBBINS UMEDA LLP**  
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*Co-Lead Counsel for Plaintiffs*

DATED: November 6, 2012



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Brandon Bohland, and Lawrence J. Alexander*

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748239

# Exhibit A

## **Exhibit A**

### **CHARTER OF THE DISCLOSURE COMMITTEE of Cell Therapeutics, Inc.**

This Disclosure Committee Charter (“Charter”) has been adopted by the Disclosure Committee (“Committee”) of Cell Therapeutics, Inc. (“Company”) and approved by the Company’s Board of Directors (“Board”). The Committee shall review and reassess this Charter periodically and recommend any proposed changes for approval by the Board.

#### **I. PURPOSE**

It is the Company’s policy that all disclosures made by the Company to its shareholders or the investment community should be accurate and complete, and fairly present the Company’s financial condition and results of operations in all material respects, and should be made on a timely basis as required by applicable laws and stock exchange requirements. The Committee has been established pursuant to the authority of the Chief Executive Officer and Chief Financial Officer and is intended to follow the suggestion of the Securities and Exchange Commission (“SEC”) that is contained in SEC Release No. 33-8124, 34-46427 “Certification of Disclosure in Companies’ Quarterly and Annual Reports” to establish a disclosure committee.

#### **II. RESPONSIBILITIES**

The Committee shall assist the Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), and President (collectively, “Senior Officers”) in fulfilling their responsibility for oversight of the accuracy and timeliness of the disclosures made by the Company, by being responsible for the following tasks, subject to the supervision and oversight of the Senior Officers:

- Evaluate and monitor the integrity and effectiveness of controls and procedures (“Disclosure Controls”) that are designed to ensure: (1) the accurate and timely disclosure of information required to be disclosed by the SEC; (2) the accuracy of other written disclosures that the Company issues to the investment community, including, without limitation, disclosures related to the Company’s financial condition, products, product approval efforts, and interactions with federal agencies, including the Food and Drug Administration (“FDA”); and (3) the accurate communication of information to management, including the Senior Officers, as appropriate to allow timely decisions regarding disclosures.
- Through the chair of the Committee, provide an annual written report to the Audit Committee of the Board regarding the integrity and effectiveness of the Disclosure Controls. The Committee shall provide additional information regarding the Disclosure Controls, and the meetings and other activities of the Committee, at the request of the Audit Committee.

- Evaluate and monitor the existing lines of communication across the Company's operations and business units, for their effectiveness in collecting relevant information on a timely basis for use by the Committee and Senior Officers in making disclosure decisions.
- As a member of the Committee, the Chief Medical Officer will ensure that the members of the Committee are kept apprised of potentially material oral and/or written communications to or from the FDA. The Chief Medical Officer will also ensure that the Board is kept regularly apprised of all potentially material oral and/or written communications to or from the FDA.
- Report problems with the Disclosure Controls to the Senior Officers, and propose any necessary and appropriate changes to such controls, and to the lines of communication within the Company. When the majority of the Committee deems it to be appropriate, problems and proposed changes may be reported directly to the Board.
- Review the Company's Forms 10-Q, Forms 10-K, proxy statements, and annual reports prior to issuance, to ensure the adequacy and accuracy of the disclosures included therein. The Committee will then pass such disclosures on for review by the Audit Committee of the Board, accompanied by a letter describing the activities of the Committee in regard to such disclosures and including its recommendation regarding those disclosures.
- By a majority vote, advise the CEO and the CFO of the Company with respect to the certifications they provide in connection with the Company's quarterly and annual reports.
- Review the Company's quarterly earnings press releases and related materials, prior to submission to the Audit Committee, to ensure the adequacy and accuracy of the disclosures included therein.
- Hold *ad hoc* meetings upon the occurrence of events that may require the filing of a Form 8-K, to discuss whether such disclosure should be made, and the form and content of any such disclosure. Such meetings may be called by one of the Senior Officers, if, in his or her judgment, there has been a potentially material development that requires review by the Committee.
- Review in advance the Company's press releases, scripts developed for analyst conference calls, and related documents, such as Forms 8-K.
- Consult as appropriate with other Company personnel in connection with the review of disclosures or potentially material information, and request input from advisors including outside counsel and outside auditors.

- Undertake any other duties or responsibilities that the Company's Chief Financial Officer, President, General Counsel and Audit Committee together determine are necessary or desirable.

### **III. MEMBERSHIP**

The membership of the Committee shall consist of the following:

- President
- Chief Financial Officer
- Chief Medical Officer or the head(s) of the clinical and regulatory departments
- General Counsel or the head of the legal department
- Chief Compliance Officer
- Chief Governance Officer
- Head of the corporate communications department

Such members may be replaced, or new members added, at any time by the Board. The Chief Financial Officer shall serve as the head of the Committee, unless another member is selected by the Board.

The Committee may invite other Company personnel, outside auditors, outside counsel, or other outside advisors to attend its meetings, as it deems necessary and appropriate to perform its duties and responsibilities. A representative of each major department in the Company, including clinical, regulatory, quality, legal, finance, manufacturing, human resources, corporate communications, and marketing, shall be invited to participate in the meetings held to review the Forms 10-Q and 10-K.

### **IV. OPERATIONS**

The Committee shall meet at least quarterly, but may meet more frequently as circumstances dictate, or at the request of the Senior Officers. Meetings may occur in person or via conference call. When meetings are not practicable or appropriate, the Committee may be consulted via electronic mail, copied to all members of the Committee, in lieu of a meeting.

The occurrence of each meeting of the Committee shall be recorded, and minutes shall be kept of each meeting that is held to review Forms 10-Q, Forms 10-K, proxy statements, and annual reports.

The Committee shall solicit the input of department representatives as necessary to review the accuracy of disclosures related to issues within their expertise, including, but not limited to: (1) financial reporting; (2) the Company's ongoing relationships and communications

with regulators, including, but not limited to, the FDA, SEC, NASDAQ, and foreign equivalents; (3) the status of the Company's clinical trials; and (4) the status of the Company's manufacturing activities.

In helping the Committee to discharge its duties, the Senior Officers shall have full access to all Company books, records, facilities, and personnel.

The Committee shall solicit advice and counsel on the accuracy and materiality of disclosures, whenever it deems it to be necessary and appropriate, from the Company's outside auditors, outside counsel, regulatory advisors, and other independent advisors. The Committee may ask independent advisors to assist it in evaluating the adequacy of the Disclosure Controls, if it deems it necessary and appropriate to do so.

The head of the Committee shall have the authority to retain separate and independent advisors at the Company's expense, to provide advice and counsel on material risk issues and the appropriate disclosure of such issues, including, but not limited to, the Company's clinical trials and its communications with regulators.

# EXHIBIT H

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**IN RE RH SHAREHOLDER DERIVATIVE  
LITIGATION**

This Document Relates To:  
  
ALL ACTIONS.

Lead Case No.: 4:18-cv-02452-YGR  
(Consolidated with: 4:18-cv-3930-YGR)  
~~PROPOSED~~ ORDER AND FINAL JUDGMENT  
**\*AS MODIFIED BY THE COURT\***  
Hearing Date: October 6, 2020  
Hearing Time: 2 p.m.  
Judge: Hon. Yvonne Gonzalez Rogers

1 This matter came before the Court for hearing on October 6, 2020 pursuant to the Order of  
2 this Court, dated August 3, 2020 (“Order”), on the motion of the parties for approval of the proposed  
3 settlement (“Settlement”) set forth in the Stipulation of Settlement dated June 17, 2020, and attached  
4 hereto as Exhibit 1 (the “Stipulation”).

5 The Court has reviewed and considered all documents, evidence, objections (if any), and  
6 arguments presented in support of or against the Settlement; the Court being fully advised of the  
7 premises and good cause appearing therefor, the Court enters this Judgment.

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:**

9 1. This Order and Final Judgment incorporates by reference the definitions in the  
10 Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation,  
11 unless otherwise set forth herein.

12 2. This Court has jurisdiction over the subject matter of the Action, including all matters  
13 necessary to effectuate the Settlement, and over all Settling Parties.

14 3. Based on evidence submitted, the Court finds that notice was published and  
15 disseminated in accordance with this Court’s Preliminary Approval Order. This Court further finds  
16 that the forms and contents of the Notice and Summary Notice, as previously preliminarily approved  
17 by the Court, complied with the requirements of Federal Rule of Civil Procedure 23.1, satisfied the  
18 requirements of due process of the United States Constitution, and constituted due and sufficient  
19 notice of the matters set forth therein.

20 4. The Court finds that the terms of the Stipulation and Settlement are fair, reasonable,  
21 and adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and  
22 Settlement in all respects, and orders the Settling Parties to perform its terms to the extent the Settling  
23 Parties have not already done so.

24 5. Pursuant to entry of this Judgment, the Action and all claims contained therein against  
25 Defendants, as well as all of the Released Claims against each of the Defendants and their Related  
26 Persons, are hereby dismissed with prejudice. As among the Plaintiffs and Defendants, the parties  
27 are to bear their own costs, except as otherwise provided in the Stipulation.

1           6.       Upon the Effective Date, RH, Plaintiffs (acting on their own behalf and derivatively  
2 on behalf of RH), and each of RH's shareholders (solely in their capacity as RH shareholders) shall  
3 be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,  
4 relinquished, and discharged the Released Claims against the Released Persons and any and all claims  
5 (including Unknown Claims) arising out of, relating to, or in connection with the defense, settlement  
6 or resolution of the Action against the Released Persons, provided that nothing herein shall in any  
7 way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation or this  
8 Judgment.

9           7.       Upon the Effective Date, RH, Plaintiffs (acting on their own behalf and derivatively  
10 on behalf of RH), and each of RH's shareholders (solely in their capacity as RH shareholders) will be  
11 forever barred and enjoined from commencing, instituting or prosecuting any of the Released Claims  
12 or any action or other proceeding against any of the Released Persons based on the Released Claims  
13 or any action or proceeding arising out of, related to, or in connection with the settlement or resolution  
14 of the Action, provided that nothing herein shall in any way impair or restrict the rights of any Settling  
15 Party to enforce the terms of the Stipulation or this Judgment.

16           8.       Upon the Effective Date, each of the Released Persons shall be deemed to have, and  
17 by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and  
18 discharged each and all of the Plaintiffs, Plaintiffs' Counsel, RH, and all of the RH shareholders  
19 (solely in their capacity as RH shareholders) from all claims (including Unknown Claims) arising out  
20 of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of  
21 the Action or the Released Claims. Nothing herein shall in any way impair or restrict the rights of  
22 any Settling Party to enforce the terms of the Stipulation or this Judgment.

23           9.       Nothing in the Stipulation constitutes or reflects a waiver or release of any rights or  
24 claims of Defendants and/or RH against their insurers, or their insurers' subsidiaries, predecessors,  
25 successors, assigns, affiliates, or representatives, including, but not limited to, any rights or claims by  
26 the Defendants under any directors' and officers' liability insurance or other applicable insurance  
27 coverage maintained by the Company. Nothing in the Stipulation constitutes or reflects a waiver or  
28 release of any rights or claims of the Defendants relating in any way to indemnification or

1 advancement of attorneys' fees relating to the Action or the Released Claims, whether under any  
2 written indemnification or advancement agreement, or under the Company's charter, by-laws or  
3 operating agreement, or under applicable law.

4       10. The Court hereby approves the Fee and Expense Amount in accordance with the  
5 Stipulation and finds that such fee is fair and reasonable. Generally, having high expectations for  
6 plaintiffs' counsel to act professionally and with the duty of loyalty to their clients, the Court rarely  
7 comments on counsel's performance. Here, such commentary is appropriate. The case at hand  
8 presented corporate acts which illustrated why the class action tool is a necessary device to implement  
9 change. Good corporate governance can serve to discipline so that litigation is not necessary. However,  
10 where, as here, those controls either did not exist or did not work, litigation is sometimes the only  
11 option. Counsel performed excellent work in not only investigating and analyzing the core of the  
12 issues, but in negotiating and demanding the necessary reforms to prevent malfeasance for the benefit  
13 of the shareholders and the consumers. The Court complements counsel for its excellence.

14       11. Plaintiffs are hereby each awarded a service award in the amount of \$5,000, which  
15 sum shall be paid out of counsel for Plaintiffs' Fee and Expense Amount.

16       12. Neither the Stipulation (including any Exhibits attached thereto) nor the Settlement,  
17 nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the  
18 Settlement: (a) is or may be deemed to be, or may be offered, attempted to be offered, or used in any  
19 way by the Settling Parties as a presumption, a concession, or an admission of, or evidence of, any  
20 fault, wrongdoing, or liability of the Settling Parties or of the validity of any Released Claims; or  
21 (b) is intended by the Settling Parties to be offered or received as evidence, or used by any other  
22 person in any other actions or proceedings, whether civil, criminal, or administrative. The Released  
23 Persons may file the Stipulation and/or the Judgment in any action that may be brought against them  
24 in order to support a defense or counterclaim based on principles of claim preclusion, collateral  
25 estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction or  
26 any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, and any  
27 of the Settling Parties may file the Stipulation and documents executed pursuant, and in furtherance  
28 thereof in any action to enforce the Settlement.

1           13.     Without affecting the finality of this Judgment in any way, this Court hereby retains  
2 continuing jurisdiction with respect to implementation and enforcement of the terms of the Stipulation  
3 and the Settlement.

4           14.     During the course of the Action, the parties and their respective counsel at all times  
5 complied with the requirements of Federal Rule of Civil Procedure 11 and all other similar rules.

6           15.     This Order and Final Judgment is a final, appealable judgment and should be entered  
7 forthwith by the Clerk in accordance with Federal Rule of Civil Procedure 58 and all other similar  
8 rules.

9           Accordingly, the motion for final approval of derivative settlement and application for an  
10 award of attorneys' fees and expenses is **GRANTED**. This Order terminates Docket Number 74.

11           The Clerk of the Court is directed to close this case.

12           **IT IS SO ORDERED.**

13  
14           **DATED:** December 18, 2020



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**YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT JUDGE**

# EXHIBIT 1

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6 *Lead Counsel for Plaintiffs*

7 [Additional counsel appear on signature page]

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **OAKLAND DIVISION**

11 IN RE RH SHAREHOLDER DERIVATIVE  
12 LITIGATION

13 This Document Relates To:

14 ALL ACTIONS.

Lead Case No.: 4:18-cv-02452-YGR

(Consolidated with: 3:18-cv-3930-YGR)

**STIPULATION OF SETTLEMENT**

15 *Assigned for all purposes to*  
16 *Hon. Yvonne Gonzalez Rogers*

1 This Stipulation of Settlement dated June 17, 2020 (the “Stipulation”), is made and  
2 entered into by and among the following Settling Parties,<sup>1</sup> each by and through their respective  
3 counsel: (i) Plaintiffs David Magnani and Hosrof Izmirliyan (“Plaintiffs”) (on behalf of  
4 themselves and derivatively on behalf of RH Inc. (“RH” or the “Company”); (ii) Individual  
5 Defendants; and (iii) nominal defendant RH. The Individual Defendants and nominal defendant  
6 RH are collectively referred to as “Defendants.” The Stipulation is intended by the Settling  
7 Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and  
8 subject to the terms and conditions hereof.

9 **I. TERMS OF STIPULATION AND SETTLEMENT AGREEMENT**

10 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among  
11 the undersigned counsel for the Settling Parties herein, in consideration of the benefits flowing  
12 to the Settling Parties from the Settlement, and subject to the approval of the Court pursuant to  
13 Federal Rule of Civil Procedure 23.1, that the claims asserted in the Action and the Released  
14 Claims shall be finally and fully compromised, settled, and released, and the Action shall be  
15 dismissed with prejudice and with full preclusive effect, upon and subject to the terms and  
16 conditions of this Stipulation, as follows:

17 **1. Definitions**

18 As used in the Stipulation, the following terms have the meanings specified below:

19 1.1 “Action” means the consolidated action pending in the U.S. District Court for the  
20 Northern District of California entitled *In re RH Shareholder Derivative Litigation*, Lead Case  
21 No. 4:18-cv-02452-YGR (consolidated with *Izmirliyan v. Friedman, et al.*, Case No. 3:18-cv-  
22 3930-YGR).

23 1.2 “Class Action” means the securities class action captioned *In re RH, Inc.*  
24 *Securities Litigation*, Case No. 4:17-cv-00554-YGR (N.D. Cal.), which was ordered related to  
25 the Action by order of the Court dated July 16, 2018.

26 1.3 “Complaint” means the verified consolidated shareholder derivative complaint  
27

28 <sup>1</sup> All capitalized terms not otherwise defined are defined in § I, at ¶1, “Definitions.”

1 filed in the Action (ECF No. 25).

2 1.4 “Court” means the U.S. District Court for the Northern District of California.

3 1.5 “Defendants” means the Individual Defendants and nominal defendant RH.

4 1.6 “Effective Date” means the first date by which all of the events and conditions  
5 specified in ¶9.1 of this Stipulation have been met and have occurred.

6 1.7 “Final” means when the last of the following with respect to the Judgment (as  
7 defined below in ¶1.9) shall have occurred: (i) either no appeal has been filed and the time has  
8 passed for any notice of appeal to be timely filed in the Action; or (ii) an appeal has been filed  
9 and the court of appeal has either affirmed the Judgment/dismissal or dismissed that appeal and  
10 the time for any reconsideration or further appellate review has passed; or (iii) a higher court has  
11 granted further appellate review and that court has either affirmed the underlying  
12 Judgment/dismissal or affirmed the court of appeals’ decision affirming the Judgment/dismissal  
13 or dismissing the appeal.

14 1.8 “Individual Defendants” means defendants Gary Friedman, Karen Boone, Carlos  
15 Alberini, Keith Belling, Eri Chaya, Mark Demilio, Katie Mitic, Ali Rowghani, and Leonard  
16 Schlesinger.

17 1.9 “Judgment” means the Order and Final Judgment to be rendered by the Court,  
18 substantially in the form attached hereto as Exhibit B hereto.

19 1.10 “Lead Counsel” means Johnson Fistel, LLP.

20 1.11 “Person” means an individual, corporation, limited liability corporation,  
21 professional corporation, partnership, limited partnership, limited liability partnership,  
22 association, joint stock company, estate, legal representative, trust, unincorporated association,  
23 government, or any political subdivision or agency thereof, and any business or legal entity and  
24 their spouses, heirs, predecessors, successors, representatives, or assignees.

25 1.12 “Plaintiffs” means David Magnani and Hosrof Izmirliyan, and their respective  
26 agents, heirs, and/or successors.

27 1.13 “Plaintiffs’ Counsel” means any counsel that has appeared of record or rendered  
28 legal services to any Plaintiffs in connection with the Action.

1.14 “RH Board” means the RH Board of Directors.

1.15 “Related Persons” means each of the Defendants’ past or present agents, officers, directors, attorneys, accountants, auditors, advisors, insurers, co-insurers, reinsurers, spouses, immediate family members, heirs, executors, personal or legal representatives, estates, administrators, trusts, predecessors, successors, and assigns, or other individual or entity in which any Defendant has or had a controlling interest, and each and all of their respective past and present officers, directors, employees, agents, affiliates, parents, subsidiaries, divisions, attorneys, accountants, auditors, advisors, insurers, co-insurers, re-insurers, heirs, executors, personal or legal representatives, estates, administrators, trusts, predecessors, successors, and assigns.

1.16 “Released Claims” shall collectively mean any and all claims for relief (including Unknown Claims), debts, rights, demands, suits, matters, liabilities, or causes of action, known or unknown, whether or not concealed or hidden, asserted or unasserted (including, without limitation, claims for damages, interest, attorneys’ fees, costs, expert or consulting fees and any other costs, expenses or liability, disgorgement, constructive trust, breach of duty of care and/or breach of duty of loyalty or good faith, breach of contract, fraud, misrepresentation, negligence, negligent supervision, gross negligence, negligent misrepresentation, professional negligence, intentional conduct, indemnification, insider trading, mismanagement, misconduct, waste of corporate assets, abuse of control, unjust enrichment, or violations of statutes, rules, or regulations, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation), that have been and could have been asserted in the Action by Plaintiffs, RH, or by any RH shareholder derivatively on behalf of RH, against each and every Defendant and the Released Persons arising out of and based upon the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act that were or could have been alleged in the Action, or any claims in connection with, based upon, arising out of, or relating to the Settlement, but excluding any claims to enforce the Settlement set forth in this Stipulation.

1.17 “Released Persons” means each of the Defendants and their Related Persons.

1           1.18   “RH” or the “Company” means nominal defendant RH Inc., and its predecessors,  
2 successors, subsidiaries, affiliates, divisions, and assigns.

3           1.19   “Settling Parties” means, collectively, each of the Defendants, Plaintiffs (on  
4 behalf of themselves and derivatively on behalf of RH), RH, and RH’s shareholders.

5           1.20   “Unknown Claims” means any of the Released Claims which Plaintiffs, RH, or  
6 RH shareholders do not know or suspect to exist in his, her, or its favor at the time of the release  
7 of the Released Persons, including claims which, if known by him, her, or it, might have affected  
8 his, her, or its settlement with and release of the Released Persons, or might have affected his,  
9 her, or its decision not to object to this Settlement. With respect to any and all Released Claims,  
10 the Settling Parties stipulate and agree that, upon the Effective Date, the Plaintiffs, Defendants,  
11 and RH shall expressly waive and each of the RH shareholders shall be deemed to have, and by  
12 operation of the Judgment shall have, expressly waived, the provisions, rights, and benefits of  
13 California Civil Code Section 1542, which provides:

14           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
18 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
19 DEBTOR OR RELEASED PARTY.

20           Upon the Effective Date, Plaintiffs and Defendants shall expressly waive, and each of the RH  
21 shareholders shall be deemed to have, and by operation of the Judgment shall have, expressly  
22 waived any and all provisions, rights, and benefits conferred by any law of any jurisdiction or  
23 any state or territory of the United States or any foreign jurisdiction, or principle of common  
24 law, which is similar, comparable, or equivalent to California Civil Code Section 1542.  
25 Plaintiffs, Defendants, and RH shareholders may hereafter discover facts in addition to or  
26 different from those which he, she, or it now knows or believes to be true with respect to the  
27 subject matter of the Released Claims, but, upon the Effective Date, each Plaintiff and Defendant  
28 shall expressly settle and release, and each RH shareholder shall be deemed to have, and by  
operation of the Judgment shall have, fully, finally, and forever settled and released, any and all  
Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent,

whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the RH shareholders shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement of which this release is a part.

## **2. Description of the Action and Settlement**

On April 24, 2018 and June 29, 2018 respectively, Plaintiffs David Magnani and Hosrof Izmirliyan filed shareholder derivative complaints in the U.S. District Court for the Northern District of California (the “Court”): *Magnani v. Friedman, et al.*, Case No. 4:18-cv-02452-YGR (the “*Magnani Action*”) and *Izmirliyan v. Friedman, et al.*, Case No. 3:18-cv-3930-YGR (the “*Izmirliyan Action*”). Thereafter, on July 19, 2018, the Court consolidated the *Magnani* and *Izmirliyan* Actions, and designated *In re RH Shareholder Derivative Litigation*, Lead Case No. 4:18-cv-02452-YGR, as the lead case (the “Action”).

The operative Complaint in the Action asserts derivative claims on behalf of RH against the Individual Defendants for allegedly issuing false and misleading proxy statements in violation of Section 14(a) of the Securities Exchange Act of 1934, and for breaches of fiduciary duties, unjust enrichment, corporate waste, and insider selling in connection with the launch of the Company’s RH Modern line. The Complaint alleges that the Individual Defendants allowed RH to make alleged misstatements regarding the roll out of the RH Modern product line and the company’s inventory levels. The Complaint further alleges that while the Company’s stock price was artificially inflated, two of the officers and directors of RH breached their fiduciary duties while selling RH stock for personal gain. The Complaint alleges that pre-suit demand on the RH Board would be futile.

On September 28, 2018, Defendants filed a motion to dismiss the Consolidated Complaint, and RH filed a motion to stay the Action, pending the resolution of the Class Action. In their motion to dismiss, Defendants argued that Plaintiffs failed to make a demand on RH’s

1 Board to pursue litigation, as required by controlling Delaware law. Defendants further argued  
2 that Plaintiffs have not fulfilled their burden to plead particularized facts showing that any pre-  
3 suit demand would have been futile. Defendants also invoked RH's forum selection clause,  
4 which designates Delaware courts as the exclusive fora for the breach of fiduciary duty claims  
5 asserted in the Action.

6 On January 23, 2019, the Court entered an Order granting RH's motion staying the  
7 Action pending the resolution of the Class Action. The Court declined to rule on the motion to  
8 dismiss at that time.

9 Plaintiffs sent a settlement demand to Defendants on May 22, 2019, outlining the terms  
10 upon which Plaintiffs would be willing to explore a resolution of the Action. Thereafter, the  
11 Settling Parties engaged in months of arms-length settlement negotiations. In January 2020, in  
12 order to facilitate further settlement negotiations, the Settling Parties agreed to participate in a  
13 mediation session before Michelle Yoshida, Esq. of Phillips ADR Enterprises, P.C.  
14 Ms. Yoshida is an experienced mediator with extensive experience in handling complex  
15 representative actions, including shareholder derivative actions. The mediation session was  
16 preceded by submission of detailed mediation statements and relevant exhibits by the Settling  
17 Parties. On March 12, 2020, the Settling Parties engaged in an all-day mediation session with  
18 Ms. Yoshida but were unable to reach an agreement at the mediation. However, the Settling  
19 Parties, with the substantial assistance of Ms. Yoshida, continued settlement discussions in the  
20 days following the March 12, 2020 mediation, culminating in a mediator's proposal by  
21 Ms. Yoshida on March 18, 2020. The Settling Parties accepted the mediator's proposal on  
22 March 19, 2020. The RH Board has, in an exercise of its independent business judgment,  
23 approved the Settlement, and each of its terms, as fair, reasonable, and adequate, and in the best  
24 interest of RH and its shareholders.

### 25 **3. Plaintiffs' Claims and the Benefits of the Settlement**

26 3.1 Plaintiffs believe that the claims asserted in the Action have merit, and Plaintiffs'  
27 entry into this Stipulation and Settlement is not intended to be and shall not be construed as an  
28 admission or concession concerning the relative strength or merit of the claims alleged in the

1 Action. However, the Plaintiffs recognize and acknowledge the expense and length of continued  
2 legal proceedings necessary to prosecute the Action through trial and the appeals process.  
3 Plaintiffs' Counsel have taken into account the uncertain outcome and the risk of any litigation,  
4 especially in complex litigations such as the Action, as well as the difficulties and delays  
5 inherent in such litigation. Plaintiffs' Counsel are also mindful of the problems of proof and  
6 possible defenses to the claims asserted in the Action.

7 3.2 Plaintiffs' Counsel have conducted extensive investigation, including, *inter alia*:  
8 (i) reviewing RH's press releases, public statements, SEC filings, and securities analysts'  
9 reports, and advisories about the Company; (ii) reviewing media reports about the Company;  
10 (iii) researching the applicable law with respect to the claims alleged in the Action and the  
11 potential defenses thereto; (iv) preparing and filing derivative complaints, including the  
12 Consolidated Complaint; (v) conducting preliminary damages analyses; (vi) participating in  
13 informal conferences with Defendants' counsel regarding the specific facts of the cases, the  
14 perceived strengths and weaknesses of the cases, and other issues in an effort to facilitate  
15 negotiations and conducting research into the Company's corporate governance structure in  
16 order to make a settlement demand; (vii) participating in mediation and other conferences before  
17 Michelle Yoshida of Phillips ADR Enterprises, P.C; and (viii) negotiating this Settlement with  
18 Defendants. Based on Plaintiffs' Counsel's thorough review and analysis of the relevant facts,  
19 allegations, defenses, and controlling legal principles, Plaintiffs' Counsel believe that the  
20 Settlement set forth in this Stipulation is fair, reasonable, and adequate, and confers substantial  
21 benefits upon RH and its shareholders. Based upon Plaintiffs' Counsel's evaluation, Plaintiffs  
22 have determined that the Settlement is in the best interests of RH and its shareholders and have  
23 agreed to settle the Action upon the terms and subject to the conditions set forth herein.

#### 24 **4. Defendants' Denials of Wrongdoing and Liability**

25 Defendants have denied and continue to deny each and every one of the claims,  
26 contentions, and allegations made against them or that could have been made against them in  
27 the Action, and expressly deny all charges of wrongdoing or liability against them arising out of  
28 any of the conduct, statements, acts, or omissions alleged, or that could have been alleged in the

1 Action. Defendants have denied and continue to believe that Plaintiffs lack standing to assert  
2 claims on RH's behalf. Defendants assert that they have satisfied their fiduciary duties at all  
3 relevant times, have acted in good faith and in the best interests of RH and its shareholders, have  
4 meritorious defenses to Plaintiffs' claims, and that judgment should be entered dismissing all  
5 claims against them with prejudice. Defendants also have denied and continue to deny, among  
6 other things, the allegations that Plaintiffs, RH, or its shareholders have suffered damage, or that  
7 Plaintiffs, RH, or its shareholders were harmed by the conduct alleged in Action. Nevertheless,  
8 Defendants acknowledge that continuation of the Action would be lengthy and expensive, and  
9 recognize that it is desirable that the Action be fully and finally settled in the manner and upon  
10 the terms and conditions set forth in this Stipulation. Defendants have thus entered into the  
11 Stipulation solely to avoid the continuing additional expense, inconvenience, and distraction of  
12 the Action and to avoid the risks inherent in litigation, and without admitting any wrongdoing  
13 or liability whatsoever.

14 **5. Corporate Governance Reforms**

15 5.1 In connection with the Settlement of the Action, within ninety (90) days after  
16 final approval of the Settlement, the RH Board shall adopt such resolutions and amend  
17 appropriate committee charters to the extent applicable to ensure adherence to the Corporate  
18 Governance Measures ("Measures"). The Measures shall be maintained for a minimum of four  
19 (4) years from the Effective Date of this Stipulation. These Measures constitute part of the  
20 consideration for this Stipulation, and RH acknowledges and agrees that the Measures confer  
21 substantial benefits upon RH and its shareholders. RH also acknowledges and agrees that the  
22 Action precipitated and was the cause for the adoption of the Measures set forth below.

23 **I. MEETINGS OF INDEPENDENT DIRECTORS IN EXECUTIVE SESSION**

24 5.2 The Company's executive session practices of the RH Board shall be formalized  
25 and enhanced in accordance with the following specific terms and conditions:

- 26 a) The outside directors shall regularly meet in executive session without any  
27 members of management or management directors.  
28 b) The overall frequency of such "executive session" meetings of the RH

Board shall be not less than one-half of the number of all regularly scheduled RH Board meetings.

## II. DISCLOSURE COMMITTEE CHARTER

5.3 The RH Board shall adopt a Disclosure Committee Charter (the form of which has been reviewed by Plaintiffs' Counsel) setting forth the certain enumerated powers and responsibilities for the Disclosure Committee consistent with the following:

a) Among other things, the Disclosure Committee shall be charged with reviewing the (i) Company's principal SEC disclosures consisting of its SEC filings of quarterly and annual reports on Forms 10-Q and 10-K, respectively, as well as its proxy statements, disclosures that include risk factors and registration statements under the Securities Act of 1933, as amended, (ii) material correspondence with the Staff of the Division of Corporate Finance of the SEC including responses to SEC comment letters and requests for no action relief, and (iii) other material investor disclosures as the Disclosure Committee may determine from time to time. The Disclosure Committee shall review any such investor disclosures and public filings with the objective of providing accurate and timely disclosures to investors of material information when and to the extent there is a duty to disclose such information under applicable laws and regulations.

b) In connection with its review of such investor disclosures and public filings, the objective of the Disclosure Committee will be to solicit the review and comment on the Company's public disclosures by key Company personnel to the extent the disclosures concern subject matters pertaining to those individuals' areas of responsibility or expertise.

c) One of the objectives of the Disclosure Committee shall be to serve as a resource to assist the Company both in meeting its disclosure obligations in a timely manner and in supporting the CFO and CEO in the discharge of their obligations in connection with certification of SEC filings as required under applicable laws and regulations.

1 d) The Disclosure Committee will report regularly to the Audit Committee  
2 regarding material disclosure items in the context of the Audit Committee's  
3 review of SEC filings and other investor disclosures and will provide comments  
4 with respect to any disclosures in such filings related to the Company's disclosure  
5 controls and procedures as of the end of each fiscal quarter and year-end.

6 e) The membership of the Disclosure Committee shall include executives  
7 representing key areas of the Company's operations that may be relevant to SEC  
8 filings and other investor disclosures including senior representatives from the  
9 following key functional areas of the Company (but not to the exclusion of other  
10 members being included from these or other functional areas) as applicable: (i) the  
11 finance and accounting organization including the Principal Accounting Officer  
12 and the Principal Financial Officer, (ii) legal including the Chief Legal Officer;  
13 (iii) tax including the head of tax; (iv) compliance including the Chief Compliance  
14 Officer; (v) risk including the senior leader of any risk function; (vi) investor  
15 relations; and (vii) internal audit, including the senior representative of the  
16 internal audit function. No Board member shall serve on the Disclosure  
17 Committee.

18 f) The Disclosure Committee shall hold regular meetings before the filing of  
19 the Company's annual and quarterly financial statements with the SEC, as well as  
20 ad-hoc meetings from time to time as necessary in the performance of the duties  
21 and responsibilities of the Disclosure Committee.

22 g) The Disclosure Committee shall extend invitations to employees,  
23 advisors, and other individuals as deemed necessary or appropriate by the  
24 Disclosure Committee in performing its duties and responsibilities.

25 h) The specific listing of membership of the Disclosure Committee set forth  
26 in the charter shall not be in limitation of any other representation on or  
27 participation in the Disclosure Committee.

28 i) The existence of the Disclosure Committee shall not in any way limit the

1 participation of other Company personnel in investor disclosures and public  
2 filings by the Company.

3 j) The Disclosure Committee shall be a component of the Company's  
4 disclosure controls ("Disclosure Controls"), but the Disclosure Committee shall  
5 not itself be responsible for the overall design and/or implementation of the  
6 Company's Disclosure Controls or the Company's internal controls over financial  
7 reporting ("ICOFR"). The Disclosure Committee may provide comments and  
8 recommendations to the Audit Committee or members of the Company's  
9 management team concerning the Company's Disclosure Controls or ICOFR  
10 from time to time.

11 k) The Disclosure Committee shall also report to and advise the CEO and  
12 CFO with respect to the certifications they must provide for the Company's  
13 quarterly and annual reports. The Disclosure Committee may provide comments  
14 and recommendations to the CEO and/or CFO concerning the Company's  
15 Disclosure Controls or ICOFR from time to time.

16 l) The Disclosure Committee shall undertake any other duties or  
17 responsibilities as may be prescribed from time to time by any of (i) the CFO;  
18 (ii) the CEO; or (iii) the Audit Committee and, in the event of any conflict in such  
19 directions, the Audit Committee shall have the ultimate authority to resolve any  
20 such conflict.

### 21 **III. AMENDMENTS TO AUDIT COMMITTEE CHARTER**

22 5.4 The Audit Committee Charter shall be amended to delineate the following  
23 specific additional rights and responsibilities.

24 a) The Audit Committee shall receive regular reporting from the Disclosure  
25 Committee in the context of the Audit Committee's review of SEC filings and  
26 other investor disclosures. Such reporting may take the form of interviews and  
27 feedback to the Audit Committee by key members of the Disclosure Committee  
28 including, without limitation, the CFO and the Principal Accounting Officer.

b) The Audit Committee may direct the Disclosure Committee to undertake such other actions and responsibilities as the Audit Committee may determine from time to time.

c) Any action or responsibility of the Audit Committee that is undertaken with respect to the Disclosure Committee or otherwise may be performed by the Chair of the Audit Committee (as necessary or appropriate for the Audit Committee to perform its functions) and the Audit Committee may also delegate plenary authority to any other member of the Audit Committee from time to time as necessary or appropriate for the Audit Committee to perform its functions with respect to the Disclosure Committee.

d) The Audit Committee shall meet at least five (5) times annually, including meetings before (i) filing each quarterly or annual report with the SEC; (ii) commencement of the annual audit; and (iii) completion of the annual audit.

e) The Audit Committee shall meet at least four (4) times annually in executive session at which sessions any representatives of management as well as any management Board members shall not be present.

#### **IV. CHIEF COMPLIANCE OFFICER**

5.5 The responsibilities and duties of the Company's Chief Compliance Officer position shall be delineated in accordance with the following specific terms and conditions:

a) A charter document shall be created setting forth the duties and responsibilities of the Chief Compliance Officer which shall include:

i. The Audit Committee working in consultation with the CEO may revise the duties and responsibilities of the Chief Compliance Officer position from time to time, which changes in such duties and responsibilities shall be reflected in the charter document.

ii. The duties and responsibilities of the Chief Compliance Officer shall include (but not be limited to) the oversight and administration of the Company's corporate governance and

1 compliance policies, with the objective of (i) fostering a culture  
2 that integrates compliance and ethics into business processes and  
3 practices, and (ii) maintaining and monitoring a system for  
4 reporting and investigating potential compliance and ethics  
5 concerns. Such duties shall be delineated in the charter document.

6 iii. The Chief Compliance Officer shall report regularly to the Audit  
7 Committee and/or the Nominating and Governance Committee as  
8 appropriate with regard to (i) the Company's compliance with  
9 applicable laws and regulations, (ii) relevant topics concerning the  
10 Company's corporate governance, and (iii) any other material  
11 matters within the responsibility of the Chief Compliance Officer.

12 iv. Any functional areas within the responsibility and authority of the  
13 Chief Compliance Officer may be performed by other Company  
14 personnel under the direction and supervision of the Chief  
15 Compliance Officer as may be determined from time to time by  
16 the Chief Compliance Officer.

17 **V. DIRECTOR TRAINING, CONTINUING EDUCATION, EVALUATION**  
18 **AND REPORTING, AND ANNUAL SELF-ASSESSMENT**

19 5.6 The practices of the RH Board regarding continuing education and self-  
20 assessment shall be enhanced in accordance with the following specific terms and conditions:

21 a) Each member of the RH Board shall be reimbursed for attending approved  
22 programs for continuing education which shall include the Stanford Law School  
23 Directors' College and other similar program(s) for continuing education.

24 b) The Company shall provide other support to directors in the areas of  
25 continuing education which may include compliance and other forms of refresher  
26 training.

27 c) The RH Board shall engage in an annual self-assessment concerning the  
28 operation and functioning of the RH Board and its various committees.

**VI. ENHANCEMENTS TO INSIDER TRADING COMPLIANCE**

5.7 The Company's insider trading compliance programs and practices shall be enhanced in conformity with the following specific terms and conditions:

- a) Officers and directors of the corporation shall be educated on the potential benefits of utilizing 10b5-1 trading plans in connection with transactions in RH stock;
- b) The Company's insider trading policy shall make clear that officers and directors of the corporation are encouraged, where and to the extent practicable, to adopt such 10b5-1 plans in connection with transactions in RH stock;
- c) Any 10b5-1 trading plans shall be pre-cleared by the General Counsel and/or Chief Compliance Officer or such other compliance personnel as designated under the Company's Insider Trading Policy;
- d) The General Counsel and/or Chief Compliance Officer will have responsibility for implementing and overseeing compliance with the Insider Trading Policy and reporting any material non-compliance and disciplinary determinations to the Audit Committee and/or the RH Board;
- e) The General Counsel and/or Chief Compliance Officer shall take other appropriate steps to facilitate compliance with the Insider Trading Policy including by making available to covered personnel training programs and other educational materials, and in the event of material violations, by taking appropriate remedial actions and recommending appropriate sanctions for noncompliance; and
- f) The General Counsel and/or Chief Compliance Officer will provide appropriate and timely reports to the Audit Committee and/or RH Board in the event of any applicable waivers or other exceptions to compliance.

**VII. CONFIDENTIAL WHISTLEBLOWER PROGRAM**

5.8 The Company's confidential whistleblower policy under Sarbanes-Oxley (the "SOX Whistleblower Program") shall be enhanced with the following specific terms and

conditions:

- a) Employees shall be advised that they may report matters concerning any questionable accounting or auditing matters concerning the Company to the Audit Committee through the SOX Whistleblower Program.
- b) Employees shall be advised by the terms and conditions of the SOX Whistleblower Program that the Company is not permitted to engage in retaliation with respect to confidential whistleblower tips through the SOX Whistleblower Program and that the employee is entitled to anonymity in submitting any whistleblower reports to the SOX Whistleblower Program.
- c) The SOX Whistleblower Program shall be administered under the direction of the Audit Committee with separate contact information and administration from other hotlines and complaint procedures directed to employees so as to maintain the integrity of the SOX Whistleblower Program.
- d) Whistleblower complaints that are directed to the Audit Committee through the SOX Whistleblower Program will be handled under the SOX Whistleblower Program in a manner that is designed to preserve the anonymity of the party submitting the complaint.
- e) The Company's intranet shall provide employees with information about whistleblower options and the whistleblower protections provided to employees through the SOX Whistleblower Program.

#### **VIII. ENHANCEMENTS FOR BOARD INDEPENDENCE**

5.9 The Company shall adopt enhanced standards for director independence as set forth herein such that in addition to the standards required by the New York Stock Exchange, a director will be deemed independent of corporate management only if he or she:

- a) has neither been employed by the Company or by any of its direct or indirect subsidiaries in any capacity within the last five (5) calendar years;
- b) has not received, during the current calendar year or any of the three (3) immediately preceding calendar years, remuneration, directly or indirectly, other

1 than *de minimis* remuneration (less than \$35,000) as a result of service as (or being  
2 affiliated with an entity that serves as): (i) an advisor, consultant, or legal counsel  
3 to the Company or to a member of the Company's senior management; or (ii) a  
4 significant supplier of the Company;

5 c) has no personal service contracts with the Company, or any member of the  
6 Company's senior management;

7 d) is not an employee of a not-for-profit entity that receives contributions  
8 from the Company or the Company's executive officers totaling the lesser of  
9 \$100,000 or 1% of the charity's total contribution in the preceding two (2) years;

10 e) is not employed by a private or public company at which an executive  
11 officer of the Company serves as a director;

12 f) has not had any of the relationships described in this Section's subsections  
13 (a) through (e) above, with any affiliate of the Company;

14 g) is not a member of the immediate family of any person described in this  
15 Section's subsections (a) through (e) above; and

16 h) a director is deemed to have received remuneration (other than  
17 remuneration as a director, including remuneration for serving as non-executive  
18 Chairperson of the RH Board, as a Committee Chair, as a member of a RH Board  
19 committee or as Lead Independent Director), directly or indirectly, if  
20 remuneration, other than *de minimis* remuneration, was paid by RH, its  
21 subsidiaries, or affiliates, to any entity in which the director has a beneficial  
22 ownership interest of 10% or more. Remuneration is deemed *de minimis*  
23 remuneration if such remuneration is \$35,000 or less in any calendar year, or if  
24 such remuneration is paid to an entity, it (i) did not for the calendar year exceed  
25 the lesser of \$1 million, or 5% of the gross revenues of the entity; and (ii) did not  
26 directly result in a material increase in the compensation received by the director  
27 from that entity.

28 i) The service of any director in an interim capacity as an officer of the

1 Company, its subsidiaries, or affiliates (where the RH Board determines that  
2 appointment of a RH Board member to serve as an officer in such an interim  
3 capacity is necessary or advisable to assure the Company's compliance with  
4 requirements under applicable law or under any listing rules of the New York  
5 Stock Exchange) shall not in and of itself trigger a conclusion of such director not  
6 being independent under any of the relationships described in ¶5.09(a)–(i) above.

#### 7 **IX. MODIFICATION MEASURES**

8 5.10 Nothing in this Stipulation will require the Company to implement or maintain  
9 any of the requirements listed herein, if, in the opinion of Company counsel and supported by  
10 the opinion of outside counsel to the Company, such act or failure to act would result in a  
11 reasonably foreseeable risk that the Company, or the RH Board or any of its committees, or any  
12 affiliate of the Company, or any executive, director, officer, agent, or employee, of the Company  
13 or any affiliate, would be in violation of any federal or state law, statute, rule, or regulation, or  
14 any fiduciary or other duty that now exists or applies in the future (collectively, the "Laws and  
15 Duties").

16 5.11 In the event of such a determination, Defendants' counsel shall notify Plaintiffs'  
17 Counsel in writing of any changes or modifications to the corporate governance measure at issue  
18 (the "Changes") that the Company so determines to be necessary and appropriate. If Plaintiffs  
19 object to the Changes or request modifications to the Changes, and the Company and Plaintiffs  
20 are able to reach an agreement regarding modifications to the Changes, then such agreed upon  
21 modifications shall be adopted as promptly as practicable after there is a signed agreement by  
22 the parties regarding such modifications. In the event the Company and Plaintiffs are unable to  
23 reach an agreement on such modifications, the parties hereby agree to submit any such dispute  
24 to confidential arbitration using a single arbitrator in San Francisco under the arbitration rules  
25 of JAMS/ENDispute pertaining to commercial controversies. Such arbitrator shall have power  
26 and authorization to render a binding decision on such matters. Such dispute shall be determined  
27 as rapidly as possible, with the arbitrator being advised that the process and decision shall be  
28 undertaken on an expedited basis with the expectation that the arbitration shall occur not later

1 than thirty (30) days from the date the arbitrator is retained and a decision shall be rendered  
2 within thirty (30) days from the date of the arbitration. The decision shall not be appealable and  
3 shall be subject to the then existing rules of the Judicial Arbitration and Mediation Services as  
4 may be modified by agreement of the parties.

5 5.12 Defendants hereby represent that they are not currently aware of any risk that  
6 would trigger the application of ¶5.11.

7 **6. Procedure for Implementing the Settlement**

8 6.1 Promptly after execution of this Stipulation, Plaintiffs shall submit the  
9 Stipulation and its Exhibits to the Court and shall apply for an order substantially in the form of  
10 Exhibit A hereto, requesting the preliminary approval of the Settlement set forth in this  
11 Stipulation (the "Preliminary Approval Order"), and approval for the publication of the Notice  
12 of Proposed Settlement and of Settlement Hearing (the "Notice") and the Summary Notice of  
13 Proposed Settlement and of Settlement Hearing (the "Summary Notice") substantially in the  
14 form of Exhibits A-1 and A-2 hereto, requesting: (i) preliminary approval of the Settlement set  
15 forth in this Stipulation; (ii) approval of the form and manner of providing notice of the  
16 Settlement to current RH shareholders; and (iii) a date for a final hearing at which the Court will  
17 determine, among other matters, whether the terms of the Settlement should be approved,  
18 whether a final judgment should be entered, and whether to approve the separately negotiated  
19 Fee and Expense Amount (the "Settlement Hearing"), pursuant to Federal Rule of Civil  
20 Procedure 23.1.

21 6.2 Within ten (10) business days of the issuance of the Preliminary Approval Order,  
22 RH (i) shall cause the Stipulation and Notice to be filed with the SEC via a Form 8-K, (ii) shall  
23 publish the Summary Notice substantially in the form of Exhibit A-2 hereto, for one day in  
24 *Investor's Business Daily*, and (iii) shall post a link to the Stipulation and Notice on RH's  
25 website such that visitors to the "Investor Relations" section of the website will readily find a  
26 hyperlink to the Notice, which shall be maintained as an active link until such time as the Court  
27 grants final approval of the settlement. All costs in providing notice will be paid by RH. The  
28 Settling Parties believe the content and manner of the notice, as set forth in this paragraph,

1 constitutes adequate and reasonable notice to current RH shareholders pursuant to applicable  
2 law and due process. At least seven (7) calendar days before the Settlement Hearing, RH's  
3 Counsel shall file with the Court an appropriate affidavit or declaration with respect to filing and  
4 posting the Notice and Summary Notice.

5 **7. Releases**

6 7.1 Upon the Effective Date, RH, Plaintiffs (acting on their own behalf and  
7 derivatively on behalf of RH), and each of RH's shareholders (solely in their capacity as RH  
8 shareholders) shall be deemed to have, and by operation of the Judgment shall have, fully,  
9 finally, and forever released, relinquished, and discharged the Released Claims against the  
10 Released Persons and any and all claims (including Unknown Claims) arising out of, relating  
11 to, or in connection with the defense, settlement, or resolution of the Action against the Released  
12 Persons, provided that nothing herein shall in any way impair or restrict the rights of any Settling  
13 Party to enforce the terms of this Stipulation or the Judgment.

14 7.2 Upon the Effective Date, RH, Plaintiffs (acting on their own behalf and  
15 derivatively on behalf of RH), and each of RH's shareholders (solely in their capacity as RH  
16 shareholders) will be forever barred and enjoined from commencing, instituting or prosecuting  
17 any of the Released Claims or any action or other proceeding against any of the Released Persons  
18 based on the Released Claims or any action or proceeding arising out of, related to, or in  
19 connection with the settlement or resolution of the Action, provided that nothing herein shall in  
20 any way impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation  
21 or the Judgment.

22 7.3 Upon the Effective Date, each of the Released Persons shall be deemed to have,  
23 and by operation of the Judgment shall have, fully, finally, and forever released, relinquished,  
24 and discharged each and all of the Plaintiffs, Plaintiffs' Counsel, RH, and all of the RH  
25 shareholders (solely in their capacity as RH shareholders) from all claims (including Unknown  
26 Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion,  
27 settlement, or resolution of the Action or the Released Claims. Nothing herein shall in any way  
28 impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation or the

1 Judgment.

2 7.4 Nothing in this Stipulation constitutes or reflects a waiver or release of any rights  
3 or claims of Defendants and/or RH against their insurers, or their insurers' subsidiaries,  
4 predecessors, successors, assigns, affiliates, or representatives, including, but not limited to, any  
5 rights or claims by the Defendants under any directors' and officers' liability insurance or other  
6 applicable insurance coverage maintained by the Company. Nothing in this Stipulation  
7 constitutes or reflects a waiver or release of any rights or claims of the Defendants relating in  
8 any way to indemnification or advancement of attorneys' fees relating to the Action or the  
9 Released Claims, whether under any written indemnification or advancement agreement, or  
10 under the Company's charter, by-laws or operating agreement, or under applicable law.

11 **8. Plaintiffs' Counsel's Attorneys' Fees and Expenses**

12 8.1 As a result of arm's-length negotiations and with the substantial assistance of the  
13 Mediator, and in light of the substantial benefits conferred upon RH by Plaintiffs' Counsel's  
14 efforts, RH shall cause its insurance carriers to pay Plaintiffs' Counsel the amount of \$1,000,000,  
15 subject to Court approval (the "Fee and Expense Amount"). This agreement was reached in  
16 connection with the parties' mediation and after the Settling Parties had substantially negotiated  
17 the Measures. The Fee and Expense Amount shall constitute final and complete payment for  
18 Plaintiffs' attorneys' fees and expenses that have been incurred or will be incurred in connection  
19 with the Action.

20 8.2 In full and final settlement of the claims asserted in the Action against the  
21 Defendants and in consideration of the releases specified herein, Defendants' shall cause the Fee  
22 and Expense Amount to be deposited by their insurance carriers into an escrow account  
23 controlled by Plaintiffs' Counsel within thirty (30) calendar days of (i) the entry of the  
24 Preliminary Approval Order, as defined in ¶6.1 herein, and (ii) the date on which Plaintiffs'  
25 Counsel provides sufficient written payment instructions to Defendants' Counsel, whichever is  
26 later, and shall be immediately releasable upon entry of the Judgment and an order approving  
27 the Fee and Expense Amount, notwithstanding the existence of any collateral attacks on the  
28 Settlement, including, without limitation, any objections or appeals. In the event that the

Judgment fails to become Final, then it shall be the several obligation of Plaintiffs' Counsel to make appropriate refunds or repayments of any attorneys' fees and expenses previously paid within thirty (30) calendar days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction. Other than the obligation to pay or cause to be paid the Fee and Expense Amount, neither the Defendants nor any other Released Person shall have any obligations to make any other payment pursuant to this Stipulation, and shall have any responsibility, obligation, or liability with respect to the escrow account or the monies maintained therein or the administration related to the Fee and Expense Amount, including, without limitation, any responsibility or liability related to allocation of the Fee and Expense Amount among Plaintiffs' Counsel, any fees, taxes, investment decisions, maintenance, supervision or distribution of any portion of the Fee and Expense Amount. The Fee and Expense Amount shall constitute full, complete, and exclusive compensation for Plaintiffs' Counsel's efforts, fees, services, and expenses.

8.3 Plaintiffs may apply to the Court for service awards in the amount of \$5,000.00 per Plaintiff ("Service Awards"), to be paid out of such Fee and Expense Amount awarded by the Court. Defendants will take no position on this application.

**9. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

9.1 The Effective Date is conditioned on the occurrence of all of the following events, and is the first date by which all of the following events and conditions have been met and have occurred:

- a) Approval of the Settlement, and each of its terms, by the RH Board;
- b) Entry by the Court of the Judgment and an order approving the Settlement;
- c) Payment of the Fee and Expense Amount; and
- d) the Judgment has become Final.

9.2 If any of the conditions specified in ¶9.1 are not met, then the Stipulation shall be canceled and terminated subject to ¶9.4, unless the Settling Parties mutually agree in writing to proceed with the Stipulation.

1           9.3 Any proceeding, appeal, or petition pertaining solely to the Fee and Expense  
2 Amount or reversal or modification thereof, shall not operate to terminate, modify, or cancel this  
3 Stipulation, or affect or delay the Effective Date or the finality of the Judgment approving this  
4 Stipulation and the Settlement of the Action.

5           9.4 If for any reason the Effective Date does not occur, or if this Stipulation is in any  
6 way canceled, terminated, or fails to become Final in accordance with its terms: (i) the payments  
7 to Plaintiffs' Counsel pursuant to ¶8 shall be returned and repaid to the payor within thirty (30)  
8 calendar days of the event that triggered the repayment obligation; (ii) the Settling Parties shall  
9 be restored to their respective positions as of the date immediately preceding the full execution  
10 of this Stipulation; and (iii) all negotiations, proceedings, documents prepared, and statements  
11 made in connection herewith shall be without prejudice to the Settling Parties, shall not be  
12 deemed or construed to be an admission by a Settling Party of any act, matter, or proposition  
13 and shall not be used in any manner for any purpose in the Action or in any other action or  
14 proceeding. In such event, the terms and provisions of this Stipulation shall have no further  
15 force and effect with respect to the Settling Parties and shall not be used in the Action or in any  
16 other proceedings for any purpose, and any Judgment or other order entered in accordance with  
17 the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

18           **10. Additional Provisions**

19           10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this  
20 Stipulation and Settlement; and (ii) agree to cooperate to the extent reasonably necessary to  
21 effectuate and implement all terms and conditions of the Stipulation and the Settlement and to  
22 exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation  
23 and the Settlement.

24           10.2 The Settling Parties intend this Settlement to be a final and complete resolution  
25 of all disputes between Plaintiffs, Defendants, and RH with respect to the Action. The  
26 Settlement compromises claims that are contested and shall not be deemed an admission by any  
27 Settling Party as to the merits of any claim, allegation, or defense. The Settling Parties agree  
28 that the parties and their respective counsel at all times during the course of the Action complied

1 with the applicable rules, including, without limitation, Federal Rule of Civil Procedure 11. The  
2 Settling Parties further agree that the claims are being settled voluntarily after consultation with  
3 competent legal counsel.

4 10.3 Neither the Stipulation (including any Exhibits attached hereto) nor the  
5 Settlement, nor any act performed or document executed pursuant to or in furtherance of the  
6 Stipulation or the Settlement: (a) is or may be deemed to be, or may be offered, attempted to be  
7 offered, or used in any way by the Settling Parties as a presumption, a concession, or an  
8 admission of, or evidence of, any fault, wrongdoing, or liability of the Settling Parties or of the  
9 validity of any Released Claims; or (b) is intended by the Settling Parties to be offered or  
10 received as evidence, or used by any other person in any other actions or proceedings, whether  
11 civil, criminal, or administrative. The Released Persons may file the Stipulation and/or the  
12 Judgment in any action that may be brought against them in order to support a defense or  
13 counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release,  
14 standing, good faith settlement, judgment bar or reduction or any other theory of claim  
15 preclusion or issue preclusion or similar defense or counterclaim, and any of the Settling Parties  
16 may file the Stipulation and documents executed pursuant and in furtherance thereto in any  
17 action to enforce the Settlement.

18 10.4 The Exhibits to this Stipulation are material and integral parts hereof and are fully  
19 incorporated herein by this reference.

20 10.5 The Stipulation may be amended or modified only by a written instrument signed  
21 by or on behalf of all Settling Parties or their respective successors-in-interest.

22 10.6 This Stipulation and the Exhibits attached hereto constitute the entire agreement  
23 among the Settling Parties and no representations, warranties, or inducements have been made  
24 to any Settling Party concerning the Stipulation or any of its Exhibits other than the  
25 representations, warranties, and covenants contained and memorialized in such documents.

26 10.7 Each counsel or other Person executing the Stipulation and/or the Exhibits  
27 attached hereto on behalf of any Settling Party hereby warrants that such Person has the full  
28 authority to do so.

1           10.8   Except as otherwise provided herein, each Settling Party shall bear its own costs.

2           10.9   The Stipulation may be executed in one or more counterparts. A faxed signature  
3 or electronically scanned (in .pdf format) signature shall be deemed an original signature for the  
4 purposes of this Stipulation. All executed counterparts and each of them shall be deemed to be  
5 one and the same instrument. A complete set of counterparts, either originally executed or  
6 copies thereof, shall be filed with the Court.

7           10.10 The Stipulation and the Settlement shall be binding upon, and inure to the benefit  
8 of, the successors and assigns of the Settling Parties and the Released Persons.

9           10.11 The Court shall retain jurisdiction with respect to implementation and  
10 enforcement of the terms of the Stipulation and the Settlement, and the Settling Parties submit  
11 to the jurisdiction of the Court for purposes of implementing and enforcing the Stipulation and  
12 the Settlement.

13           10.12 This Stipulation and the Exhibits attached hereto shall be considered to have been  
14 negotiated, executed, and delivered, and to be wholly performed, in the State of California, and  
15 the rights and obligations of the parties to the Stipulation shall be construed and enforced in  
16 accordance with, and governed by, the internal, substantive laws of the State of California  
17 without giving effect to that state's choice-of-law principles.

18           10.13 The Settling Parties hereby represent and warrant that they have not assigned any  
19 rights, claims, or causes of action that were asserted or could have been asserted in connection  
20 with, under, or arising out of the Released Claims.

21           10.14 All agreements made and orders entered during the course of the Action relating  
22 to the confidentiality of information shall survive this Stipulation.

23           10.15 Without further order of the Court, the Settling Parties may agree to reasonable  
24 extensions of time to carry out any of the provisions of this Stipulation.

25           IN WITNESS WHEREOF, the parties have caused the Stipulation to be executed, by  
26 their duly authorized attorneys, dated June 17, 2020.

Dated: June 17, 2020

Respectfully submitted,

JOHNSON FISTEL, LLP  
FRANK J. JOHNSON  
KRISTEN O'CONNOR

By: 

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1 Dated: 6/17, 2020

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Nominal Defendant RH*

# EXHIBIT I

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF ILLINOIS  
 EASTERN DIVISION**

S.S.K. NANDURI, derivatively on behalf of	)	
GOGO INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	No. 18 C 06524
MICHAEL J. SMALL, <i>et al.</i> ,	)	
	)	Judge Martha M. Pacold
Defendants,	)	Magistrate Judge Sheila M. Finnegan
and	)	
	)	
GOGO INC.,	)	
Nominal Defendant.	)	
	)	
<hr/>		
MICHAEL HUTSENPILLER, derivatively on	)	
behalf of GOGO INC.,	)	
	)	
Plaintiff,	)	
v.	)	No. 18 C 06547
	)	
MICHAEL J. SMALL, <i>et al.</i> ,	)	(Consolidated with the above)
	)	
Defendants,	)	
and	)	
	)	
GOGO INC.,	)	
Nominal Defendant.	)	

**FINAL ORDER AND JUDGMENT**

This matter came before the Court for hearing pursuant to the Order of this Court, dated February 1, 2023 (the “Preliminary Approval Order”), on the application of the Plaintiffs for approval of the Settlement set forth in the Stipulation and Agreement of Settlement, dated January 5, 2023 (the “Stipulation” or “Settlement”). Due and adequate notice having been given to Gogo Inc. (“Gogo” or the “Company”) stockholders as required in the 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 Final Order and Judgment (“Judgment”) incorporates herein the Stipulation, including all exhibits thereto. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given in the Stipulation.

2. This Court has jurisdiction over the subject matter of the above-captioned 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 Notice and the Summary Notice provided to Gogo stockholders constituted the best notice practicable under the circumstances. Accordingly, the Notice and the Summary Notice fully satisfied the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and the requirements of due process.

4. The Court finds that the Settlement as set forth in the Stipulation is fair, reasonable, adequate, and in the best interests of Gogo and Current Gogo Stockholders. 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 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 (as defined in the Stipulation), the Releasing Persons (on behalf of themselves and derivatively on behalf of Gogo) shall be deemed to have, and by operation

of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, relinquished, extinguished, discharged and dismissed with prejudice the Released Persons from the Released Claims. The Releasing Persons shall be deemed to have, and by operation of this Judgment shall have covenanted not to sue any Released Person with respect to any Released Claims, and shall be permanently barred and enjoined from initiating, instituting, commencing, maintaining, or prosecuting any of the Released Claims against any of the Released Persons. Upon the Effective Date, the Releasing Persons shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of any state, federal, or foreign law, or principle of common law, which may have the effect of limiting the foregoing release. The foregoing release includes a release of Unknown Claims.

7. Upon the Effective Date, Defendants and each of the other Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Stockholders, Stockholders' Counsel, Current Gogo Stockholders (derivatively on behalf of Gogo), and each of their Related Persons from all claims, sanctions, actions, liabilities, or damages arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Derivative Matters and the Released Claims. The foregoing release includes a release of Unknown Claims.

8. Notwithstanding ¶¶ 6 and 7 above, nothing in the Stipulation or this Judgment shall provide a release of any claims to enforce the Stipulation, the Settlement, or this Judgment or bar any action by any Settling Party to enforce the terms of the Stipulation, the Settlement, or this Judgment. In addition, nothing in ¶¶ 6 and 7 above is intended to release any rights to indemnification, insurance coverage, or advancement of expenses that any Released Person has or may have under any insurance policy, contract, bylaw, or charter provision, or under Delaware

law, including, but not limited to, any rights any Released Person has or may have related to any pending or threatened civil or government proceedings.

9. During the course of the Derivative Action, all parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure, and all other similar rules, laws, or statutes.

10. Neither the Stipulation, including the exhibits attached thereto, nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation, including the exhibits attached thereto, 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, or lack thereof, of any Released Claims, or of any fault, wrongdoing, or liability, or lack thereof, of the Released Persons or Gogo; or (b) is or may be deemed to be or may be used as a presumption, admission, or evidence, or lack thereof, of any liability, fault, or omission of any of the Released Persons or Gogo in any civil, criminal, administrative, or other proceeding in any court, administrative agency, tribunal, or other forum.

11. Neither the Stipulation, including the exhibits attached thereto, nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation, including the exhibits attached thereto, or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement; provided, however, that the Released Persons may refer to the Settlement and/or file or use the Stipulation, the Preliminary Approval Order, and/or this Judgment in any action that may be brought against them to effectuate the protections granted them hereunder, including without limitation to support a defense or claim 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 claim under United States federal or state law or foreign law.

12. The Court hereby approves the sum of \$875,000.00 for the payment of fees and expenses to the Stockholders' 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 Stockholders' Counsel in connection with the Settlement. The Fee and Expense Amount shall be distributed in accordance with the terms of the Stipulation.

13. The Court hereby approves the Service Awards of \$2,000.00 to be paid to each of the four Stockholders from the Fee and Expense Amount, in recognition of their participation and effort in the prosecution of the Derivative Matters.

14. 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.

15. This Judgment is a final, appealable judgment and the Clerk is directed to enter this Judgment forthwith in accordance with Rule 58 of the Federal Rules of Civil Procedure, dismissing the Derivative Action with prejudice.

**IT IS SO ORDERED.**

DATED: April 11, 2023

/s/ Martha M. Pacold  
MARTHA M. PACOLD  
U.S. DISTRICT JUDGE

# EXHIBIT J

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

S.S.K. NANDURI, derivatively on behalf of	)	
GOGO INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	No. 18 C 06524
MICHAEL J. SMALL, <i>et al.</i> ,	)	
	)	Judge Martha M. Pacold
Defendants,	)	Magistrate Judge Sheila M. Finnegan
and	)	
	)	
GOGO INC.,	)	
Nominal Defendant.	)	
	)	

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MICHAEL HUTSENPILLER, derivatively on	)	
behalf of GOGO, INC.,	)	
	)	
Plaintiff,	)	
v.	)	No. 18 C 06547
	)	
MICHAEL J. SMALL, <i>et al.</i> ,	)	(Consolidated with the above)
	)	
Defendants,	)	
and	)	
	)	
GOGO INC.,	)	
Nominal Defendant.	)	

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement, dated January 5, 2023 (the “Stipulation”), is made and entered into by and among the following Settling Parties (as defined herein), through their respective counsel: (1) S.S.K. Nanduri (“Nanduri”) and Michael Hutsenpiller (“Hutsenpiller,” and, together with Nanduri, the Plaintiffs”) plaintiffs in the above-captioned consolidated action (the “Derivative Action”); (2) Sujit Bakre (“Bakre”), who made a demand for corporate books and records pursuant to 8 Del. C. § 220 (the “Books and Records Demand”); (3) Thomas G. Conboy (“Conboy”), who made a stockholder litigation demand pursuant to Del. Ct.

4.3 Notwithstanding ¶¶ 4.1 and 4.2 above, nothing in the Stipulation or the Final Order and Judgment shall provide a release of any claims to enforce this Stipulation, the Settlement, or the Final Order and Judgment or bar any action by any Settling Party to enforce the terms of the Stipulation, the Settlement, or the Final Order and Judgment. In addition, nothing in ¶¶ 4.1 and 4.2 above is intended to release any rights to indemnification, insurance coverage, or advancement of expenses that any Released Person has or may have under any insurance policy, contract, bylaw, or charter provision, or under Delaware law, including, but not limited to, any rights any Released Person has or may have related to any pending or threatened civil or government proceedings.

**5. Separately Negotiated Fee and Expense Amount and Stockholders' Service Awards**

5.1 Gogo shall cause its insurer(s) to pay to Stockholders' Counsel attorneys' fees and expenses in the total amount of eight hundred seventy-five thousand dollars (\$875,000.00), (the "Fee and Expense Amount"), subject to approval by the Court.

5.2 The Fee and Expense Amount shall be paid by the Defendants' insurer(s) by check made out to "The Brown Law Firm, P.C. IOLTA Account" and sent by overnight courier to The Brown Law Firm, P.C., 767 Third Avenue, Suite 2501, New York, NY 10017, within fifteen (15) business days after the later of (i) the date of the entry on the Court's docket of the Preliminary Approval Order, and (ii) Defendants' Counsel's receipt from The Brown Law Firm, P.C., as receiving agent for Stockholders' Counsel, of a signed W-9 reflecting a valid taxpayer identification number. The Fee and Expense Amount shall be immediately releasable from the Escrow Account upon the Court's docketing of the Final Order and Judgment and the Court's approval of the Fee and Expense Amount notwithstanding any collateral attacks on the Settlement, including without limitation any objections or appeals, subject to Stockholders' Counsel's obligations, which shall be joint and several as to each law firm that comprise Stockholders'

Counsel, (i) to return all fees and expenses within thirty (30) days following any notice that the Final Order and Judgment has not been entered or failed to become Final; and (ii) to refund any amount by which the Fee and Expense Amount may be reduced within thirty (30) days following notice of such reduction.

5.3 The Defendants, Defendants' Counsel and Defendants' insurers shall have no responsibility for, nor bear any risk or liability with respect to, the Escrow Account, its operation, and any taxes or expenses incurred in connection with the Escrow Account. Stockholders' Counsel shall be solely responsible for any administrative costs associated with the Escrow Account as well as the filing of all informational and other tax returns with the Internal Revenue Service, or any other state or local taxing authority, as may be necessary or appropriate.

5.4 Payment of the Fee and Expense Amount shall constitute final and complete payment for all of Stockholders' Counsel's attorneys' fees and expenses in connection with the Derivative Matters. Stockholders' Counsel shall allocate the Fee and Expense Amount among themselves. The Defendants, Defendants' Counsel and Defendants' insurers bear no responsibility for the allocation of the Fee and Expense Amount among Stockholders' Counsel following payment of the Fee and Expense Amount into the Escrow Account.

5.5 Except as otherwise provided herein, each of the Settling Parties shall bear his, her, or its own costs and attorneys' fees.

5.6 The Stockholders may seek the Court's approval of service awards of up to two thousand dollars (\$2,000) for each Stockholder (the "Service Awards"), to be paid from the Fee and Expense Amount, and the Defendants shall not oppose any such request.

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# EXHIBIT A

## **Framework for Risk Committee**

Gogo Inc. (“Gogo” or the “Company”) shall establish a management-level risk committee (“Risk Committee”) and adopt a resolution and draft a charter formally creating the Risk Committee. The Risk Committee will evaluate and assess its Charter and its performance annually.

The Board must approve a resolution that: (i) will obligate Gogo to implement the following reforms within thirty (30) days of final settlement approval; (ii) requires the measures set forth below to be maintained without material change for no less than five (5) years from the date of implementation; and (iii) provides appropriate funding for all such measures.

### **I. Risk Committee Responsibilities and Composition**

The Company’s charter for the Risk Committee shall require the following:

- A. The chair of the Risk Committee shall be selected by the members of the Risk Committee;
- B. The Risk Committee shall meet at least quarterly;
- C. The Risk Committee shall consist of at least three (3) members, each of whom shall possess experience in identifying, assessing, and managing risk exposures of the kinds that the Company faces in its business operations;
- D. The Risk Committee shall be responsible for (i) overseeing the Company’s risk governance structure, risk assessment and risk management practices and the guidelines, policies and procedures for risk assessment and risk management; (ii) guiding Gogo’s employees in integrating effective risk management practices into their strategic planning and day-to-day decision making; (iii) overseeing the Company’s assessment of risks related to Gogo’s business operations and prospects and maintenance of a strategic risk register that includes known material risks; (iv) overseeing the assessment and development of potential steps to disclose, rectify, and mitigate the material risks included in the strategic risk register; (v) receiving and reviewing, as and when appropriate, reports from the Company’s internal audit staff on the results of financial risk management reviews and assessments; (vi) reporting regularly to the Board about the strategic risk register to ensure that any material risks are regularly communicated to the Board; and (vii) assisting the Audit Committee, at its request, in carrying out its responsibilities with respect to financial, legal and cybersecurity risks;
- E. The Risk Committee shall have free access to all levels of Company management and Company employees for the purpose of fulfilling the responsibilities set out in its Charter;
- F. The Risk Committee shall work with the Company’s existing Sarbanes-Oxley Act steering committee to conduct an annual review of the effectiveness of Gogo’s internal

controls over the Company's aforesaid compliance, with the assistance of the General Counsel, and shall implement changes to Gogo's policies and internal controls as necessary; and

- G. The Risk Committee shall annually prepare a written report to the Board summarizing its activities, conclusions, and recommendations for the past year and its agenda for the coming year. The Risk Committee shall keep the Board apprised of its activities and shall directly advise the Board in detail of its material findings on a periodic basis.

# EXHIBIT B

## **Framework for Technology Oversight Committee**

Gogo Inc. ("Gogo" or "the Company") shall establish a management-level Technology Oversight Committee ("TOC") and adopt a resolution and draft a charter formally creating the TOC. The TOC will evaluate and assess its Charter and its performance annually or upon the occurrence of certain material events. Any changes to the TOC's Charter must be approved by a majority vote of the TOC.

The Board must approve a resolution that: (i) will obligate Gogo to implement the following reforms within thirty (30) days of final settlement approval; (ii) requires the measures set forth below to be maintained without material change for no less than five (5) years from the date of implementation; and (iii) provides appropriate funding for all such measures.

### **A. Composition**

The TOC shall be composed of the Chief Executive Officer ("CEO"), the Chief Operating Officer ("COO") and the General Counsel. The members of the TOC shall select a chair.

### **B. Duties and Responsibilities**

In the event of a material technological malfunction or other material failure of any of Gogo's in-flight network, products or services, the TOC shall:

1. Oversee a root cause analysis of the failure or malfunction; and
2. Prepare for distribution to the Company's Executive Leadership Team, Board, Disclosure Committee and Risk Committee an oral or written report that details the process undertaken in conducting the root cause analysis, a summary of the facts and circumstances causing the technological malfunction or failure, whether any misconduct or violation of Company policy was uncovered, whether the matter was an isolated incident or had, has or may have a Company-wide impact, and the remedial measures implemented or to be implemented.

### **C. Authority**

In the performance of its duties and responsibilities, the TOC shall have full access to all necessary Company books, records, facilities and personnel.

### **D. Meetings**

The TOC shall meet upon the occurrence of a material technological malfunction or other material failure of any of Gogo's in-flight network, products or services and at such other times as the Chair shall deem necessary or appropriate. Minutes shall be kept of each meeting of the TOC, and shall be made a part of the Board's meeting materials at the next Board meeting following any meeting of the TOC.

The TOC may invite other Company personnel, outside auditors, outside counsel, or other outside advisors or guests to attend its meetings, as it deems necessary and appropriate to perform

its duties and responsibilities.

A majority of the members of the TOC shall constitute a quorum for purposes of holding a meeting, and the TOC may act by a vote of a majority of the members present at such meeting.

# EXHIBIT C

## **Framework for Ethics Committee**

Gogo Inc. (“Gogo” or the “Company”) shall establish a management-level ethics committee (“Ethics Committee”) and adopt a resolution and draft a charter formally creating the Ethics Committee. The Ethics Committee will evaluate and assess its Charter and its performance annually.

The Board must approve a resolution that: (i) will obligate Gogo to implement the following reforms within thirty (30) days of final settlement approval; (ii) requires the measures set forth below to be maintained without material change for no less than five (5) years from the date of implementation; and (iii) provides appropriate funding for all such measures.

### **I. Ethics Committee Responsibilities and Composition**

The Company’s charter for the Ethics Committee shall require the following:

- A. The chair of the Ethics Committee shall be selected by the members of the Ethics Committee;
- B. The Ethics Committee shall consist of at least three (3) members, including the Company’s General Counsel, Head of Human Resources, and Head of Internal Audit;
- C. The Ethics Committee shall be responsible for overseeing the maintenance and oversight of the Company’s Ethics Line. The third-party Ethics Line provider shall promptly report in writing any credible complaint to the Ethics Committee within three (3) days of receipt. The Ethics Line phone number shall continue to be conspicuously posted by Gogo on its investor website, its employee intranet, and in breakrooms in Gogo facilities. The Ethics Line phone number shall provide an anonymous communication channel for employees and other stakeholders to report their concerns regarding, among other things, the integrity of Gogo’s public disclosures, internal controls, auditing, financial reporting, accounting matters, insider sales and other matters. Employees may also use this communication channel to report concerns relating to ethical business or personal conduct, integrity, and professionalism. The Ethics Committee shall ensure that all anonymous whistleblower complaints are provided to the Company’s legal counsel and the Chair of the Audit Committee and that all credible complaints are completely and fully investigated by internal or external personnel, in consultation with and under the supervision of the Company’s legal counsel, and that any appropriate remedial action is taken based on the results of the investigation. The Ethics Committee and the Company’s legal counsel shall ensure that non-retaliation policies are maintained and strictly complied with in order to protect any Gogo employee who reports a complaint via the Ethics Line; and
- D. The Ethics Committee shall have free access to all levels of Company management and Company employees for the purpose of fulfilling the responsibilities set out in its Charter.

## **II. Meetings of the Ethics Committee**

- A. The Ethics Committee shall meet as necessary or appropriate upon the occurrence of a credible incident reported through the Ethics Line. Minutes shall be kept of each meeting of the Ethics Committee, and shall be made available to the members of the Board upon request.
- B. The Ethics Committee may invite other Company personnel, outside auditors, outside counsel, or other outside advisors or guests to attend its meetings, as it deems necessary and appropriate to perform its duties and responsibilities.

# EXHIBIT D

## **Gogo Inc. Disclosure Committee Charter**

This Disclosure Committee Charter (the “**Charter**”) has been developed by the Chief Executive Officer (the “**CEO**”) and Chief Financial Officer (the “**CFO**”) of Gogo Inc. (the “**Company**”) and adopted and approved by the Audit Committee of the Board of Directors of the Company (the “**Audit Committee**”). The disclosure committee (the “**Disclosure Committee**”) shall review and reassess this Charter periodically and recommend any proposed changes to the CEO and CFO and the Audit Committee for consideration.

### **I. Purpose**

The Disclosure Committee’s purpose is to ensure that the Company implements and maintains internal procedures for the timely collection, evaluation and disclosure, as appropriate, of information potentially subject to public disclosure under the legal, regulatory and stock exchange requirements to which the Company is subject. It is the Company’s policy that all disclosures made by the Company should (i) be materially accurate and complete, (ii) fairly present in all material respects the Company’s financial condition, results of operations and cash flows and (iii) be made on a timely basis as required by applicable laws, regulations and stock exchange requirements.

### **II. Responsibilities**

The Disclosure Committee shall assist the CEO and CFO in fulfilling their responsibility for oversight of the accuracy and timeliness of the disclosures made by the Company by being responsible for the following tasks, in each case subject to the supervision and oversight of the CEO and CFO:

- Design, establish and maintain disclosure controls and procedures (the “**Disclosure Controls and Procedures**”), which may include procedures currently used by the Company, that are designed to ensure that:
  - (i) information required by the Company to be disclosed to the Securities and Exchange Commission (“**SEC**”), NASDAQ (“**NASDAQ**”) and other written information that the Company will disclose to the investment community is recorded, processed, summarized and reported accurately and on a timely basis;
  - (ii) information is accumulated and communicated to management, including the CEO and CFO, as appropriate to allow timely decisions regarding any required disclosure; and

- (iii) information that is relevant to an assessment of the developments and risks that pertain to the Company's business and financial performance is captured and communicated to management, including the CEO and CFO.
- Review and supervise the preparation of the following disclosure documents of the Company (the “**Disclosure Statements**”):
    - (i) periodic and current reports, proxy statements, information statements, registration statements and any other information filed with the SEC, NASDAQ and other material financial documents, including but not limited to offering documents and tender offer documents, issued to investors or the public by the Company or any of its subsidiaries;
    - (ii) press releases containing financial information, earnings guidance, information about material acquisitions or dispositions or other information material to the Company's security holders;
    - (iii) correspondence broadly disseminated to shareholders and all presentations to analysts and the investment community; and
    - (iv) presentations to rating agencies and lenders; and
  - Review disclosure policies for the Company's corporate/investor relations website.
  - Consider the materiality of information and determine disclosure obligations with respect to the Disclosure Controls and Procedures on a timely basis, including the quarterly 302 sub-certification letters. Participate in discussions with, and make recommendations to the CEO and CFO regarding such decisions.
  - Monitor the integrity and effectiveness of the Company's Disclosure Controls and Procedures.
  - Evaluate the effectiveness of the Company's Disclosure Controls and Procedures prior to the filing of the Company's Annual Report on Form 10-K and each Quarterly Report on Form 10-Q (collectively, the “**periodic reports**”), in accordance with SEC rules and regulations.
  - Discuss with the CEO and CFO all relevant information with respect to the Disclosure Committee's proceedings, the preparation of the Disclosure Statements and the Disclosure Committee's evaluation of the effectiveness of the Company's Disclosure Controls and Procedures.

- Oversee the preparation of the Company's Disclosure Statements and coordinate the review thereof with the CEO, CFO, the Company's outside auditors and the Audit Committee.
- Oversee a sub-certification process.
- Conduct semi-annual reviews to identify leading oversight practices in connection with Gogo's Disclosure Statements.
- Review at least once annually the non-financial metrics disclosed in the Company's Disclosure Statements filed with the SEC.
- If the Disclosure Committee becomes aware of a false statement or omission of material fact in a Disclosure Statement or other public Company's statement, the Disclosure Committee will report the deficiency to the Audit Committee.

In discharging its duties, the Disclosure Committee shall have full access to all Company books, records, facilities, and personnel, including the internal auditors, as well as to the Company's outside legal counsel and outside auditors.

The Disclosure Committee should remain fully apprised of all material Company developments, including any intended material disclosures, in order to evaluate and discuss those developments, and to advise on the appropriateness and timing of any public release. Developments that may impact the disclosure function include, but are not limited to, the status of any acquisition and divestiture activities, material litigation, operational or regulatory developments, extraordinary transactions, major management changes and changed ratings.

### **III. Organization**

The membership of the Disclosure Committee shall initially consist of (i) the chief draftsman for each periodic report, (ii) the senior Company officers whose responsibilities include oversight of the Company's financial, accounting, legal, risk management and investor relations functions and (iii) such other persons as the CEO and CFO shall appoint. Such members may be replaced, or new members added, at any time and from time to time by the CEO and CFO. Any member of the Disclosure Committee may invite additional attendees to meetings to advise on disclosure and he or she deems appropriate. The Disclosure Committee may designate two or more members of the Disclosure Committee, at least one of whom shall be an attorney knowledgeable about SEC rules and regulations with respect to disclosure, and at least one of whom shall be knowledgeable about financial reporting, who can, acting together, approve Disclosure Statements other than periodic reports when time does not permit the full Disclosure

Committee to meet. Notwithstanding the foregoing, the CEO and CFO at their option may at any time assume any or all of the responsibilities of the Disclosure Committee identified in this Charter.

The General Counsel shall be the chair of the Disclosure Committee. The chair shall be responsible for scheduling and presiding over meetings and preparing agendas. The chair shall provide quarterly reports to the Audit Committee and at least one report annually to the full Board concerning the activities of the Disclosure Committee. Any question of interpretation of this charter or the Disclosure Committee's procedures shall be determined by the CEO and CFO. Any amendments, modifications or supplements to this Charter must be approved by the CEO, CFO and General Counsel.

The Disclosure Committee shall meet as appropriate to (i) ensure the accuracy and completeness of the Disclosure Statements and (ii) evaluate the Disclosure Controls and Procedures and determine whether any changes to the Disclosure Controls and Procedures are necessary or advisable in connection with the preparation of the Company's upcoming periodic reports or other Disclosure Statements, taking into account developments since the most recent meeting, including changes in the Company's organization and business lines and any change in economic or industry conditions.

#### **IV. Other Responsibilities**

The Disclosure Committee shall also have such other responsibilities as the CEO and CFO may assign to it from time to time.

# EXHIBIT K

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

IN RE SYNCHRONY FINANCIAL  
DERIVATIVE LITIGATION

No. 3:19-cv-00130-VAB

**RULING AND ORDER APPROVING  
SHAREHOLDER DERIVATIVE SETTLEMENT**

This consolidated shareholder derivative litigation pending in this Court is entitled *In re: Synchrony Financial Derivative Litigation*, No. 3:19-cv-00130 (the “Action”).

Jeffrey Gilbert, derivatively on behalf of Synchrony Financial (“Synchrony” or the “Company”), and Maureen Aldridge, derivatively on behalf of Synchrony (collectively, the “Plaintiffs”), filed verified shareholder derivative complaints related to the case, *In re Synchrony Financial Securities Litigation* (the “Securities Class Action”), against Margaret M. Keane (“Keane”), Brian D. Doubles (“Doubles”), Paget L. Alves (“Alves”), Arthur W. Coviello, Jr. (“Coviello”), William W. Graylin (“Graylin”), Roy A. Guthrie (“Guthrie”), Richard C. Hartnack (“Hartnack”), Jeffrey G. Naylor (“Naylor”), Laurel J. Richie (“Richie”), and Olympia J. Snowe (“Snowe”) (collectively, the “Defendants”).

The parties have entered into a Stipulation and Agreement of Settlement<sup>1</sup> dated December 12, 2023 (the “Stipulation”), that provides for a dismissal with prejudice of the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”).

The Parties seek the entry of an order: (1) approving the terms of the Settlement as fair, reasonable, and adequate to Synchrony and Current Synchrony Stockholders; (2) fully and finally

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning as those set forth in the Stipulation and Agreement of Settlement dated December 12, 2023 (the “Stipulation”). Declaration of Eric P. Smith, Ex. 1, ECF No. 23-1 (Dec. 20, 2023) (“Stipulation”).

releasing all Released Claims against the Released Persons; (3) awarding \$885,000 in attorney's fees and expenses to Plaintiffs' Counsel<sup>2</sup> and \$2,000 Service Awards to each of the two Plaintiffs; and (4) awarding other and further relief as the Court may deem appropriate. Mot. for Final Approval of Settlement at 1, ECF No. 29 (Mar. 4, 2024) ("Mot. for Final Approval").

Upon reviewing the Stipulation and all of the filings, and following a settlement hearing held on April 1, 2024, the Court **GRANTS** the motion for final approval of the Settlement and the Fee and Expense Amount. The Court **FINDS, CONCLUDES, and ORDERS** as follows.

## **I. BACKGROUND**

On January 28, 2019, Mr. Gilbert filed this verified shareholder derivative complaint on behalf of Synchrony, which was originally captioned *Gilbert v. Keane*, No. 3:19-CV-00130. Compl., ECF No. 1 (Jan. 28, 2019).

On March 11, 2019, Ms. Aldridge filed a separate verified shareholder derivative complaint on behalf of Synchrony. *Aldridge v. Keane*, No. 3:19-CV-00369, Compl. ECF No. 1 (Mar. 11, 2019).

On March 26, 2020, the Court directed the Clerk of Court to consolidate the two cases into this single Action. Order, ECF No. 10 (Mar. 26, 2020); Not. of Consolidation, ECF No. 13 (Mar. 26, 2020).

On December 3, 2020, the Parties filed a joint motion to stay the Action pending final resolution of the Securities Class Action, which the Court granted on December 4, 2020. Joint Mot. to Stay, ECF No. 15 (Dec. 3, 2020); Order Granting Joint Mot. to Stay, ECF No. 16 (Dec. 4, 2020) ("Order Staying Case").

On August 6, 2023, the Court issued an order lifting the stay in light of its order granting final approval of the settlement in the Securities Class Action. Order Lifting Stay, ECF No. 17 (Aug.

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<sup>2</sup> Plaintiffs' Counsel includes Faxon Law Group, LLC ("Faxon Law Group"), The Brown Law Firm, P.C. ("Brown Law Firm"), and The Rosen Law Firm, P.A. ("Rosen Law Firm").

6, 2023).

On December 20, 2023, Plaintiffs filed a motion for preliminary settlement approval. Mot. for Prelim. Approval of Settlement, ECF No. 22 (Dec. 20, 2023).

On December 21, 2023, the Court granted the motion for preliminary settlement approval and: (a) preliminarily approved the Settlement, as set forth in the Stipulation, as being fair, reasonable, and adequate; (b) ordered that notice of the proposed Settlement be provided to Synchrony stockholders; (c) provided the stockholders with the opportunity to object to the proposed Settlement; and (d) scheduled a hearing regarding final approval of the Settlement for April 1, 2024. Order Granting Preliminary Settlement Approval, ECF No. 24 (Dec. 21, 2023) (“Preliminary Approval Order”).

On February 28, 2024, Defendants’ Counsel filed a declaration confirming that Defendants provided a copy of the Notice of Pendency and Proposed Settlement of Stockholder Derivative Action, Declaration of Eric P. Smith, Ex. C, ECF No. 23-1 (Dec. 20, 2023) (“Notice”), and the Stipulation in accordance with ¶ 5 of the Preliminary Approval Order, including posting a copy of the Notice and the Stipulation on the Investor Relations page of Synchrony’s website, publishing the Summary Notice of Pendency and Proposed Settlement of Stockholder Derivative Action, Declaration of Eric P. Smith, Ex. D, ECF No. 23-1 (Dec. 20, 2023) (“Summary Notice”), in *Investor’s Business Daily*, and publishing the Summary Notice in *USA Today*. Declaration of Jared Gerber, ECF No. 26 (Feb. 28, 2024) (“Gerber Decl.”).

On March 4, 2024, Plaintiffs filed a motion for final approval of the Settlement. Mot. for Final Approval; Mem. in Supp. of Mot. for Final Approval of Settlement, ECF No. 29-1 (“Mem.”).

Also on March 4, 2024, Plaintiffs’ Counsel filed a declaration in support of Plaintiffs’ motion for final approval of the Settlement. Declaration of Timothy Brown, ECF No. 30 (Mar. 4, 2024) (“Brown Decl.”).

On March 25, 2024, Plaintiffs filed a notice of no objectors in support of their motion for final approval of settlement. Not. of No Objs., ECF No. 34 (Mar. 25, 2024) (“Not. of No Objs.”).

On April 1, 2024, the Court conducted a hearing (the “Settlement Hearing”) to consider, among other things, (1) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to Synchrony and Current Synchrony Stockholders, and should therefore be approved; and (2) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants.

This Ruling and Order incorporates and makes a part hereof: (1) the Stipulation filed with the Court on December 20, 2023; and (b) the Notice and the Summary Notice, also filed with the Court on December 20, 2023.

## **II. STANDARD OF REVIEW**

### **A. Settlement Approval**

“A derivative action may be settled . . . only with the court’s approval.” Fed. R. Civ. P. 23.1(c). For the Court, “[t]he central question . . . is whether the compromise is fair, reasonable and adequate.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982). “[I]n the context of a derivative action settled on behalf of the class of all shareholders, this [question] requires consideration, in particular, of whether the settlement is the result of arm’s-length negotiations in which plaintiffs’ counsel has effectively represented the interests of the shareholder class, and whether the substantive terms of the settlement are in the interests of [the company] and its shareholders relative to “the likely rewards of litigation[.]” *In re Pfizer Inc. S’holder Derivative Litig.*, 780 F. Supp. 2d 336, 340 (S.D.N.Y. 2011) (internal citations omitted).

To ensure procedural fairness, “[a] court reviewing a proposed settlement must pay close attention to the negotiating process, to ensure that the settlement resulted from “arm’s-length negotiations and that plaintiffs’ counsel have possessed the experience and ability, and have engaged

in the discovery, necessary to effective representation of the class’s interests.” *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (quoting *Weinberger*, 698 F.2d at 74).

To review a settlement for substantive fairness—for whether a settlement is fair, reasonable, and adequate—“the court is primarily concerned with ‘the strength of the case for plaintiffs on the merits balanced against the amount offered in settlement.’” *In re AOL Time Warner S’holder Derivative Litig.*, No. 02 CIV. 6302 (SWK), 2006 WL 2572114, at \*3 (S.D.N.Y. Sept. 6, 2006) (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974)).

### **B. Attorney’s fees**

In light of the corporate benefits conferred by the Settlement, “the Court’s determination of whether plaintiffs’ counsel’s requested fee award is reasonable is guided by the factors set forth by the Second Circuit in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). *In re Pfizer Inc. S’holder Derivative Litig.*, 780 F. Supp. 2d at 343. The six factors include: “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.” *In re Pfizer Inc. S’holder Derivative Litig.*, 780 F. Supp. 2d at 343 (citing *Goldberger*, 209 F.3d at 50).

## **III. DISCUSSION**

As a preliminary matter, this Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Shareholders. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 380 (2016) (“Like the Third Circuit, we read § 27 as conferring exclusive federal jurisdiction of the same suits as ‘aris[e] under’ the Exchange Act pursuant to the general federal question statute.” (citing 28 U.S.C. § 1331)); *In re Bristol-Myers Squibb Derivative Litig.*, No. 02 Civ. 8571 (LAP), 2007 WL 959081, at \*6 (S.D.N.Y. Mar. 30, 2007) (“[D]efendant . . . is subject to personal jurisdiction in this

District based on its substantial operations within this District.”); *Messinger v. United Canso Oil & Gas Ltd.*, 80 F.R.D. 730, 734 (D. Conn. 1978) (“Unlike the truly adverse claims stated against ‘real’ defendants . . . the naming of the derivative corporation as a party defendant raises no potentially harmful consequences for the corporation, because plaintiff is acting solely for the corporation’s benefit. Due process is therefore satisfied so long as the corporation has notice of the suit.”).

As outlined below, the Court finds that the proposed Settlement is fair, reasonable, adequate, and in the best interest of the Shareholders. The Court further finds the Settlement to be the product of extensive arm’s length negotiations conducted by highly experienced counsel.

The Court therefore approves the proposed Settlement.

#### **A. Notice**

“Notice of a proposed settlement . . . must be given to shareholders or members in the manner that the court orders.” Fed. R. Civ. P. 23.1(c). Here, a copy of the Notice and the Stipulation was posted on the Investor Relations page of Synchrony’s website, Gerber Decl. ¶ 6, a copy of the Summary Notice was published in *Investor’s Business Daily*, *id.* ¶ 7, and a copy of the Summary Notice was published in *USA Today*, *id.* ¶ 8. Thus, notice in this case was undertaken consistent with the Court’s Preliminary Approval Order. *See In re AOL Time Warner S’holder Derivative Litig.*, 2006 WL 2572114, at \*6 (S.D.N.Y. Sept. 6, 2006) (finding that the “distribution of notice was consistent with the direction of the Court and adequately satisfied due process” where the plaintiffs distributed notices and published a summary notice in two nationally available newspapers).

Accordingly, the Court finds that the notice requirements under Rule 23.1(c) of the Federal Rules of Civil Procedure were met.

#### **B. Final Approval of the Terms of the Settlement**

“In determining whether a settlement is fair, reasonable, and adequate, the District Court examines the ‘negotiating process leading up to the settlement[, *i.e.*, procedural fairness,] as well as

the settlement’s substantive terms[, *i.e.*, substantive fairness].” *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803–04 (2d Cir. 2009) (quoting *D’Amato*, 236 F.3d at 85) (alterations in *McReynolds*).

First, the Court “must review the negotiating process leading up to the settlement for procedural fairness, to ensure that the settlement resulted from an arm’s-length, good faith negotiation between experienced and skilled litigators.” *Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013) (first citing *McReynolds*, 588 F.3d at 803–04; and then citing *D’Amato*, 236 F.3d at 85). “A ‘presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.’” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (quoting *Manual for Complex Litigation*, Third § 30.42 (1995)).

Here, the Court finds that presumption is met.

As consideration for the Settlement, Synchrony’s Board of Directors agreed to implement corporate governance reforms for a period of no less than three and a half years. Brown Decl. ¶ 8. Following the Parties’ agreement in principle, they participated in a full-day, private mediation and engaged in good faith, arm’s length negotiations as to the attorney’s fees and expenses (the “Fee and Expense Amount”) to be paid to Plaintiffs’ Counsel. *Id.* ¶¶ 9, 79. For the mediation, the Parties engaged a nationally reputed mediator from Phillips ADR. *Id.*; Stipulation § I.C. That the negotiations included active participation by an experienced mediator supports finding that the Settlement is procedurally fair. *See, e.g., D’Amato*, 236 F.3d at 85 (stating that a mediator’s involvement in settlement negotiations “helps to ensure that proceedings were free of collusion and undue pressure”).

Additionally, the Settlement “was negotiated between and among experienced and sophisticated counsel . . . .” Brown Decl. ¶ 53. Defendants were represented by Cleary Gottlieb Steen & Hamilton, a leading corporate defense firm. *Id.* ¶ 54. Plaintiffs’ Counsel, Brown Law Firm, is a

complex business litigation firm that specializes in shareholder derivative litigation. Brown Decl., Ex. A at 2. Plaintiffs’ Counsel, Rosen Law Firm, is currently lead counsel in numerous securities class actions. *Id.*, Ex. B, Ex. 1 at 23–26. And Partner Phillip Kim served as Assistant Corporation Counsel for the City of New York in the Special Federal Litigation Division and currently focuses his practice on securities class actions and shareholder derivative litigation. *Id.* at 7. Plaintiffs’ Counsel, Faxon Law Group, has handled many complex litigation and class action matters in Connecticut and specializes in commercial litigation, among other things. *Id.*, Ex. C, Ex. 1 at 11.

Further, under the terms of the Court’s order staying the Action, Defendants were required to provide Plaintiffs with any written discovery produced in the Securities Class Action or any related derivative action. Brown Decl. ¶ 23. Also, Plaintiffs’ Counsel conducted an extensive investigation, including reviewing and analyzing Synchrony press releases, U.S. Securities and Exchange Commission filings, and reviewing tens of thousands of pages of confidential internal corporate documents produced by Defendants. *Id.* ¶ 79; Stipulation § II. Therefore, “meaningful” discovery has occurred. *See, e.g., In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000) (“[W]hile no formal discovery was conducted in this case, plaintiffs were afforded several opportunities to extensively review records provided by the Austrian Banks . . . . Therefore the Settlement enjoys a presumption of [procedural] fairness.”), *aff’d sub nom. D’Amato*, 236 F.3d at 85–86 (rejecting appellants’ argument that counsel misrepresented the importance of the Austrian Banks’ agreement to provide access to documents, and finding that “the District Court in this case examined the negotiation process with appropriate scrutiny”); *Ferrick v. Spotify USA Inc.*, No. 16-cv-8412 (AJN), 2018 WL 2324076, at \*3 (S.D.N.Y. May 22, 2018) (finding the settlement entitled to presumption of procedural fairness where “settlement negotiations included the exchange of tens of millions of rows of Spotify’s data and work by experts on both sides to evaluate the settlement value of the case”); *cf. Plummer v. Chem. Bank*, 668 F.2d 654, 658 (2d Cir. 1982) (“Although

negotiations in the instant case were conducted by undesignated class representatives without formal pretrial discovery, this, standing alone, did not preclude judicial approval.”).

Accordingly, the Court finds that the Settlement was “reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery[.]” *Visa U.S.A., Inc.*, 396 F.3d at 116, and the presumption of procedural fairness has been met.

Next, “[i]n the context of shareholder derivative litigation, several of the factors enunciated in *Grinnell* inform the Court’s evaluation of whether a settlement is fair, reasonable, and adequate: (1) the reasonableness of the benefits achieved by the settlement in light of the potential recovery at trial; (2) the likelihood of success in light of the risks posed by continued litigation; (3) the likely duration and cost of continued litigation; and (4) any shareholder objections to the proposed settlement.” *In re AOL Time Warner S’holder Derivative Litig.*, 2006 WL 2572114, at \*3 (citing *In re Metropolitan Life Derivative Litig.*, 935 F. Supp. 286, 292 (S.D.N.Y. 1996); *Grinnell Corp.*, 495 F.2d at 463).

The Court makes the following findings and concludes that the balance of the *Grinnell* factors weighs in favor of approving the Settlement Agreement.

*i. Reasonableness of the Benefits Achieved by the Settlement in Light of the Potential Recovery at Trial*

“[I]n any case there is a range of reasonableness with respect to a settlement[—]a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *In re Fab Universal Corp. S’holder Derivative Litig.*, 148 F. Supp. 3d 277, 281 (S.D.N.Y. 2015) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). “[I]n derivative actions where the harm done is to the corporation, a monetary benefit is not necessary for settlement approval.” *Id.* (citing *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 395 (1970)).

The benefits achieved here are the corporate governance reforms tailored to strengthen Synchrony's disclosure controls, oversight, risk assessment practice, and overall corporate governance, and to address the specific deficiencies and misconduct relating to Synchrony's loan portfolio, risk management and disclosure controls. Brown Decl. ¶ 32.

Accordingly, the first *Grinnell* factor supports approval of the settlement. *See In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d at 281 ("Such reforms that directly address the issues that gave rise to suit are exactly the type that courts deem to confer a substantial benefit on the company. The benefits achieved in this settlement are therefore substantial and reasonable, particularly in light of the 'range of reasonableness' standard." (citation omitted)).

*ii. Likelihood of Success in Light of the Risks Posed by Continued Litigation*

"Without the benefit of a fully developed record, courts must heed the Supreme Court's admonition not to 'decide the merits of the case or resolve unsettled legal questions.'" *In re AOL Time Warner S'holder Derivative Litig.*, 2006 WL 2572114, at \*5 (quoting *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981)). "Rather, 'the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement.'" *Id.* (quoting *In re Global Crossing Securities and ERISA Litigation*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004)).

"In analyzing the risks of continued litigation and the likelihood of Plaintiffs' ultimate success, '[t]he doctrine of demand futility, the business judgment rule, and the generally uncertain prospect of establishing a breach of fiduciary duties combine to make shareholder derivative suits an infamously uphill battle for plaintiffs.'" *In re CPI Aerostructures S'holder Derivative Litig.*, No. 1:20-CV-2092 (ENV) (CLP), 2023 WL 2969279, at \*8 (E.D.N.Y. Feb. 14, 2023) (footnote omitted) (quoting *In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d at 281–820); *see also In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d at 282 ("A number of risks are posed by continued litigation, while settlement assures broad corporate reform.").

Here, Plaintiffs faced the challenge of, among other things, establishing demand futility and that the Defendants who were directors acted in bad faith. *See In re SAIC Inc. Derivative Litig.*, 948 F. Supp. 2d 366, 382 (S.D.N.Y. 2013), *aff'd sub nom. Welch v. Havenstein*, 553 F. Appx. 54 (2d Cir. 2014) (stating a claim for failure of oversight requires “particularized factual allegations demonstrating bad faith by the director defendants”) (quoting *In re Citigroup Inc. S’holder Derivative Litig.*, 964 A.2d 106, 124 (Del. Ch. 2009)); *id.* at 376 (“A shareholder’s right to bring a derivative action does not arise until he has made a demand on the board of directors to institute such an action directly, such demand has been wrongfully refused, or until the shareholder has demonstrated, with particularity, the reasons why pre-suit demand would be futile.”) (quoting *Khanna v. McMinn*, No. Civ. A. 20545-NC, 2006 WL 1388744, at \*11 (Del. Ch. May 9, 2006) (alteration omitted)).

And similar to the procedural posture in *In re Fab Universal Corp. S’holder Derivative Litig.*, “[t]his case has not undergone substantive motion practice, and it is therefore even less clear that Plaintiffs will be meritorious in establishing liability than in other instances where settlement is reached after extensive adversarial proceedings.” 148 F. Supp. 3d at 282.

Accordingly, the second *Grinnell* factor supports approval of the settlement.

*iii. Likely Duration and Cost of Continued Litigation*

This litigation began on January 28, 2019, and as noted above, has not undergone substantive motion practice. As such, fully litigating this case would require several more years at a cost to the Company. *See In re Metro. Life Derivative Litig.*, 935 F. Supp. 286, 293 (S.D.N.Y. 1996) (“Continued litigation of this case would put a strain on all the parties. This consolidated federal case is already substantially more than two years old. . . . If these cases must be litigated, several more years of litigation would be required.”); *see also In re AOL Time Warner S’holder Derivative Litig.*, 2006 WL 2572114, at \*5 (“Termination of the litigation at this stage of the proceedings ‘obviate[s]

the expenditure of any future time and expense in connection with this action,’ and will allow the Company to direct its full attention to its substantive business.” (quoting *Mathes v. Roberts*, 85 F.R.D. 710, 714 (S.D.N.Y. 1980))).

Accordingly, the Court finds the third *Grinnell* factor weighs in favor of approval.

*iv. Shareholder Objections to the Proposed Settlement*

“The reaction of shareholders may be gauged by reference to the extent of objection to the settlement. In the context of class actions, courts in this Circuit have noted that ‘the lack of objections may well evidence the fairness of the Settlement.’” *In re AOL Time Warner S’holder Derivative Litig.*, 2006 WL 2572114, at \*6 (quoting *In re American Bank Note Holographics*, 127 F. Supp. 2d 418, 425 (S.D.N.Y. 2001)). “The same principle applies to shareholders’ approval of a derivative settlement.” *Id.*

On March 25, 2024, Plaintiffs filed a notice informing the Court that no objections to the Settlement, Plaintiffs’ Counsel’s application for attorney’s fees and expenses, or Plaintiffs’ Service Awards had been served on Plaintiffs’ Counsel or filed with the Court. Not. of No Objs. at 2.

Accordingly, this *Grinnell* factor weighs in favor of approval. *See Menkes v. Stolt-Nielsen S.A.*, No. 3:03-CV-00409(DJS), 2011 WL 13234815, at \*3 (D. Conn. Jan. 25, 2011) (“[T]he complete absence of opposition . . . favors approval of the proposed settlement.”).

As a result, the *Grinnell* factors—taken as a whole—support finding the settlement substantively fair, reasonable, and adequate.

The Court therefore approves the Settlement Agreement and next considers the application for attorney’s fees and expenses.

**C. Attorney’s Fees and Expenses**

“An award of counsel fees is justified in a shareholder derivative action ‘where the derivative action results in a substantial non-monetary benefit to a corporation.’” *Allred on behalf of Aclaris*

*Therapeutics, Inc. v. Walker*, No. 19-CV-10641 (LJL), 2021 WL 5847405, at \*5 (S.D.N.Y. Dec. 9, 2021) (quoting *In re Fab Universal Corp. S’holder Derivative Litig.*, 148 F. Supp. 3d at 283); *In re Pfizer Inc. S’holder Derivative Litig.*, 780 F. Supp. 2d at 343 (“[I]t is well-established that plaintiffs who confer a corporate benefit may be awarded attorneys’ fees and expenses under Delaware law.” (citing *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1165 (Del. 1989))).

Here, the Settlement creates benefits for Synchrony through the reforms addressing the wrongdoing Plaintiffs alleged. Brown Decl. ¶ 7; Stipulation § 4.1. Additionally, the Parties negotiated the Fee and Expense Amount, \$885,000 to be paid by Synchrony’s insurers to the escrow account of Brown Law Firm, with the assistance of a mediator and after the material substantive terms of the Settlement were determined. *Id.* ¶¶ 82–83; *see also Allred on behalf of Aclaris Therapeutics, Inc.*, 2021 WL 5847405, at \*5 (collecting cases) (“The few courts that have considered the issue over the years have held that great, and potentially dispositive, weight should be given to a fee amount not to be paid from a common fund negotiated at arm’s length between sophisticated counsel after the substantive terms of a settlement have been agreed.”).

Considering the *Goldberger* factors, “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations[.]” *In re Pfizer Inc. S’holder Derivative Litig.*, 780 F. Supp. 2d at 343 (citing *Goldberger*, 209 F.3d at 50), the Court finds that the requested attorney’s fees are reasonable.

First, Brown Law Firm expended 739.5 hours on this Action, Rosen Law Firm expended 64.6 hours, and Faxon Law Group expended 37 hours for a total of 841.1 hours. Brown Decl. ¶ 97. This time was spent on numerous tasks, including conducting research; drafting the Complaints and subsequent motions; analyzing Synchrony’s press releases, public statements, filings with the SEC, securities analysts’ reports and advisories, and media reports about Synchrony; reviewing the

pleadings and attending proceedings pertaining to the Securities Class Action; reviewing tens of thousands of pages of confidential internal corporate documents produced by Defendants; engaging in settlement negotiations with Defendants' counsel; negotiating and drafting the Memorandum of Understanding and the Stipulation; and attending the full-day mediation session. Brown Decl. ¶ 96. For the 841.1 hours expended, Plaintiffs' Counsel incurred \$584,917.50 in attorney's fees, and reasonably seek, in net attorney's fees, a total of \$866,252.43, a lodestar multiplier of 1.48. *Id.* ¶ 97; Mem. at 37; *see also In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d at 283 ("A lodestar multiplier of 1.35 is sufficiently low that it is reasonable to compensate counsel for the time and labor expended, as well as the risk of litigating an uncertain case under a contingency fee arrangement." (citing *In re Comverse Tech., Inc. Sec. Litig.*, No. 06–CV1825 (NGG), 2010 WL 2653354, at \*5 (E.D.N.Y. June 24, 2010))).

Second, although the Parties did not directly address the magnitude and complexities of this specific Action, the Court agrees with Plaintiffs, *see* Mem. at 21, that shareholder derivative actions are generally complex. *See In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d at 283 ("Counsel has provided limited information as to the unique complexities of litigating this action. However, as a derivative shareholder suit, the many defenses available and opportunities to reduce or rebut any findings of liability or damages make this litigation complicated. This factor militates in favor of settlement approval." (citations omitted)).

Third, as discussed above, "[i]n analyzing the risks of continued litigation and the likelihood of Plaintiffs' ultimate success, '[t]he doctrine of demand futility, the business judgment rule, and the generally uncertain prospect of establishing a breach of fiduciary duties combine to make shareholder derivative suits an infamously uphill battle for plaintiffs.'" *In re CPI Aerostructures S'holder Derivative Litig.*, 2023 WL 2969279, at \*8 (footnote omitted) (quoting *In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d at 281–820).

Fourth, both Parties were represented by experienced counsel who zealously represented their clients and negotiated “a strong package of valuable corporate therapeutics despite the real challenges Plaintiffs faced in their ability to recover for Synchrony in this derivative litigation, all while avoiding any unnecessary expenditure of resources by Synchrony, the real party in interest.” Brown Decl. ¶¶ 91–92.

Fifth, the corporate governance reforms that Synchrony will undertake as a part of the Settlement, including policies designed to strengthen the Company’s corporate transparency, risk management, oversight, and disclosure controls, among other improvements, *id.* ¶ 88, warrant a fee award on par with the economic benefit to Synchrony, *see In re Fab Universal Corp. S’holder Derivative Litig.*, 148 F. Supp. 3d at 284 (“In the marketplace, assurance of [corporate governance reform] . . . has a monetary benefit for [the company]. This factor therefore weighs in favor of settlement approval.”).

Sixth, derivative actions allow “individual shareholders a means to protect the interests of the corporation . . . [.]” *In re Scudder Mut. Funds Fee Litig.*, No. 04 CIV. 1921 (DAB), 2007 WL 2325862, at \*10 (S.D.N.Y. Aug. 14, 2007), and fee awards “serve as an incentive for future counsel to devise remedies as an alternative to money, strengthening corporate America in the long run through innovation and prophylaxis[.]” *In re AOL Time Warner S’holder Derivative Litig.*, No. 02 CIV. 6302 (CM), 2010 WL 363113, at \*23 (S.D.N.Y. Feb. 1, 2010); *see also Allred on behalf of Aclaris Therapeutics, Inc.*, 2021 WL 5847405, at \*6. (“Public policy also favors an award of attorneys’ fees in derivative actions—which keep corporate directors honest and improve corporate governance.” (citing *In re Fab Universal Corp. S’holder Derivative Litig.*, 148 F. Supp. 3d at 284)).

Finally, “[i]t is well-settled that ‘[a]ttorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were incidental and necessary to the representation of those clients.’” *In re Bear Stearns Companies, Inc. Sec.*,

*Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 272 (S.D.N.Y. 2012) (quoting *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003)). Plaintiffs' Counsel attests that the \$14,747.57 in expenses it incurred "were necessary to effectively prosecute and resolve the case on favorable terms" and "would have been billed in non-contingency matters." Brown Decl. ¶ 99.

Accordingly, Plaintiffs' Counsel are hereby awarded the negotiated Fee and Expense Amount of \$885,000, a fair and reasonable sum after considering the factors outlined in *Goldberger*.<sup>3</sup>

#### IV. CONCLUSION

For the reasons explained above, upon reviewing the Stipulation and all of the filings, and following a settlement hearing held on April 1, 2024, the Court **GRANTS** the motion for final approval of the Settlement and the Fee and Expense Amount. The Court **FINDS, CONCLUDES,** and **ORDERS** as follows:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, and over all Parties.
3. The Court finds that the notice of the Settlement was published and disseminated in accordance with this Court's Preliminary Approval Order. This Court further finds that the forms and contents of the Notice and Summary Notice, as previously preliminarily approved by the Court, fully satisfied the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and the

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<sup>3</sup> This sum includes, having considered and deemed reasonable, the two \$2,000 Service Awards to be paid from the Fee and Expense Amount. Stipulation § 4.4; *see also In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d at 285 (determining that a \$2,5000 service award was reasonable because the request was minimal, no objection had been made, and because "[c]ourts in this Circuit routinely award . . . costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." (quoting *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 272 (S.D.N.Y. 2012))).

requirements of due process.

4. The Court hereby approves the Settlement set forth in the Stipulation and finds that the Settlement is, in all respects, fair, reasonable, and adequate to each of the Parties, and further finds that the Settlement is in the best interests of Synchrony and its stockholders.

5. The Action and all claims contained therein, as well as all of the Released Claims against Released Persons, are dismissed with prejudice. The Parties are to bear their own costs, except as otherwise provided below.

6. Upon the Effective Date, the Plaintiffs' Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Claims against the Released Persons. Plaintiffs' Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, covenanted not to sue any Released Persons with respect to any Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting the Released Claims against the Released Persons except to enforce the releases and other terms and conditions contained in the Settlement and/or this Judgment.

7. Upon the Effective Date, Defendants and Defendants' Counsel shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged each and all of Defendants' Released Persons from Defendants' Released Claims. Defendants and Defendants' Counsel shall be deemed to have, and by operation of the Judgment shall have, covenanted not to sue Defendants' Released Persons with respect to any of Defendants' Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting Defendants' Released Claims against Defendants' Released Persons except to enforce the releases and other terms and conditions contained in the Stipulation and/or this Judgment.

8. During the course of the litigation, all parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure, and all other

similar laws or statutes.

9. The Court hereby approves the sum of eight hundred and eighty-five thousand dollars (\$885,000.00) for the payment of Plaintiffs' Counsel's attorney's fees and expenses in the Action 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.

10. The Court hereby approves the service awards of two thousand dollars (\$2,000.00) for each of the two Plaintiffs to be paid from Plaintiffs' Counsel's Fee and Expense Amount in recognition of Plaintiffs' participation and effort in the prosecution of the Action.

11. Neither the Stipulation, nor any of its terms or provisions, nor entry of this Judgment, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement, may be construed as, or may be used as evidence of the validity of any of the claims released herein or an admission by or against the Defendants of any fault, wrongdoing, or concession of liability whatsoever.

12. Defendants may file the Stipulation and/or the Judgment in any action that has or may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction with respect to implementation and enforcement of the terms of the Stipulation.

14. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, this Court hereby finally approves the Stipulation and Settlement in all respects and orders the Parties to perform its terms to the extent the Parties have not already done so.

15. This Judgment is a final judgment, and the Court finds that no just reason exists for delay in entering the Judgment in accordance with the Stipulation. Accordingly, the Clerk of Court is respectfully directed to enter this Judgment forthwith in accordance with Rule 58 of the Federal Rules of Civil Procedure, and to close this case.

**SO ORDERED** at New Haven, Connecticut, this 5th day of April, 2024.

/s/ Victor A. Bolden

VICTOR A. BOLDEN  
UNITED STATES DISTRICT JUDGE

# EXHIBIT L

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

IN RE: SYNCHRONY FINANCIAL  
DERIVATIVE LITIGATION

Lead Case No. 3:19-cv-00130-VAB

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement dated December 12, 2023 (“Stipulation”), is made and entered into by the following parties, each by and through their respective counsel: (1) plaintiffs in the above-captioned consolidated stockholder derivative action (the “Action”) pending in the United States District Court for the District of Connecticut (the “Court”), Jeffrey Gilbert (“Gilbert”) and Maureen Aldridge (“Aldridge”) (the “Plaintiffs”); (2) individual defendants Margaret M. Keane, Brian D. Doubles, Paget L. Alves, Arthur W. Coviello, Jr., William W. Graylin, Roy A. Guthrie, Richard C. Hartnack, Jeffrey G. Naylor, Laurel J. Richie, and Olympia J. Snowe (each a “Defendant,” and collectively, the “Individual Defendants”); and (3) nominal defendant Synchrony Financial (“Synchrony” or the “Company,” and together with the Individual Defendants, “Defendants”) (the “Parties” refers collectively to Plaintiffs and Defendants).

This Stipulation, subject to the approval of the Court, is intended to fully, finally, and forever compromise, resolve, release, settle, discharge, and dismiss any and all Released Claims (as defined herein) upon the terms and subject to the conditions set forth herein.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiffs allege that, *inter alia*, beginning January 19, 2018, at least, the Individual Defendants breached their fiduciary duties by issuing and/or causing the Company to issue false and misleading statements and omissions to the public regarding the pushback Synchrony was receiving from its retail partners based on: (1) adjustments the Company had made to its underwriting practices; and (2) Synchrony making less credit available to certain Company

and by operation of the Judgment shall completely, fully, finally, and forever compromise, settle, release, discharge, and extinguish any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which do now exist, or heretofore existed, or may hereafter exist, upon any theory of law or equity now existing or coming into existence in the future, and without regard to the subsequent discovery of additional or different facts. The Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of the Stipulation of which this release is a part.

## **2. TERMS OF THE SETTLEMENT**

2.1 Within ninety (90) days of issuance of a final order approving the settlement of the Action by the Court, the Board shall adopt resolutions and amend Board committee charters, corporate governance documents, and/or the Company's Bylaws<sup>1</sup> to ensure the adoption, implementation, and maintenance of the Reforms, which are set forth in Exhibit A attached hereto, and which shall remain in effect for no less than three and a half (3.5) years from the date of implementation.

2.2 Synchrony acknowledges and agrees that the filing, pendency, and settlement of the Action was a material and precipitating cause of the Company's decision to adopt, implement, and maintain the Reforms. Synchrony also acknowledges and agrees that the Reforms confer substantial benefits to Synchrony and Synchrony's shareholders.

## **3. APPROVAL AND NOTICE**

3.1 Within ten (10) business days of the execution of this Stipulation, the Plaintiffs shall submit this Stipulation together with its exhibits to the Court and shall jointly apply for entry

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<sup>1</sup> The term "Bylaws" refers to the Amended and Restated Bylaws of Synchrony Financial, As Amended on October 27, 2016.

of the Preliminary Approval Order, substantially in the form of Exhibit B attached hereto, requesting: (i) preliminary approval of the Settlement set forth in this Stipulation; (ii) approval of the form and manner of providing notice of the Settlement to Current Synchrony Stockholders; and (iii) a date for the Settlement Hearing.

3.2 Within twenty-one (21) days after the entry of the Preliminary Approval Order, Synchrony shall: (1) post a copy of the Notice and the Stipulation (and exhibits thereto) on the Investor Relations page of the Company's website; (2) publish the Summary Notice in *Investor's Business Daily*; and (3) publish the Summary Notice in *USA Today*. At least thirty (30) days before the Settlement Hearing, Synchrony shall also update the litigation disclosure in its first filing with the SEC on Form 10-Q or Form 10-K after the entry of the Preliminary Approval Order to advise of the status of the Settlement and that the Notice and Stipulation (and exhibits thereto) can be found on the Investor Relations page of Synchrony's website. Synchrony shall be solely responsible for paying the costs and expenses related to providing notice of the Settlement set forth in this paragraph or as otherwise required by the Court.

3.3 Pending the Court's determination as to final approval of the Settlement, Plaintiffs and Current Synchrony Stockholders are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims against any of the Released Persons. The Parties request that the current proceedings in the Action, including any deadlines or filing requirements, except to consummate the Settlement, be suspended.

#### **4. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

4.1 In consideration of the substantial benefits conferred upon Synchrony as a direct result of the Reforms and Plaintiffs' and Plaintiffs' Counsel's efforts in connection with the Action,

and subject to Court approval, the Company's insurers shall pay to Plaintiffs' Counsel, collectively, their attorneys' fees and costs in the amount of eight hundred eighty-five thousand dollars (\$885,000.00) (the "Fee and Expense Amount").

4.2 Within thirty (30) days of the date of entry of the Preliminary Approval Order, Synchrony's insurers shall pay the Fee and Expense Amount to the escrow account of The Brown Law Firm, P.C. (the "Escrow Account"). The Fee and Expense Amount, to the extent approved by the Court, shall be released from the Escrow Account once the Court enters the Judgment and an order approving the Fee and Expense Amount—notwithstanding the existence of any collateral attacks on the Settlement, including, without limitation, any objections or appeals—by The Brown Law Firm, P.C. to each of the firms comprising Plaintiffs' Counsel. Plaintiffs' Counsel shall make no request to the Court for (and hereby release any right they may otherwise have to seek) attorneys' fees and/or costs beyond the Fee and Expense Amount. In no event shall Defendants or their insurers be obligated to pay any fees or costs to Plaintiffs' Counsel in excess of the Fee and Expense Award. Defendants, including Synchrony, shall have no responsibility for, and no liability with respect to, the allocation of the attorneys' fees and expenses awarded or distribution of attorneys' fees and expenses from the Escrow Account to Plaintiffs' Counsel.

4.3 In the event that the Judgment fails to become Final as defined in Section V (§1.10), if a collateral attack is successful or the Settlement is otherwise terminated, or to the extent that the Court does not approve Plaintiffs' Counsel's application for an award of attorneys' fees and costs in the full amount of the Fee and Expense Amount, Plaintiffs' Counsel must refund the Fee and Expense Amount to the extent it is denied or reduced to Synchrony within thirty (30) days from receiving notice from Defendants' Counsel or from a court of appropriate jurisdiction.

4.4 Plaintiffs' Counsel may apply to the Court for service awards of up to two thousand dollars (\$2,000.00) for each of the two Plaintiffs to be paid from the Fee and Expense Amount in recognition of Plaintiffs' participation and effort in the prosecution of the Action (the "Service Awards"). Defendants shall not object to the application for the Service Awards.

4.5 The procedure for and the allowance or disallowance by the Court of any application by Plaintiffs' Counsel for fees and costs are not part of this Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. The Court's awarding of any fees and costs is not a necessary term of this Settlement, and it is not a condition of this Settlement that Plaintiffs' Counsel's application(s) for such fees and costs be approved by the Court in the amount of the Fee and Expense Amount or in any other amount whatsoever.

## **5. RELEASES**

5.1 Upon the Effective Date, the Plaintiffs' Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Claims against the Released Persons, individually on behalf of themselves, and derivatively on behalf of Synchrony, and on behalf of their respective agents, spouses, heirs, executors, administrators, personal representatives, predecessors, successors, transferors, transferees, representatives, and assigns, in their capacities as such. Plaintiffs' Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, covenanted not to sue any Released Persons with respect to any Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting the Released Claims against the Released Persons except to enforce the releases and other terms and conditions contained in the Settlement and/or the Judgment.

**THE BROWN LAW FIRM, P.C.**

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**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

IN RE: SYNCHRONY FINANCIAL  
DERIVATIVE LITIGATION

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Lead Case No. 3:19-cv-00130-VAB

**EXHIBIT A**

**CORPORATE GOVERNANCE REFORMS**

***I. CORPORATE GOVERNANCE REFORMS TO BE IMPLEMENTED AND MAINTAINED BY SYNCHRONY AS A RESULT OF THE SETTLEMENT***

The Board of Synchrony shall adopt resolutions and amend Board committee charters, corporate governance documents, and/or its Bylaws<sup>1</sup> within ninety (90) days of the Court approved settlement order becoming final to implement as described herein the following Reforms, which shall remain in effect for no less than three and one-half (3.5) years from the date of implementation.

**1. THE CHIEF CREDIT OFFICER POSITION**

The Company shall ensure that its Chief Credit Officer position is charged with the following responsibilities:

(a) Performing a comprehensive review of Synchrony's credit card loan portfolio and the state of the Company's credit quality, any material trends and changes on an annual basis and providing a report on his or her findings to the Risk Committee; and

(b) The Chief Credit Officer shall attend every meeting of the Disclosure Committee, absent extraordinary circumstances, in which case the Chief Credit Officer shall have the option to delegate and designate a direct report to attend such meeting.

**2. THE CHIEF RISK OFFICER POSITION**

The Company shall ensure that its Chief Risk Officer position is charged with the following responsibilities:

(a) Ensuring full cooperation of the Risk function to support the Internal Audit function's independent annual assessment of Synchrony's enterprise risk governance framework, and working with Internal Audit to schedule a Joint Risk and Audit Committee update where Internal Audit will present the independent assessment results;

(b) Ensuring Material Risk Takers' and Material Risk Controllers' goals and objectives reflect the expectations to promote a sound risk culture;

(c) Performing an independent review of Synchrony's draft quarterly and annual reports filed with the SEC on Forms 10-Q and 10-K, and related materials prior to their publication to check for (1) the accuracy, completeness, and timeliness of disclosures relating to risk exposure from Synchrony's loan portfolio and reserves for loan losses, (2) the identification and disclosure of any material risks to Synchrony's compliance with applicable laws and regulations, and (3) accurate reporting of any material issues that may merit disclosure to Synchrony's Disclosure Committee;

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<sup>1</sup> The term "Bylaws" refers to the Amended and Restated Bylaws of Synchrony Financial, as Amended on October 27, 2016.

(d) Reporting periodically to the Risk Committee regarding any material changes or recently discovered deficiencies in the Company's enterprise risk management program;

(e) In conjunction with the Chief Compliance Officer, overseeing employee training in compliance; and

(f) The Chief Risk Officer shall attend every meeting of the Disclosure Committee, absent extraordinary circumstances, in which case the Chief Risk Officer shall have the option to delegate and designate a direct report to attend such meeting.

### **3. THE CHIEF COMPLIANCE OFFICER POSITION**

The Company shall ensure that its Chief Compliance Officer position is charged with the following responsibilities:

(a) Working with Synchrony's Legal function to evaluate Synchrony's ethics and compliance program in light of trends and changes in laws which may affect Synchrony's compliance with applicable laws and regulations;

(b) Acting as a liaison between management and the Board, or an applicable Board committee, in which capacity the Chief Compliance Officer shall: (i) be responsible for assessing organizational risk for misconduct and noncompliance with applicable laws and regulations; (ii) report material risks relating to such noncompliance to the Risk Committee promptly after identification of these risks; and (iii) make written recommendations for further evaluation and/or remedial action to address material instances of noncompliance within reasonable deadlines, if any, established by the Risk Committee;

(c) Working with the VP, Ombuds & Ethics Leader to promptly report to the Audit Committee any allegations of non-compliance and ethics concerns relating to material compliance matters; and

(d) Meeting with the Company's Legal function at least every quarter to discuss ongoing and potential litigation and compliance issues.

### **4. THE MANAGEMENT-LEVEL DISCLOSURE COMMITTEE**

The Disclosure Committee members shall consist of, at least, the Company's CEO, CFO, Chief Risk Officer, Chief Compliance Officer, Chief Audit Executive, Chief Credit Officer, and at least one other senior officer with day-to-day oversight of a key functional area of the Company. The Disclosure Committee charter shall be amended to address the following:

(a) Establish procedures and review timelines relating to the preparation and filing of the Company's quarterly earnings press releases in addition to its periodic SEC reports, including disclosure policies and lines of communication to ensure that relevant Company personnel timely report to the Disclosure Committee information potentially requiring disclosure, in coordination with other groups within the Company as appropriate;

(b) Review the Company's Exchange Act filings (including Forms 10-K, Forms 10-Q, Forms 8-K, and proxy statements) and registration statements. In the event that such review reveals a false statement or omission of material fact, the Disclosure Committee will report the deficiency to the Board;

(c) The chair of the Disclosure Committee, or the chair's designee, shall provide a report at least quarterly to the Audit Committee regarding its processes and findings; and

(d) At least annually review Company's non-financial operating metrics disclosed in its Exchange Act filings and assess whether to continue reporting such metrics.

## **5. THE BOARD-LEVEL RISK COMMITTEE**

Synchrony shall adopt a resolution to amend the Risk Committee Charter and Risk Committee Key Practices and post the amended Risk Committee Charter and Risk Committee Key Practices on the Company's website. The Risk Committee Charter and Risk Committee Key Practices shall be amended to address the following:

(a) The purpose of the Risk Committee shall be to assist the Board in its oversight of the Company's enterprise-wide risk management framework, including as it relates to credit and investment, market, liquidity, operational (including cyber security), compliance and strategic risks;

(b) The Risk Committee shall have unrestricted access to Company personnel and documents and authority to direct and supervise an investigation into any matters within the scope of its duties, including for the purpose of overseeing Synchrony's risk management as it relates to compliance risks. The Risk Committee shall request no less than twice a year that management prepare a report to the Board reflecting material risks that have been identified including recommendations regarding proposals for mitigating these risks, as well as relevant considerations relating to Synchrony's public disclosures of these risks;

(c) The Risk Committee shall have access to certifications or such other reports, as it deems necessary, from the Chief Credit Officer, Chief Risk Officer, the Chief Compliance Officer, and as appropriate other members of management or other personnel, at least quarterly, confirming the accuracy of any proposed risk disclosures or providing information necessary to confirm the same; and

(d) The Risk Committee shall ensure that its Charter and Key Practices are amended to describe its oversight functions and responsibilities with regard to the Enterprise Risk Management Committee, the Asset and Liability Management Committee and the Capital Management Committee.

## **6. THE AUDIT COMMITTEE**

Synchrony shall adopt a resolution to amend the Audit Committee Charter and Audit Committee Key Practices and post the amended Audit Committee Charter and Audit Committee Key Practices on the Company's website. The Audit Committee Charter and Audit Committee Key Practices shall be amended to address the following:

(a) During the Audit Committee's separate executive sessions with the Company's Chief Audit Executive and independent auditor, the Audit Committee shall also meet with, as the Audit Committee deems appropriate, the Chief Credit Officer, Chief Risk Officer, Chief Compliance Officer, Chief Legal Officer, Secretary and a representative of the Disclosure Committee in carrying out its duties;

(b) In reviewing the Company's draft quarterly and annual reports filed with the SEC on Forms 10-Q and 10-K and its quarterly earnings releases, the Audit Committee shall solicit the input of management, as necessary, to review the accuracy of public disclosures related to topics within their expertise, including, without limitation: (i) Synchrony's loan portfolio and reserves for loan losses, internal controls, enterprise risks, and compliance matters that may have a material impact on the Company's business, results of operations or financial condition; or (ii) any other matter required to be disclosed under state and federal securities laws and regulations; and

(c) The Audit Committee shall be responsible for overseeing the establishment and maintenance of a new third-party reporting hotline, website, and email address. The Audit Committee may delegate matters with respect to the operation and process for establishment of the hotline to a management committee.

## **7. BOARD OVERSIGHT OF STOCK REPURCHASES**

The Company shall modify its procedure for approving and overseeing stock repurchases, which shall include the following measures:

(a) Before authorizing any program to repurchase the Company stock, the Board shall evaluate management's recommendation and determine independently whether such a repurchase program is in the best interests of the Company; and

(b) The Board's evaluation must support a finding that: (i) the proposed repurchases would serve the best interests of the Company and its stockholders; and (ii) the proposed repurchases appropriately manage the Company's liquidity, capital and stockholder equity.

## **8. INSIDER TRADING CONTROLS**

The Company shall post the Insider Trading Policy on the Company's website.

(a) The adoption of a 10b5-1 Trading Plan by an executive officer or director, and the aggregate number of shares involved, shall be publicly disclosed, as and if so required by SEC rules and regulations; and

(b) All 10b5-1 Trading Plans shall be pre-cleared by the Company's Legal function.

## **9. THE COMPENSATION COMMITTEE**

Synchrony shall adopt a resolution to amend the Management Development and Compensation Committee Charter ("Compensation Committee Charter") and Management Development and Compensation Committee Key Practices ("Compensation Committee Key

Practices”) and post the amended Compensation Committee Charter and Compensation Committee Key Practices on the Company’s website. The Compensation Committee Charter and Compensation Committee Key Practices shall be amended to address the following:

(a) In determining, setting, or approving annual short-term compensation arrangements, the Compensation Committee shall take into account the particular executive officer’s performance as it relates to both legal compliance and compliance with the Company’s internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company’s plans, policies, or agreements; and

(b) In determining, setting, or approving termination benefits and/or separation pay to executive officers, the Compensation Committee shall take into consideration the circumstances surrounding the particular executive officer’s departure and the executive officer’s performance as it relates to both legal compliance and compliance with the Company’s internal policies and procedures. This shall not affect payments or benefits that are required to be paid pursuant to the Company’s plans, policies, or agreements.

#### **10. EMPLOYEE TRAINING IN COMPLIANCE**

Synchrony shall ensure that its employee training program adheres to the following conditions:

(a) Synchrony’s Chief Risk Officer shall be responsible for education pursuant to this provision;

(b) Training shall be mandatory for all directors, officers, employees, of Synchrony. Training shall be annual for all such persons, and in the event a person is appointed or hired after the annual training for a particular year, a special training session shall be held for such individual within three (3) months of his or her appointment or hiring; and

(c) Training shall include coverage of Synchrony’s Code of Conduct and the Insider Trading Policy for relevant directors, officers and employees.

#### **11. UPDATE OF OMBUDS PROGRAM POLICY**

In conjunction with Synchrony’s Ombuds program, the Board shall require management to update the Synchrony Ombuds Program Policy (the “Ombuds Policy”) to address the following. The Company shall complete implementation of the Ombuds Policy within fifteen (15) months of the Court approved settlement order becoming final.

(a) The Company’s Ombuds Policy shall:

1. Encourage interested parties to bring forward ethical and legal violations, and/or a reasonable belief that ethical and legal violations have occurred, to the VP, Ombuds & Ethics Leader, the Chief Compliance Officer, Human Resources, Legal and/or the third-party reporting hotline, website, or email address, in addition to those reporting resources already identified in the Code of Conduct, so that action may be taken to resolve the potential concern. These concerns shall be reviewed by the VP, Ombuds & Ethics Leader and/or Legal as applicable

and may also be directed to the Ombuds Sub-Committee and Audit Committee, in consultation with and under the supervision of the Company's Legal function;

2. Communicate to all employees regarding the importance of concern reporting;

3. Require all Company employees to cooperate with the Board, Audit Committee or company authorized investigations. Failure to cooperate, making false statements to or otherwise misleading internal or external auditors, investigators, legal or compliance representatives, regulators or other governmental entities may be grounds for immediate termination of employment or other relationship with the Company and may also be a criminal act that can result in severe penalties; and

4. Require a third-party provider to promptly report in writing any credible concern to the Ombuds Program. The Ombuds Sub-Committee shall ensure that the third-party reporting hotline, website, and email address are published conspicuously on the Company's website, are published in the Code of Conduct, and are made available elsewhere so as to be available not only to employees, but also to customers, vendors, and other third parties. The third-party reporting resources shall provide an anonymous communication channel for employees and other stakeholders to report their concerns regarding, among other things, compliance matters, the integrity of Synchrony's public disclosures, internal controls, auditing, financial reporting, accounting matters, insider sales and other matters. Employees may also use this communication channel to report concerns relating to ethical business or personal conduct, integrity, and professionalism. The VP, Ombuds & Ethics Leader shall ensure that all anonymous Ombuds concerns are provided to the Company's Legal function and that all concerns will be confidentially and promptly reviewed and investigated, where appropriate, with oversight by the Company's Legal function, and that any appropriate remedial action is taken based on the results of the investigation. The Company's Legal function shall ensure that the Company's nonretaliation policy is strictly complied with in order to protect any Synchrony employee who reports a concern via the third-party reporting resources.

(b) The Code of Conduct—with the endorsement of the Board and the most senior management of the Company—must adequately notify employees and independent contractors of Synchrony of the following:

1. Ombuds concerns should be directed to the VP, Ombuds & Ethics Leader, or any reporting resources already identified in the Code of Conduct, and the concerns will be handled by these parties anonymously, if requested, and in confidence;

2. If a concern is brought to an outside regulator or other governmental entity, he or she will be protected by the terms of the Ombuds Policy just as if he or she directed the concern to the Company reporting resources identified in the Code of Conduct; and

3. It is both illegal and against Synchrony's policy to retaliate in any manner against anyone for raising a concern in good faith, participating in any investigation and/or for encouraging/assisting others in raising a concern;

(c) The Company shall conspicuously post information regarding the third-party reporting hotline, website, or email address on the Company website and make clear that it provides an anonymous communication channel and is available to assist on matters pertaining to any unlawful activities, compliance matters, the integrity of Synchrony's public disclosures, internal controls, auditing, financial reporting, accounting matters, insider sales, and other related matters. Employees may also use this communication channel to report concerns relating to ethical business or personal conduct, integrity, and professionalism; and

(d) The Company shall remind employees of concern reporting options and protections in employee communications provided at least annually and via the Company's intranet.